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

ARBITRATION APPLICATION NO.337 OF 2014

M/s.Vichare & Co. Pvt. Ltd.	...Applicant
V/s.	
M/s.S.D. Corporation Pvt. Ltd. & Anr.	...Respondents

Mr.Pankaj Sutar with Ms.Ketki Gadkari for the Applicant.

Mr.Ashish Kamat i/b Desai Desai Carimjee & Mulla for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 29TH JULY, 2015.

P.C. :-

1. By this application under under section 11(6) of the Arbitration & Conciliation Act, 1996, the applicant seeks an appointment of the sole arbitrator by invoking clause no.24 of the work order dated 28th January, 2008. Dispute arose between the parties. The applicant invoked arbitration agreement and issued a notice vide its advocate's letter dated 17th July, 2014 and suggested the name of Mr.D.K. Sankaran as the sole arbitrator. There was no response to the said notice. The applicant through its advocate issued another notice on 25th August, 2014 by way of reminder. There was no response to the said notice also.

2. Mr.Kamat, learned counsel for the respondents raises two objections to grant of reliefs in this application. He submits that the present application is pre-mature on the ground that the applicant has

not complied with the mandatory requirement under clause 16.1.2, 16.2.1 to 16.2.4 of the General Conditions of Contract. He submits that by virtue of the work order issued by the respondents on 28th January, 2008, only clause 64.1.1 of the General Conditions of Contract is substituted by the arbitration agreement recorded in clause 28 of the work order. He submits that since the applicant has not applied to the Project Manager for determination of their dispute, the applicant could not have filed this application for appointment of the arbitrator.

3. The next submission of learned counsel for the respondents is that the claims made by the applicant would be barred by law of limitation. In support of this submission, learned counsel invited my attention to some of the correspondence annexed to the arbitration application.

4. Insofar as the first objection raised by learned counsel for the respondents is concerned, a perusal of the work order dated 28th January, 2008 clearly indicates that the terms and conditions enumerated in the said work order shall supersede similar terms and conditions enumerated in the tender document. In my view, in view of this specific condition mentioned in the work order dated 28th January, 2008, the arbitration agreement along with the procedure prescribed under the General Condition of Contract is superseded by the arbitration clause specifically recorded in clause 24 of the work order dated 28th January, 2008. In my view there is thus no substance in the submission of learned counsel for the respondents that this application filed under section 11(6) of the Arbitration Act is premature and not in compliance with the procedure prescribed under clause 64.1.2 read with other provisions.

5. Insofar as the issue of limitation raised by the respondents is concerned, it is not possible to come to any definite conclusion on perusal of the documents annexed to the proceedings that the claims, if made by the applicant, would be barred by law of limitation. In my view, the plea of limitation being a mixed question of fact and law, the same can be decided by the learned arbitrator after pleadings and documents are filed by the parties and oral evidence, if any, is led by the parties. The issue of limitation thus raised by the respondents is kept open. In my view, the arbitration agreement exists between the parties. This application filed under section 11(6) of the Arbitration Act for appointment of the learned arbitrator is maintainable.

6. Shri Justice S.K. Shah, former Judge of this Court is appointed as the sole arbitrator.

7. The arbitration application is accordingly disposed of in the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)