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Arb.O.P(Com.Div.) Nos.507 and 508 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) Nos.507 and 508 of 2023

M/s.Detection Instruments (India) Private Limited,
Represented by its Authorized Signatory

Amit Pravin Satra,
Having its Registered Office at
Plot No.EL-36,
Electronics Zone,
TTC Industrial Area,
MIDC-Mahape,
Navi Mumbai,
Maharashtra – 400 710.

... Petitioner in both O.Ps

Vs.

The Southern Railways,
Represented by its
Senior Divisional Signal and Telecommunication

Engineer, Salem,
Having its Office at
Southern Railway,
Salem Division, Salem,
Tamil Nadu – 636 005.

... Respondent in both O.Ps

Prayer in both O.Ps: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint an Independent Sole Arbitrator to adjudicate upon the disputes between the parties arising under the Contract.



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For Petitioner (In both O.Ps)	: Mr.Sasank Iyer
For Respondent (In both O.Ps)	: Mr.K.Gunasekar Senior Panel Counsel (Central Government)

COMMON ORDER

The petitioner has filed these petitions under Section 11(5) of the Arbitration and Conciliation Act, 1996, for appointment of an Independent Sole Arbitrator.

2. The dispute between the petitioner and the respondent is governed by Clause 39.4.2 of the Special Conditions of Contract to Agreement dated 12.03.2019 in Agreement No.SA-SG-120-I-OT-16-17. Relevant Clause reads as under:-

“39.4.2 In cases not covered by Clause 39.4.1, the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below JA grade, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more Departments, of the Railway to the contractor who will be asked to suggest to General Manager upto 2 names out of the panel for an appointment as contractor's nominee. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so



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appointed. While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts Department. An Officer of selection grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other Departments of the Railways for the purpose of appointment of arbitrators.”

3. The petitioner has sent a notice to the respondent as early as 19.09.2022 seeking to invoke arbitration clause to which, the respondent has replied on 30.09.2022 as follows:-

“Dear Sir,

With reference to the subject above, as per clause 63.1 of GCC-“Matters Finally determined by the Railway : All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM”. Hence, it is requested to kindly refer the matter to the General Manager, Southern Railway.”

4. Since the respondent did not reply, the petitioner has issued yet another notice on 09.01.2023 wherein, the petitioner has asked the respondent to expedite the proceedings. However, the respondent has not responded to the same.

5. It is thus clear that the respondent has forfeited the right to



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participate in the constitution of the Arbitral Tribunal to resolve the dispute between the parties.

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6. Clause 39.4.2 of the Special Conditions of Contract, which has been extracted above also indicates that the clause cannot be enforced in the light of the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516.

7. Considering the same, Court is inclined to appoint **Hon'ble Mr.Justice N.Kirubakaran (Retd.), Former Judge of Madras High Court residing at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai - 600 089, (Mobile No.94450 25454)**, as the Sole Arbitrator to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties.

8. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions



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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 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

9. 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, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

10. These Original Petitions are allowed accordingly, leaving the parties to bear their own costs.

C.SARAVANAN, J.



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11. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

26.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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