

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Commercial Arbitration Application NO. 318 OF 2019

Sanghvi Forging And Engineering Ltd. ...Applicant

Versus

Godrej And Boyce Mfg.Co.Ltd. ...Respondent

Mr.Aditya A.Gupta with Sandeep S.Sharma, for the Applicant.

Ms.Kritika Sethi i/b. Cyril Amarchand Mangaldas, for Respondent.

CORAM : G.S. KULKARNI, J.**DATE : 18th October, 2019****P.C.:**

1. Heard the learned Counsel for the applicant and the learned Counsel for the respondent.

2. This is an application filed under Section 11 of the Arbitration and Conciliation Act,1996 (for short 'the Act') whereby the applicant 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 purchase order dated 11 April 2016. The arbitration agreement between the parties is contained in Clause 17 which reads thus:-

"17. Court Jurisdiction

a. Any dispute relating to or arising out of this purchase order shall be referred to the sole arbitration of the Managing Director, whose decision shall be final and binding on both the

parties. Furthermore, you shall not raise any objection on the ground that the Managing Director is an interested party. The provisions of the Arbitration & Conciliation Act 1996 shall be application to such arbitration proceedings. The arbitration proceeding shall be in English and shall be conducted at Mumbai.”

3. The only contention as urged on behalf of the respondent is that a meeting was held some time in the year 2017 between the parties and considering the minutes of the meeting, there are no disputes which can be stated to have arisen between the parties. According to her, the claim of the petitioner is required to be treated as time barred. Learned Counsel for the respondent did not dispute the existence of the arbitration agreement as also invocation of the arbitration agreement. By a notice dated 26 December 2018 the petitioner invoked the arbitration agreement and as the same was not favourably responded by appointing an arbitral tribunal, the present petition has been filed. As regards the respondent's contention that the petitioner's claim is time barred, this is surely something on the merits of the dispute to be urged before the arbitral tribunal.

4. As there is no dispute in regard to the existence of arbitration agreement as also its invocation, in my opinion, the petition is required to be allowed by appointing an arbitral tribunal. Hence, the following order:-

ORDER

I. Dr.Justice S.Radhakrishnan, Former Judge of this Court is appointed as an Arbitrator to arbitrate the disputes and differences between the parties under the Purchase order dated 11 April 2016.

(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 application 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 provisions of 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;

(vi) The application 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:-

“110, Dalamal Chambers,
Behind Income Tax Office,
29, New Marine Lines,
Mumbai-400020.

Mobile No.9920030650

E-Mail: radhakrishnans11@gmail.com

[G.S. KULKARNI, J.]