

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.28 OF 2019**

Royal Packers and Co.	...	Applicant
versus		
Samalkot Power Limited	...	Respondent

Mr. Om Prakash Singh, for Applicant.
Ms. Bijal Vora i/by Clove Legal, for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 11st SEPTEMBER, 2019

P.C.:

1. The Applicant is carrying on business of manufacture and supply of wooden boxes as per the orders placed by the customers. The Respondent admittedly placed an order on the Applicant for supply of wooden boxes, by two purchase orders dated 8th January, 2015 being Nos.33008797 and 33008211. The terms and conditions of the purchase orders contained an arbitration agreement, which is reproduced hereunder :

“Any dispute arising out of or in connection with this Purchase Order/contract shall be finally resolved through arbitration, by a sole arbitrator to be mutually appointed by Reliance and Vendor/Contractor. The Arbitration proceedings shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The arbitration

proceedings shall be held in English language and the venue of the arbitration proceedings shall be at Mumbai. Subject to arbitration to resolve any disputes between Reliance and Contractor, the Courts in Mumbai shall have exclusive jurisdiction.”

2. Since disputes arose between the parties, the Applicant through its Advocate’s letter dated 28th June, 2016 invoked the arbitration agreement. By a reply letter dated 18th July, 2016 the Respondent responded to the invocation notice, wherein after disputing the facts set out in the notice, the Respondent proposed names of two Advocates for being appointed as the sole Arbitrator in the matter. The relevant portion of the reply letter of the Respondent is reproduced hereunder :

“4. Should your client still choose to indulge in litigation, we advise that the names suggested in your notice dated 28th June, 2016 for the appointment of sole arbitrator are not acceptable to us. You may consider sharing the names and particulars of some more persons for appointment as the sole arbitrator.

5. You may also consider any of the following eminent persons to act as the sole arbitrator in the matter....”

3. Though a meeting was thereafter held between the parties, the minutes of which is annexed at Exhibit N, the said minutes do not indicate that there is a full and final settlement was arrived between the parties. After the said meetings of the Respondent once again i.e. on 24th August, 2017 recorded the same statement which is recorded in the Reply notice dated 18th July, 2017 and suggested names of two arbitrators in the matter.

4. The Respondent has filed an Affidavit in Reply and submitted before the Court that in view of the minutes signed between the parties dated 28th July, 2017, the matter was settled between the parties. As stated earlier, the minutes did not indicate that there is a full and final settlement arrived at between the parties. This submission is also not tenable since on 24th August, 2017 the Respondent company once again written to the Applicant that if the Applicant still chooses to indulge in litigation, then the names suggested by the Respondent for appointment as sole arbitrator to decide the disputes between the parties, may be considered. The above submissions advanced by the Respondent are therefore baseless and untenable.

5. One more submission advanced by the Respondent is that since it is alleged that the signature on the minutes of the meeting

were obtained by force / coercion the matter cannot be referred to Arbitration. The submission is rejected as I am of the view that the argument that the minutes were not signed by consent can be raised before and decided by the Arbitrator. In view thereof, the following order is passed :

(i) Mr. Vikram Deshmukh, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of the Purchase Orders dated 8th January, 2015.

(ii) The venue of Arbitration shall be at Mumbai.

(iii) The learned Arbitrator shall within a period of two weeks from today file his disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) with the Prothonotary and Senior Master of this Court.

(iv) The parties and/or their Advocates shall appear before the learned Arbitrator in his chambers, on 23rd September, 2019 at 10.00 a.m. and obtain necessary directions.

(v) The learned Arbitrator shall endeavour to pass his final Award within a period of six months from the date of this order.

(vi) The learned Arbitrator shall not grant adjournments to the parties unless absolutely necessary.

- (vii) All contentions of the parties are kept open.
- (viii) The cost of arbitration shall initially be borne by the parties equally.
- (ix) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

The above Arbitration Application is accordingly disposed of.

(S.J.KATHAWALLA, J.)