

jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.156 OF 2019

K R Traders Thr its Partners Joginder ...Petitioners
Nath & Anr.

Versus

Union of India & Ors. ...Respondents

Mr. Mihir S. Raje for the Petitioners.

Mr. B.B. Sharma i/b. Yashodeep Deshmukh, Vaidehi Deshmukh
and Kinjal Kanani for Respondents.

CORAM : R.I. CHAGLA J.
DATE : 12 October 2021

ORDER :

1. Heard learned Advocates for the parties.
2. By this Arbitration Petition the Petitioners are seeking appointment of a suitable Arbitrator as per condition 70 of the General Conditions of Contract (IAFW 2249) to adjudicate the dispute with respect to the contract bearing C.A.CE/AF/G/PUNE/31 of 2011-2012 dated 11th October, 2011 between the Petitioners and the Respondents.

3. The learned Advocate appearing for the Petitioners has referred to an Affidavit dated 21st August, 2021 which was filed pursuant to the order dated 17th January, 2020. As per the said order the learned Advocate for the Petitioners had agreed to give fresh notice invoking arbitration as required by law and in conformity with the contract in question. This Court had rather than permitting withdrawal of the Petition required the filing a further Affidavit disclosing fresh notice invoking arbitration. The Petitioners have issued a fresh notice which has been served on the Respondents for appointment of Arbitrator on 22nd January, 2020. However, the Respondents had failed to appoint Sole Arbitrator. The letter dated 22nd January, 2020 which is at Exhibit B to the said Affidavit.

4. The learned Advocate for the Respondents states that the claims which are mentioned in the notice invoking arbitration which was withdrawn by the Petitioners at paragraph 5 stated that more than three and half years lapsed since about Rs.28 lakhs, being the undisputed amount was not paid. He has stated that the Petitioners are making nothing but a monetary claim and that too a stale claim. The learned Advocate for the Respondents has submitted that in view of the

stale claim made by the Petitioners, this Court should not appoint an arbitrator and the Respondents have refused to reply to the notice invoking arbitration.

5. Having considered the submissions, it is clear from Condition 70 that there is an arbitration agreement between the parties. In so far as whether the claims are stale or not that should be decided by the Arbitrator as and when raised by the Respondents. In view thereof, the following order is passed.

(i) Mr. S.S. Rao, F.I.E. (I), LLB; Retired Chief Engineer (Civil), Wcl. Arbitrator from the High Court Panel is appointed as a Sole Arbitrator to adjudicate the dispute with respect to the Contract bearing C.A. No.: CE/AF/G/PUNE/31 of 2011-12 between the Petitioners and the Respondents.

(ii) The Arbitration Petition is accordingly disposed of.

[R.I. CHAGLA J.]