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

ARBITRATION APPLICATION NO.78 OF 2017

M/s. Indian Constructions ….Applicant

Vs.

The General Manager (W.R.) & Anr. ….Respondents

Mr. Thomas James I/b. Auris Legal for applicant.
Mr. N.D. Sharma for respondents.

CORAM : K.R.SHRIRAM, J.
DATE : 31th AUGUST, 2018

P.C.:

1 The general conditions of contract read with special conditions provide for referring the disputes between the parties to arbitration. Under the clause, if respondents fail to make a decision within 120 days, then claimant within 180 days of presenting final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration. The clause also provides that this cannot be in cases of “excepted matters”.

2 It is not respondents' case that the claim for arbitration falls under the “excepted matters”. Clause 52 of the special conditions of contract also provides that the arbitration clauses 63 and 64 will be applicable only if the claim is less than or equal to 20% of the value of contract. Mr. James, counsel for petitioner brings to the attention of this Court a notice dated 19th January 2016 at Exhibit “L” to the petition in which the claimant has restricted its claim to 20% of contract value. Therefore, the arbitration clauses 63 and 64 of general conditions of contract are applicable.

3 Mr. Sharma, counsel for respondents submitted that petitioner has issued a no claim certificate and therefore, petitioner is not entitled to make any claim against respondents. This is something the Arbitral Tribunal will consider because section 11 (6A) of the Arbitration and Conciliation Act, 1996 provides that the Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree of order of any Court, confine to the examination of the existence of an arbitration agreement.

4 Indisputably there is an arbitration agreement. Admittedly, the claim does not fall under any of the expected matters and thirdly, the claimants' claim is restricted to 20% of the contract value.

5 In the circumstances, application is allowed and accordingly disposed.

6 Shri Prabhakar Yashwantrao Deshmukh, having his address at “Suyah” B-44/173, Kalina Co-operative Housing Society, Gaurudwara Lane, Near Bombay College of Pharmacy, Santacruz (East), Mumbai 400 098, is appointed as Sole Arbitrator to arbitrate on all disputes and differences, including counter claim, if any, arising out of or in connection with or relating to Agreement No.DRM/311 dated 30th March 2009. All rights and contentions of the parties are kept open, except the question of jurisdiction of the arbitrator.

7 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicant and 50% by respondents and the same shall be subject to cost in the arbitral proceedings.

8 The Arbitrator to communicate in writing to the Advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within two weeks of receiving a copy of this order from any of the party.

9 Liberty to apply.

Gauri Amit Gaekwad
Digitally signed by Gauri Amit Gaekwad
Date: 2018.09.06 11:36:10 +0530

(K.R. SHRIRAM, J.)