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

ARBITRATION PETITION NO.781 OF 2014

Summai Shipping Pvt. Ltd.	...Petitioner
V/s.	
Seabon Shipping Pvt. Ltd. & Anr.	...Respondents

WITH
NOTICE OF MOTION NO.2101 OF 2015
IN
ARBITRATION PETITION NO.781 OF 2014

Oil & Natural Gas Corporation Limited	...Applicant
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IN THE MATTER BETWEEN :

Summai Shipping Pvt. Ltd.	...Petitioner
V/s.	
Seabon Shipping Pvt. Ltd. & Anr.	...Respondents

Mr.S.P. Bharti for the Applicant in Notice Of Motion / Original Respondent No.2.

Ms.Ankita Singhania with Mr.T. Kapadia i/b D.H. Law Associates for the Original Petitioner.

Ms.Priyanka Patil i/b Mr.S.P. Bharti for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 6TH MAY, 2016.

P.C. :-

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996 (for short "the said Act") the petitioner seeks

interim measures against both the respondents.

2. There is no dispute that the respondent no.2 – Oil & Natural Gas Corporation Limited had awarded a contract for hiring of marine man management services to the consortium of the petitioner and the respondent no.1. In the said letter of award, it was mentioned that all other terms and conditions of the contract shall be as per e-tender No.P460C13012 as agreed between the ONGC and consortium of M/s.Summai Shipping Pvt. Ltd. (bidder) and M/s.Seabon Shipping Pvt. Ltd. i.e. respondent no.1 and the petitioner respectively. The dispute arose between the parties. It is the case of the petitioner that the respondent no.2 has colluded with the respondent no.1 and has committed breaches of the said contract. The petitioner invoked arbitration agreement recorded in the tender document.

3. By an order dated 7th February, 2014 passed by this Court, this Court granted certain interim reliefs in favour of the petitioner. The arbitration petition thereafter appeared before this Court on 2nd July, 2015. Mr.Bharti, learned counsel appearing for the respondent no.2 submitted that the petitioner and the respondent no.1 be directed to approach the Outside Expert Committee for resolution of the dispute before the matter was referred to arbitration. Learned counsel appearing for the petitioner and the respondent no.1 gave

their no objection to approach the Outside Expert Committee to be appointed by the respondent no.2. This Court accordingly passed an order making it clear that the present arbitration petition could be treated as a representation on behalf of the petitioner and the reply filed by the respondents could be considered as their defence before the said Outside Expert Committee. The Outside Expert Committee was directed to dispose of the representation within three months from the date of the first meeting. This Court continued the *ad-interim* order passed by this Court on 7th February, 2014 for a period of six months from the date of the said order and directed the parties to exchange the names of the arbitrators in terms of the arbitration agreement in the meanwhile. It was made clear that if there was a consensus on the name of the arbitrator or the arbitral tribunal, as the case may be, the same shall be constituted in the event of the failure on the part of the Outside Expert Committee to resolve the dispute.

4. The respondent no.2 thereafter filed a notice of motion (2101 of 2015) *inter-alia* praying for modification of the order dated 2nd July, 2015 passed by this Court in regard to the appointment of the Outside Expert Committee by the respondent no.2 is concerned. It is the case of the respondent no.2 that the law department of the respondent no.2 has now opined that the provisions of the Outside Expert Committee are applicable only in those cases where the

dispute was between the contractor and the respondent no.2. It is the case of the respondent no.2 that the office of the respondent no.2 at Mumbai was under erroneous impression in regard to the provisions of the Outside Expert Committee and thus on being aware of the mistake, the respondent no.2 did not take any further steps towards the formation of Outside Expert Committee.

