

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMM. ARBITRATION APPLICATION NO. 224 OF 2021

A. S. Clearing and Forwarding (India) Pvt. Ltd. Applicant

Versus

APM Terminals India Pvt. Ltd. Respondent

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Mr. Sidd Panicha with Vanshika Rai i/b Mansi Patel for the Applicant.

Mr. Tarang Kulkarni, Legal Counsel/P.O.A. holder Respondent
Company is present.

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CORAM:- B.P. COLABAWALLA, J.

DATE : NOVEMBER 25, 2021.

P.C.:

1. The above Arbitration Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “**the Arbitration Act**”) seeking the constitution of the Arbitral Tribunal to decide the disputes and differences between the Applicant and the Respondent arising out the Inland Services Agreement (for short “ISA”) dated 25th May, 2018.

2. The arbitration agreement between the parties can be found at clause 10 of the said ISA which reads thus:

“10. Arbitration and Law & Jurisdiction

10.1 This Agreement shall be governed by and construed in accordance with the laws of India.

10.2 In the event of any disputes, differences or claims arising between the Parties in connection with this Agreement, during its subsistence or/and after its termination in any manner whatsoever, including the validity or the construction or interpretation of any of the clauses hereof or anything done or omitted to be done pursuant hereto, the same shall be referred and resolved through arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactment or modification thereof;

10.3 The Arbitral Tribunal shall comprise of three Arbitrators, each Party shall be entitled to appoint one Arbitrator each, who in turn will then appoint the third Arbitrator who shall preside as chairman.

10.4 The decision of the Arbitral Tribunal thereon shall be final, conclusive, and binding on both the parties to the Agreement.

10.5 The venue of such arbitration proceedings shall be in Mumbai and the proceedings shall be in English. The arbitration shall be conducted in accordance with the substantive and procedural laws of India.

10.6 Subject to the provisions of the preceding clause relating to arbitration, the civil courts in Mumbai shall have exclusive jurisdiction to deal with all issues arising under this agreement”

3. Mr. Tarang Kulkarni has appeared on behalf of the Respondent. He has stated that he is in the employment of the Respondent Company as a Legal Counsel and has the Authority to appear on their behalf as per the Power of Attorney dated 16th August, 2021. He also tendered a copy of the said Power of Attorney. The same is taken on record and marked 'X' for identification.

4. Mr. Kurkarni has has fairly stated that Respondent does not dispute the existence and validity of the arbitration agreement reproduced earlier. He further submitted that the arbitration clause contemplates the constitution of a three member tribunal where as he would suggest that the disputes and differences be decided by a Sole Arbitrator.

5. The learned Advocate appearing on behalf of the Applicant also joined in the said request and agreed that the disputes and differences between the Applicant and the Respondent be decided by a Sole Arbitrator rather than a three member tribunal.

6. In view of the aforesaid stand of the parties the following order is passed:

- a) By consent, Ms H. V. Tamanna, an Advocate of this Court, is appointed as a Sole Arbitrator to decide the disputes and

differences between the Petitioner and the Respondent arising out of and/or in connection with and/or in relation to the Inland Services Agreement dated 25th May, 2018.

- b) A copy of this order shall be communicated to the learned Sole Arbitrator by the advocates for the Petitioner within a period of one week from today.
- c) The learned Sole Arbitrator is requested to forward her Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this application and a copy of the same shall be furnished by the advocates for the Petitioner to the Respondent.
- d) The parties shall appear before the learned Sole Arbitrator on such date and at such place as she nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings, etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.
- e) The contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one

week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective advocates.

f) The parties further agree that all the arbitral costs and the fees of the Arbitrator will be borne by the Petitioner on the one hand and the Respondents on the other, equally and will be subject to the final Award that may be passed by the Tribunal.

g) The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Sole Arbitrator find it necessary.

h) The parties have agreed that the venue and seat of the arbitration will be in Mumbai.

7. The above Section 11 Application is accordingly disposed of. No order as to costs.

8. All parties to act on an authenticated copy of this order digitally signed by the Personal Assistant /Private Secretary/Associate of this Court.

(B. P. COLABAWALLA, J.)