

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION (LODG) NO.377 OF 2018

RB Investments Pvt.Ltd. ..Applicant
Vs.
Cleanmax Cogen Solutions Pvt.Ltd. ..Respondent

Mr.Rahul Sinha I/b. DSK Legal, for the Applicant.

Mr.Onkar Gupte with Bhuvan Thakkar I/b. Mahi Ranchoddas & Co., for
the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 9th January, 2019

PC:

1. Heard the learned Counsel for the parties. The learned counsel for the respondent has placed on record a reply affidavit on behalf of the respondent.
2. This is an application under section 11(6) of the Arbitration and conciliation Act,1996 (for short 'the Act'), whereby the applicant prays for an appointment of an arbitral tribunal for adjudication of the disputes and differences between the parties which are stated to have arisen under Operation and Maintenance Agreement dated 13 October 2015. A perusal of the record does not show that there is any dispute in regard to the parties entering into the said agreement. The agreement

in clause 16.1 provides for resolution of disputes through discussion.

Clause 16.2 is the arbitration clause which reads thus:-

“Section 16.2 Arbitration.

Any Dispute arising out, or in connection with, this Agreement and not settled by the procedure prescribed in Section 16.1, shall (regardless of the nature of the Dispute) be finally settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and/or any statutory modifications thereof, by an arbitral tribunal consisting of three arbitrators, with each Party nominating and appointing its nominee arbitrator and both the arbitrators nominating and appointing the third and presiding arbitrator. The venue of the arbitration proceedings shall be at Mumbai and the language used shall be English.”

3. The learned counsel for the applicant has argued that the applicants have espoused their grievances by the letters of Advocate dated 22 June 2018, 29 September 2018 and finally invocation of the arbitration agreement by notice dated 12 October 2018. The respondent replied to the applicant's advocate's notice dated 29 September 2018, by their advocates letter dated 15 October 2018 denying the contentions and claims as made on behalf of the respondent. In paragraph 4 of the reply, it was pointed out that considering the long-standing business relationship between the parties, all earnest efforts were made for restoration of the connection apart from approaching the MERC. The learned Counsel for the respondents would submit that the invocation of the arbitration by notice dated 12 October 2018 is not appropriate inasmuch as in the said notice the name of the CleanMax Enviro Energy Solutions Pvt. Ltd. has been indicated which is a sister concern of the respondent. However, at the same time, the learned Counsel for the

respondent would not dispute that the notice is clearly addressed to the respondent-Cleanmax Cogen Solutions Pvt.Ltd., as also it refers to invocation of the arbitration agreement as contained in clause 16 of the Operations and Maintenance Agreement dated 13 October 2015 under which the applicant claims that the disputes and differences between the parties have arisen. Further in the invocation letter there is specific reference to the legal notice dated 22 June 2018 and 29 September 2018.

4. The second objection as raised on behalf of the learned Counsel for the respondent is that in fact the applicant is not in a position to show that any claim would arise under the Operations and Maintenance Agreement and hence any claim under the said agreement would not be maintainable and thus a reference of the disputes to arbitration should not be made.

5. I have heard the learned Counsel for the parties as also perused the documents as placed on record and the arbitration clause.

6. The jurisdiction of this Court under Section 11 of the Act considering sub-section (6A) of Section 11 would be limited in examining as to whether there exists an arbitration agreement between

the parties. It appears to be quite clear that the parties have entered into an agreement dated 13 October 2015 which contains arbitration agreement as contained in clause 16.2 as noted above. It also appears to be quite clear that the disputes between the parties are subject matter of legal notice dated 22 June 2018 and 29 September 2018. One of the legal notices dated 29 September 2018 was replied by the respondents by its Advocate's reply dated 15 October 2018. A perusal of all these documents including invocation notice does not bring about a situation that the reference of dispute to arbitration should be denied to the applicant.

7. In the above circumstances and considering the documents on record, in my opinion, the application is required to be allowed. Hence, the following order:-

ORDER

(I) Mr.Mustafa Doctor, Senior Advocate of this Court is appointed as the prospective arbitrator to arbitrate the dispute and differences between the parties under the agreement dated 13 October 2015.

(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 and Senior

Master of this Court, to be placed on record of this application with a copy to be forwarded to the parties.

(III) All contentions of the parties on merits of the matter are expressly kept open.

(IV) The parties shall approach the prospective arbitrator alongwith a copy of this order, on a mutually convenient date, within ten days from today.

(V) Office to forward a copy of this order to the learned Arbitrator alongwith a copy of the Memo of this application.

8. The Arbitration Application is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]