

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

ARBITRATION PETITION NO. 57 OF 2022

M/s. Miraj Engineering Services Pvt. Ltd.,
Through Its Managing Director,
Mr. Rajesh P. Solanki ...Petitioner

Versus

M/s. Furnace Fabrica India Limited ...Respondent

- Ms. Ruby R. Kambli i/by Amanchi Legal & Co., for Petitioner.
- None for Respondent.

CORAM : MANISH PITALE, J

DATE : 11TH OCTOBER, 2022.

P. C. :

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator.

2. The respondent was served and there was no representation on his behalf. On 24th August, 2022, this Court decided to grant a last and final opportunity to the respondent and accordingly, notice was issued and in addition to the Court notice, the petitioner was permitted to serve the respondent by private service. It was made clear in the said order that if the respondent is not represented on the adjourned date of hearing before this Court, this Court would proceed to hear the petitioner and pass appropriate orders.

3. The petitioner has filed an affidavit of service dated 08th September, 2022, along with documents to show that the respondent has been indeed again served in the matter.

4. Today, when the petition was called for hearing, while the learned Counsel for the petitioner is present and ready for arguments, none appears on behalf of the respondent despite service. As indicated in the order dated 24th August, 2022, this Court is proceeding to hear the petitioner and pass appropriate orders.

5. The learned Counsel for the petitioner has invited attention of this Court to the Arbitration clause i.e. clause 7.10, which is part of work order issued by the respondent to the petitioner. As per the said work order, the petitioner, which is a company providing instrumentation services, was supposed to carry out certain works. According to the petitioner, in terms of the works carried out by the petitioner, after taking into account the amounts paid by the respondent, there was an outstanding receivable of Rs. 2,16,34,215/- from the respondent. As the respondent failed to make the said payment, demanded by the petitioner, a dispute arose between the parties.

6. On 14th December, 2021, the petitioner through its legal counsel sent a notice titled "Arbitration Notice" to the respondent,

proposing to appoint an Arbitrator on behalf of the petitioner, as contemplated under clause 7 of the said work order, which is an arbitration clause. The said clause reads as follows :

“In the event of any dispute or difference arising out of, relating to, under of in respect of the contract between FFIL and MISPL the same shall be referred at the written request of either party to the Arbitral Tribunal of three arbitrators comprising one nominee from each of FFIL and MISPL and an Umpire to be appointed by the two Arbitrators by mutual agreement in writing before entering upon the reference. Such arbitration shall be subjected to and in accordance to the provisions of Arbitration and Conciliation Act 1996 (No. 26 of 1996) and the rules made there under any statutory modification or reenactment thereof. The venue of arbitration proceedings shall be Navi Mumbai, Maharashtra, India. Arbitration award made in such arbitration proceedings shall be final and binding on the FFIL and MISPL and shall be enforceable in any Court of competent jurisdiction.”

7. It is stated in the petition that despite service of the aforesaid Arbitration Notice on 14th December, 2021, on the respondent, there was no response, because of which the petitioner was constrained to approach this Court by filing the present petition under Section 11 of said Act.

8. As noted above, despite service on the respondent, which has chosen not to appear before this Court and in terms of the earlier order of this Court, this Court is proceeding to dispose of the present petition.

9. Perusal of the above quoted arbitration clause, does show that in case there is a dispute between the parties arising from the work order, the same needs to be referred an Arbitral Tribunal, as specified in the said clause and that arbitration proceeding would be subject to the provisions of the said Act.

10. As there is no agreement between the parties about the appointment of the members to the Arbitral Tribunal, in terms of the aforesaid clause, this Court is inclined to allow the present petition by appointing an independent "Sole Arbitrator". The material on record is sufficient to indicate that the dispute has arisen out of the work order, which contains the aforesaid clause.

11. From amongst the list of arbitrators available with the office of this Court, the petitioner proposed the appointment of Dr. Smt. Justice P. D. Upasani (Retired Judge) as the Sole Arbitrator.

12. In view of the above, present petition is allowed by appointing Dr. Smt. Justice P.D. Upasani (Retired Judge) as Sole Arbitrator to adjudicate dispute between the parties arising out of

Work Order.

13. The contact numbers and the details of the learned Arbitrator are as follows :

The Hon'ble Dr. Smt. Justice P.D. Upasani

(i) 301-302, 3rd Floor, "A" Wing, Muley Building,
Shivaji Nagar, Naupada, Thane (W), 400 602.
Tel : 022 - 25390379
Mob. : 9870494546

(ii) Ambreesh, CHS Flat No. 104, 1st Floor,
Plot No. 242, RDP(8), Sector-4, Near Charkop
Bus Depot, Ambamata Road, Charkop,
Kandiwali (W), Mumbai - 400 067
Email : justicedrpdupasani@yahoo.com.
Tel : 022 - 288693010

14. Liberty to the petitioner to place this order before the learned Arbitrator. In terms of Section 11(8) and 12(1) of the said Act, the learned Arbitrator is requested to communicate consent and disclosure statement, to the Registrar (Judicial), within three weeks from today.

15. The petitioner to appear before the learned Arbitrator on 14th November, 2022. The statement of claim shall be filed before the learned Arbitrator within two weeks of the appearance of the petitioner.

(MANISH PITALE, J.)