

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****Arbitration Petition NO. 76 OF 2019**

M/s. Ray Project Private Limited ...Petitioner

Versus

M/s. Sona Alloys Private Limited & Ors. ...Respondents

Mr.Jeetendra Ranawat i/b. Suman Jain, for the Petitioner.

Mr.Sagar Sheth with Ms.Nikita Hinger, for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 17 July 2019

P.C.

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act,1996 whereby the petitioner has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties which are stated to have arisen under the work orders dated 23 August 2010, 23 September 2010 and 26 March 2012 alongwith the amended work order dated 26 March 2012. Clause 26 of the work orders

contain arbitration clause which is an arbitration agreement between the parties. There is no dispute on existence of the arbitration agreement between the parties as contained in Clause 26. Learned Counsel for the petitioner has drawn my attention to the order dated 6 December 2018 passed by this Court (S.J.Kathawalla, J.) in Arbitration Petition no.61 of 2018 (page 41 of the paperbook) whereby in relation to the work order dated 5 September 2013 read with the revised work order dated 22 January 2014 this Court had appointed a sole arbitrator to adjudicate the disputes and differences between the parties. It is not in dispute that the parties are before the arbitral tribunal.

3. The contention as urged on behalf of the petitioner is that the work orders which are subject matter of this petition are not part of the earlier proceedings when the petitioner had approached this Court for appointment of an arbitral tribunal. He submits that in the statement of claim which has been made, these work orders are also included and the claim is being raised on the basis of these work orders.

4. A specific averment to that effect has been made in paragraph 4 of the Memo of petition to contend that as this Court by an order dated 6

December 2018 (supra) had referred for adjudication the disputes in regard to the work order dated 5 September 2013 as also the revised work order dated 22 January 2013, however the learned arbitrator would not undertake adjudication qua these work orders, as these are not covered by the said order passed by this Court, which are subject matter of this petition.

5. It is in the above circumstances the present petition has been filed praying that the disputes and differences between the parties be also referred for arbitration in relation to the said work orders.

6. Learned Counsel for the respondents has opposed this petition principally on the ground that the invocation is delayed and the petition is time barred. Learned Counsel for the respondents has referred to the judgment of the learned Single Judge of this Court in “**Deepdarshan Builders Pvt.Ltd. Vs. Saroj, Widow of Satish Sunderrao Trasikar & Ors.**”¹ in supporting this contention. The second contention as urged on behalf of the respondents is that there are three independent work orders and in this context referring to the decision of the Supreme Court in

1 Com.Arb.Appln.no.107/18, order dt.22/11/2018

“M/s.Dura Felguera, S.A. Vs. M/s.Gangavaram Port Ltd.”², more particularly the observations as made by His Lordship Justice Kurian Joseph in the supplementing judgment in Paragraph 14 would submit that three separate arbitral tribunal are required to be appointed.

7. Having heard the learned Counsel for the parties and having perused the record, in my opinion, it is difficult to accept the respondent's submission that three separate arbitral tribunals are required to be appointed to adjudicate the disputes and differences between the parties arising under the work orders and the amended work order in question. The disputes in regard to the three work orders can be distinct, however, there cannot be any bar for one arbitral tribunal to adjudicate the disputes, even considering the decision as relied on behalf of the respondents. The observations as made by the Supreme Court in the judgment by Mr.Justice Kurian Joseph in **M/s.Dura Felguera, S.A. Vs. M/s.Gangavaram Port Ltd.** (supra) would also not assist the respondents. This for the reason that the Court in the said case was concerned with two categories of arbitration, there was also an international commercial arbitration and a domestic arbitration. The Court clearly observed in paragraph 14 that there has to be an arbitral tribunal for the dispute

² (2017) 9 SCC 729,

pertaining to each agreement but the arbitrator can be the same. In the facts of the present case, this argument is too far technical for this Court to accept such a contention as made on behalf of the respondents, when the respondents do not dispute the existence of the arbitration agreement as contained in these work orders.

8. The contention as urged on behalf of the respondents that the invocation is time barred also cannot be accepted. The notice invoking the arbitration agreement is dated 23 April 2019 and the present petition has been filed on 12 June 2019. The petition is certainly filed within the prescribed limitation as available to the petitioner under Article 137 of the Schedule to the Limitation Act. The contention as urged on behalf of the respondents referring to the decision of the learned Single Judge of this Court in “*Deepdarshan Builders Pvt.Ltd.*” (supra), cannot be accepted. This decision is applicable in a case where the party approaches the court beyond the prescribed limitation as provided under Article 137 of the Limitation Act, that is beyond the period of three years after the receipt of the invocation notice by the respondents.

9. In the above circumstances, the petition is required to be allowed.

As the parties in respect of the identical cause of action, are already before an arbitral tribunal of Mr.Amrut Joshi, it would be appropriate in the facts and circumstances of the case that the same arbitrator be appointed. Hence, the following order:-

ORDER

- (i) Mr.Amrut Joshi, Advocate of this Court is appointed as an arbitrator to adjudicate the disputes and difference between the parties under the work orders dated 23 August 2010, 23 September 2010 and 26 March 2012 alongwith the amended work order dated 26 March 2012.
- (ii) The 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 Registrar Judicial (I) of this Court, to be placed on record of these proceedings 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 15 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 including the contention of the respondents that the claim as made by petitioner, is time barred.

(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:-

Mr.Amrut Anil Joshi
Co/o. Mr.Gaurav R.Joshi
302, 'B' Wing, Fort Chambers,
Above Stock Exchange Post Office,
Homi Modi Cross Lane,
Fort, Mumbai-400001.

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(G.S.Kulkarni, J.)