

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

ARBITRATION APPLICATION NO.31 OF 2017

M/s.Centrum Capital Limited)....Applicant
V/s.

M/s.Dhanshree Developer Private Limited)....Respondent

Mr.Rajeev Ravi i/by Prudentia Advisory LLP for the applicant.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 7.12.2017**

P.C.:-

1 This application is for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act 1996 (the said Act). Respondent was interested in getting its existing debts restructured and availed the service of the applicant by signing mandate letter/agreement dated 5.2.2013 for services and for fees as mentioned in the said letter. Copy of the said letter is annexed at Exh.A to the Application.

2 It is the case of the applicant that subsequently applicant rendered services and raised invoices. It is the case of the applicant that invoices have not been paid and therefore, dispute arose. Clause-9 of the Agreement reads as under :-

“IX. Governing Law and Submission to Jurisdiction

This letter Agreement shall be governed by and construed in accordance with the laws of the Republic of India. Any dispute or differences arising under the Agreement shall be referred to Arbitration by three arbitrators in Mumbai, India (one to be appointed by Centrum and one to be appointed by the Client and the third to be chosen by mutual agreement by the other two arbitrators) and such arbitration shall be held in accordance with the (Indian) Arbitration & Conciliation Act, 1996, and any re-enactment or modification thereof and judgment upon the award rendered may be entered in the High Court of Mumbai or in any other court in India of competent jurisdiction. The arbitral award shall be treated as final and binding on the parties hereto.”

3 Having considered the same, I am satisfied that there is an arbitration agreement.

4 The applicant had issued a letter dated 4.7.2016 to respondent invoking the arbitration clause. Though served, respondent has not replied to the said letter. There is also on record an affidavit of service of one Neha Nagpal affirmed on 4.8.2017 confirming service of the application upon respondent on 17.3.2017. Respondent has neither entered appearance nor filed any reply opposing the application. Nobody is present either for respondent. The averments made in the application are therefore, uncontroverted.

5 In the circumstances, being satisfied that there is an arbitration agreement, I am inclined to allow the application.

6 Respondent having not appointed an arbitrator before filing of this application, is deemed to have waived its right to nominate an arbitrator. In the matter of ¹*Datar Switchgears Ltd. Vs. Tata Finance Ltd. & Anr.*, it is held that if the party that had a right to make an appointment does not make the appointment before the application under Section 11 is filed, forfeits that right to make appointment. Respondent having failed to make the appointment, has forfeited its right to appoint arbitrator.

7 Looking into the amount involved which is only about Rs.30 lakhs as claimed by the applicant as outstanding, I am inclined to appoint a sole arbitrator. Therefore, the following order is passed :-

ORDER

(a) Ms. Deepti Panda, an advocate practicing in this court, Mobile no.9892079219, is appointed as sole arbitrator to adjudicate upon all disputes and differences, including counter claim, if any, connected with, in relation to and arising out of the Mandate

1 (2000) 8 Supreme Court Cases 151

Letter/Agreement dated 5.2.2013 ;

(b) The fees, administrative expenses, typing charges and venue charges shall be shared equally between the parties and the same will be cost in the arbitral proceeding ;

(c) Within 3 weeks of receiving a copy of this order either from the advocates for petitioner or for respondents, the learned Arbitrator shall file with the parties, disclosure in writing as required under Section 11(8) read with section 12(1) of Arbitration and Conciliation Act 1996;

(d) Application disposed accordingly.

(K.R.SHRIRAM,J)