

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO.248/2013

Gupta Energy Private Limited
..Versus..
G.E.T. Power Limited

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 26.6.2015

Heard Shri S.V. Manohar, the learned advocate for the applicant and Shri S.B. Badge, the learned advocate for the non-applicant.

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996.

Shri Manohar, the learned advocate for the applicant has pointed out arbitration clause in the agreement dated 25th July, 2009 and the agreement dated 9th September, 2009. It is submitted that the dispute raised by the applicant falls within the purview of the arbitration

clause and the arbitration has to be conducted at Nagpur. It is further submitted that the dispute raised by the applicant is live dispute and, therefore, there is no impediment in referring it to the Arbitrator.

Shri Badge, the learned advocate for the non-applicant has submitted that the applicant cannot invoke the arbitration clause as the applicant had agreed its liability to pay the amount due to the non-applicant in the meeting, the minutes of which are recoded on 24th August, 2012. It is further submitted that there is no dispute between the parties and the applicant is unnecessarily delaying the payment. It is further submitted that the dispute raised by the applicant is not covered by the arbitration clause. On these submissions, it is requested that the present application be dismissed.

After considering the submissions made by the learned advocates for the respective parties, I am convinced that the dispute raised by the applicant falls within the purview of the arbitration clause of the agreement between the parties and that the dispute is live and arbitrable.

As per Clause 15 of the agreement the matter is required to be referred to the Sole Arbitrator if the parties agree to his appointment otherwise, panel of three Arbitrators has to be appointed, out of whom

one is to be appointed by the applicant and other to be appointed by the non-applicant and the two Arbitrators have to appoint third Arbitrator. As there is no agreement on the name of the Sole Arbitrator, the Arbitral Panel of three Arbitrators is required to be appointed.

The applicant has suggested name of Shri Ashok Parnandiwar, B.E. (Electrical) MIE, Former Chief Engineer, M.S.E.B., resident of Flat No.15, Anand Apartments, 88, Shiwaji Nagar, Nagpur - 440010.

The non-applicant has suggested name of Shri B.A. Khan, Former Judge, Delhi High Court, resident of 55, High Court Judges Colony, Sector 105, Express Highway, Noida 301 304.

As per Clause 15 of the agreement, two Arbitrators, whose names are suggested by the applicant and the non-applicant are required to appoint the third Arbitrator.

The applicant shall deposit Rs.12,000/- towards processing charges.

The applicant shall deposit Rs.3,00,000/- towards fees of the Arbitrators. This amount shall remain with the Registry of this Court till the arbitration proceedings are completed as security of the fees of the Arbitrators.

The Arbitrators shall finalize their fees and the applicant and the non-applicant shall pay the fees of the Arbitrators in the proportion of 50 : 50.

The application is allowed in the above terms.

JUDGE

Tambaskar.