

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 3 OF 2021**

Hyderabad Precision Mfg Co Pvt Ltd ...Petitioner
Versus
Government of India, Ministry of Defence & Anr ...Respondents

Ms Tanmayi Rajadhyaksha, *with Ankit Jadhav, i/b Amit Karle, for the Petitioner.*
Mr BB Sharma, *with Yashodeep Deshmukh, Vaidehi Deshmukh, Sonali Pawar and Kinjal Kanani, for the Respondents.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 14th July 2021

PC:-

1. Heard through video conferencing.
2. The Petition is on the Appellate Side under Section 11 of the Arbitration and Conciliation Act 1996 seeking the appointment of an arbitrator under the relevant terms of a Supply Order dated 30th November 2010 placed by the 1st Respondent on the Petitioner. The arbitration clause is Clause 4(e) of Annexure 1 (terms and conditions of the Supply Order). It is reproduced at pages 38 and 39 of the Petition. Sub-clause (i) says that the sole arbitrator is to be appointed by the Director General of Ordnance Factories of the

Government of India. He is to appoint a government servant. The venue of the arbitration is to be in Pune.

3. It seems to me self-evident that this kind of a clause providing for unilateral appointment of an Arbitrator by one of the parties is not in accordance with the law as interpreted and declared by the Hon'ble Supreme Court of India. See: *Lite Bite Foods Pvt Ltd v AAI*,¹ following the decisions in *Perkins Eastman Architect DPC & Anr vs HSSC (India) Ltd*;² *Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd*;³ and *TRF Limited v Energo Engineering Products Ltd*.⁴

4. The weight of authority clearly suggests that where the requirement is for the appointment of a sole arbitrator, that appointment must be by consent of parties or by an order of the Court. No unilateral appointment is any longer possible in the present state of the law.

5. I have no hesitation in requesting Dr Smt Justice Shalini Phansalkar-Joshi, former Judge of this Court to accept the nomination as a sole arbitrator to decide the disputes and differences between the parties under the Supply Order No.SP/A00609/SO/T1/A/D2/DEV/OPT dated 30th November 2010.

1 2019 SCC OnLine Bom 5163.

2 2019 (9) SCC OnLine SC 1517.

3 (2019) 4 SCC 665.

4 (2017) 8 SCC 377.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Subject to her consent and willingness, Dr Smt Justice Shalini Phansalkar-Joshi, former Judge of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under under the Supply Order No.SP/A00609/SO/T1/A/D2/DEV/OPT dated 30th November 2010

(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 Petitioner within one week from the date this order is uploaded.
- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Dr Smt Justice Shalini Phansalkar-Joshi**

Address Bungalow No.12
Bhagya Chintamani Society
Opposite Kachra Depot
Paud Road
Kothrud
Pune 400 411

Mobile 9657188676

Email phansalkarjoshi@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioner will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** 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.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (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. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

- (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** Parties agrees that the learned Sole Arbitrator's fees shall be in her discretion.
- (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:** Parties agree that the venue and seat of the arbitration will be in Pune, which is the seat provided in the Arbitration Clause.
- (l) **Procedure:** These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

6. The Arbitration Petition is disposed of in these terms.
7. Liberty to the parties to seek the costs of this Petition as costs in arbitration.
8. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)