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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.76 OF 2014

Parekh Integrated Services Pvt. Ltd.	...Applicant
V/s.	
Amra Remedies Limited	...Respondent

Ms.Heal Master i/b Mr.Ashwin Ankhad & Associates for the Applicant.

Mr.Tasneem Zariwala i/b Vidhi Partners for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 7TH OCTOBER, 2015.

P.C. :-

1. By this application filed under section 11 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act") the applicant seeks appointment of the arbitrator by invoking clause 20 of the Memorandum of Understanding (MOU) dated 25th July, 2011. Dispute arose between the parties. The applicant through its advocates issued a notice on 9th October, 2013 invoking arbitration agreement recorded in the MOU dated 25th July, 2011 and suggested few names to enable the respondent to nominate one of them as the sole arbitrator. There was no response to the said notice.

2. The arbitration application is opposed by learned counsel appearing for the respondent on the ground that in terms of clause "E"

of the said MOU, the parties had entered into separate agreements for each individual location and for different divisions. It is submitted that even in the arbitration application, the applicant seeks that the dispute be referred with respect to five claims narrated in paragraph 4 of the arbitration application. She submits that except claim mentioned in paragraph 4(i), the other claims do not arise of the said MOU. She submits that the applicant has not annexed the copy of other agreements under which the applicant seeks to make the claim against the respondent and thus no arbitrator shall be appointed.

3. In re-joinder, learned counsel for the applicant invited my attention to the order dated 26th June, 2014 passed by this Court, which was filed by the applicant herein under section 9 of the Arbitration Act (760 of 2014). The respondent herein had raised similar issues while opposing the said arbitration petition. In paragraphs 8 and 9 of the said order, this Court has summarized the submissions made by the respondent herein. He submits that this Court has already clarified that whether the claims as would be made in arbitration proceedings would be arbitrable or not, the said issue can be decided by the learned arbitrator.

4. A perusal of the record indicates that the arbitration agreement as recorded in clause 20 of the MOU dated 25th July, 2011 exists. The applicant has invoked the said clause for the

purpose of appointment of an arbitrator vide notice dated 9th October, 2013, which was not responded by the respondent. Since the respondent did not nominate any arbitrator, this application under section 11(6) of the Arbitration Act is maintainable.

5. Insofar as the issue raised by the learned counsel for the respondent that since in the notice the applicant proposed to make claims not only under the said MOU but also under various other agreements, the arbitrator shall not be appointed in this application is concerned, by an order dated 26th June, 2014, this Court has already taken a *prima-facie* view that the said clause 20 of the MOU is very wide. Be that as it may, this Court has already clarified in the said order that whether the claims as would be made in the arbitration proceedings would be arbitrable or not, the said issue can be decided by the learned arbitrator.

6. As and when the applicant files any statement of claim before the learned arbitrator and if according to the respondent any of the claims were not maintainable being beyond the scope of MOU, such issues can be raised by the respondent in the arbitration proceedings. If any such issues of the arbitrability of the claim are raised by the respondent in the arbitral proceedings, the learned arbitrator shall decide the same.

7. By consent of parties Mrs.Justice Dr.P.D. Upasani, former

Judge of this Court is appointed as the sole arbitrator.

8. The arbitration application is disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)

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