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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION NO. 88 OF 2020**

SMS Integrated Facility Services Pvt Ltd ...Applicant
Versus
Larsen & Toubro Limited & Anr ...Respondents

Mr Rashmin Khandekar, i/b Amit A Tungare, for the Applicant.
Mr Ravi Varma, with Mr Abhinav Sharma, i/b Link Legal India Law
Services, for Respondent No.1-L&T.

CORAM: G.S. PATEL, J
(Through Video Conference)
DATED: 6th January 2021

PC:-

1. Heard through video conferencing.
2. This is an Application under Section 11 of the Arbitration and Conciliation Act 1996. The claim in dispute arose from a purchase order at Exhibit 'B'. This is dated 14th October 2015, bearing PO No. 200141. The purchase order was placed by a consortium of the two Respondents on the Applicant.

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3. On the face of the purchase order itself there are certain terms and conditions. Condition No. 5 is captioned 'special directions'. Beneath that, clause 5.1 says 'all other items will be as per attached ANNEXURE-I'. A copy of this annexure is at Exhibit 'C' from page 26. There is no dispute that this does contain in clause 50 at page 48 a dispute resolution agreement for references of all disputes to a sole Arbitrator with the venue to be in Mumbai and the proceedings to be in English. Of course, the clause says that the Arbitrator is to be appointed by the contractor. The later provision cannot prevail and the appointment will have to be either by mutual consent or by an order of the Court.

4. Mr Khandekar points out that the invoice at Exhibit 'B' is only one of a large number of similar invoices, all between the same parties and part of a chain or series of transactions. Some, though not all, of the invoices that passed between the parties are annexed at Exhibit 'D' collectively from page 50. On a bare perusal of some of these invoices, it appears that they fall into two categories. One class makes a cross-reference to one or the other of different purchase orders saying, in one case for instance, that all other terms will be 'as per the main contract purchase order No. 200141'. This is not a reference to the purchase order at Exhibit 'B' (and to which the terms and conditions of ANNEXURE-I at Exhibit 'C' with the arbitration agreement) are appended. There is another class of additional invoices, and these contain no special instructions at all.

5. The prayer in the Application is in fact only for a reference of the disputes under Exhibit 'C'. This, as noted, is ANNEXURE-I to solitary purchase order at Exhibit 'B'.

6. Mr Varma's instructions are to say that it is only this invoice and the disputes under it that can be referred to arbitration. His clients are unwilling to refer to arbitration any disputes under any other invoices, whether or not they contain cross-references or are silent.

7. Evidently, therefore there will need to be an order only in regard to the invoice at Exhibit 'B' read with the terms and conditions at ANNEXURE-I to Exhibit 'C'. So far as all other invoices are concerned, irrespective of whether or not they are annexed to the Application, all contentions of the Applicants are expressly left open for appropriate proceedings as may be advised.

8. Accordingly, the disputes and differences between the parties under invoice at Exhibit 'B' read with the terms and conditions at Exhibit 'C' are referred to the sole arbitration of Mr Kamal Khata, learned Advocate of this Court.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Kamal Khata, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under invoice at Exhibit 'B' read with the terms and conditions at Exhibit 'C'.

(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 Applicant within one week from the date this order is uploaded.

(ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr Kamal Khata, Advocate.**

Address Techno Heritage Building,
2nd floor,
76, Nagindas Master Road,
Kala Ghoda, Fort,
Mumbai 400 023.

Mobile 98200 88706

Email kamal.khata@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 Applicant 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:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (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 Mumbai.
- (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.

9. The application is disposed of in these terms. Liberty to the parties to seek the costs of this application in arbitration.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)