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C.M.P. Nos.3853, 3706 and 3712 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

C.M.P. Nos.3853, 3706 and 3712 of 2025

in

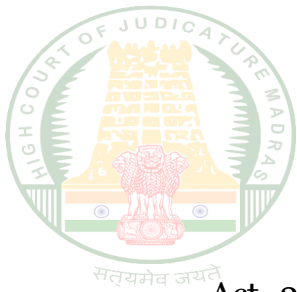
O.S.A.(CAD)Nos.176335, 176350 and 176349 of 2024

BVG India Ltd.,
Represented by its Authorised Signatory having
Registered office at BVG House, Premier Plaza,
Pune, Mumbai Road, Chinchwad, Pune,
Maharashtra-411019119. ... Appellant in all Petitions

Vs.

- 1.M/s.Brandavan Food Products,
Rep. By its Partner SH Rahul Agarwal,
D-187, FF, B-Wing, Okhla Industrial Area,
Phase-I, New Delhi-110 020.
- 2.Southern Railway,
Through its General Manager,
Having Office at 37MG+2VH,
Poonamallee High Road,
NGO Annexe, Park Town,
Chennai, Tamil Nadu-600 003. ... Respondents in all Petitions

Common Prayer: Appeals filed under Section 13 of the Commercial Courts



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Act, 2015, read with Order XXXVI Rule 9 of Original Side Rules against the common order dated 23.10.2024 passed in O.A.Nos.616, 614 and 615 of 2024 on the file of original side of this Court.

For Appellant(s):
in all petitions

Mr.G.Rajagopalan
Senior Advocate
for M/s.G.R.Associates

For Respondent(s):
in all petitions

Mr.Sankaranarayanan
Senior Advocate
Mr.Satish Parasaran
Senior Advocate
for M/s.Pawan Jhabakh
Mr.Jasmeet Singh
Mr.Wasif Khan (for R1)

Mr.ARL.Sundaresan
Additional Solicitor General
Assisted by
Mr.V.Chandrasekaran
Senior Panel Counsel (for R2)

* * * * *

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The applications are filed seeking leave to file appeals impugning the common order passed by a learned Single Judge of this Court and pronounced on 23.10.2024 under Section 9 of the Arbitration and Conciliation Act, 1996.



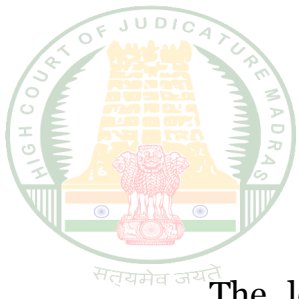
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2. Admittedly, the applicant was not a party to the Section 9 application.

3. The Southern Railways had awarded a tender to Respondent No.1. The applicant was one of the bidders for the tender and did not succeed in securing the contract.

4. Applicant filed a writ petition which was disposed vide order dated 25.07.2024. According to applicant, in the writ petition, applicant made allegations against Respondent No.1 stating that Respondent No.1 committed a default in respect of clause(5) of the bid license, under which Respondent No.1 was duty bound to disclose all criminal cases filed against Respondent No.1 and also to make a disclosure that it was not implicated in any of the criminal cases and no cases were pending for criminal activities in any Court of law. According to applicant, it was a clear case of suppression of fact/non-disclosure of pending criminal cases by Respondent No.1 and thereby rendering it ineligible to have been awarded the contract.



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The learned Single Judge, while disposing the writ petition, made an observation that it is not going to examine the facts as to whether there was a pending criminal case or whether Respondent No.1 has been implicated in any criminal case, but gave liberty to applicant to inform the railway authorities who would look into it and take such steps required in accordance with law. Pursuant to the liberty given, a representation was made by applicant, in response to which a notice dated 28.08.2024 was issued by Railways i.e.. Respondent 2 herein, calling upon Respondent No.1 to show cause as to why further action be not taken. Respondent No.1 was called upon to explain as to why it should not be held that it has withheld vital and factual information and why the contract be not liable for termination, the security deposit be forfeited and why business dealings with Respondent No.1 and its constituents be not banned for five years.

5. Respondent No.1, after giving reply to the show cause notice, filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, before a learned Single Judge of this Court. By the order pronounced on 23.10.2024, the learned Single Judge was pleased to give relief to



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Respondent No.1 and stayed the show cause notice dated 28.08.2024 till the Arbitrator enters upon dispute and interprets the tender conditions and model agreement appended to the tender documents. Upset with this order, the present leave application is filed.

6. In our view, the applications merit no consideration and have to be dismissed *in limini*. This is because, a) applicant is totally a third party, who is not a party to the arbitration agreement and if we allow the applications, indirectly it would mean we are permitting the applicant to join issues in an arbitration matter with which it is totally unconnected; b) if Railways is unhappy, the Railways would certainly challenge the order pronounced on 23.10.2024; c) liberty was given to applicant only to bring to the notice of railway authorities that Respondent No.1 has breached the requirements of tender documents by allegedly suppressing material fact. It was for the railway authorities to take action. Railway authorities have taken action, against which Respondent No.1 filed an application under Section 9 of the Arbitration and Conciliation Act, 1996. The learned Single Judge in his wisdom has passed the order dated 23.10.2024. The applicant's role ends



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there.

7. In the circumstances, applications are dismissed. There shall be no order as to costs. Consequently, OSA (CAD) SR Nos.176335, 176350 and 176349 of 2024 are rejected at the SR stage itself.

We hasten to add that we have not made any observations on the correctness or otherwise of the order dated 23.10.2024 or on the merits of the complaint made by applicant to Railways. Whatever facts narrated above are only for the purpose of rejecting these applications and nothing more.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ, J.)

24.02.2025

MKA/SRA

To:

The General Manager,
Southern Railway, Having Office at 37MG+2VH,
Poonamallee High Road,NGO Annexe, Park Town,
Chennai, Tamil Nadu-600 003.

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The Hon'ble Chief Justice
and
Mohammed Shaffiq, J.

(sra)

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