

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.79 OF 2014

M/s. United Sales Corporation
V/s
Union of India & Anr.

..... Petitioner
..... Respondents

Mr. Mihir S. Raje for Petitioner.
Ms. Anjani Kumar Singh for Respondent.

CORAM : A.A. SAYED, J.
DATED : 7 AUGUST 2015

P.C.

1 This Arbitration Petition is filed under section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

2 The Petitioner is a registered Partnership Firm and is a Contractor registered with Military Engineering Services. The Petitioner was allotted a contract and accordingly entered into the contract for "WORK SERVICES FOR PROVISIONS OF 1500KVA TRANSFORMER AND ITS CONNECTED ITEMS AT AFS PUNE". The work was completed and a completion certificate dated 20 November 2010 was issued. The said completion letter stated that the completion certificate has been issued subject to minus price adjustment of provision of 30 V DC power pack in lieu of battery charges 110V, 100AH with battery 2V-55 Nos. against Item no.5 of Schedule 'A'. In view of this caveat in the completion certificate, disputes and differences have arisen between the parties.

3 Clause No.70 of the General Conditions of Contract reads as follows:

“70. Arbitration - All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of sub-Division II of Institution of Surveyor (India) recognised by the Government of India to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos.55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos.52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalised by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to

any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, exparte, if either party, insite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual, item of dispute. The arbitrator shall give reason for the award in each and every case irrespective of the value of claims or counter claims.

The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The Award of the Arbitrator shall be final and binding on both parties to the Contract.”

4 The Petitioner by his letter dated 11 June 2012 had called upon the Respondent No.2 to appoint an Arbitrator. By a further letter dated 5 June 2013 the Petitioner reiterated its request to appoint an Arbitrator. The Petitioner thereafter by a letter dated 4 October 2013 through its

Advocate again called upon the Respondent No.2 to appoint an Arbitrator. Respondent No.2 did not respond nor appointed Arbitrator in spite of the aforesaid two letters written by the Petitioner and one letter by the Advocate for the Petitioner.

5. In the facts and circumstances of the case, I am satisfied that a dispute has arisen between the parties and I am inclined to accede to the request of learned Counsel for the Petitioner that the Arbitrator is required to be appointed in terms of clause 70 of the General Conditions of Contract. Hence, the following order:

Order

The Respondent No.2 shall appoint an Arbitrator in terms of clause 70 of the General Conditions of contract as reproduced in para 3 above within a period of four weeks from the date of the communication of this order to the Respondent No.2.

6 The Petition is disposed of in the aforesaid terms.

(A.A. SAYED, J.)

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