

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 30 of 2023

Applicant :- M/S Krishna Associates

Opposite Party :- Shipra Estates Ltd.

Counsel for Applicant :- Rahul Sahai

Hon'ble Ashwani Kumar Mishra,J.

In view of office report dated 25.10.2023, notice of this petition upon the opposite party is held sufficient. None, however, has appeared on behalf of the opposite party.

Counsel for the applicant has placed before the Court the original envelope containing notice allegedly sent by the applicant for appointment of arbitrator on 21.10.2022. Its copy is kept on record.

Counsel for the applicant points out that in the inter-se dispute between the same party, in respect of a separate contract dated 22.8.2012, this Court has already appointed an arbitrator in Arbitration and Conciliation Application No. 31 of 2023, vide following order passed on 21.9.2023:-

"Heard learned counsel for the applicant and learned counsel for the respondent.

This application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

Service of notice has already been held to be sufficient, vide order passed by this Court on 15.03.2023, in view of the office report. None has appeared for the opposite party, nor any objection has been filed.

This petition has been filed contending that there exists an arbitration clause in the agreement executed between the parties, which has been duly invoked, but no arbitrator has been appointed.

The work order order has been issued in favour of the applicant by the opposite party on 22.05.2012, which contains an arbitration clause. Clause 7 provides that all disputes are to subject to the jurisdiction of Courts at Ghaziabad.

It transpires that dispute between the parties has arisen and a notice has been sent to the opposite party on 30.09.2022 for appointment of arbitrator. Copy of the postal receipt of India Post is also appended at the bottom of page 158.

Existence of arbitration clause as well as accrual of dispute between the

parties is not in issue. Invocation of arbitration clause is also substantiated. In such circumstances, necessary ingredients to invoke the jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 is shown to be exist. As the existence of arbitration clause is undisputed and the parties have failed to appoint an arbitrator, as such this petition is liable to succeed and is, accordingly, allowed.

Accordingly, Justice Barkat Ali Zaidi, (Retd. Judge), R/o- Plot A/7 Ansal Acquapolis, Republic Crossing, Ghaziabad, Mobile No.7522233735, is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11(6) of the Arbitration and Conciliation Act.

The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties."

It is stated that except for the change in the date or work order, all other conditions remain the same. Submission is that there being an arbitral agreement between the parties and accrual of dispute between them the matter be referred to arbitrator.

Despite service of notice, none has appeared for the opposite party. The averments made in the application are, therefore, relied upon by invoking the doctrine of non-traverse.

Considering the fact that in the inter-se dispute between the same party, this Court has already appointed Justice Barkat Ali Zaidi, (Retd. Judge), R/o- Plot A/7 Ansal Acquapolis, Republic Crossing, Ghaziabad, Mobile No.7522233735, as such, he is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, in this case also, subject to his consent in terms of section 11(6) of the Arbitration and Conciliation Act.

The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

The application stands disposed of, accordingly.

Order Date :- 26.10.2023
Ranjeet Sahu