5. Mr.Bharti, learned counsel for the respondent no.2 in support of the notice of motion invited my attention to clause 27.3 of the tender document which provides for resolution of disputes through conciliation by the Outside Expert Committee and also through arbitration. It is submitted by the learned counsel that since there was no dispute between the contractor and the respondent no.2 matter could not be referred to Outside Expert Committee or to the arbitrators. He submits that the dispute between the petitioner and the respondent no.1 can be resolved under the mechanism of arbitration under a separate arbitration clause recorded in the agreement entered into between the petitioner and the respondent no.1 and his client is not concerned with the *inter-se* dispute between the petitioner and the respondent no.1.

6. Ms.Singhania, learned counsel appearing for the petitioner invited my attention to the provisions of the letter of award and more particularly clause 8 and would submit that since the dispute is not

only between the petitioner and the respondent no.1 but also between the respondent no.2 also, the petitioner is entitled to invoke the arbitration agreement recorded in the tender document. She submits that all the terms and conditions of the tender document were made applicable to such letter of award and the contract awarded to consortium. She submits that under the provisions of the tender document, the rights and obligations of the petitioner and the respondent no.1 *qua* respondent no.2 are joint and several.

7. It is lastly submitted that in view of the admission of the existence of the arbitration agreement in the affidavit in reply in the present proceedings filed before this Court and in view of the statement made before this Court recorded in the order dated 2nd July, 2015, the petitioner is entitled to invoke the arbitration agreement recorded in the tender document.

8. Mr.Bharti, learned counsel appearing for the respondent no.2, on instruction, submits that if this Court comes to the conclusion that the arbitration agreement exists between the parties, his clients have no objection if any retired Judge of this Court is appointed as a sole arbitrator. Learned counsel for the petitioner and the respondent no.1 also have no objection, if a retired Judge of this Court is appointed as a sole arbitrator. The statements made by all the learned counsel are accepted.

9. Insofar as the issue raised by the learned counsel for the respondent no.2 as to whether the petitioner could invoke arbitration agreement recorded in the tender document is concerned, there is no dispute that under the tender document, the rights, obligations and liabilities of the petitioner and the respondent no.1 being part of consortium are joint and several. A perusal of the affidavit in reply filed by the respondent no.2 on 12th February, 2015 in the present proceedings clearly indicates that the respondent no.2 has admitted the existence of the arbitration agreement. The only submission of the respondent no.2 was that before referring the matter to arbitration, the dispute was required to be referred to the Outside Expert Committee to be constituted by the Chairman and the Managing Committee of the respondent no.2.

10. The respondent no.2 through its learned counsel made a similar statement before this Court on 2nd July, 2015. This Court recorded and accepted the said statement of the learned counsel for the respondent no.2 and referred the parties to Outside Expert Committee to be appointed by the respondent no.2. This Court also simultaneously directed the parties to exchange the names of the arbitrators in terms of the arbitration agreement and also in accordance with law. The said order passed by this Court has not been impugned by the respondent no.2.

11. In my view, the respondent no.2 thus cannot be allowed to now urge that the petitioner could not have invoked arbitration agreement recorded in the tender document. It is not in dispute that the petitioner is also part of the consortium who was awarded the contract by the respondent no.2. In my view, the petitioner can invoke arbitration agreement against the respondents recorded in the tender document in view of the alleged cause of action reflected in the correspondence exchanged between the parties and annexed to the arbitration petition.

12. Insofar as the name of the learned arbitrator is concerned, since all the parties have agreed to the appointment of a retired Judge of this Court, I propose to appoint Shri Justice S.K. Shah, a former Judge of this Court as a sole arbitrator having his address at Plot No.301, Siddhant Co-operative Housing Society Limited, Madhusudan Kalelkar Marg, Kalanagar, Bandra (East), Mumbai – 400 051, and Cell No.99207 82583. The learned arbitrator is required to file letter of statement under section 11(8) read with 12(1) of the Arbitration & Conciliation Act, 1996, before the next date.

13. In my view the notice of motion filed by the respondent no.2 is thus misconceived and is accordingly dismissed. No order as to costs.

14. Ad-interim order passed by this Court to continue until

further orders.

15. Place the arbitration petition on board for directions on 15th
June, 2016.

(R.D. DHANUKA, J.)