



O.A.Nos.59, 60,61 and 62 of 2024

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WEB C **C.SARAVANAN, J.**

By this common order, all the applications are closed by recording the consent of the learned counsel for the parties that they are willing to work out their remedy before the Arbitrator Tribunal. The contract signed between the parties pursuant to the Tender document contemplates Arbitration clauses for resolution of the disputes through an Arbitrator. Relevant Clauses are reads as under:

20.ARBITRATION

20.1. Except where otherwise provided for in the contract, all questions and disputes relating to the meaning of the words, terms, specifications, operations, and instructions, mentioned in this contract and as to the quality of workmanship or performance of handling and/or transportation, any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, specifications, operating instructions, orders or these conditions; or otherwise concerning the transport and handling operations, the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof, shall be referred to a sole arbitrator to be appointed by



the Tender Accepting Authority of CONCOR. There will be no objection if the arbitrator so appointed is an employee of CONCOR.

20.2. If the Arbitrator, to whom the matter is originally referred, is transferred or vacates his office or is unable to act for any reason, the Tender Accepting Authority of CONCOR, as aforesaid at the time of such transfer, or vacation of the office or inability to act, shall appoint another person to act as Arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage, at which it was left by his predecessor.

Subject as aforesaid, the provisions of the Arbitration and Conciliation Act 1996, or any statutory modification or re-enactment thereof, and the rules made there under, and for the time being in force shall apply to the arbitration proceeding under this clause.

20.3. It is a term of the contract that the party invoking arbitration shall specify the disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each dispute. The Arbitrator may, with consent of the parties, fix and/or enlarge the time for making and publishing the award as situation warrants.

20.4. The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due



or payable to the contractor shall be withheld on account of such proceedings.

20.5. The Arbitrator shall be deemed to have entered on the reference on the date on which he issues notices to both the parties fixing the date of the first hearing.

20.6. The Arbitrator shall have power to call for such evidence by way of affidavits or otherwise as the Arbitrator shall think proper and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitrator to make the award without any delay.

20.7 The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

20.8 The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

20.9 The award of the Arbitrator shall be final, conclusive and binding on all parties to the contract.

20.10 In case of any disputes or differences between the parties hereto, the court at Chennai shall alone have jurisdiction to entertain the suit/arbitration award.

2. The learned counsel for the applicant would submit that the applicant was ousted forcefully and the contract is awarded to a third party without following the tender process. That apart, it is submitted that the



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respondent is unfair in demanding the amounts in terms of letters 16.12.2023, 19.12.2023 and 01.01.2024.

3. The learned counsel for the respondent submits that there is no dispute as there is no proposal to recover any amount from the respondents. It is submitted that the applicant ought to have invoked the arbitration clause.

4. Considering the submission of the learned counsel for the applicant and the learned counsel for the respondents and recording the consent of both parties and their learned counsels, this Court is inclined to appoint **Mr.A.K.Sri Ram**, Senior Advocate, having office at No.86, Law Chambers, High Court Buildings, Chennai - 600 104, Mobile No.98410 43004, as a sole arbitrator to enter upon reference to resolve the dispute between the parties. It is open to the parties to file fresh application under Section 17 of the Arbitration and Conciliation Act for appropriate interim relief.

5. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral



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proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

6. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, one of the party remains *ex parte*, the other party shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

7. With the above discussions, all the original applications are allowed.

11.03.2024

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