

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.125 OF 2021

Surya Wires Private Limited ... Petitioner
Vs.
Maharashtra State Rural Livelihoods Mission ... Respondent

Mr. Vishal Hegde i/b. Deepakar Livingston for Petitioner.
Mr. Nitin Deshpande for Respondent.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 13, 2022

P.C. :

This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner and the respondent entered into a Memorandum of Understanding (MoU) dated 20.05.2017. While executing the terms of the said document, certain disputes arose between the parties. Clause 8 of the said document pertains to arbitration and applicable laws. The said clause reads as follows:-

“8. Arbitration and Applicable Laws:

8.1. The parties hereby agree that any controversy, claim or dispute arising in connection with this MoU, and which cannot be resolved amicably, shall be referred to the Chief Secretary (Chairman of the Executive Council of Maharashtra State Rural Livelihoods Mission in the State), whose decision shall be final and binding on all parties.

8.2. All disputes shall be resolved as per the Government of India policies and applicable Indian / State Laws.

8.3. If case is filed for judicial remedy, where the Ministry of Rural Development is the First Party, the case shall be filed in New Delhi. In case for judicial remedy, where the First Party is Maharashtra State Rural Livelihoods Mission, the case shall be filed in the respective court in the State Headquarters.

8.4. The parties specifically agree and confirm that any matter or issue arising here under shall be governed by and construed exclusively in accordance with the Indian Laws and shall be subject to the Jurisdiction of the Courts of Mumbai in India.”

2. Since the disputes arose between the parties, the petitioner sent a notice dated 18.07.2019 to the respondent invoking the aforesaid arbitration clause. On 05.02.2020, the respondent sent a communication stating that the petitioner was not entitled to change the authority, which would undertake the arbitration and that the arbitration ought to proceed strictly in terms of the above quoted clause.

3. Learned counsel for the petitioner submits that the insistence of the respondent on the authority named in the clause for undertaking arbitration is not sustainable in the teeth of the law laid down by the Supreme Court in the case of *Perkins Eastman Architects DPC Vs. HSCC (India) Limited*, (2020) 20 SCC 760 followed by this Court in the case of *Lite Bite Foods Pvt. Ltd. Vs. Airports Authority of India*, 2019 SCC OnLine Bom 5163.

4. On the other hand, learned counsel for the respondent submits that the stand taken by the respondent is evident from the reply sent to the notice. In view of the position of law clarified by the Supreme Court and this Court, learned counsel for the respondent, on instructions from the respondent, has suggested two names for being appointed as an arbitrator.

5. It is relevant to note that learned counsel for the petitioner has also suggested certain names for appointment of an arbitrator upon instructions taken from the petitioner.

6. This Court has perused the above quoted arbitration clause. It is evident from the position of law laid down in the aforementioned judgments of the Supreme Court and this Court that by operation of law, the authority named in Clause 8.1 of the said MoU is disqualified from being appointed as the arbitrator. In this situation, this Court is inclined to allow the present petition by appointing one of the persons suggested by the parties to be appointed as the arbitrator.

7. Accordingly, Mr. Aakash Rebello (Contact No.+91 99300 58606) is appointed as the Arbitrator to adjudicate the disputes between the parties pertaining to the MoU dated 20.05.2017. Learned Arbitrator is requested to submit his consent and disclosure statement in terms of Section 11(8) and 12(1) of the aforesaid Act within three weeks to the Registrar (Judicial) of this Court.

8. The parties shall appear before the learned Arbitrator on 14.11.2022. The statement of claim shall be filed within two weeks of appearance of the parties before the learned Arbitrator. Learned Arbitrator shall proceed further in accordance with law.

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

10. Petition stands disposed of.

(MANISH PITALE, J.)

Minal Parab