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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 4191 OF 2021

M/S. TIGER STEEL ENGINEERINGPETITIONER
(INDIA)

V/s.

M/S. NIKHIL COMFORTSRESPONDENT

Mr. U. L. Shah advocate for the Petitioner
Mr. S. B. Shetty for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 27, 2022.

P.C.:

1) Heard Shri. Shah, learned counsel appearing for the Petitioner and learned counsel Shri. Shetty, appearing for the Respondent-Plaintiff. Respondent-Plaintiff initiated summary Suit No. 335/2018 pursuant to Order XXXVII of Code of Civil Procedure, 1908 for recovery. Application Exh. 11 came to be moved under Section 8 of the Arbitration and Conciliation Act, 1996 by the Petitioner-Defendant alleging that there exist an Arbitration Agreement which came to be rejected vide order dated 24/01/2020 by Civil Judge,

Senior Division, Thane. As such, this Petition.

2) Counsel for the Petitioner would invite attention of this Court to the pleadings in the Plaint, various work orders, e-mail dated 02/07/2014 and reply by Respondent-Plaintiff dated 10/07/2014, condition no. 27 in the work order issued to the Respondent and also payments made. According to him, aforesaid fact lead to the only inference that there exist Arbitration Agreement and that being so, the Trial Court should have referred the matter to Arbitration.

3) Learned counsel Mr. Shah for the Respondent would urge that the claim put forth by the Petitioner does not fit into requirement under sub-section 2 of Section 8 of the Arbitration and Conciliation Act, 1996. Apart from above, according to him, irrespective of arbitration proceedings, Suit is very much maintainable.

4) I have considered aforesaid submissions.

5) The work orders which are produced on record from page no. 33 onwards in support of which pleadings could be noticed in para 4 onwards of the Plaint in categorical terms speaks of Arbitration clause. Item no. 27 in work orders reads thus:

27 (a) If any Dispute remains unresolved mutually within 7 Business

Days of reference of such Dispute, then the same shall be referred to sole arbitrator, to be appointed by Company. The arbitration proceedings shall be conducted in accordance with the Arbitration & Conciliation Act 1996. The place of arbitration and the seat of arbitral proceedings shall be Mumbai, State of Maharashtra, India have exclusive jurisdiction in relation to all matters arising out of this Purchase order.

(b) Any arbitral proceeding begun pursuant pursuant to any reference made under this Purchase order shall be conducted in English language. The decision of the arbitral tribunal and any award given by the arbitral tribunal shall be final and binding upon the parties.

(c) Each party shall bear its own expenses in relation to the arbitration.

6) I am informed and also could be inferred from the pleadings of the Respondent-Plaintiff, that the Respondent-Plaintiff has acted on the aforesaid work orders and claimed to have executed entire work. Not only the work is executed, payments were also received as against execution of the aforesaid work orders. That being so, prima facie it can be inferred that Respondent-Plaintiff has accepted terms of the work order. That being so, this Court is prompted to infer that there

exist Arbitration Agreement.

7) In the aforesaid background, in my opinion, order impugned is not sustainable. As such, impugned order passed below Exh. 11 by CJSD, Thane on 24/01/2020 is hereby quashed and set aside. Application Exh. 11 stands allowed. The Trial Court is directed to refer the matter to Arbitrator.

8) It shall be open for the Respondent to raise an issue as regards existence of arbitration clause before the Arbitrator which the Arbitrator is expected to decide in accordance with law.

9) Petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]