

Tauseef

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION (L) NO.25199 OF 2019

Esteem Bio Fuel Pvt. Ltd.	...Petitioner
V/S.	
First Engergy Pvt. Ltd.	...Respondent

Mr. Balaji H. Iyer a/w. Mr. Kunal Naik Advocate for Petitioner.
Mr. Abhijeet Marathe for Respondent.

CORAM : G.S. KULKARNI, J.
Date : 09th OCTOBER 2019.

P.C.:

1. Heard 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 between the parties which are stated to have arisen under the agreement dated 01 April 2012. The Arbitration Agreement is contend in clause 21 of the Agreement which read thus:

“21. Arbitration:

a. The parties shall use their best endeavors to settle amicably all disputes or differences which may arise out of or in relation to or in connection with this Agreement. If any dispute or difference is not so settled, each party shall have the right to

refer the dispute or difference to arbitration for final settlement by three arbitrators under the Arbitration and Conciliation Act, 1996.

b. Arbitration shall take place in Pune, India and all hearings shall be conducted in the English language.

c. The parties hereto shall have right to seek preliminary injunctive relief from any court of competent jurisdiction pending the award of the arbitration.”

3. Learned counsel for the petitioner has drawn my attention to the Notice issued on behalf of the petitioner dated 01 August 2019 invoking the Arbitration Agreement and requesting the respondent to appoint an Arbitral Tribunal. This Notice was responded by a letter of the Respondent dated 29 August 2019 (page no.184 of the paperback). Perusal of this letter would indicate that the respondent has not disputed the existence of an arbitration agreement. However, the respondent says that the disputes be amicably settled as agreed in the arbitration clause. Learned counsel for the petitioner has drawn my attention to several emails which are part of separate compilation whereby the petitioner's requested the respondent to amicably resolve the disputes, however, as the respondents did not accede to the petitioner's request, the present petition was filed.

4. Learned counsel for the respondent has made submissions to oppose this petition. The principal contention is not different on the contention which is urged on behalf of the respondent in the reply dated

29 August 2019 to the notice of the petitioners invoking the arbitration agreement.

5. Having heard the learned counsel for the parties and having perused the record and considering the fact that there is no dispute on the existence of an arbitration agreement as also on the invocation, in my opinion, the petition would be required to be allowed by appointing an arbitral tribunal.

6. At this stage, learned counsel for the respondent submits that it would be in the interest of the parties that instead of an arbitral tribunal of three members a Sole Arbitrator be appointed to Arbitration between the parties. Learned counsel for the petitioner has no objection on the suggestion as made on behalf of the respondent for appointment of a Sole Arbitrator. In view of the consent between the parties, the petition is being disposed of by the following order:

ORDER

- (i). Shri. R.R. Deshmukh, Retired District Judge is appointed as the Sole Arbitrator to arbitrate the disputes and differences between the parties under the Contract Agreement dated 01 April 2012;

- (ii). The learned prospective Sole Arbitrator, fifteen days before entering the 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:

C/o. F. 602, Rose County,
Kunal Icon Road, Near ICICI Bank,
Pimple, Saudagar, Pune – 411 027.
Mobile : 9423325090.
Email : arnav432@gmail.com

(G.S. KULKARNI, J.)