

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 111 OF 2022

Nagnechi Construction Private Limited
through Mr. Narendra Rathore (POA holder) ...Petitioner

Vs.

M/s. Shiv Construction ...Respondent

Mr. Smit Shah i/b. Ms. Geeta Lundwani, for the Petitioner.
None for the Respondent.

CORAM : MANISH PITALE, J.
DATE : 30 NOVEMBER 2022

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. By this petition, filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of an arbitrator, in terms of an arbitration clause in the work order issued by the respondent in favour of the petitioner.

2. It appears that certain disputes arose between the parties in respect of the said work order, which includes the said arbitration clause.

3. The arbitration clause reads as follows:

Arbitration : All disputes or differences arising out of

this contract shall be resolved amicably by mutual discussions. However, in the event of any dispute or difference remaining unresolved such dispute or difference arising out of or in connection with the Contract or carrying out of works (whether during the progress of works or after their completion) shall be referred to and settled by the Consultant who shall state his decision in writing. If either the Employer or the Contractor be dissatisfied by the decision of the Consultants on any matter, then either party may, within 28 days after receiving notice of such decision, give a written notice to the other party requiring that such matters in dispute be arbitrated upon. The arbitration shall be held in accordance to the provisions of the Arbitration Act, 1996. The arbitration will be held in Pune. Each party to bear their own cost for representation and arbitration unless as provided by the award. The award so passed in the arbitration shall be final and binding on the parties.

4. A perusal of the above quoted clause shows that it is a two tier arbitration clause, wherein initially the dispute has to be referred to and settled by the Consultant, who shall give his decision in writing. If any of the parties to the agreement are dissatisfied with the decision of the Consultant, written notice can be given by the aggrieved party to the other to initiate the

arbitration proceedings.

5. The documents placed on record show that on 24/9/2021, the petitioner sent a communication through Advocate to the respondent for referring the dispute to a Consultant and also proposed appointment of the Consultant in the matter. The respondent was specifically called upon to convey the acceptance or rejection of the appointment of the Consultant.

6. The respondent did not respond to the said communication at all. As a consequence, on 13/12/2021, the petitioner through his Advocate sent another notice to the respondent to invoke the arbitration clause.

7. The petitioner also proposed two names from which the sole arbitrator could be appointed.

8. Despite service of the said notice, the respondent failed to respond to the same, as a consequence of which the petitioner was constrained to file the present petition.

9. In the present petition, the petitioner served notice on the respondent by way of Speed Post and filed affidavit of service. The documents filed with the affidavit of service dated 19/10/2022, show a track report issued by the Postal Department, specifically stating that the respondent was served on 17/10/2022. By order dated 19/10/2022, this Court treated the

respondent as served in the matter and adjourned the petition to today for hearing, to give an opportunity to the respondent to appear before this Court.

10. Learned counsel appearing for the petitioner informs this Court that the respondent was informed about listing of the case today also.

11. Despite service, the respondent has chosen not to appear before this Court. In this backdrop, the petition is taken up for consideration on the basis of the documents filed alongwith the petition.

12. This Court is satisfied that the petitioner exhausted the two tier procefure specified in the arbitration clause quoted above and despite specific invocation of the arbitration clause by notice dated 13/12/2021, the respondent failed to respond to the same.

13. In this backdrop, this Court is convinced that a sole arbitrator can be appointed for resolving the dispute between the parties by way of arbitration in terms of the arbitration clause executed between the parties.

14. Since the clause specifies that the arbitrator shall be at Pune, it would be appropriate to appoint an arbitrator who is available at Pune.

15. Accordingly, Shri. P. M. Dhakephalkar, retired District Judge, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows.

Shri. P. M. Dhakephalkar
6, 'Pooja Apartment',
Pandurang Colony, Erandawane,
Pune – 411 038.
Tel.: 020-5455045

16. The petitioner undertakes to inform the learned Arbitrator about the order passed today, at the earliest.

17. The learned arbitrator is requested to send his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks from today to the Registrar (Judicial) of this Court.

18. The fees of the learned arbitrator shall be as per schedule IV to the said Act.

19. All contentions of the parties are kept open.

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

MANISH PITALE, J.