

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 328 OF 2014

Schindler India Private Limited ... Applicant

Versus

Y.M. Motors Private Limited ... Respondent

Ms. Shamika Kulkarni i/b. Navdeep Vora and Associates for the Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 4TH FEBRUARY, 2015

P.C.

1. The Applicant – Schindler India Private Limited has filed the above Arbitration Application against the Respondent – Y.M. Motors Private Limited 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 21st September, 2010 (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 in the business of automobiles.

4. According to the Applicant, under a Contract executed by and

between the Applicant and the Respondent dated 21st September, 2010, the Respondent placed an order with the Applicant to supply and install one elevator, to be installed in the prestigious project of the Respondent at Sharayu Toyota at Bhosari, Pune. The Commercial Terms and Conditions entered into by and between the parties, are at page 30 of the Application. Clause 18 of the said terms and conditions pertains to arbitration and is reproduced hereunder :

“18. 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 30th January, 2015 (Exhibit-F to the Application) was compelled to invoke Clause 18 of the Commercial Terms and Conditions of the said Contract dated 21st September, 2010 and nominated Ms. Shruti Desai, Advocate, High Court 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 30th January, 2014 despite having received the same on 5th February, 2014. The Applicant therefore filed the present Application under section 11 of the Act on 17th October, 2014.

6. The above Application was taken up for hearing on 13th January, 2015 when the Advocate for the Respondent was present. The Application was adjourned to 27th January, 2015 for hearing. On 20th January, 2015 the Applicant was allowed to replace page Nos. 25 and 26 of the Application and once again serve a copy of the Application on the Respondent by hand delivery. The Applicant was also directed to inform the Respondent that the above Application is fixed for hearing and final disposal on 27th January, 2015, first on board. On 27th January, 2015 the Advocate for the Respondent appeared and sought time in the matter. In

view thereof, the Application was adjourned to 3rd February, 2015 as a last chance. On 3rd February, 2015 when the matter was called out, none appeared for the Respondent. In view thereof, the above Application was directed to be placed on 4th February, 2015 first on board. Today, when the matter is called out again none appear for the Respondent.

7. 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 21st September, 2010 (Exhibit-C to the Application) referred to arbitration. The Applicant has invoked the arbitration agreement by its letter dated 30th January, 2014. However, the Respondent failed to respond to the said letter dated 30th January, 2014.

8. 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 21st September, 2010.

The above Arbitration Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)