

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Misc. Civil Application (ARBN) No. 1204 OF 2019

Epiroc Mining India Limited Vs. Mineral Exploration Corp. Ltd.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.A. Abhyankar, Advocate for the applicant
Mr. M.D. Samel, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : MARCH 12, 2020

By this application, the applicant has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator in terms of the arbitration agreement between the applicant and respondent herein.

2. The applicant was supplying drill rods to the respondent – Corporation and in the contract of supply there was an arbitration clause for resolution of disputes, if any by arbitration. The said clause reads as follows :

“29. ARBITRATION :

In case of any dispute or difference arising out of the contract, which can not be resolved mutually between MECL and seller, it shall be referred to a Sole Arbitrator to be appointed by the CMD, MECL. The CMD, MECL shall communicate / cause to communicate, a panel

of three names of persons to Seller/MECL as the case may be in this regard within 30(thirty) days of notice of arbitration by the Seller/MECL as the case may be, to select any one of them to be appointed as the Arbitrator. In case Seller/MECL as the case may be has not communicated its selection as above within thirty days, CMD, MECL will appoint any one of the persons from the panel as a Sole Arbitrator. The Arbitrator shall give a reasoned and speaking award. The award of the Arbitrator shall be binding on both the parties. The venue of arbitration shall be at Nagpur. In case of any vacancy another Arbitrator will be appointed in the same manner as above. The Arbitration and Conciliation Act, 1996 and rules made there under shall apply to the Arbitration Proceedings.”

3. Although initially the applicant had filed a suit for recovery of specific amount from the respondent, on an application filed under Section 8 of the aforesaid Act, in view of the aforesaid arbitration clause, the suit was not proceeded with and the plaint was returned.

4. Thereafter, on 20th February 2019, the applicant sent a communication to the respondent requesting it to initiate action in terms of the aforesaid arbitration clause by communicating names of three persons amongst whom one person could be appointed as Arbitrator.

5. It is undisputed that the respondent failed to send any reply or response to the said

communication of the applicant, due to which the applicant was constrained to file the present application before this Court.

6. Upon notice being issued in the present application, respondent has entered appearance through counsel. The existence of the arbitration clause is not disputed, although the learned counsel appearing for respondent submits that he would have much to say about the claims raised by the applicant. Since the said aspect concerns merits of the matter and in view of existence of dispute between the parties, this Court is called upon to exercise powers under Section 11(6) of the aforesaid Act. Perusal of aforesaid provision shows that when a party fails to act as required under the agreed procedure for appointment of Arbitrator, the Court can step in and exercise powers to appoint an Arbitrator. In the present case, the parties had agreed to appoint sole Arbitrator.

7. On a query put to learned counsel for rival parties as to whether they would agree for appointment of Arbitrator from the panel of Arbitrators, a joint request is made for appointment of Shri M. P. Kukday, Retired District Judge, as an Arbitrator.

8. In view of above, the present application is allowed and Shri M.P. Kukday, Retired District Judge,

is appointed as Arbitrator to enter reference and proceed to conduct arbitration proceedings so as to resolve the dispute between the parties.

9. **Office to take necessary steps in this regard.**

JUDGE

MP Deshpande