

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 72 OF 2014

Racold Thermo Ltd. & Anr.

.. Petitioners

Vs.

Apex Encon Projects Pvt. Ltd. & Anr.

.. Respondents

Mr.Priten P. Killedar i/b Vijaykumar Dhakane for petitioner.

None for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 17TH NOVEMBER 2017

P.C.

1 At the outset, counsel for petitioner seeks leave to strike off the name of petitioner no.2 and respondent no.2.

Leave granted. Amendment to be carried out forthwith.

2 Pursuant to two purchase orders placed by respondent no.2, petitioner supplied various quantities of water heaters and raised two invoices for a total sum of Rs.19,15,536/-. The invoices sent by petitioner contain various terms and conditions at the bottom thereof and clause 15 thereof reads as under :

“.....5. If any dispute/difference arises out of or in connection with the Invoice including issues in respect of delivery and/or payment, then the same shall be referred to the sole arbitrator to be appointed by us and place of arbitration shall be Pune.”

3 Respondents, it is alleged, have accepted all the materials supplied with the invoices and also accepted the invoices. By accepting the invoices, respondents have also accepted the terms and conditions mentioned therein.

4 As payments were not made, dispute arose and petitioner issued a statutory notice, dated 30th December 2013 invoking arbitration. Respondents did not even respond to this notice invoking arbitration.

5 Therefore, I am satisfied that there is an arbitration agreement between the parties. This petition has also been served upon respondents and an affidavit of service of one Vishnu Laxman Lele affirmed on 19th November 2014 has also been filed. Office remarks also indicates that an affidavit of service is on record confirming service on respondent. Mr. Killedar appearing for petitioner states that even after the petition was restored, vide order dated 13th October 2017, petitioner has forwarded a copy of the petition and the order restoring the petition to respondents and the same has been delivered upon respondents on 14th November 2017.

6 Respondents are not present though served. It should be noted that even when the earlier service was effected on 28th September 2015, no reply has been filed and nobody had entered appearance. Therefore, it would

make no sense in standing over the matter waiting for respondents to enter an appearance.

7 Therefore, the following order is passed :

- (i) The petition allowed in terms of prayer clause (a).
- (ii) Mr.Nikhil Karnavat, an Advocate having office at :
F-503, Rohan Garima Apartment, Shivaji HS, Behind JW
Marriott Hotel, Senapati Bapat Road, Pune, Mobile No.
9011049049 is appointed as Arbitrator to arbitrate on
disputes arising out of and/or in connection with and relating
to invoices raised by petitioner which is the subject matter of
this petition.
- (iii) Fees of the Arbitrator to be decided by the Arbitrator.
- (iv) Within four weeks of receiving a communication from
the advocate for petitioner, the Arbitrator shall give in
writing, to parties directly, disclosure as required under
Section (11)(8) read with Section 12(1) of the said Act.

8 Petition accordingly disposed.

(K.R. SHRIRAM, J.)