

Vidya Amin

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

ARBITRATION PETITION NO. 85 OF 2018

Paramatrix Technologies Pvt. Ltd.	... Petitioner
V/s.	
Taher Zainuddin Chittalwala	... Respondent

Mr. Sagar Batavia h/f. Mr. Chinmay Athalye for the Petitioner.

CORAM : G.S.KULKARNI, J.

DATE : 3rd July, 2019

P.C.:

Heard learned counsel for the petitioner. Respondent though served is not represented.

2. In the order dated 15th January, 2019, this Court (Coram : S.J. Kathawalla, J.) has passed following order:

“The Respondent – Taher Zainuddin Chittalwala, having his address at Abhidip Building, B-2, Block No. 308, Uran Naka, Panvel is directed to remain present before this Court on 25th January, 2019 at 3.00 p.m., failing which the Court shall proceed to hear the above Petition filed by the Petitioner against him and pass appropriate orders in the matter.

2. A copy of this Order shall be forthwith served on the respondent by hand delivery by the Advocate for the petitioner.

3. Stand over to 25th January, 2019 at 3.00 p.m.”

3. On 25th January, 2019 the respondent appeared in this

proceeding and this Court (Coram : S.J. Kathawalla, J.) accordingly passed the following order:

“The Respondent is present in Court. He seeks time to appoint an Advocate in the matter. Stand over to 1st February, 2019.”

Thereafter, on 19th June 2019, this Court has passed following order:

“Issue notice to the respondent returnable on 3 July 2019. In addition to Court notice, Advocate for the petitioner is permitted to serve the respondent by private service and place on record affidavit of service before the returnable date.

2. Stand over to 3 July 2019.”

4. Learned counsel for the petitioner has tendered affidavit of service dated 1st July, 2019 of Mr. Chinmay Athalye stating re-service of the proceedings on the respondent and interalia stating that service of the petition and notice is complete as directed by this Court in the earlier order dated 19th June, 2019. Accordingly, this Petition is taken up for hearing.

5. This is a Petition filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) whereby the petitioner has prayed that an arbitral tribunal be appointed for adjudication of the disputes and differences which are stated to have arisen between the

parties under an agreement titled as “Employment Bond” dated 28th June, 2016. It is pointed out that the arbitration agreement is contained in Clauses 10 and 11 of the Agreement, which reads thus:

“10. In the event the parties are not able to amicably resolve and settle the disputes/differences under the procedure mentioned above, the dispute/difference shall be referred to the arbitration by a single arbitrator to be jointly appointed. In the event the parties fail to concur in appointing the sole arbitrator, the arbitrator shall be appointed in accordance with the provision of the Arbitration and Conciliation Act. The arbitration shall be conducted in accordance with the Arbitration & Conciliation Act, for the time being in force or any statutory modification or re-enactment thereof. The place of Arbitration shall be Navi Mumbai. The language of the Arbitration shall be English. The award of the arbitrator shall be final and binding upon the parties herein.

11. This Agreement shall be construed according to the law of India and the parties submit to the Jurisdiction of the Courts at Navi Mumbai and Courts superior thereto.”

6. Learned counsel for the petitioner has drawn my attention to the notice dated 4th August, 2017 issued by the advocate for the applicant setting out the details of disputes which have arisen between the parties as contained in paragraphs 12, 13 and 14 of the said notice, invoking the arbitration agreement. As the respondent has not responded to the said arbitration notice, present petition is filed.

7. As the respondent has chosen not to contest this proceeding despite notice, the averments as made in the petition will be required

to be taken as uncontroverted. It clearly appears that there exists an arbitration agreement between the parties as noted above. There is appropriate invocation of the arbitration agreement by the petitioner's advocate by notice dated 4th August, 2017 to which the respondent has neither replied nor in any manner has consented for appointment of arbitrator. In this circumstances, the Petition is required to be allowed. Hence, following order:

ORDER

- (i) Ms. Manorama Mohanty, advocate of this Court is appointed as a sole Arbitrator to arbitrate the disputes between the parties which have arisen under an agreement titled as "Employment Bond Agreement" dated 9th June, 2016.
- (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:

Ms. Manorama Mohanty

Res.: A/4, 5/2, Shree Ganesh CHS, Sector-28,
Nerul (W.), Navi Mumbai – 400 076.

c/o. S.K. Srivastav & Co.

1st floor, Laxmi Insurance Bldg. Sir P.M. Road, Fort,
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(G.S.KULKARNI, J.)

corrected as per speaking to minutes of order dated 27.08.2019.