

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 26 OF 2019

Peoples Empowerment Group
A Public Trust registered under the Maharashtra
Public trust through its trustee, Pramod Kumar

... Petitioner

V/s.

M/s. MC Kession Elevators Company
through its representatives

... Respondents

Mr. Ojas Deolankar for the petitioner.

CORAM : G.S.KULKARNI, J.

DATE : 28th August, 2019

P.C.:

Learned counsel for the petitioner has tendered an affidavit of service stating that service is already effected on the respondents in pursuance of the order dated 24th July 2019 passed by this Court. However, the respondents are not represented. The hearing of the Petition is kept back till 3.00 p.m.

2. When the matter is again called out in the afternoon session, none appears for the respondents. Accordingly, the Petition is taken up for hearing.

3. This Petition is filed under section 11 of the Arbitration and Conciliation Act whereby the petitioner has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the

parties which has arisen under the Agreement dated 14th July, 2019. The arbitration agreement is contained in Clause 17.1, which reads as under:

“17.1 If any dispute or difference arises by and between the parties hereto, either during the progress or after the completion or abandonment of the work, touching the said services and/or pertaining to this Agreement/Arrangement as to the meaning or interpretation of any provision/s hereof or any clause/s hereof or otherwise howsoever relating to the said services, and/or to the rights/obligations in respect of any of the parties hereto and/or any other matter or things arising directly or indirectly, under this Agreement, then in such case the said dispute/difference shall be mutually solved by the parties hereto or if not solved within 30 days, shall be finally referred to and settled by the sole arbitrator under Indian Arbitration Act. The arbitrator shall be appointed in mutual understanding without prejudice. The arbitration proceedings shall be conducted in English language and at Pune only.”

4. The case of the petitioner is that the disputes have arisen between the parties in view of the respondents not performing the contractual obligations despite receiving advance of Rs.6,37,960/-. The correspondence between the parties to that effect is annexed to the petition. A notice dated 29th November, 2017 issued by the petitioner to the respondents calling upon the respondents to perform its obligations and to complete the installation of lift or alternatively return the amount of advance as received by the respondents with interest @18% p.a. The petitioner also stated in the said notice that failing non-performance of the obligations, the petitioner will have no alternate but to commence legal proceedings.

5. Thereafter by petitioner's notice dated 21st March, 2018, the agreement as entered with the respondents came to be terminated. The petitioner also

raised a demand against the respondent for an amount of Rs.6,37,960/- along with interest @24% p.a. This notice was also not replied by the respondent and eventually the petitioner by notice dated 12th October, 2018 addressed to the respondents, invoked the arbitration agreement calling upon the respondents to appoint an arbitrator as per the arbitration agreement so that the disputes can be adjudicated. As the said notice was not responded, the present petition was filed.

6. Having heard the learned counsel for the petitioner and having perused the documents as placed on record, it prima facie appears that there is an arbitration agreement between the parties as noted above. There is also an appropriate invocation of arbitration, as per the petitioner's notice dated 12th October, 2018. The respondents are duly served, despite service, they have chosen not to appear.

7. In the facts and circumstances of the case, in my opinion, the Petition will require to be allowed. It is accordingly allowed by the following order:

ORDER

- (i) Mr. Anurag M. Jain, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement dated 14th July, 2019.
- (ii) The learned prospective sole arbitrator, ten days before entering

the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial-I) to be placed on record of this application with a copy to be forwarded to both the parties;

- (iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties are expressly kept open;
- (vi) The petition is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Varun Capital, Office No. 501,
CTS No. 364+365/13,
Next to Hotel Sudama,
Oppo Jangli Maharaj Temple,
Shivajinagar, Pune – 411 005.
(M) – 9833759856
Email – ajassociateslaw@gmail.com

(G.S.KULKARNI, J.)