

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 66 OF 2021

M/s. Rapid Infra and Mining LLP through
its Partner Kartik S/o. Santosh Kumar Jain ...Petitioner
Vs.

M/s. Patil Construction & Infrastructure
Limited through its Managing Director ...Respondent

Mr. Pankaj D. Purway a/w. Mr. Habib Ur Rehman Ansari and Mr.
Aakash Yadav, for the Petitioner.
None for the Respondent.

**CORAM : MANISH PITALE, J.
DATE : 9 DECEMBER 2022**

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. Heard learned counsel for the petitioner. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

2. On 21/9/2022, this Court issued notice in the present petition. The respondent was served. On 19/10/2022, this Court recorded the fact that respondent was served but there was no appearance on behalf of the respondent. Accordingly, the petition was directed to be listed for final disposal on 1/12/2022.

3. Even on the said date, none had appeared on behalf of the respondent and accordingly the petition was directed to be listed

today for final disposal. Even today, none has appeared on behalf of the respondent.

4. The learned counsel for the petitioner submits that a sub-contract is executed between the petitioner and the respondent in the context of construction of road. The said agreement contained an arbitration clause at Clause No.36. As disputes arose between the parties, the petitioner invoked the arbitration clause by sending a notice dated 23/8/2019, but there was no response on the part of the respondent, as a consequence of which, the present petition came to be filed.

5. The arbitration clause in the said agreement reads as follows:

Disputes : In case any dispute or difference should arise between the parties, whether in respect of quality of material used by the contractors or work done or in respect of delay in completion of works or in respect of payment of extra work required to be done and so executed or in respect of measurement of work done or in respect of delay of payment to the contractors or touching the interpretation, fulfillment of any of the terms of these presents or any other matter arising out of or in connection with these presents or the carrying out of the work, shall be resolved at the office of the Contractor first and if the same will not be resolved

the same shall be referred to arbitrator. The sole arbitrator will be the chief engineer of the Contractor. The proceedings of the arbitrators shall be recorded in English, a copy whereof shall be furnished to each party. The provisions of the Arbitration and Conciliation Act, 1996 so far as applicable and are not inconsistent or repugnant to these presents, shall apply to this reference to arbitration. The award of the arbitrators shall be final and binding on the parties and the parties, their executors and administrators shall on their respective parts obey, abide by the award and shall not challenge on any ground excepting fraud or collusion or error apparent on the face of the award.

6. A perusal of the above quoted clause shows that it is already hit by Section 12(5) read with Seventh Schedule thereof for the reason that the clause provides for unilateral appointment of the arbitrator. In fact, it is specified that the chief engineer of the Contractor would be the sole arbitrator. In these circumstances, the learned counsel for the petitioner submits that this Court may appoint a neutral arbitrator.

7. The arbitration clause does not specify the place of arbitration, but it is submitted on behalf of the petitioner that this Court may direct arbitration proceedings to take place at Mumbai, which would be convenient for both the parties.

8. In view of the above, Justice Shri. D. D. Sinha, former Judge of this Court is appointed as the sole Arbitrator, for resolving the disputes between the parties. The details of the learned Arbitrator are as follows.

The Hon'ble Shri. Justice D. D. Sinha
Flat No.A-202, Landscape Township,
Cabo Odxel, Dona Paula, Goa,
Mobile No.9833016199

9. The learned counsel for the petitioner submits that the learned arbitrator is available at Mumbai.

10. The petitioner to inform the learned arbitrator immediately about the order passed today.

11. The learned arbitrator is requested to communicate his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be as per schedule IV to the said Act.

12. All contentions of the parties are kept open.

13. The petition stands disposed of, in aforesaid terms.

MANISH PITALE, J.