

IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO.16/2019

DRISHTI LIFESAVINGS PVT.LTD. Applicant

V/s.

THE SECRETARY (TOURISM),
GOVT. OF GOA. Respondent

Mr. S. Joshi, Advocate for the Applicant.

Mr. P. Arolkar, Addl. Govt. Advocate for the Respondent.

Coram:- M.S. SONAK, J.

Date:- 6th December, 2019

ORAL ORDER:

Heard Mr. S. N. Joshi for the applicant and Mr. P. Arolkar,
Addl. Government Advocate for the respondent.

2. This is an application seeking appointment of arbitrator in terms of Section 11 of the Arbitration and Conciliation Act, 1996 (said Act).

3. There is no dispute between the parties that vide agreement dated 12.10.2017 the respondent appointed the applicant as a

contractor to undertake certain works described in the first recital to the said agreement.

4. The aforesaid agreement contains an arbitration clause i.e. Clause 8 which reads as follows:-

"8. In the event of any question, dispute or difference of opinion arising under or out of or in any way relating to or concerning these presents or effects of these presents or in connection with the conditions herein contained or touching or concerning the meaning or effect thereof, or any other matter contained therein as to the rights, duties or liabilities of the parties of the parties hereto, howsoever, in connection with this Agreement, the same shall be referred to the sole arbitration of a person appointed by the Secretary (Tourism) to the Government of Goa. In the event of such arbitrator being transferred or vacates his office or refuses or is unable to act as such for any reason whatsoever, it shall be open to the Secretary (Tourism) to the Government of Goa to appoint another person in his place. The arbitrator so appointed shall be entitled to proceed with the reference from the stage at which it was pending. The arbitrator may, with the consent of both the parties to these presents, extend the time for making the award. The award of the arbitrator shall be final and binding on the parties to these presents. Save as aforesaid, the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996) and rules made thereunder shall apply to the appointment of Arbitrator and to the arbitration proceeding under this clause."

5. The applicant contends that disputes have arisen between the applicant and respondent in relation to the aforesaid agreement dated 12.10.2017. Accordingly, the applicant, vide notice dated 31.07.2019,

called upon the Secretary (Tourism) to nominate an arbitrator within 15 days from the date of receipt of the notice. This notice was received by the Secretary (Tourism) on 1st August, 2019. Despite receipt of the notice, the Secretary (Tourism), has failed to nominate arbitrator in terms of Clause 8 of the agreement dated 12.10.2017. Hence the present application invoking the provisions of Section 11 of the said Act.

6. Mr. P. Arolkar, learned Addl. Government Advocate has tendered affidavit-in-reply of Sanjiv Gadkar, Director of Tourism, Government of Goa. From the perusal of the affidavit, it is apparent that there is no opposition as such to the appointment of arbitrator. All that the deponent to the affidavit has stated is that there is no provision/clause under the agreement dated 12.10.2017 for payment of any interest towards the delayed payment of escalation amounts and accordingly, the applicant is not entitled for any interest towards payment of escalation amount, particularly, since there was no delay in such payment.

7. Mr. P. Arolkar has submitted that in the absence of any delay and in any case, in the absence of any clause providing for interest on delayed payments, the claim of the applicant for interest is clearly not maintainable.

8. According to me, the defence which is raised by the respondent is really a defence to the claims of the applicant on merits. At this stage, there is no question of going into such disputes, in the exercise of jurisdiction under Section 11 of the said Act. Accordingly, on the basis of contentions raised in the affidavit or the contentions urged by Mr. Arolkar before the Court, the appointment of an arbitrator cannot be resisted.

9. It is the case made out by the applicant for invocation of the jurisdiction under Section 11 of the said Act by this Court. Accordingly, this is a fit case for appointment of arbitrator to go into the disputes between the parties. All contentions of all parties on the merits of the dispute, including whether the dispute raised falls within the scope and ambit of the arbitration clause and as well be determined by the arbitrator once the arbitration is so appointed in the matter.

Corrections
carried out
as per order
dated
10.01.2020

10. The learned counsel for the parties point out that under the same agreement dated 12.10.2017, in respect of certain disputes which had arisen, Hon'ble ~~Judge~~^{Justice} Shri N. A. Britto, Retired Judge of this Court has already been appointed as the Arbitrator. Accordingly, it will be appropriate if, once again, Hon'ble ~~Judge~~^{Justice} Shri N. A. Britto, is appointed as arbitrator in this matter.

11. The learned counsel for the parties submitted that since Hon'ble

Justice

~~Judge~~ Shri N. A. Britto is already appointed as arbitrator in respect of disputes under the agreement, there may not be any necessity of filing of statement of disclosure as contemplated by Section 11(8) of the said Act. As a matter of abundant caution, however, it will be appropriate if the parties formally request Hon'ble ~~Judge~~ ^{Justice} Shri N. A. Britto to furnish the statement of disclosure and produce the same on record within two weeks from today.

Corrections
carried out
as per order
dated
10.01.2020

Correction
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10.01.2020

12. Subject to the filing of such statement of disclosure on record within two weeks from today, Hon'ble ~~Judge~~ ^{Justice} Shri N. A. Britto, Retired Judge of this Court is appointed as the arbitrator in order to arbitrate upon disputes which have arisen between the parties under the agreement dated 12.10.2017. It is made clear that all conditions of all parties on merits will be kept open to be adjudicated by the arbitrator in accordance with law and on their own merits.

13. The arbitration application is disposed of in the aforesaid terms.

14. All concerned to act on the basis of an authenticated copy of this order.

M. S. SONAK, J.