

IN THE HIGH COURT OF BOMBAY AT GOA**APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 12 OF 2016**

PREMIER BUILDERS GOA PVT. LTD.
REP. BY THEIR MANAGING DIRECTOR
SHRI DOMNIC ISAAC. ... Applicant

Versus

A. W. FABER CASTELL (INDIA) PVT.
LTD. REP. HEREIN BY THEIR MANAGING
DIRECTOR. ... Respondent

Ms. R. Kantak, Advocate for the applicant.

Mr. Jagannath Jayant Mulgaonkar, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 20th January, 2017

P.C.

Heard Ms. R. Kantak, learned counsel appearing for the applicant and Mr. J. J. Mulgaonkar, learned counsel appearing for the respondent.

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. It is the case of the applicant that pursuant to the tender

issued by the respondent, the applicant had carried out some work which resulted in a dispute between the applicant and the respondent which requires to be adjudicated by the Arbitrator in view of the arbitration clause as reflected in the terms and conditions proposed by the applicant while submitting their bid on 05.05.2012.

3. Mr. Mulgaonkar, learned counsel appearing for the respondent however dispute the existence of an arbitration clause on the ground that the original tender document issued by the respondent did not have any arbitration clause as according to him the dispute had to be adjudicated by the Civil Court. It is also pointed out that the proceedings have been initiated for mismanagement and breach of trust against the concerned Director which are pending before the appropriate forum and as such according to him the admission on the part of such Director is not binding on the respondent company. It is further pointed out that the documentary evidence relied upon by the applicant to substantiate their claim against the respondent is not binding on the

respondent as the concerned Director has played a fraud on the respondent company.

4. I have considered the submissions of the learned counsel and I have gone through the records. The terms and conditions of acceptance of the tender by the respondent clearly provide at clause 15 itself of settling the disputes by Arbitration. The applicant has also brought on record a letter dated 22.08.2012 inter alia disclosing that such terms and conditions of the tender of the applicant were accordingly accepted by the respondent. Clause 15 reads thus :

"15. Settlement of disputes: In event of any disputes/differences arising between the parties to this contract, as to any matter arising out of or connected with or incidental to this agreement or as to the rights, duties and obligations of either party, such differences or disputes whenever and so often as the same shall arise, shall be referred to and settled by Arbitration of an independent sole arbitrator so appointed and the proceedings shall be as governed under the Arbitration and

Conciliation Act, 1996. The venue of such Arbitration shall be in Panaji, Goa and Courts in Panaji alone shall have the jurisdiction."

5. During the course of the hearing, it was also not disputed that some of the terms which are reflected in such tender document dated 05.05.2012 were in fact acted upon by the parties. In such circumstances, the contention of Mr. Mulgaonkar that in the tender document there is no arbitration clause cannot be accepted. But however, the contention of Mr. Mulgaonkar that the concerned Director had committed a fraud and as such according to him the admission or otherwise of such Director is not binding on the concerned company is a matter which would have to be adjudicated by the learned Arbitrator on its own merits after hearing the parties in accordance with law. To that extent the contentions of the respondent based on the dispute raised by the applicant are left open.

6. In view of the above, I pass the following :

ORDER

(i) Justice N. A. Britto, Retired Judge of this Court is appointed as a sole Arbitrator to adjudicate the dispute between the parties.

(ii) All contentions of both the parties on merits are left open.

(iii) The application stands disposed of accordingly.

F. M. REIS, J.

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