

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 313 OF 2014

Krishnaping Minerals Private Limited ... Applicant

Versus

Baig Trading Company & Ors. ... Respondents

Mr. Girish Thanvi for the Applicant.

Ms. P.V. Thorat for Respondent No. 2.

Ms. P.C. Contractor for Respondent Nos. 1 and 3.

CORAM : S.J. KATHAWALLA, J.
DATED : 25TH FEBRUARY, 2015

P.C. :

1. The Applicant – Krishnaping Minerals Private Limited has filed the above Arbitration Application against the Respondents – Baig Trading Company & Others under section 11 (6) of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of an independent Arbitrator to resolve the disputes arising between the parties under the Memorandum of Understanding (MOU) dated 1st August, 2012 (Exhibit-A to the Application).

2. According to the Applicant, as per the said MOU dated 1st August, 2012, monies received from Central Empowered Committee (CEC), which was appointed by the Hon'ble Supreme Court of India for evolving modalities for resumption of mining activities upon sale of Iron Ore, to be distributed first towards reimbursement of basic costs and thereafter towards profit. However, various amounts were

misappropriated by the Respondents and the monies received from CEC were inappropriately distributed to the disadvantage of the Applicant. After certain correspondence was exchanged between the Advocates for the parties, the Advocate for the Applicant issued a notice dated 25th September, 2014 to the Respondents invoking Clause 5 of the MOU dated 1st August, 2012. The said Clause 5 is reproduced hereunder :

“5. In the event of any dispute or difference of opinion, claims, or other questions whatsoever arising between the parties hereto relating to this MOU or any further MOU or other documents, agreements and papers executed in pursuance hereof or in respect of any construction or application thereof or as to any act, deed or omission or as to any other matter in any way relating to the said transaction or the affairs thereof, the same shall be referred to sole arbitration in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The parties to this MOU shall jointly appoint a retired Judge of the Bombay High Court as a Sole Arbitrator. The award or directions given by the Sole Arbitrator so appointed shall be final and binding as between the parties hereto. The arbitration proceedings shall be held in Mumbai. The Arbitration shall be conducted in the English Language”.

3. The said notice dated 25th September, 2014 is received by the Respondents (Exhibit-G to the Application). The Advocate for Respondent No. 1 also responded to the said notice dated 25th

September, 2014 by a letter dated 11th October, 2011 (Exhibit-J to the Application), wherein Respondent No. 1 has taken a stand that there is no cause of action for the Applicant to invoke the arbitration clause, however and that the dispute with regard to the refund of Rs. 10 Crores taken from Respondent No. 1 by the Applicant by fraudulent representations may be referred to the sole arbitration of the Arbitrator suggested in the said reply. The Applicant therefore filed the present Application seeking the aforesaid relief.

4. From the aforestated facts, it is clear that there exists a valid agreement between the parties to have their disputes, arising out of the MOU dated 1st August, 2012 (Exhibit-A to the Application) resolved by Arbitration. The Applicant has invoked the arbitration agreement by its letter dated 25th September, 2011. However, the Respondents failed to agree to appoint an Arbitrator as agreed under the arbitration agreement contained in Clause 5 of the MOU dated 1st August, 2012.

5. It is therefore clear that the parties have failed to appoint an Arbitrator to decide their disputes as agreed. Hence, the following order :

i. Mr. Justice M.G. Gaikwad (Retired) is appointed as a sole Arbitrator to decide the disputes between the Applicant and the Respondent arising out of the MOU dated 1st August, 2012.

The above Arbitration Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)