

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 230 OF 2014

Schindler India Private Limited ... Applicant

Versus

Mr. Kamlesh Padalkar, the sole Proprietor
of M/s. Shrikrishna Constructions ... Respondent

Ms. Namrata Barot i/b. Navdeep Vora and Associates for the Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 13TH JANUARY, 2015

P.C.

1. The Applicant – Schindler India Private Limited has filed the above Arbitration Application against the Respondent – Mr. Kamlesh Padalkar, the sole Proprietor of M/s. Shrikrishna Constructions under section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of a sole Arbitrator to resolve the disputes arisen between the parties under the contract dated 23rd February, 2008 (Exhibit-C to the Application).

2. None appear for the Respondent though served.

3. The Applicant is in the business inter alia of rendering installation, commissioning, testing and maintenance services for Schindler Elevators and other allied machines. The Respondent is

engaged in the business of real estate developers.

4. According to the Applicant, under a Contract executed by and between the Applicant and the Respondent dated 23rd February, 2008, the Respondent placed an order with the Applicant to supply and install one elevator, to be installed in the residential project of the Respondent at Xpanz, Moshi, Pune. The Commercial Terms and Conditions entered into by and between the parties, are at page 26 of the Application. Clause 20 of the said terms and conditions pertains to arbitration and is reproduced hereunder :

“20. Arbitration

If any dispute, controversy or claim between the parties arises out of or in connection with this Agreement, including the existence, breach, termination or validity thereof (Dispute), the parties shall use all reasonable endeavors to negotiate with a view to resolving the Dispute amicably. If a party gives the other party notice that a Dispute has arisen (a Dispute Notice) and the parties are unable to resolve the Dispute amicably within 15 days of service of the Dispute Notice (or such longer period as the parties may mutually agree), then the Dispute shall be referred to arbitration.

Any Dispute shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996. The number of arbitrators shall be one, mutually accepted by the parties. Any arbitral award shall be final and binding on the

parties. The seat of the arbitration shall be Mumbai. The language of the arbitration shall be English. Jurisdiction for purpose of the Arbitration and Conciliation act, 1996 shall be Mumbai”.

5. According to the Applicant, since the Respondent failed and neglected to make full payment as agreed, the Applicant through its Advocate's letter dated 3rd March, 2014 (Exhibit-H to the Application) was compelled to invoke Clause 20 of the Commercial Terms and Conditions of the said Contract dated 23rd February, 2008 and nominated Ms. Shruti Desai, to act as a sole Arbitrator for resolution of disputes, which arose between the Applicant and the Respondent. However, the Respondent failed and neglected to respond to the said letter dated 3rd March, 2014 despite having received the same. The Applicant therefore filed the present Application under section 11 of the Act.

6. From the aforestated facts, it is clear that there exists a valid agreement between the parties to have their disputes, arising out of the contract dated 23rd February, 2008 (Exhibit-C to the Application) referred to arbitration. The Applicant has invoked the arbitration agreement by its letter dated 3rd March, 2014. However, the Respondent failed to respond to the said letter dated 3rd March, 2014.

7. It is therefore clear that the parties have failed to name any person to be appointed as a sole Arbitrator to resolve their disputes.

Hence, the following order :

- i. Mr. Denzil D'mello, Advocate is appointed as a sole Arbitrator to decide the disputes of the Applicant and the Respondent arising out of the contract dated 23rd February, 2008.

The above Arbitration Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)