

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10305 OF 2019

M/S ACC LIMITED AND OTHERS
VERSUS
M/S CHAITANYA MAGASVARGIYA AUDYOGIK
SAHAKARI SANSTHA AND OTHER

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Advocate for Petitioners : Shri Bhavar Nitin R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 20, 2019

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PER COURT :-

1. The petitioner / Company is aggrieved by the order dated 20.12.2018, passed by the trial Court, by which, application Exhibit 118 filed by the petitioner seeking a direction under Section 8(1) of the Arbitration and Conciliation Act, 1996 that the matter be referred to an Arbitrator, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. Contention is that Clause 16.1 of the addendum to the agreement dated 26.3.2013, entered on 30.7.2015, provides for referring the matter to an Arbitrator. He further canvasses the ground under Clause 16.2 that the jurisdiction of the Court of law would be exclusively restricted to the competent courts at Mumbai. The proceedings are initiated by the respondents at Aurangabad.

3. I have considered the strenuous submissions of the learned Advocate and have gone through the grounds formulated in the memo of the petition.

4. I find from Clause 16.1 that the parties are given the option of approaching the General Manager of the Company for resolving their dispute. If there is no amicable resolution, they are given the option to put up the dispute before the Head of Logistics and procurement at the Corporate Office of the Company and if any grievance still survives, the parties may seek relief by way of Arbitration under the 1996 Act.

5. The frequent use of the word 'MAY' at several places, indicates that the parties have the option of approaching the different authorities of the company and then carrying the dispute to the Arbitrator.

6. It is now informed that the parties had few meetings with the General Manager and with the Head of Logistics and as there was no resolution, the plaintiffs directly approached the trial Court.

7. I find that the trial Court has relied upon the judgment of the

Honourable Apex Court in the matter of Wellington Associates Ltd. Vs. Kirit Mehta [AIR 2000 SC 1379], wherein a similar clause was interpreted by the Honourable Apex Court holding that the agreement must mandatorily provide for referring the dispute to an Arbitrator and the use of the word 'MAY' would not mean such a mandate.

8. In view of the above, I do not find that the impugned order could be faulted. So also, the petitioner filed application Exhibit 118, after a passage of time. This petition, therefore, being devoid of merits, is dismissed.

9. Nevertheless, the objection of the petitioner that the Court at Aurangabad would not have jurisdiction, in view of clause 16.2, is kept open.

(RAVINDRA V. GHUGE, J.)

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