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

ARBITRATION PETITION NO.60 OF 2019

Pan Gulf Technologies Private Ltd.	...	Petitioner
V/s.		
Pyramid Consulting Engineer	...	Respondent

Mr. Suhas Joshi i/by VNZ Legal,for the Petitioner.

CORAM : G. S. KULKARNI, J.

DATE : 25th September, 2019.

PC. :

1] This petition is filed under Section 11 of the Arbitration and Conciliation Act (for short, “the Act”); whereby the petitioner has prayed for appointment an arbitral tribunal to adjudicate the disputes and differences between the parties as arisen under the Leave and Licence Agreement dated 11th August, 2017.

2] The case of the petitioner is that petitioner is entitled to refund of security deposit which was an amount of Rs.36,40,000/-. On termination of the agreement, an amount of Rs.10,82,400/- came to be refunded to the petitioner. The claim of the petitioner was for the full amount. According to petitioner disputes and differences have arisen between the parties as the

petitioner has contended that the respondent has illegally retained the balance amount. Agreement provides for arbitral agreement in clause 19 which reads thus :-

“19. GOVERNING LAW & JURISDICTION:-

a. The agreement shall be governed in all respects by the laws of India and the Courts in Thane City shall have the exclusive jurisdiction.

b. The parties agree to use their best efforts to negotiate in good faith and settle amicably any dispute or difference that may arise or relate to this Agreement. If such dispute cannot be settled amicably through ordinary negotiations by each party, within 30 days after commencement of the negotiations, the same shall be decided by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The venue of the arbitration will be at Thane City, India, and the arbitration proceedings will be conducted in the English language. The award of the arbitrator shall be final and finding upon the parties”.

3] Learned counsel for petitioner states that petitioner has served the respondent by a private notice and affidavit of service dated 10th April, 2019 was already placed on record. As none appeared on behalf of respondent, this Court, on 14th August, 2019 passed the following order:-

“ Issue notice to the respondent, returnable on 11 September 2019. In addition to the Court notice, learned Advocate for the petitioner is permitted to serve the respondent by all permissible modes including hand delivery and place on record affidavit of service before the returnable date.

2. Stand over to 11th September, 2019”.

4] However, again none appeared for the respondent on 11th September, 2019. In order to grant a last opportunity to respondent to appear in these proceedings, this Court on 11th September, 2019 passed the following order:-

“Affidavit of service is already filed, however, none appears for the respondent.

2. Learned advocate for the petitioner is also permitted to serve the respondent by all permissible means including hand delivery and place on record affidavit of service on or before the returnable date.

3. It is clarified that if on the adjourned date of hearing, despite service the respondent is not appearing in the present petition, the Court shall proceed to hear this petition and pass appropriate orders.

4. To enable the respondent to appear, as a last chance, stand over to 25th September, 2019.

5. Let the copy of this order be forwarded along with petitioner’s advocate.

5] As per orders of this Court, notice came to be issued by the petitioner. It is received by the respondent on 21.09.2019. As per second affidavit of service dated 23rd September, 2019, as placed on record, it appears that respondent despite notice has preferred not to appear and contest this petition.

6] Hence, the averments as made in the petition are required to be taken

as un-controverted.

7] Having heard learned counsel for the parties and perused the record, it is clear that there is an arbitration clause in the agreement as referred. By notice dated 19th December, 2018, petitioner has invoked the arbitration agreement.

8] In view of above facts, the petition is required to be disposed of by the following order.

Order.

i] Mr. Milind Sathaye, Advocate, is appointed as the prospective substitute Arbitrator to adjudicate the disputes and differences between the parties, arising under the leave and licence agreement dated 11th August, 2017.

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these applications with a copy to be forwarded to both the parties;

iii)At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time as may be fixed by the prospective arbitrator.

iv] The learned prospective arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as

prescribed under Section 29-A of the Act;

v) All contentions of the parties on merits of the matter are expressly kept open;

vi] The fees of the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018;

(vi) The Arbitration petition is disposed of in the above terms. No costs.

9]. Office to forward a copy of this order to the learned Arbitrator on the following address:-

Office No.14, 1st floor Mezzanine
Raja Bahadur Mansion No.32,
Hamam Street (A.D. Marg)
Near Stock Exchange, Fort
Mumbai.

Mobile No.9821170905.

[G. S. KULKARNI, J]