



WEB COPY



Arb. O.P. (Com. Div.) No.13 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.13 of 2023

KSK Engineering Industrial Pvt. Ltd.,
(Formerly known as Kontinental Steel Korporation)
Represented by its authorized signatory,
Mr.Chandranath Bhattacharya,
Ground Floor, Na. Ward No.15 G E Road,
Kumhari, Chhattisgarh, India – 490 042 and also
having office at 18, R.N.Mukherjee Road,
Kolkata – 700 001.

... Petitioner

VS.

Union of India
Through PCE/SR
Represented by Principal Chief Engineer,
Office of Principal Chief Engineer,
Park Town, Chennai-600 003.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent under the Arbitration Agreement dated 06.07.2022 and pass such further or other orders as this Court may deem fit.



WEB COPY



Arb. O.P. (Com. Div.) No.13 of 2023

For petitioner	: Mr.Hitesh Singhvi
For Respondent	: Mr.AR.L.Sundaresan, Addl. Solicitor General Assisted by Mr.V.Chandrasekaran SPC (GOI)

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of sole arbitrator by this Court.

2. The petitioner was constrained to file this petition since there was no consensus with regard to the appointment of an Arbitrator between the parties to the dispute. The petitioner and the respondent had entered into a contract dated 12.11.2021, which is a letter of acceptance issued by the respondent in favour of the petitioner. There seems to be a dispute arising out of the said contract. Since there was no consensus with regard to the appointment of an Arbitrator as per the arbitration agreement contained in the Letter of Acceptance, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator. Even though a detailed

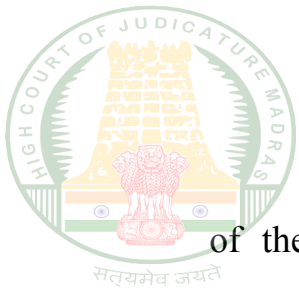


Arb. O.P. (Com. Div.) No.13 of 2023

counter has been filed by the respondent objecting to the appointment of an Arbitrator by this Court, since according to them the arbitration clause contains a mechanism by which, the respondent has got the power to appoint an arbitrator.

3. The law is now well settled by virtue of the decision rendered by the Hon'ble Supreme Court in the case of ***Central Organisation for Railway Electrification vs. M/s.ECI SPIC SMO MCML (JV) A Joint Venture Company rendered on 08.11.2024 in Civil Appeal Nos.9486-9487 of 2019 and also reported in 2024 SCC Online SC 3219*** that an unilateral appointment of an arbitrator by the Railways though they may have an arbitration panel is not permissible under law. In view of the law laid down by the Hon'ble Supreme Court in the aforesaid decision, the question of objecting to the appointment of an Arbitrator by this Court by the respondent under Section 11 of the Arbitration and Conciliation Act, 1996 does not arise.

4. Both the learned counsels on instructions would submit that the parties are now willing to go for appointment of a sole arbitrator, instead



Arb. O.P. (Com. Div.) No.13 of 2023

WEB COPY

of the panel of arbitrators comprising of three members as per the arbitration agreement contained in the contract. The said submission is recorded. In view of the law laid by the Hon'ble Supreme Court in the aforesaid decision and since there is no consensus between the parties with regard to the name of the arbitrator, this Court will have to necessarily appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

5. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions :-

a) This Court appoints Mr. N.L. Rajah, learned Senior Counsel, who is having office at No.IV, Law Chambers, High Court Building, Chennai - 104, (Mobile No.9841013617) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the aforesaid contract entered into between the parties.

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the arbitrator's fees.



Arb. O.P. (Com. Div.) No.13 of 2023

WEB COPY

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

(e) The venue of the arbitration shall be at Chennai at a mutually convenient place.

03.02.2025

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

vsi2



WEB COPY



Arb. O.P. (Com. Div.) No.13 of 2023

ABDUL QUDDHOSE, J.

vsi2

Arb.O.P (Com.Div.) No.13 of 2023

03.02.2025

(1/2)