

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 285 OF 2014

PAN India Paryatan Private Limited ... Applicant

Versus

M/s. M.S. Enterprises & Another ... Respondents

Mr. Amar Mishra i/b. SRM Law Associates for the Applicant.
None for the Respondents.

CORAM : S.J. KATHAWALLA, J.
DATED : 27TH JANUARY, 2015

P.C.

1. The learned Advocate appearing for the Applicant states that he is not pressing the above Application against Respondent No. 2 – M/s. Mark Engineering and is pressing the above Application only against Respondent No. 1 - M/s. M.S. Enterprises .
2. The Applicant – PAN India Paryatan Private Limited has filed the above Arbitration Application against Respondent No. 1 – M/s. M.S. Enterprises 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 Letter of Intent (LOI) dated 26th April, 2012 (Exhibit-A to the Application).
3. None appear for Respondent No. 1 though served.
4. The Applicant is a Private Limited Company registered under the

provisions of Indian Companies Act, 1956 and carrying on the business of tourism since 15 years which is well known as 'Esselworld'. The Respondent No. 1 is a Contractor engaged in the business of civil and fabrication work. By virtue of the Letter of Intent (LOI) for the construction of wall and fabrication of fencing at Esselworld executed by and between Respondent No. 1 and the Applicant vide dated 26th April, 2012, the Applicant has entrusted a contract amounting to Rs. 1,31,61,139/- to the Respondent No. 1. Clause XVIII of the LOI pertains to Arbitration and the same is reproduced hereunder :

“XVIII. ARBITRATION :

Any controversy or claim arising out of relating to this contract of the breach thereof shall at the written request of a party be delivered to the other party not less than thirty (30) calendar days in advance of the date of such submittal and submitted to arbitration in accordance with the provisions of the India Arbitration Act 1996 or any statutory modification thereof. Unless otherwise agreed by the parties, the venue of arbitration shall be MUMBAI.

The award rendered by the arbitrator (s) shall be binding upon the parties without appeal /Judgment upon such award may be entered in any court having jurisdiction thereof or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the party seeking to enforce such award may elect. Each party

shall bear its own expenses of arbitration and any costs payable, shall be shared equally by the parties”.

5. Since disputes arose between the parties, the Applicant by its Advocate's letter dated 17th July, 2013 invoked the arbitration clause. The Respondent No. 1 failed and neglected to reply to the said letter of invocation. The Applicant therefore filed the present Application for the aforestated relief. A copy of the Application has been served on the Respondent No. 1. However, Respondent No. 1 has not come forward to oppose the Application.

6. It is therefore clear that the parties have agreed to refer their disputes arising out of the Contract dated 26th April, 2012 to Arbitration. However, 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. Farhan Dubash, Advocate is appointed as a sole Arbitrator to decide the disputes of the Applicant and the Respondent No. 1 arising out of the Letter of Intent dated 26th April, 2012.

The above Arbitration Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)