

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.8 OF 2013

Kirloskar Brothers Limited

..... Petitioner

V/s

B.K. Enterprises

..... Respondent

Mr. Tejas Dande for Petitioner.

None for Respondent.

CORAM : A.A. SAYED, J.

DATED : 10 APRIL 2015

P.C.

1 This Arbitration Petition is filed under section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator. The Petitioner is a Company involved in the business of manufacturing Valves and Pumps, etc. The Respondent is a Contractor, undertaking work on contractual basis. On 17 November 2010, the Petitioner had issued a Letter of Intent to the Respondent for work contract for erection and commissioning of cast iron piping work at PHED Dharbhanga (Bihar) Project. On 18 January 2011, a Purchase Order was issued to the Respondent and the said contract was awarded specifying the conditions of work therein. According to the Petitioner, there was delay in carrying out the work. The work had commenced in the first week of February. As the work was found to be unsatisfactory, the Petitioner had brought this fact to the notice of the Respondent by writing several letters.

On 19 May 2011, a reply was given by the Respondent to the Petitioner explaining the reasons for the delay. On 15 February 2012, notice was given by the Petitioner to the Respondent cautioning to take action to terminate the project order, which was not replied to. The Respondent also did not remain present for joint inspection of the site as requested. The Petitioner ultimately terminated the work contract on 16 March 2012. Thereafter, by letter dated 25 May 2012 the Petitioner invoked Arbitration. The Respondent did not reply to the same.

2. In the Purchase Order there is an arbitration clause, which reads as follows:-

“All disputes arising out this Agreement shall be first settled through Arbitration to be conducted by two Arbitrators, one Arbitrator to be nominated by each party and the Arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The venue of Arbitration shall be Pune, Maharashtra.”

3. Learned Counsel for the Petitioner has pointed out the letter dated 19 May 2011 of the Respondent, where the Respondent has made a reference to the aforesaid Purchase Order No.3100123140, dated 18 January 2011. Learned Counsel for the Petitioner has also invited my attention to the clause in the Purchase Order, which reads as under:

“Please sign and return back the duplicate copy of the P.O. as your acceptance. In the event the same is not received within 15 days, it will be deemed to have been accepted.”

4 Learned Counsel for the Petitioner relied upon the judgment in Arbitration Petition No.48 of 2012 (**Kirloskar Brothers Limited vs. M/s. Jharana Developers**) dated 20 August 2013 wherein learned Single Judge of this Court has dealt with an identical issue relating to arbitration clause in the Purchase Order. Paras 5, 6, 7 and 8 of the said order read as follows:

“5. Having considered the rival submissions and having gone through the petition along with the annexures thereto, I find merit in the case of the petitioner. The respondent does not dispute that the petitioner assigned/outsourced the works of erections and rural electrification to it. The Purchase Order is annexed at Exhibit “A” to the petition. Undisputedly, Clause 17 of the Purchase Order contains the arbitration agreement. The said clause reads as under :

“All disputes arising out of this Agreement shall be first settled through Arbitration to be conducted by two Arbitrators, one Arbitrator to be nominated by each party and the Arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time. The venue of Arbitration shall be Pune, Maharashtra.”

Clause 20 of the Purchase Order is also relevant and it reads as under :

“Please sign and return back the duplicate copy of the P.O. as your acceptance. In the event, the same is not received within 15 days, it will be deemed to have been accepted.”

6. *The respondent, despite receipt of this Purchase Order, did not register any protest or objection to the Purchase Order. The respondent, therefore, deemed to have accepted the terms and conditions of the Purchase Order. A copy of running bill No.4 dated 10th June, 2010, issued by the respondent to the petitioner makes a reference of the said Purchase Order. Be that as it may, the respondents filed a suit in the Court of the Civil Judge (Junior Division), Brahmapur, Ganjam, in respect of the subject matter of the Purchase Order. The respondent, in fact, relied upon the said Purchase Order. In the circumstances, the respondent now cannot take a stand that the Purchase Order was not signed by it or that it is not a party to the arbitration agreement.*

7 *Under Section 7(2) of the Arbitration and Conciliation Act, 1996, an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of separate agreement. Under Clause 7(4)(b) of the said Act, an arbitration agreement is in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunications which provide a record of the agreement.*

8. *The purchase order coupled with running bill No.4 issued by respondent to the petitioner, makes it clear that there exists arbitration agreement between the parties. Under Clause 17 of the Purchase Order, the venue of the arbitration shall be Pune. Clause 18 talks about jurisdiction under which the Courts at Pune in the State of Maharashtra shall have exclusive jurisdiction in respect of any dispute arising out of this agreement.”*

The Petitioner in the aforesaid case is the very Petitioner in the case in hand.

5 The principle laid down in the aforesaid case is clearly applicable to the facts of the present case. In the circumstance, it would have to be held that Arbitration clause in the purchase order would be an Arbitration Agreement between the parties within the meaning of section 7 of the 1996 Act.

6 Though Respondents have been served by substituted service, which has been treated as valid service, none has appeared on their behalf. In the circumstances, I pass the following order:

ORDER

- i) Shri S.K. Binwade, District & Sessions Judge (Retd.) residing at New Ajantha Avenue Bldg., No.3, 'C' wing A-1, Flat No.9, Kothrud, Pune-411 032 is appointed as an Arbitrator to adjudicate the dispute and difference between the parties under the Arbitration & Conciliation Act, 1996.
- ii) Registry to communicate a copy of this order to the Arbitrator together with a memorandum of address of the parties.

7 The Petition is disposed of in aforesaid terms.

(A.A. SAYED, J.)