

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1602 OF 2019**

All Services Global Pvt Ltd	...Petitioner
<i>Versus</i>	
Senior Divisional Commercial Manager	...Respondent

Ms SI Joshi, *with Ms Nikita Pawar, i/b SI Joshi & Co., for the
Petitioner.*

Mr Suresh Kumar, *for the Respondent-Western Railway.*

CORAM: G.S. PATEL, J.
DATED: 3rd March 2020

PC:-

1. The petition is under Sections 14 and 15 of the Arbitration and Conciliation Act 1996. Between the parties there was a Contract No. C331/Composite Cleaning Contract/BRCP dated 17th December 2013. The arbitration clause in this contract is at pages 55 to 59. It is a very long provision and modifies clause 64 of the General Conditions of Contract 2014. The place of arbitration is to be within the geographical limits of the division of the Railways where the cause of action arose or the headquarters of the Railway concerned or any other place with the requisite consent of the parties.

2. This clause also provided for the appointment of an arbitral panel to be drawn from a panel of four names of retired railway officers. As it turns out, parties agreed upon the appointment of one Sandeep Rajvanshy, the Chief Rolling Stock Engineer (Chg) with his office at the Churchgate Headquarters of Western Railway in Mumbai.

3. The reason for the application is that the sole arbitrator has held only two hearings, one on 10th May 2019 and the second on 22nd September 2019. Before him pleadings were completed up to the stage of a Rejoinder. The Claimants/Petitioners sought an early date after the last hearing at any time after 13th October 2019. However, until today, i.e. at least six months down the road, the arbitration has not progressed at all. It is not possible to delay matters like this. There is also the question which I am not deciding as to whether the appointment was initially in accordance with the decisions of the Supreme Court.¹ Leaving that aside, there is no doubt in my mind that the arbitrator will have to be substituted after the mandate of the present arbitrator is terminated.

4. The submission on behalf of the Railways is that this Court would not have any jurisdiction. Reference is invited to a clause at page 50, being Clause 38 which says that any litigation out of the operation of the contract shall be within the competent Court of Vadodara city. Now this submission is, in my view, singularly

¹ *Perkins Eastman Architect DPC & Anr vs HSSC (India) Ltd*, 2019 (9) SCC OnLine SC 1517; *Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd*, (2017) 4 SCC 665; *TRF Ltd v Energo Engineering Products Ltd*, (2017) 8 SCC 377.

misplaced. The clause is part of the General Conditions of the Contract began at page 23. There is a jurisdiction clause but there is also a preceding arbitration Clause 37. As we have seen, this entire provision for arbitration has been substituted at page 55. The amendment is of November 2016 and follows the 2015 amendments to the Arbitration and Conciliation Act 1996. In any case, this is not an argument that can be sustained for the simple reason that the present arbitrator was in fact conducting his arbitration hearings at the Churchgate headquarters in Mumbai and it is inconceivable that any Civil Court in Vadodara city would have jurisdiction over an arbitration seated in Mumbai. As I have noted, there are alternative seats possible and parties have proceeded with the arbitration here. There is no compelling reason now to send parties to Vadodara.

5. The mandate of the arbitrator is terminated. In his place and stead, I nominate Mr Nimay Dave, learned Advocate of this Court as the sole arbitrator to decide the disputes and differences between the parties arising out of the contract dated 17th December 2013.

(a) **Appointment of Arbitrator:** Mr Nimay Dave, learned Advocate of this Court is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the contract dated 17th December 2013.

(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/s Mr Nimay Dave, Advocate.

Address C/o. Mustafa Doctor, Senior Advocate,
29/29A, Alli Chamber, Nagindas Master Road, Fort,
Mumbai 400 023

Mobile 98208 86286

Email nimaydave@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward the necessary 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 before entering upon the reference to 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:

- (i) Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (ii) The pleadings already filed will be tendered before Mr Dave. There will be no amendments or fresh pleadings with express leave of the learned Sole Arbitrator.

(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 the 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.

- (ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (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:** The venue and seat of the arbitration will be in Mumbai.

2. The petition is disposed of in these terms. No costs.

(G. S. PATEL, J)