

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION APPLICATION (L) NO. 486 OF 2015****Sur Mangal Holding Private Limited****..... Petitioner****VERSUS****M/s.Nirmal Bang Financial Services Private
Limited & Anr.****..... Respondents****WITH****ARBITRATION APPLICATION (L) NO. 638 OF 2015****Satish Kumar Saboo****..... Petitioner****VERSUS****M/s.Nirmal Bang Financial Services Private
Limited & Anr.****..... Respondents**

Mr.Kedar, a/w. Mr.Harshad Inamdar for the Applicant.

Mr.Shailesh Shukla, a/w. Mr.Paras Parekh, i/b.J.Sagar Associates for Respondent No.1.

CORAM : R.D. DHANUKA, J.**DATED : 12th JUNE, 2015****P.C.**

Both these applications are filed under section 11 of the Arbitration and Conciliation Act, 1996 inter alia praying for an order and direction that appointment of respondent no.2 is illegal and bad in law and be set aside. The applicant also seeks appointment of independent arbitrator in the matter of alleged disputes between the parties.

2. A perusal of the record indicates that the applicant had filed petitions (L) No. 1023 of 2014 and (L) No.1025 of 2014 in this court. This court recorded the

submissions made by the learned counsel appearing for the petitioner that though there was no dispute that under the arbitration agreement the power of appointing an arbitrator vests in the respondent, the respondent did not communicate the appointment of the learned arbitrator to the petitioner. The petitioner sought liberty to challenge the appointment of the learned arbitrator on that ground by raising an issue under section 16 of the Arbitration and Conciliation Act, 1996 before the learned arbitrator. This court on application of the petitioner granted liberty to withdraw those two petitions by recording the submission that the petitioner seeks to raise appropriate issue before the learned arbitrator under section 16 of the Arbitration and Conciliation Act, 1996 with liberty as prayed. The petitions were accordingly dismissed as withdrawn.

3. Pursuant to the said order, the petitioner filed an application before the learned arbitrator on 29th August, 2014 inter alia praying for an order requesting the learned arbitrator to recluse himself from the arbitration proceedings. Various allegations were made by the petitioner against the learned arbitrator in that application. The said application was resisted by the respondent by filing detail affidavit in reply.

4. A perusal of record indicates that the learned arbitrator after hearing both the parties through their respective advocates at length has passed an order dated 20th November, 2014 rejecting the said application. The learned arbitrator has also rejected the application of bias made against the learned arbitrator by the petitioner as having found no substance. A perusal of the said order prima facie indicates that the apprehension of bias alleged by the petitioner were totally unfounded and without any basis. In my view the learned arbitrator has rightly rejected such allegations of the bias against the learned arbitrator.

5. Learned counsel appearing for the applicant placed reliance on the judgment of Supreme Court in case of ***Bipromasz Bipron Trading SA vs. Bharat Electronics Limited (BEL) (2012) 6 SCC 384*** and would submit that even if the respondent has power to appoint an arbitrator, the Chief Justice or his designate can appoint a neutral arbitrator. In my view, the said judgment of Supreme Court relied upon by the learned counsel is not applicable to the facts of this case. In this case the learned arbitrator has been already appointed by the respondent by exercising the rights under the arbitration clause. The arbitral proceedings are going on before the learned arbitrator. The application filed by the petitioner has been rejected by the learned arbitrator. Under section 13(5) of the Arbitration and Conciliation Act, 1996, if any such application made under section 13 and under section 16 if any application made under that provision is rejected by the learned arbitrator, such orders can be impugned at the stage of filing application under section 34 if the need so arise.

6. In my view the present application for a declaration that the appointment of the learned arbitrator is illegal and bad in law, misconceived, not maintainable and is filed with an intention to delay the arbitration proceedings further.

7. Both the petitions are accordingly dismissed with costs quantified at Rs.25,000/- in each case which shall be paid by the applicant to the respondent within one week from today.

[R.D. DHANUKA, J.]