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Arb. O.P. (Com. Div.) No.31 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.31 of 2023

Metlonics Industries Private Limited,
Having its registered office at
D 105, Phase VII, Industrial Area,
Mohali – 160055, Punjab,
Rep. By its Director Mr.Gangandeep Singh.

... Petitioner

VS.

The Integral Coach Factory,
Admin Building, Dr. Ambedkar Road,
Chennai, Tamil Nadu – 600 038,
Rep. By its General Manager.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint Mr.Justice K.P.Sivasubramaniam, Retired Judge, Madras High Court Chennai and/or Mr.Justice Kannan, Retired Judge, Madras High Court, Chennai as the Sole Arbitrator to resolve the dispute between the petitioner and the respondent under purchase order No.02/18/2457/2981/S dated 11.12.2018 and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.



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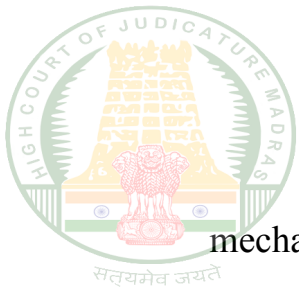
For petitioner
For Respondent

: Mr.N.Karthik Sheshadri
: Mr.Prasad Vijayakumar,
SPC

ORDER

This petition has been filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996, seeking for appointment of a sole arbitrator by this Court.

2. The petitioner was constrained to file this petition since there was no consensus with regard to name of the Arbitrator to adjudicate the dispute between the parties to the dispute. The petitioner and the respondent had entered into a contract through a Purchase Order and the underlying documents which includes the 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 name of the Arbitrator, this petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator. A detailed 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 separate

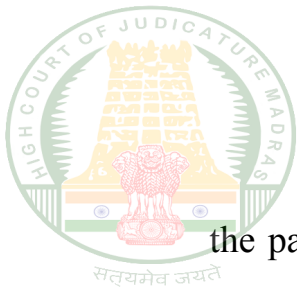


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mechanism by which, the respondent has got the power to appoint an arbitrator unilaterally from the panel of arbitrators maintained by the respondent.

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 the arbitration through a sole arbitrator appointed by this Court instead of constituting the arbitral tribunal from



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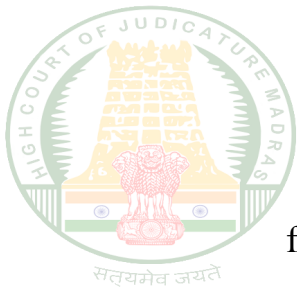
the panel of arbitrators maintained by the respondent. The said consent is recorded by this Court. In view of the consent given by both the parties for the appointment of a sole arbitrator and in view of the law laid by the Hon'ble Supreme Court in the aforesaid decision and since there is no consensus 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 Hon'ble Mr.Justice Sanjay V.Gangapurwala, Chief Justice of High Court of Madras (Retd), residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad – 431 001, 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



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fees.

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(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 or at a mutually convenient place, agreeable to both the parties to the dispute.

03.02.2025

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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