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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.117 OF 2021

TK Elevator India Pvt. Ltd.

...Applicant

Versus

City Corporation Ltd.

...Respondent

Dharmesh Jain, i/b. Anil Agarwal for the Applicant / Petitioner.
Amit Karle for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 25 October 2021

ORDER :

1. Heard learned Advocate for the Petitioner.
2. By this Petition, the Petitioner is seeking appointment of sole arbitrator in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 to adjudicate upon the disputes between parties in respect of the work orders.
3. The work orders are dated 10th May, 2017 and at

clause (K) provides for dispute resolution. It is provided in the said clause that any dispute notice that has not been resolved amicably from the date of such notice (or such other longer period as agreed in writing by the parties) shall be submitted to the jurisdictional Court for arbitration, which shall be conducted in accordance with the Arbitration Rules in effect at the time of applying for arbitration. The place of arbitration shall be in Pune and the language of the arbitration shall be English. Any arbitral award shall be final and binding on the parties, from the day it is made, and the parties waive any right of appeal on law and / or merits to any Court.

4. The Petitioner has invoked arbitration by its letter dated 17th March, 2021. It is stated in the said letter that despite repeated requests and written communications to the Respondent, they have chosen to overlook and not respond to such request and demands made by the Petitioner for the recovery of the outstanding dues. The Petitioner had tried to resolve the matter amicably and gave the Respondent enough time and extended full co-operation and support. Accordingly, the dispute resolution at clause (K) of the work order has been invoked and the Respondent's consent has been sought for the

appointment of an arbitrator within 30 days of receipt of this notice. This notice invoking the arbitration agreement dated 17th March, 2012 has not been responded to by the Respondent. Accordingly, the present Petition has been filed.

5. The learned Advocate for the Petitioner applies for the learned Arbitrator be appointed in terms of clause Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended in respect of the dispute that has arisen between the parties under the work orders. He has submitted that though the Respondent was given sufficient opportunity to amicably settle the matter but the matter has not been resolved. Clause (K) of the work order provides for dispute resolution and the parties are required to appoint the sole arbitrator.

6. The learned Advocate for the Respondent has not disputed the fact that the dispute between the Petitioner and Respondent under the work order dated 10th May, 2017 come under the clause (K) of the work order be referred to arbitration. However, the Respondents are not agreeable to the persons named in the notice invoking arbitration and leave it to this Court to appoint suitable person from the panel of

arbitrators of this Court as the sole arbitrator to adjudicate the disputes between the Petitioner and Respondent.

7. In view thereof, the Petition is required to be allowed. Hence the following order:-

(i) (Dr.) Smt. Shalini Phansalkar-Joshi (Retired High Court Judge) is appointed as a Sole Arbitrator to decide the disputes between the Petitioner and the Respondent arising out of the Single Joint Venture Agreement dated 12th April 2012 executed between them.

(ii) The venue of arbitration shall be in Pune as per Clause 40 of the said Joint Venture Agreement dated 12th April 2012.

(iii) Office to inform the Sole Arbitrator regarding her appointment.

(iv) The Sole Arbitrator is requested to file her Disclosure Affidavit of Arbitration under Section 11(8)(i) of

the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

(v) Parties to appear before the Sole Arbitrator on the date fixed.

(vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

(vii) Arbitration is disposed of in the above terms.

(viii) No costs.

[R.I. CHAGLA J.]