

Santosh

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

ARBITRATION APPLICATION NO. 135 OF 2016

Bharat Petroleum Corporation Ltd. ...Applicant

Versus

Nandan Cleantec Ltd. ...Respondent

Mr. Shivprasad R. Page, for the Applicant.
None for the Respondent.

CORAM: G. S. KULKARNI, J.
DATED: 21st November, 2018.

PC:-

1. By this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('the Arbitration Act', for short) the applicant Bharat Petroleum Corporation Ltd. prays for appointment of an arbitrator to adjudicate the disputes between the parties, which are stated to have arisen under the Joint Venture Agreement dated 19th May, 2008 (for short the "JV Agreement").
2. The Respondent despite service and substituted service has chosen not to appear.
3. The said JV Agreement was entered between the Applicant and one Shapoorji Pallonji and Co. Ltd and the Respondent and is stated to be duly executed between the parties. The purpose of forming the Joint Venture was for producing Bio-Diesel with a large scale catchment area development in the State of Uttar Pradesh.

4. The learned Counsel for the Applicant has pointed out that disputes had arisen under the said agreement with the other member of the joint venture namely Shapoorji Pallonji and Co. Ltd which already stand settled.

5. Article 19 of the said agreement contains the arbitration clause which reads thus:

“Article 19 – Dispute Resolution:

The Modus Operandi for dispute resolution between three parties shall be as follows:

- a) All disputes of differences arising out of or in relation to this Agreement shall be firstly mutually discussed and resolved by the parties. In case of the disputes and differences are not so mutually resolved within 60 (sixty) days after formal written notice of dispute or difference has been given by one party to the other but continue to subsist; the same shall be referred to Arbitration. Company Secretary of BPCL, Company Secretary of SPCL and Company Secretary of NBL shall after mutual discussion appoint a Sole Arbitrator to adjudicate the disputes and differences between the parties.
- b) However, if no agreement is reached between the parties on appointment of Sole Arbitrator within 60 days of the date of reference to arbitration, the Sole Arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Sole Arbitrator shall conduct the proceedings in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- c) The Award of the Sole Arbitrator shall be final, conclusive and binding on all the parties to the Agreement, subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time. The Award shall include the reasons for such Award.
- d) The Sole Arbitrator shall have power to make one or more Award, whether interim or otherwise, in respect of the dispute and difference. The Sole Arbitrator shall be entitled to direct any of the parties to pay the cost of arbitration in such manner and to such extent as the Sole Arbitrator may, in his discretion determine and shall also be entitled to require one or more parties to deposit funds in such proportions to meet the Arbitration expenses. The parties to Arbitration, whenever called upon to do so shall be bound to comply with such direction.

- e) The venue of Arbitration shall be in Mumbai. All documentation and oral proceedings shall be conducted in the English language. The Award shall also be made in the English language.
- f) The parties hereby submits to the jurisdiction of the Courts situated at Mumbai for the purposes of actions and proceedings arising out of the Agreement and the Courts in Mumbai only will have the jurisdiction to hear and decide such arbitration and proceedings.” (Emphasis added)

6. The Applicant has placed on record letters dated 9th September, 2014, 3rd November, 2014 and 25th November, 2014, whereby the parties to the JV Agreement were informed of the dues liable to be paid by the said parties to the Applicant. A request was made for amicable settlement of the monetary dispute. As noted above, Shapoorji Pallonji and Co. Ltd settled the dispute amicably. However, the Respondent neither represented nor participated in the settlement meetings. According to the applicant, Respondent with a deliberate intention to avoid making payment to the applicant neglected to respond to the applicant.

7. Accordingly, by its letter dated 12th March, 2015 addressed to the Respondent, the applicant invoked the arbitration clause (supra) as contained in the JV agreement. The Applicant *inter alia* recorded that disputes had arisen between the Applicant and the Respondent and on failure to resolve the disputes a sole arbitrator as per Clause 19 (a) of the JV agreement was required to be appointed to adjudicate the disputes and differences between the parties as referred in the letter dated 9th September, 2014. Another letter dated 2nd September, 2015 was addressed to the Respondent at the registered address

whereby the Respondent was called upon to depute a representative for a meeting to be held to mutually appoint a Sole Arbitrator to adjudicate the dispute between the parties. However, there was no response to these letters. Resultantly, on the failure of the parties to mutually appoint an Arbitrator, the present application has been filed.

8. The Respondent despite service has chosen not to appear in this application. In the above circumstances, there being no dispute on arbitration agreement existing between the parties and disputes having arisen between the parties, it would be appropriate for the Court to exercise jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 and appoint a sole Arbitrator. The application is accordingly disposed in terms of the following order:

: O r d e r :

- (a) Mr. Justice J. P. Devadhar (Retd) is appointed as Sole Arbitrator to adjudicate the disputes between the parties under the Joint Venture Agreement dated 19th May, 2008.
- (b) The proposed learned Arbitrator, 15 days prior to entering reference shall forward to the Prothonotary and Senior Master, a disclosure in terms of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act and also furnish the same to the parties.
- (c) The Arbitration Application is accordingly disposed of in the above terms. No costs.
- (d) Office to forward a copy of this order to Mr. Justice J.P.Devadhar (Retd).

[G. S. KULKARNI, J.]