

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 9 OF 2016**

I.B. Commercial Pvt. Ltd

....Applicant

Versus

The Material Orginazation, Indian Navy
and Ors

...Respondents

Mr. Simil Purohit a/w. Ms. Trupti Shetty and Ms. Pooja Shah I/b.
Dhruve Liladhar & Co. for the Applicant.

Mr. R.V. Govilkar and Mr. Pranil Sonawane a/w. Mr. Mihir R.
Govilkar for the Respondent Nos. 1 and 2.

Mr. Phiroze Colabawalla a/w. Ms. Anaisha Zachariah I/b. HSA
Advocates for the Respondent No.3.

CORAM: G.S. KULKARNI, J.

DATED: 07th September, 2017

JUDGEMENT:-

1. This is an application whereby the applicant prays for appointment of an arbitrator by the Court, exercising its powers under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). After this application was heard for sometime, on the last occasion the parties were ad-idem that the disputes between the applicant and respondent no.2-Union of India can be referred to arbitration of a sole arbitrator. The dispute arises in regard to the sale of a vessel, belonging to the

Indian Navy, namely “IMS Vikrant”. This application was adjourned for Mr. Govilkar to take instructions on the name of the proposed arbitrator if the parties can so appoint by consent.

2. Today Mr. Govilkar, learned counsel for the respondent no.2 on instructions of Mr. S.K. Chandrakar ANSO-1 as contained in the letter dated 05/09/2017 informs the Court, that Real Admiral Mr. H. Gupta, (Retired) who is presently a Dean of the Amity Law School, Amity University, Jaipur, Rajasthan be appointed as a sole arbitrator to adjudicate the disputes between the parties.

3. On such suggestion, as being made by Mr. Govilkar on behalf of the respondent no.2, Mr. Purohit, learned counsel for the applicant would submit that, it would be appropriate that the Court appoints an independent sole arbitrator as the applicant cannot consent for the appointment, as suggested on behalf of the Union of India. Mr. Purohit in making this submission would refer to the amended provisions of the Arbitration and Conciliation Act, 1996 as contained in Section 12(1) read with the Seventh Schedule, however, Mr. Govilkar, learned counsel for the respondent no.2-Union of India would have an objection to Mr. Purohit's submission. Mr. Govilkar submits that the proposed

arbitrator as suggested on behalf of respondent no.2-Union of India, is an independent arbitrator, being a retired officer and presently holding the post of the Dean, Amity Law School. It is his submission that the requirement of Section 12(1) read with Seventh Schedule of the Act also stands complied, if such appointment is made.

4. At the outset it can be noted that the applicant has approached this Court invoking the jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 on the failure of the respondent to appoint an arbitrator. The parties would not dispute that Section 11(6) confers a jurisdiction on this Court to appoint an arbitrator in a situation where the parties fail to appoint an arbitrator in accordance with the arbitration agreement. Thus the respondents cannot make an insistence for a particular appointment.

5. Be that as it may, the hearing of this application was adjourned only to enable Mr. Govilkar, learned counsel for respondent no.2-Union of India to take instructions as noted above. To this Mr. Govilkar's response today on instructions is that the Court appoints Real Admiral Mr. H. Gupta (Retired), Dean of

the Amity Law School.

6. In my considered opinion, as also in view of the clear provisions of Section 11(6) of the Act, the submission of Mr. Govilkar certainly cannot be accepted. The amended provisions of the Act contained in Section 12(1) read with Seventh Schedule are required to be noted. Section 12(1) reads thus:

“12. Grounds of challenge-(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances-

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality;”

7. The relevant provision under the 'Seventh Schedule' of the Act is also required to be noted, which reads thus:

“1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.”

8. Mr. Govilkar, learned counsel for the respondent no.2-Union of India has fairly stated that the proposed arbitrator as suggested by them was in the service of the Indian Navy upto 2015 and

however on his retirement he is now an independent person. It is not in dispute that the vessel in question was a vessel which was belonging to the Indian Navy and the decision to auction the same came to be taken in the year 2014. If these are the circumstances, then in my opinion, the amended provisions of the Act as noted above would certainly apply. The mandate of law as contained in the said amended provisions is required to be considered in letter and spirit, even if the Court, de hors the request of the respondent-Union of India, is considering to nominate Real Admiral Mr. H. Gupta (Retired). It would thus be appropriate that the Court proceeds to appoint an arbitrator in exercise of the jurisdiction required under Section 11(6) of the Arbitration and Conciliation Act.

9. In the circumstances, the Court proposes Mr. Justice H.L. Gokhale, Former Judge Supreme Court of India as a sole arbitrator to adjudicate the dispute between the parties. In the first instance, the proposed arbitrator will make a disclosure in terms of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 and thereafter enter upon reference. In the event, the disclosure is not made within a reasonable time or the disclosure

records the inability of the proposed arbitrator to act as such, it will be open to the parties to apply to this Court for directions. The parties will appear before Mr. Justice H.L. Gokhale (Retired), on a date to be fixed by him, which will be informed to the parties atleast 15 days in advance.

10. The arbitration application is disposed of in the above terms. No order as to costs.

11. A copy of this order be forwarded to Hon'ble Mr. Justice H.L. Gokhale (Retired), Former Judge Supreme Court of India.

(G.S. Kulkarni, J.)