

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 153 OF 2022**

Riasti Enterprises ... Petitioner
vs.
HQ Chief Engineer Pune Zone and others ... Respondents

Mr. Siddharth Deshpande for petitioner.

Mr. Yashodeep Deshmukh i/by. Akash Kotecha for respondents.

**CORAM : MANISH PITALE, J
DATE : 6th DECEMBER, 2022**

P.C. :

1. The petitioner-firm has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrator. The petitioner was awarded contract bearing C.A. No. GE (CME) K-22 OF 2011-2012, executed between the petitioner and the respondents for carrying out civil works and electrical works and the scope of the contract being 'REPAIR/ MAINTENANCE OF GI DISTRIBUTION PIPE FITTING IN MD JCO'S/OR'S AND OTM ACCN AT CME AREA'.

2. The general conditions of contract governing such contract between the parties consists of clause No.70 as the arbitration clause, which is also reiterated in the tender document.

3. As per the arbitration clause at clause No.70, in case of any dispute arising between the parties, the same is to be referred to sole arbitration of an Engineer officer to be appointed by the respondent authorities. In ordinary course, such a clause would be hit by section 12(5) of the aforesaid

Act, but in the present case, the petitioner has agreed in writing by executing agreement dated 6th September, 2021 to waive the rigour of Section 12(5) of the said Act. As a consequence, proviso of Section 12(5) of the said Act comes into operation. Notwithstanding the unilateral nature of the clause, in the facts of the present case, appointment of arbitrator can be made under the aforesaid clause No.70.

4. On 12th July, 2021, the petitioner invoked the arbitration clause, in response to which, the respondents sent a reply dated 27th July, 2021. Yet, it appears that the matter could not proceed to the sole arbitration of an Engineer officer to be appointed by the respondent authorities.

5. In the present petition, the respondents have entered appearance through counsel and handed over reply. The same is taken on record.

6. Learned counsel for the respondents has proposed appointment of Major General K. Gajria, retired ADGTE of Army (Corps of Engrs) as the sole arbitrator. Accordingly, the aforesaid person is appointed as the sole arbitrator.

7. The contact details of the learned sole arbitrator are as follows:-

Major General K. T. Gajria

II K 51, Lajpat Nagar 2,

New Delhi – 110 024.

Mob.: 9871 200 483

E-mail: gajriakt51@gmail.com

8. Learned counsel for the respondents undertakes to inform the learned arbitrator about the order passed today.

9. Learned arbitrator is requested to communicate his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court.
10. The fees of the learned Arbitrator shall be fixed in terms of Fourth Schedule to the aforesaid Act.
11. All questions are kept open to be decided by the learned arbitrator. The arbitration clause refers to the discretion in the arbitrator to decide upon the venue and place of arbitration. Learned arbitrator would be at liberty to conduct the proceedings through video conferencing, if so requested by the parties.
12. Petition stands disposed of in above terms.

(MANISH PITALE, J)

Priya Kambli