

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.44 OF 2021

Kimiya Engineers Pvt. Ltd. ... Petitioner
Vs.
Uttar Pradesh Rajkiya Nirman Nigam Limited ... Respondent

Ms. Shilpa Kapil for Petitioner.

Mr. V. V. Khemka and Mr. Gaurav Parkar for Respondent.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 19, 2022

P.C. :

This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. The petitioner is a contractor engaged by the respondent for execution of certain project. It is undisputed that the conditions of the contract include a clause for arbitration. The said clause reads as follows:-

“20.6. In case of any disputes or differences in connection
Arbitration with or arising out of this agreement the same shall
 be referred to the Sole Arbitrator to be appointed
 by the Managing Director UPRNN, LUCKNOW.
 The award of the sole arbitrator shall be final and
 binding on both the parties.”

2. Learned counsel for the petitioner has brought to the notice of this Court that the arbitration clause was invoked by a communication dated 16.03.2020 addressed to the respondent. Paragraph 6 of the said communication is significant, which reads as follows:

“6. The dispute have arisen between parties thus we hereby invoke the Arbitration clause 20.6 of the Particular conditions of the Contract executed between you and us and hereby request for appointment of Arbitrator. Needless to say that provisions of section 12(5) and Schedule V, VII and VIII of the Arbitration and Conciliation Act, 1996 must be considered while appointment of arbitrator. In the event of no appointment of arbitrator within 30 days, we shall have no other option but

to approach the Hon'ble High Court, Bombay, which you should note."

3. Since there was no response from the respondent in respect of invocation of the arbitration clause, the petitioner was constrained to approach this Court.

4. The respondent has appeared through counsel and learned counsel appearing for the parties were heard.

5. In the communication invoking the arbitration clause itself, the petitioner pointed out the impact of Section 12(5) of the aforesaid Act, which indicates that the managing director of the respondent would be disabled by the operation of law for appointing a sole arbitrator. This is fortified by the position of law confirmed by the Hon'ble Supreme Court in the case of *Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.*, **2019 SCC 1517**.

6. Learned counsel appearing for the respondent was unable to dispute the position of law in that regard. In fact, a perusal of the affidavit in reply filed on behalf of the respondent seems to indicate that the respondent intends to include dispute with another entity and to have a comprehensive arbitration proceeding in the matter. Learned counsel for the petitioner is justified in submitting that there is no privity of contract of the petitioner with the said other entity. In so far as the dispute between the petitioner and the respondent is concerned, a sole arbitrator can be appointed by this Court.

7. Considering the position of law as noted hereinabove, this Court is of the opinion that a sole arbitrator will have to be appointed in the light of the disputes that have arisen between the parties and in view of the fact that the managing director of the respondent is barred by law

from appointing the sole arbitrator.

8. Accordingly, Mr. Ajay H. Nathani, Retired District Judge is appointed as the Sole Arbitrator. The contact details of the learned Arbitrator are as follows:-

Mr. Ajay H. Nathani
Suruchi Apartment,
Near Sachivalaya Gymkhana,
General Bhosale Marg, Mantralaya,
Mumbai - 400 021.
Mob. No.: 97572 82543

9. The place of arbitration agreed upon by the parties before this Court is Mumbai.

10. Learned Arbitrator is requested to forward his consent and disclosure statement in terms of Section 11(8) and 12(1) of the aforesaid Act to the Registrar (Judicial) of this Court, within four weeks from today. The parties shall place a copy of this order before the learned Arbitrator immediately.

11. The parties shall appear before the learned Arbitrator on 28.11.2022. The statement of claim shall be filed within three weeks of appearance of the parties before the learned Arbitrator.

12. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.

13. Petition stands disposed of.

(MANISH PITALE, J.)