

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO.17 OF 2019

Parkkot Maritima Agencies Pvt. Ltd.	...	Applicant
Versus		
The Mormugao Port Trust & Anr.		Respondents

Mr. Balkrishna Sardessai, Advocate for the Applicant.

Mr. Y. V. Nadkarni and Mr. Sanket Kamat, Advocates for the Respondents.

Coram:- M. S. SONAK, J

Date:- 21st January, 2021

P.C.

Heard Mr. Balkrishna Sardessai, learned counsel for the Applicant and Mr. Yogesh Nadkarni who appears along with Mr. S. Kamat for the Respondents.

2. On 13th March, 2020, the following order was made in this matter.

“Heard Mr. Sardessai for the Applicant and Mr. Yogesh V. Nadkarni with Ms. D. Shirgam for the Respondents.

2. The applicant, seeks appointment of arbitrator by invoking the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (said Act).

3. For the above purpose, the applicant refers to license agreement dated 31.08.2015 and Clause (r) thereof which reads as follows:

“He shall agree to refer any dispute or difference between him and the Mormugao Port Trust as to the payment of compensation, its quantum or any connected question, to a sole Arbitrator nominated by the Board.”

4. Mr. Sardesai submits that disputes have arisen between the parties in relation to the license agreement dated 31.08.2015 and therefore, a notice was served upon the respondents seeking appointment of sole arbitrator. He submits that since no arbitrator was appointed by the Board, present application has been taken out.

5. Mr. Nadkarni, the learned counsel for the respondents points out that the license agreement dated 31.08.2015 indicates the name of the licensee as "M/s. Agencia Comercial Maritima" . He points out that the present application has been filed by the Parkkot Maritima Agencies Pvt. Ltd., which is described as a private limited company. He therefore submits that the present applicant is not at all a licensee and therefore a part of the license agreement dated 31.08.2015. He submits that in such circumstances, the present applicant, is not entitled to maintain an application seeking appointment of arbitrator in terms of Section 11 of the said Act.

6. Mr. Sardesai contends that M/s. Agencia Comercial Maritima is only an unit of the applicant. He submits that "M/s. Agencia Comercial Maritima" is only a trade name. Finally, he refers to the Memorandum and Articles of Association of the applicant and points out to the main objects clause therein.

7. The main objects clause is to be found in Article III A)1 which reads as follows:

“III A) The main objects to be pursued by the Company on its incorporation are:-

1. To take over the existing firm AGENCIA COMERCIAL MARITIMA run by the directors in course of time and to carry on the business of stevedoring, barge operations, cargo handling and transport operations.”
8. From the aforesaid, it does appear that there is lack of clarity and to the precise status of "M/s. Agencia Comercial Maritima" . However, this lack of clarity, at the highest, gives rise to a dispute between the parties. This lack of clarity is not a good enough reason to decline the appointment of arbitrator. Ultimately, even this dispute between the parties, can be adjudicated in the arbitration proceedings.
9. Therefore, by keeping all contentions of all parties, including, particularly the contentions of the respondents herein open on the aforesaid issue, it is proposed to appoint Hon'ble Justice Shri A. P. Lawande as the arbitrator in the matter.
10. However, before any formal orders are made, the parties to request the proposed arbitrator to furnish a disclosure statement as contemplated by Section 11(8) of the said Act.
11. Mr. Sardesai states that he will furnish a copy of this order to Hon'ble Justice Shri A. P. Lawande as early as possible.
12. In order to enable the proposed arbitrator to file the disclosure statement, this matter is posted on 20th March, 2020.
13. All concerned to act on the basis of an authenticated of this Order.
14. Stand over to 20.03.2020.”

3. Necessary statement of disclosure is stated to have been filed in the registry. The learned counsel for the parties state that the proposed learned Arbitrator has expressed no difficulties in taking up this matter.

4. Accordingly, the Hon'ble Shri Justice A. P. Lavande, retired Judge of this Court is appointed as an Arbitrator to adjudicate upon the disputes which have arisen between the parties.

5. The arbitration including the issue of payment of fees will abide by the provisions of the Arbitration and Conciliation Act, 1996 as also the Rules that have been framed for this purpose.

6. The application for appointment of arbitrator is disposed of in the aforesaid terms.

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

M. S. SONAK, J

at*