

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.83 OF 2022

Pelle and Carta Technologi LLP thr. Authorized
Representative Ravi Subrahmanyam Suripeddi ... Petitioner
Vs.
R. K. Engineering and Contractors thr. Prop.
Rajendra Pandurang Kale ... Respondent

Mr. Siddhartha Ravindra Ronghe for Petitioner.
Mr. Tejas Balsara for Respondent.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 15, 2022

P.C. :

. By this petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of an arbitrator in the context of an arbitration clause incorporated in the works contract executed between the parties.

2. Learned counsel for the petitioner invited attention of this Court to the document in question at exhibit-A, which is the works contract executed between the parties for fabrication and supply of pre-engineered building based on received structural drawings. A copy of the document shows that it is signed on behalf of both the parties on every page and also on the last page. The said document consists of an arbitration clause, which reads as follows:-

“12. DISPUTES AND ARBITRATION

- i. All dispute, differences or question which may, at any time, arise between the Employer and the Contractor hereto, in respect of any clause of this Contract or in respect of Work done or quality of materials used or in respect of any delay in completion of works, whether during the progress of the Work or after completion, shall be first attempted to be settled mutually. In case of failure to reconcile the matter shall be dealt with as aforesaid in the Arbitration and Conciliation Act,

1996 and the rules made thereunder shall apply to the arbitration proceedings under this clause. The decision so given by the arbitrator(s) shall be final and binding upon the parties.

- ii. The arbitrators(s) shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice, and to determine all matters in dispute which shall be submitted to him or them and of which notice have been given as aforesaid.
- iii. The seat of the arbitration shall be at Pune.
- iv. Arbitration proceedings shall be conducted in English language.
- v. The Contract shall be governed by and constructed according to the laws in force in India. The Parties hereby submit to the exclusive jurisdiction of the Courts situated at Pune for all purposes.
- vi. Employer and the Contractor shall produce all relevant papers and drawings relating to this Contract before the arbitrator, when asked by them to do so.

The arbitrator's fees will be borne equally by the parties. All other costs and expenses in connection with the arbitration must be borne initially by the party who incurs such expense or who requests a service (such as, without --, a transcript of a deposition or of the arbitration proceeding). At the conclusion of the arbitration proceeding, all costs and expenses (including, without limitation, attorneys' and accountants' fees) of the prevailing party will be reimbursed by the party that does not prevail. If a party prevails on some but not all issues, the arbitrator will determine the manner in which such costs will be borne. On instructions from the arbitrator(s), the Employer and the Contractor shall deposit any suitable amounts as asked in one or more instalments. The awards of the arbitrator shall be final and binding on the parties."

3. As disputes arose between the parties, by a notice dated 07.04.2021, the petitioner invoked the arbitration clause and proposed appointment of a chartered accountant as the sole arbitrator. The respondent sent an email through its advocates on 14.06.2021, specifically stating as follows:-

"Dear Sir,

With the reference to our email dated 14.04.2021, our client with bona fide intention to fairly and impartially adjudicate

arbitration we recommend to appoint three Arbitrators under the Arbitration and Conciliation Act, 1996 in the present matter.

1. Mr. Sandip Igawe as the sole Arbitrator from our Client.
2. Mr. Sanat Chitale as the sole Arbitrator from your Client.
3. Technical Arbitrator shall be appointed by mutual consent of both the parties.

In view, therefore, your client is hereby called upon to accord its consent towards the aid Arbitrator recommended by our Client within seven days.

NOTE: Fees for Arbitration proceedings will be divided in proportion of 70% (from your client) and 30% (by our Client).”

4. Since the arbitrator could not be appointed as per the procedure agreed between the parties, the petitioner was constrained to file the present petition.

5. The respondent appeared through counsel. It was brought to the notice of this Court that in a suit filed by the respondent for recovery of certain amounts from the petitioner, an application under Section 8 of the said Act was filed and that the same is pending adjudication before the concerned court.

6. Today, when the application was called out for hearing, learned counsel for the respondent submitted that since the application under Section 8 was pending adjudication before the competent court, this Court may adjourn hearing of the present petition.

7. In response, learned counsel for the petitioner invited attention of this Court to Section 8(3) of the aforesaid Act, which provides that notwithstanding that an application has been made under sub-section (1) of section 8 of the said Act and that the issue raised therein is pending before the judicial authority, an arbitration may be commenced or continued and that the arbitral award be made.

8. In the context of the said provision, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *Vijay Kumar Sharma Vs. Raghunandan Sharma*, **(2010) 2 SCC 486**, wherein the Supreme Court held as follows:-

“12. Having regard to the specific provision in Section 8(3) providing that the pendency of an application under Section 8(1) will not come in the way of an arbitration being commenced or continued, we are of the view that an application under Section 11 or Section 15(2) of the Act, for appointment of an arbitrator, will not be barred by pendency of an application under Section 8 of the Act in any suit, nor will the designate of the Chief Justice be precluded from considering and disposing of an application under Section 11 or 15(2) of the Act.”

9. In view of the above statutory provision and the law clarified by the Supreme Court in that context, this Court is not inclined to adjourn the petition merely because the proceedings before the competent court, concerning application filed under Section 8 of the said Act are still pending.

10. At this stage, learned counsel for the respondent submitted that the works contract at exhibit-A is being denied by the respondent. It is submitted that the work in question was in fact initiated much prior in the year 2019 itself on the strength of a letter of intent, which did not contain an arbitration clause.

11. Although, copy of the said document was not filed along with the reply affidavit on the ground that it was illegible, a faint copy of the same is produced before the Court. This Court is not impressed with the contention raised on behalf of the respondent. A bare perusal of the copy of the agreement placed at Exhibit-A shows that the signature is placed on behalf of the respondent on every page and also on the last page. It is significant that the signature is not denied, but it is claimed that the same was only a draft document. The aforesaid contention is completely

belied by the contents of the email dated 14.06.2021, sent on behalf of the respondent to the invocation notice sent on behalf of the petitioner. In the said email, quoted above, the respondent specifically proposed names of arbitrators for a fair and impartial arbitration. This indicates that the respondent conceded to the fact that the arbitration agreement indeed existed between the parties.

12. In view of the above, the contentions raised on behalf of the respondent are rejected.

13. All the conditions necessary for exercise of jurisdiction by this Court under Section 11(6) of the said Act are evident in the present case, for the reason that there is an arbitration clause, admittedly there are disputes between the parties, the petitioner did invoke the arbitration clause, to which the respondent sent a reply through advocates in which there was no denial of the arbitration clause and on the other hand, names of arbitrators were proposed.

14. In view of the above, the petition is allowed. Since the arbitration clause specifies Pune as the place of arbitration, Mr. S. M. Deshmukh, a retired District Judge available at Pune, is appointed as the sole arbitrator for resolution of disputes between the parties. The contact details of the learned arbitrator are as follows:-

Mr. S. M. Deshmukh

Block No.13/14, Building No. "O",
Kumar Park-off Kondhwa Road,
Bibwewadi, Pune 411 037
Phone No.20-24216979

15. The parties undertake to inform the learned Arbitrator about the order passed today.

16. Learned Arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) read with 12(1) of the

aforesaid Act within four weeks to the Registrar (Judicial) of this Court.

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

18. All questions are kept open.

19. Petition stands disposed of.

(MANISH PITALE, J.)

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