

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

COMM. ARBITRATION PETITION NO.89 OF 2016

M. Pallonji and Co. Pvt. Ltd.	...	Petitioner
and		
The Tata Power Co. Ltd.	...	Respondent

Mr. Darius Khambatta, Senior Advocate with Mr. Erach Kotwal, Mr. Aditya Mehta, Mr. Arheet Hariani, Ms. Viloma Shah, Mr. Ameya Deosthale i/by M/s. Hariani and Co., for Petitioner.

Mr. D.D.Madon, Senior Advocate with Mr. B.K.Bali, Ms. Ranjana Roy Gavai with Ms. Pallavi Bali, Mr. Rajeev Pandey i/by M/s. R.R.G. Associates, for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 10th OCTOBER, 2016

P.C.:

1. Heard the learned Advocates appearing for the parties and the following order is passed by consent :

(i) Hon'ble Mr. Justice N. Santosh Hegde, former Judge of Supreme Court of India, is appointed as the sole Arbitrator to decide the disputes and differences between the parties arising out of and in relation to the Contract dated 28th September, 2004 and the Addendum dated 30th December, 2010.

(ii) The learned Arbitrator shall file his disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 on or before 17th October, 2016.

(iii) The present Petition under Section 9 of the Act, shall be converted into

an Application under Section 17 of the Act. The Pleadings Section 9 Petition shall be treated as the Pleadings in Section 17 of the Act. The parties shall be at liberty to file further documents before the learned Arbitrator within a period of seven days from the date of this order.

(iv) The learned Arbitrator is requested to hear and dispose of Section 17 Application/Petition by 31st October, 2016, if possible or as soon as possible thereafter.

(v) Pending the disposal of Section 17 Application and from 3rd November, 2016, the Petitioner will be entitled to continue to carry out the required dredging work (17.4 Lakh cu.m. per year approximately) in relation to the Coal Berth Jetty and barging activities thereat, at the rate of Rs.250/- (Rupees Two Hundred and Fifty only) per cubic meter plus service tax as applicable.

(vi) The rate specified in clause (v) above will operate during the pendency of Section 17 proceedings. This rate is an interim working arrangement and shall not in any manner prejudice the rights of the parties, including the right of the Petitioner to make a claim for the balance amounts payable under the Contract dated 28th September, 2004 and the Addendum dated 30th December, 2010 or the right of the Respondent to claim that the rate should be less.

(vii) The Respondent shall make payment under Clause (v) above as provided under the Contract dated 28th September, 2004 and the Addendum dated

30th December, 2010.

(viii) The Respondent shall not invite any tender or appoint anyone else to do the aforesaid dredging work and shall not enter into any contract or arrangement with any other person in relation to the aforesaid dredging work, including taking any action pursuant to the LOI/MOU with Maldar Dredgers and Salvagers (P) Ltd., pending disposal of Section 17 Application.

(ix) The above orders shall be subject to any orders passed by the learned Arbitrator and will be without prejudice to the rights and contentions of the parties.

(x) The documents submitted to this Court on 29th September, 2016 (the aforesaid (LOI/MOU) will be forwarded under the seal of this Court to the learned Arbitrator to be kept in his custody and subject to his further orders.

(xi) Subject to the above interim arrangement and pending the disposal of Section 17 Application, the status quo order dated 29th September, 2016 shall continue.

(xii) All contentions of the parties are kept open.

(xiii) The cost of arbitration shall initially be borne by the parties equally.

(xiv) The venue of Arbitration shall be at Mumbai.

(xv) In view of this order, the above Arbitration Petition is disposed of.

(S.J.KATHAWALLA, J.)