

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

915 ARBITRATION APPLICATION NO.13 OF 2015

SHYAM FIROMAL KASHELANI ENGINEERS AND
CONTRACTORS, SHEGAON
VERSUS
SR. DIVISIONAL ENGINEER (EAST), BHUSAWAL

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Mr. S.V. Adwant, Advocate for the applicant.
Mr. M.N. Navandar, Advocate for the respondent.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 06-07-2021.

ORDER :

1. Heard Mr. Adwant, learned Counsel for the petitioner. This is an application under Section 11 (6) of the Arbitration and Conciliation Act for appointment of arbitrator. Mr. Adwant invites my attention to the agreement which is between the parties dated 29.11.2010, at page 8 of the record, which is for the works as listed therein. He invites my attention to the arbitration clause as contained in Clause 64 (3) of the terms of the contract, which require any matters in dispute or difference to be referred to arbitration. He further contends, that notice invoking clause 64 (3) (a) (ii) was issued on 09.04.2015, which was not replied to, resulting in filing of the present application.

2. Mr. Navandar, learned Counsel for the respondent does

not dispute the existence of the arbitration clause 64 (3) (a) requiring the dispute to be referred to the Arbitrator. He however invites my attention, to the special conditions of the contract which have been placed on record at page 134, which provide that in case the value of the claim under dispute is more than 20 % of the value of the contract, then the provisions of clause 64 requiring the dispute to be referred to the Arbitrator, shall not be applicable and in such case, arbitration will not be a remedy for settlement of such disputes.

3. It is an admitted position that the value of the contract is Rs. 94,34,244.14 and 20% of its value would come to Rs. 18,86,844.82. The notice invoking the arbitration clause dated 09.04.2015, does not specify any amount. In the application under Section 11 in para 3 thereof the amount claimed, is Rs. 16,73,246/-, which would make it less than 20% as a result of which the arbitration clause as contained in clause 64 (3) (a) would be attracted.

4. Mr. Navandar, learned counsel for the respondent, however, invites my attention to the affidavit in reply of the respondent and specifically para-13, to contend that the claim raised by the applicant, is Rs. 25,02,670/- which is more than 20% and therefore, the clause in the special conditions would come into operation, which bars arbitration. Mr. Navandar, has not been able to point out, the communication, by which the claim of Rs.

25,02,670/- has been made. Mr. Adwant, learned counsel for the applicant, submits that no such claim has been made, in view of which Mr. Navandar, learned Counsel for the respondent makes a request to place the matter in the second half to clarify this position. Considering the request, list the matter in the second half.

5. In the second half, Mr. Navandar, learned Counsel for the respondent invites my attention to the letter dated 3.9.2014 in which a final statement of claim, under four heads is stated the total of which according to Mr. Navandar comes to Rs, 25,02,670/-.

6. It is pertinent to note, that the communication relied upon by Mr. Navandar is of 03.09.2014. However, the claim made by the applicant, in para – 3, is listed as Rs. 16,73,246/-, which is dated 14.10.2015. It is open, for a party, to restrict his claim, to a particular figure, to bring the claim, within the ambit of the arbitration clause, which appears to have been done in the present matter by quantifying the claim in the application under Section 11 at Rs. 16,73,246/-, due to which the arbitration clause as indicated above, clearly becomes applicable. In view of this restriction of the claim, the special conditions as relied upon by Mr. Navandar, learned Counsel for the respondent, clearly are not attracted in the present matter. That being the case, in view of the existence of the arbitration clause, it would be necessary, to appoint an arbitrator, to decide the disputes between the parties.

7. Mr. P.B. Gaikwad, former Judge of this Court, settled in Aurangabad, is hereby appointed as a Sole Arbitrator, with the consent of the learned Counsel for the parties, to arbitrate upon the disputes as raised by the applicant. Fees of the Arbitrator shall be as per the Fourth Schedule to the Act of 1996.

8. The application is accordingly disposed of.

(AVINASH G. GHAROTE)

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