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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO.350 OF 2018

Schindler India Private Limited	..Applicant
Vs.	
Supreme Infrastructure India Limited	..Respondent

Ms.Shivani Shukla i/b. M/s.Navdeep Vora Associates for Applicant.
None for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 22nd JANUARY, 2019

P.C.:

Heard learned Counsel for the applicant.

2. This Court by an order dated 15 January 2019 had issued notice to the respondent, returnable on 22 January 2019. Accordingly, notice was issued. Office report is placed on record stating that the respondent is served. Learned Advocate for the applicant has also placed on record affidavit of service dated 17 January 2019. None appears for the respondent.

3. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the ACA") by which the applicant has prayed for appointment of an arbitrator to adjudicate the disputes and

differences between the parties which have arisen under a contract dated 22 March 2013 read with revised letter dated 5 May 2013.

4. The case of the applicant is that the applicant had entered into a contract dated 22 March 2013 read with revised letter dated 5 May 2013 with the respondent for rendering installation services for 4 elevators at MIDC, ESIC Hospital (Kamgar Hospital), Andheri (E.), Mumbai for total consideration of Rs.39,70,000/- It is stated that between the period 26 February 2016 to 31 December 2016 the applicant delivered material at the site and completed the installation and accordingly raised 5 invoices. The invoices were not honoured by the respondent and consequently, the applicant was required to address a notice dated 2 February 2017 to the respondent demanding the outstanding amount under the said invoices to the tune of Rs.17,24,670/-. The applicant recorded that the installation of elevators was successfully completed and despite the same, the respondent refrained from paying the applicant's legitimate entitlement of the said amount. As there was no response to the said notice, learned Advocate for the applicant issued a notice dated 27 June 2018 making a demand for the balance amount as also invoking arbitration clause contained in Clause 18 of the contract dated 22 March 2013 entered between the parties. Arbitration clause as contained in paragraph 18 reads thus:-

“18. Arbitration

If any dispute, controversy or claim between the parties arises out of or in connection with this Agreement, including the existence, breach, termination or validity thereof (Dispute), the parties shall use all reasonable endeavors to negotiate with a view to resolving the Dispute amicably. If a party gives the other party notice that a Dispute has arisen (a Dispute Notice) and the parties are unable to resolve the Dispute amicably within 15 days of service of the Dispute Notice (or such longer period as the parties may mutually agree), then the Dispute shall be referred to arbitration.

Any Dispute shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996. The number of arbitrators shall be one, mutually accepted by the parties. Any arbitral award shall be final and binding on the parties. The seat of the arbitration shall be Mumbai. The language of the arbitration shall be English. Jurisdiction for purpose of the Arbitration and Conciliation Act, 1996 shall be Mumbai.”

5. However, again there was no response. Thereafter a part payment of Rs.10,00,000/- was made and still an amount of Rs.10,24,640/- was due and payable. The applicant again issued a notice dated 2 July 2018.

6. In the above circumstances, the present application has been filed seeking appointment of an arbitrator.

7. Having perused the averments as made in the application and the documents as placed on record, it is clear that there exists an arbitration agreement between the parties. The applicant by its letter dated 27 June 2018 addressed to the respondent invoked the arbitration agreement and sought appointment of an arbitrator. The respondent however, did not respond to the said request.

8. In the above circumstances, the applicant has made out a case for grant of reliefs in the present application. The respondents have chosen not to appear. There is no contest to the prayers as made in the present application. The averments as made in the application are also required to be accepted as uncontroverted. Hence, the following order:-

ORDER

- (i) Mr.Anupam Surve, Advocate, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties.
- (ii) The learned prospective 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) Office to forward a copy of this order to the learned Arbitrator.
- (iv) All contentions of the parties on merits of the matter are expressly kept open.
- (v) The application is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]