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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 442 OF 2019

Bharat Petroleum Corporation Limited	...Applicant
<i>Versus</i>	
SS Industrial Corporation, Parwanoo	...Respondent

Mr Maneesh Dixit, *for the Applicant.*
None *for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 8th January 2020

PC:-

1. The Respondent is absent though served. There is an Affidavit of Service. The Petition is under Section 11 of the Arbitration and Conciliation Act 1996. The factual background to the extent necessary runs like this.

2. The Petitioner, Bharat Petroleum Corporation Limited (“**BPCL**”) floated a tender dated 18th September 2009 (Tender No.1) for the supply of coolants. The Respondent, SS Industrial Corporation Parwanoo (“**SSIC**”) submitted an offer of 9th September 2009 which was found to be the best offer. The BPCL issued a Letter of Intent dated 10th August 2010 to SSIC. The contract was for the supply of coolants for a period of two years.

BPCL was to supply packaging material and send this to SSIC which was supposed to manufacture and pack the coolant and supply the finished packed product to four locations specified by BPCL.

3. The BPCL floated a second tender (Tender No.2) of 19th July 2012 by which the scope of the terms of Tender No.1 were amended. This second tender specified that SSIC was now also to procure the packaging material in addition to carrying out the packing and delivery of the finished packed material.

4. Both tender contracts contain in annexure (VI) an arbitration clause which reads thus:

“VI. Arbitration Clause

“Any dispute or differences of any nature whatsoever any claim, cross-claim, counter claim or set off the Company against the contractor or regarding any right, liability, act omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to sole Arbitrator of the Director (Marketing) of the Company or of some Officer of the Company who may be nominated by the Director (Marketing). The Contractor will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an Officer of the Company or that he had dealt with the matters to which the contract relates or that in the course of his duties as an officer of the Company he had expressed views on all or any other matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Director (Marketing) as aforesaid at the time of such transfer, vacation of office or inability to act

may in the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an Officer of the Company if the Director (Marketing) does not designate another person to act as arbitrator on such transfer, vacation of office or inability of original arbitrator. Such persons shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Director (Marketing) or a person nominated by such Director (Marketing) or the Company as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration Act, 1940 or any statutory modifications or re-enactment thereof and the rules made there under for the time being in force shall apply to the arbitration proceedings under this clause.”

5. In view of the amendments to the Arbitration and Conciliation Act and the settled law on the subject *Perkins Eastman Architect DPC & Anr vs HSSC (India) Ltd.*,¹ *Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd.*,² *TRF Ltd v Energo Engineering Products Ltd.*,³ obviously this kind of nomination process is unworkable. It is for this reason that BPCL issued a letter dated 8th August 2018, a copy of which is at Exhibit “D” at pages 76 to 79 specifically in regard to the appointment of an arbitrator. By this it proposed the names of two advocates of this Court, both

1 2019 (9) SCC OnLine SC 1517.

2 (2017) 4 SCC 665.

3 (2017) 8 SCC 377.

unconnected to BPCL as arbitrators. I note that the Respondent SSIC objected to the names suggested by the BPCL. I can find no substance to that objection.

6. I have no hesitation in accepting the first name suggested, that of Mr Rohaan Savant, as an arbitrator to decide the disputes and differences between the parties arising from the aforesaid two contracts.

7. In summary, in the Section 11 Petition, the claim arises in regard to the valuation of certain packaging materials that were still lying with SSIC but which were not returned nor adjusted in an accounting between the parties. Hence following order:

(a) **Appointment of Arbitrator:** Mr Rohan Savant, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties arising from the tender dated 18th September 2009 read with the Letter of Intent dated 10th August 2010 and the tender dated 19th July 2012 and any consequent LoI thereto.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.

- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr Rohan Savant, Advocate.**

Address 301, 3rd Floor, Rustom Building,
Veer Nariman Road, Fort,
Mumbai 400 023.

Mobile 98331 26212

Email rohanranjitsavant@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**

 - (i) Liberty to both sides parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
 - (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
 - (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
8. The Arbitration Application is disposed of in these terms.

(G. S. PATEL, J)