

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 162 OF 2019

Kirloskar Pneumatic Co Ltd	...Petitioner
<i>Versus</i>	
John Energy Ltd	...Respondent

Ms Niyati H Shah, for the Petitioner.
Mr Nishant Vyas, with Yagnesh M Vyas, for the Respondent.

CORAM: G.S. PATEL, J
(Through Video Conference)
DATED: 2nd November 2020

PC:-

1. Heard through video conferencing.
2. This is a Petition under Section 11 of the Arbitration and Conciliation Act 1996.
3. The petition says that the Respondent showed interest in purchasing certain Refrigeration Packages for Dew Point Reduction from the Petitioners. It sent an email enquiring about the rates and details. There was a meeting dated 26th December 2017 between the parties. There are minutes of that meeting and there is a submission today based on that, to which I will shortly turn.

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4. I am not concerned in this order with the terms that were decided. It is enough to note that there followed the very next date, on 27th December 2017 a revised offer letter No. MKTG/ACR/NSP/JE/Rev/3 issued by the Petitioner to the Respondent. Annexure III to that revised offer letter dated 27th December 2017 contains the arbitration clause. This requires a reference to be made to two arbitrators residing in Pune, one to be nominated by each side, and each nominee holding a responsible position in a firm or company which is the member of the Marattha Chamber of Commerce and Industries, Pune. The two arbitrators are to nominate an umpire. The reference in the clause is, oddly enough both the 1996 Act and the 1940 Act. Parties agree that this is a typographical error and the reference is only to be construed to the 1996 Act. This is noted.

5. The case in the petition is that since there were disputes and differences, the Petitioner invoked arbitration by its notice dated 31st October 2019. This was followed by the Petitioners filing Civil Miscellaneous Petition No. 1112 of 2019 before the District Judge, Pune for relief under Section 9. That is pending. Notice has been issued.

6. It is in these circumstances that the Petitioner seeks an order from this Court appointing an Arbitrator.

7. The petition is opposed and it is suggested to mean, first, that the Respondent has not 'specifically accepted' the revised offer letter of 27th December 2017. My attention is drawn to the minutes of the

day before of 26th December 2017 to suggest that there is no arbitration agreement in the minutes. There is no substance to this argument. There is very much an arbitration agreement in the revised offer letter.

8. The submission that under Section 7 of the Arbitration and Conciliation Act 1996 the contract needs to be *signed* by both parties is untenable in law. This branch of the law is well settled. The arbitration agreement needs to be in writing. But where parties are shown to have acted on that arbitration agreement, the signatures of both are not always necessary on a single document. Indeed Section 7 itself contemplates a situation where an arbitration agreement will be read as binding even if there is no single document containing the signatures of both sides.

9. The second submission is that the purchase orders in question do not themselves contain an arbitration clause. This submission does not commend itself either. Indeed a look at one of the purchase orders which is shown to me at page 332 clearly has a reference to the 27th December 2017 revised offer letter. This is referred to in the purchase order not only by date but by the identification number that I have mentioned above. There is no doubt whatsoever, therefore, that the Revised Offer Letter was accepted and acted on.

10. The two sides are not agreed on the substitution of the clause by a reference to a sole Arbitrator. Accordingly, the Petitioners will be held to the bargain they struck. They will nominate one arbitrator each. The Petitioners will communicate the name of their nominee

Arbitrator to the Respondents in accordance with Clause 8 by 23rd November 2020. The Respondents will communicate the name of their nominee arbitrator to the Petitioners on 4th December 2020. The two Arbitrators will communicate the name of their choice of presiding arbitrator to both sides on or before 11th December 2020.

11. All Arbitrators will be required to furnish their statements of disclosure. These statements of disclosure will be furnished in soft or hard copy or both to the Advocates for both sides. The advocates for the party making a nomination will arrange to have that nominee arbitrator's disclosure filed in Court. The Advocates for the Petitioner will arrange to have the disclosure by the umpire or presiding arbitrator filed in Court.

12. If the Respondents fail to nominate their nominee Arbitrator by 4th December 2020, liberty to the Petitioners to apply for an order of the Court making a nomination on behalf of the Respondents.

13. The Petition is disposed of in these terms. There will be no order as to costs.

14. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)