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Arb O.P(COM.DIV.) No. 4
of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-10-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**Arb O.P(COM.DIV.) No. 446 of 2025
AND
A NO. 2276 OF 2025**

1. M/s.Omega Construction
Private Limited
Represented by its Director
Mr.Karnan No.46, Co-operative
colony, Uppilipalayam Post,
Coimbatore 641 015. Formerly.
M/s.Omega Constructions
Represented by its Proprietor
Mr.Karnan No.46,Co-operative
Colony, Uppilipalayam Post,
Coimbatore-641 015.

Applicant(s)

Vs

1. The Union of India
Represented By the General
Manager, Southern Railway,Head
Quarters Office, Park
Town,Chennai-600003

2.The Deputy Chief Engineer,
Construction-II southern Railway,
Thiruchirapalli-620001.

Respondent(s)



PRAYER

To Appoint an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, as amended from time to time in order to resolve the dispute between the Petitioner and the Respondent arising out of and in connection with the Agreement No.14/CN/2016 dated 4.5.2016.

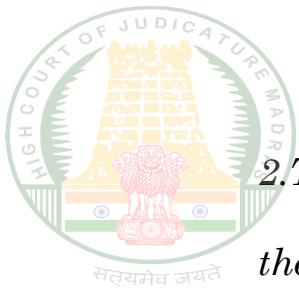
For Applicant(s): A.Madhumathi
For M/s. K.Balaji, (ms.325/2005)
Respondent(s): Central Government
Standing Counsel
Counter Affidavit D.No.
34753, Dt. 03/09/2025
Counsel For The
Respondents
Central Govt Counsel
Memo D.No.34095/25,
9444040797

ORDER

This petition has been filed under Section 11 (6) of the Arbitration and conciliation Act, 1996, for appointment of an arbitrator.

2. When the matter came up for hearing on 04.08.2025, this Court passed the following order:-

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for the appointment of an Arbitrator by this Court.



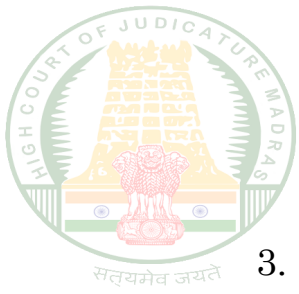
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2. *There seems to be a dispute between the petitioner and the respondents arising out of the Contract dated 04.05.2016. The general conditions of contract dated July 2014, which are part of the contract dated 04.05.2016 contains an arbitration clause.*

3. *The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondents on 06.12.2023 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act. A reply dated 19.01.2024 has been sent by the respondent for the same.*

4. *Since there is no consensus between the parties with regard to the name of the Arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for the appointment of an Arbitrator by this Court.*

5. *Mr.K.Balaji, learned counsel accepts notice on behalf of the respondents. Registry is directed to print his name as the learned Standing counsel for the respondents, who seeks time to file counter. Post the matter for counter and disposal on 25.08.2025.*



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3. After service of notice, the respondents have filed a detailed counter affidavit. In the counter affidavit, the respondents has taken a very specific stand that the entire claim of the petitioner has already been paid and after receiving the amounts, the petitioner submitted a no claim certificate to the respondent on 19.04.2022. After that, the petitioner is now making a further claim which goes against the General Conditions of Contract (GCC) and also the agreement condition. Accordingly, the respondents have taken a stand that the matter falls under the category of excepted matters and there is no scope for referring the matter to arbitration.

4. This Court heard the learned counsel for the petitioner and carefully perused the materials available on record.

5. I had an occasion to deal with the entire law on this issue with respect to the scope of consideration in a petition filed under Section 11 of the Act. One of the ground that was considered is as to whether in a case where there is already accord and satisfaction, the matter can be referred to Arbitration. This Court in Arb OP No.319 of 2025 dated 06.09.2025 after analysing all the earlier judgements



came to the following conclusion :-

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28. The result of the discussions is that the wheel has now come a full circle. The test formulated by the Hon-ble Supreme Court in the decision in Duro Felguera, S.A., departed from the decision of the Hon-ble Supreme Court in Hyundai Engineering & Construction Co. Ltd., has now been reinstated in the decision of the Hon-ble Supreme Court in Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and The Indian Stamp Act, 1899. Consequently, it must follow that the jurisdiction of the Court under Section 11(6A) is confined to examining the existence of an arbitration agreement. Nothing more and nothing less.

29. As the Hon-ble Supreme Court pointed out in the decision in Managing Director Bihar State Food and Civil Supply Corporation Limited, it is just as necessary to follow a precedent as it is to make one. The objections of the respondent on grounds of limitation and accord and satisfaction must, therefore, necessarily await



adjudication before the Arbitral Tribunal.

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6. In view of the above, the ground that has been raised by the respondents cannot be dealt with in this petition and it has to be necessarily raised only before the learned Arbitrator. Liberty is granted to the respondents to raise the issue of accord and satisfaction as a preliminary issue before the learned Arbitrator, if so advised.

7. Clause 64(3) deals with appointment of an arbitrator. Sub Clause (a) (i) states that for claims which does not exceed Rs.25,00,000/-, the Arbitral Tribunal will consist of a sole arbitrator. In case, where the claim is beyond Rs.25,00,000/-, the Arbitral Tribunal will consist of a panel of three arbitrators, whose names are nominated by the Southern Railways.

8. In the considered view of this Court, the above arbitration clause cannot be invoked since the Southern Railway cannot unilaterally appoint arbitrators. Considering the nature of dispute which can be dealt with by a sole arbitrator, this Court put forth a suggestion to the learned counsel appearing on either side as to



whether the Arbitral tribunal can consist of a sole arbitrator to cut down cost. The same was also accepted by either side.

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9. In the light of the above discussion, this Court is inclined to to appoint a sole Arbitrator. Accordingly, Mr.Abishek Jenasenan, Advocate, At No.15/6, Deivasigamani Street, Royapettah, Chennai 600 014, Mobile No.9600000036 email id : abishekj@gmail.com, is appointed as sole Arbitrator and the Arbitrator is requested to adjudicate the arbitral dispute that were arising between the parties by holding the sittings in any venue in Chennai to the convenience of all concerned and render an award. Fees of the sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees) Rules 2017.

10. This Arb. OP is disposed of in the above terms. There shall be no order as to costs.

13-10-2025

rka

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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To

1.The Union of India
Represented By the General
Manager, Southern Railway,Head
Quarters Office, Park
Town,Chennai-600003

2.The Deputy Chief Engineer,
Construction-ii,southern Railway,
Thiruchirapalli-620001.

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N.ANAND VENKATESH J.
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