

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION (lodg)NO.15935 of 2019

M/s.Ashoka Buildcon Ltd.

...Petitioner

Versus

Maharashtra State Electricity Distribution Co.Ltd
through its Chief Engineer (Infra)

...Respondent

Mr.R.S.Apte, Senior Advocate I/b. Mr.A.A.Garge, for the Petitioner.

Ms.Pruna Gandhi I/b. DSK Legal, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 26 June 2019

P.C.

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.
2. This is a petition filed under Section 11 of the Arbitration and Conciliation Act,1996 (for short 'the Act') whereby the petitioner has prayed for an arbitral tribunal to be appointed to adjudicate the disputes and differences between the parties which are stated to have arisen under the Letter of Award No.CE/DSPC/GFSS/T-7/49/588 dated 6 January 2011 titled as "Turnkey Contract for Gaonthan Feeder Separation Scheme

for left-out village/wadies and balance feeders in Pune Rural Circle. The parties under the tender conditions of the contract which is part of the contract, agreement dated 21 January 2011, have agreed for the disputes and differences between the parties be referred to arbitration. The arbitration agreement is contained in clause 17 of the said agreement which reads thus:-

“17. Arbitration

(a) All disputes and differences between the parties under or in connection with this Agreement or any breach thereof shall be sought to be referred to the Chief Engineer (Distribution Special Project Cell).

(b) If such differences or disputes as between the parties cannot be settled through Chief Engineer (Distribution Special Project Cell) within stipulated time period as mentioned in tender documents, they shall be settled by Arbitration. The Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification thereof from time to time.

(c) The language of the arbitration shall be English and the place of Arbitration shall be Mumbai.

(d) Notwithstanding the existence of any disputes referred to Arbitration, the parties shall continue to perform their obligations under this agreement.”

3. There is no dispute on the existence of an arbitration agreement between the parties. The petitioner by its letter dated 20 March 2019 ('Exhibit I' page 33 of the paperbook) invoked the arbitration agreement and called upon the respondent to refer the disputes to be adjudicated by appointing an arbitral tribunal. As there was no response to the said notice

within the prescribed period of thirty days, the petitioner is before the Court making prayer for appointment of arbitral tribunal.

4. Learned Counsel for the respondent would also not dispute the existence of the arbitration agreement. Learned Counsel for the respondent fairly and on instructions, states that his client has no objection for appointing an arbitral tribunal.

5. In view of the consensus between the parties, the petition is required to be allowed. Hence, the following order:-

ORDER

(i) Mr.Justice P.D.Kode, Former Judge of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Letter of Award No.CE/DSPC/GFSS/T-7/49/588 dated 6 January 2011 titled as “Turnkey Contract for Gaonthan Feeder Separation Scheme for left-out village/wadies and balance feeders in Pune Rural Circle;

(ii) The learned prospective Sole Arbitrator, fifteen 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 Prothonotary & Senior

Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;

(iii) The fees payable to the arbitral tribunal shall be governed in accordance with the fees 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:

204, 2nd floor, Vardhaman Chambers,
Cawasjee Patel Street, Lane adjacent
to Dwarka Hotel, Fort, Mumbai-400001.

(G.S.Kulkarni, J.)