

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF
ARBITRATOR NO.2/2021***

Gerard da Cunha. Applicant.

Versus

The Goa State Pollution Control Board. Respondent.

Mr.Nikhil Angle with Mr. Vallabh D. Pangam, Advocates for the Applicant.

Mr. Pavithran A.V., Advocate for the Respondent.

Coram : M.S. Sonak, J.

Dated : 28th January, 2021.

P.C.:-

Heard Mr. Nikhil Angle along with Mr. Vallabh Pangam, for the Applicant and Mr. Pavithran for the Respondent-Goa State Pollution Control Board (GSPCB).

2. This is an application for appointment of an arbitrator made under Section 11 of the Arbitration and Conciliation Act, 1996 (said Act).

3. There is no dispute that the Applicant and the Respondent had entered into an agreement dated 10th June, 2014 and now, certain disputes have arisen between the parties in connection with

the said agreement.

4. Clause 16 of the agreement dated 10th June, 2014, provides for resolution of the disputes by arbitration and the said clause reads as follows :

“16. ARBITRATION AND JURISDICTION OF COURT

In the event of any dispute, claim, difference or question arising out of or touching, or concerning this agreement, the same shall be referred to the arbitration of two persons each appointed by the respective parties to this Agreement. The arbitrator so appointed by the Architectural Consultant shall be a member of both the Council of Architects and Indian Institute of Architects and the arbitrator so appointed by the client shall be a Government officer Conversant with sound knowledge in architectural and construction procedures. The Arbitrators shall in turn appoint an Umpire/Presiding Arbitrator (if necessary) who shall have knowledge of construction procedure and preferably be a member of the Institution of Engineers (India).

The venue of arbitration shall be Panaji, Goa only. Save as aforesaid, The Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to the arbitration proceedings under this clause. Subject to the above, the Court in Panaji, Goa shall have exclusive jurisdiction in respect of this Agreement.”

5. The applicant has pleaded, as also placed the material on record that he has appointed Architect Dushyant P. Kamat to be one of the members of the arbitral tribunal. The applicant has also pleaded and placed on record evidence that the respondent was also

called upon to appoint an arbitrator in terms of clause 16 of the agreement, but the respondent failed to do so. Hence, the present application under Section 11 of the said Act.

6. Mr. Pavithran, the learned Counsel for the Respondent-GSPCB has today tendered across the Bar, a letter dated 15/1/2021, addressed by the respondent to the applicant, informing the applicant about appointment of Shri Sandeep Chodnekar, as an arbitrator in terms of clause 16 of the agreement dated 10th June, 2014 for arbitration in respect of the disputes relating to the Board Laboratory cum Office Building at Saligao, Bardez, Goa. Mr. Pavithran also tenders a letter dated 4th January, 2021, addressed by the Respondent-GSPCB to the arbitrator Shri Sandeep Chodnekar.

7. Mr. Pavithran, on instructions, states that Shri Sandeep Chodnekar has accepted his nomination as an arbitrator and further, has indicated that he has no difficulties in being one of the members of the arbitral tribunal in terms of clause 16 of the said agreement.

8. Mr. Nikhil Angle also states that the applicant will have no objection to the constitution of the arbitral tribunal comprising Architect Dushyant Kamat and Shri Sandeep Chodanekar. Further, he points out that in terms of clause 16 of the agreement, the two arbitrators shall, in turn, appoint an Umpire/Presiding Arbitrator (if necessary) who shall have knowledge of construction procedure and

preferably be a member of the Institution of Engineers (India).

9. The learned Counsel for the parties state that the two arbitrators will proceed to appoint such Umpire/Presiding Arbitrator in terms of clause 16 of the said agreement.

10. Taking into consideration the aforesaid developments, which are accepted by both the parties, this application seeking appointment of an arbitrator, is disposed of.

11. Needless to add that this Court has not gone into the merits or demerits of the disputes between the parties, nor has this Court accepted any of the contentious statements in this application seeking appointment of an arbitrator and, therefore, all contentions of the parties, on merits, are left open for determination of the arbitral tribunal, in accordance with law and on their own merits.

12. The application for appointment of arbitrator is disposed of in the aforesaid terms, without their being any orders for costs.

13. All concerned to act on the basis of an authenticated copy of this order.

M.S. Sonak, J.