

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.125 OF 2021**

Pushpak Rail Construction Pvt. Ltd.Applicant

V/s.

Union of India and Ors.Respondents

Mr. Rakesh Singh a/w. Ms. Shivani Soni for applicant.

Mr. Chetan C. Agrawal for respondents.

CORAM : K.R.SHRIRAM, J.

DATED : 19th JULY 2021

P.C. :

1 On 25th June 2021 application was served and applicant moved for listing the matter. The application was listed on 13th July 2021 but since respondents were absent, the matter was stood over to today. Today respondents are represented and Mr. Agrawal undertakes to file Vakalatnama within one week from today. Mr. Agrawal is seeking further time to take instructions. I am not inclined to grant any further time.

2 Applicant was appointed as a Contractor for construction of precast RCC box in lieu of level crossing for L.C. Nos.67, 73 and 96 for Virar-Surat section providing limited height subway pursuant to an agreement dated 8th December 2016. According to applicant, respondents illegally terminated the agreement and therefore, they are entitled to seek damages. Clause 52 of the Tender Notice places restrictions on arbitration clauses, which are at clauses 63 and 64. The restriction is that the

arbitration clauses 63 and 64 shall apply only for settlement of claims or disputes for value less than or equal to 20% of the value of the contract. The estimated cost of work in the Tender Notice is Rs.4,33,25,000/-. Applicant in its demand for arbitration dated 17th August 2020 (Exhibit “L” to the application) has stated that the contract was for an amount of Rs.4,33,25,000/- but since there is a restriction on the arbitration clause, claimant is reducing its claim to Rs.86,60,000/- though according to claimant it was entitled to claim Rs.1,50,57,294.70. Mr. Singh states that claimant is entitled to refer the dispute to arbitration. I would agree with Mr. Singh. Respondents did not respond and therefore, applicant sent reminders dated 19th October 2020 and 25th November 2020. By a communication dated 18th December 2020, respondents asked applicant to give a break up of items against which claim is being made so that the amount claimed against each items can be conveyed to division and case can be dealt further. Those break up and details were supplied. On receipt of the same, by a letter dated 4th February 2021 respondents replied to applicant stating that applicant’s request for appointment of Arbitrator is under process. Nothing happened thereafter and hence, applicant was constrained to approach this Court by this application in June 2021. Notwithstanding receiving a copy of this application, no reply has been filed.

3 Therefore, there is no impediment to the appointment of the Arbitrator. I hereby appoint Ms. Priyanka C. Kothari, an Advocate practicing in this Court (Address : 3rd Floor, Seksaria Chambers, 139, Nagindas Master Road, Fort, Mumbai – 400 023, Mobile No.: 9819655969, Email ID : law.priyanka@gmail.com) as sole Arbitrator to arbitrate on all disputes arising out of and/or in connection with and/or relating to the Agreement dated 8th December 2016 and counter claim, if any. All rights and contentions of the parties are kept open.

4 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicant and 50% by respondents and the same shall be subject to cost in the arbitral proceedings.

5 The Arbitrator to communicate in writing to the advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within two weeks of receiving a copy of this order from any of the party.

6 Application accordingly stands disposed.

Liberty to apply if the Arbitrator expresses inability to accept the reference.

(K.R. SHRIRAM, J.)