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ARP-40-2015
(sr. no.25)
Friday, 28.8.2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 40 OF 2015

Shahid Gehlot

.....Petitioner

: V/S :

Rio Care India Pvt. Ltd.

.....Respondent

* * * * *

Ms. Priyanka Pawar i/by. Ms. Charvy Hal-Kanagalekar, Advocate for the petitioner.

Mr. Sahim D. Ansari, Advocate for the respondent.

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Coram :- Smt. R.P. SondurBaldota, J.

28th August, 2015.

P.C. :-

1). This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of “a suitable technical person conversant with disputes arising out of construction contracts”, as sole Arbitrator to decide the disputes between the petitioner and the respondent relating to non-settlement and non-payment of the petitioner's dues. The petitioner carries on business in the name and style of “Expert Construction” and was awarded contract by the respondent for the work of civil, structure, finishing and external

development. By the e-mail dated 7th July, 2014 the respondent terminated the contract for the civil and interior works before the same was complete and without paying the bills of the petitioner. It is alleged that, in the month of December, 2014 the respondent unilaterally appointed one, Vijay Kulkarni as the sole Arbitrator in the matter. According to the petitioner, this appointment was not in accordance with the arbitration agreement between the parties as contained in Clause-52 of the General Conditions of Contract. As per the Clause, the appointing authority is the "Management Review Committee" to be constituted by the respondent.

2). The respondent seeks to justify appointment of Vijay Kulkarni as the Arbitrator contending that his appointment has been subsequently ratified and confirmed by the Management Review Committee by two separate documents. The first document is the ratification by the owners and the second document is ratification by the Project Manager. Since the appointment is to be made by the Management Review Committee, the respondent could not have appointed an Arbitrator on its own and later have the same gratified by the Management Review Committee. Therefore, appointment of Mr. Vijay Kulkarni cannot be said to be a proper appointment and hence the same must be cancelled.

3). There is no dispute as regards the existence of an arbitration agreement between the parties and also the arbitrable dispute under the agreement. Therefore, an Arbitrator is required to be now appointed. Ms. Pawar, learned Advocate appearing for the petitioner suggests four names i.e. the names of Justice Mr. S.M. Jhunjhunwala (Retd.), Justice Mr. R.Y. Ganoo (Retd.), Justice Mr. A.S. Aguiar (Retd.) and Mr. S.C. Bapat, an Engineer for appointment as an Arbitrator. Mr. Ansari, learned Advocate appearing for the respondent, states that the appointment of any of the four persons would be acceptable to the respondent. Considering the nature of the contract between the parties and the dispute, appointment of a technical person i.e. Mr. S.C. Bapat, Engineer would be more appropriate. Hence, the petition is disposed off by appointing Mr. S.C. Bapat, Engineer as the Arbitrator for adjudicating the disputes between the parties under the work order dated 23rd August, 2011.

(SMT. R.P. SONDURBALDOTA, J)

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CERTIFICATE

. Certified to be true and correct copy of the original signed order.