

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 180 OF 2022**

M/s. United Sales Corporation	...	Petitioner
vs.		
Union of India and others	...	Respondents

Mr. Mihir S. Raje for petitioner.

Ms. Apurva Gupte a/w. Ms. Smita Thakur for respondents.

Col. Vikas Kesarwani, officer of the respondent.

**CORAM : MANISH PITALE, J
DATE : 17th NOVEMBER, 2022**

P.C. :

. The petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrator in the context of contract bearing C.A. No. CE/AF/G/THANE/29 OF 2020-21 executed between the petitioner and the respondents for carrying out civil works and the scope of the contract being 'COMPLETION OF INCOMPLETE WORK FOR CONSTRUCTION OF DEFICIENT MARRIED ACCN FOR NCS(E) AND DSC PERSONNEL AT AF STATION MUMBAI'.

2. In the context of the said contract, according to the petitioner, it completed the work for an amount higher than the contracted amount and also claimed that this was about 35% more than the deviation limit of 10%, included in the contract.

3. Learned counsel for the respondents submitted that the arbitration clause would operate only after completion of the work and since the

respondents were disputing the claim of the petitioner that the work had been completed, the stage for invoking the arbitration clause had not arisen. It was also submitted by the respondents that the petitioner had performed beyond the contract and therefore, the respondents were seriously disputing the question as to whether the arbitration clause could at all be invoked in the facts and circumstances of the present case.

4. There is no dispute between the parties that Clause 70 of the general conditions of the contract consisting of the arbitration clause would apply to any disputes between them. The specific portion of the said clause on which the learned counsel for the respondents is placing reliance is as follows:

“70. Arbitration-All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of a ¹[Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of sub-Division II of Institution of Surveyor (India) recognised by the Govt. of India] to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.”

5. This Court has perused the aforesaid clause as also the communication dated 30th June, 2022, addressed to the respondent No.2 on behalf of the petitioner. In the said communication, the petitioner has raised claims against the respondent and in paragraph 8, it is specifically stated that according to the petitioner, the work is completed for a value more than 35%

above the deviation limit of 10% included in the contract, while asserting that the contract has been completed by performance. In such a situation, this Court is of the opinion that while invoking the arbitration clause, the petitioner has indeed asserted that the work is complete. This appears to be disputed by the respondents. Since the general conditions of the contract had incorporated the arbitration clause, considering the intent of the aforesaid Act, it would be appropriate for this Court to appoint an arbitrator and refer the disputes between the parties to the learned arbitrator to decide the same, including the dispute sought to be raised on behalf of the respondent that the petitioner has not completed the work.

6. The nature of Clause 70 of the general conditions of the contract is hit by Section 12(5) of the aforesaid Act, inasmuch as it stipulates that a serving officer having a degree in engineering be appointed as the sole arbitrator. In this backdrop, the rival parties agree that a neutral and sole arbitrator will have to be appointed.

7. The learned counsel for the respondents, upon instructions, suggested a list from the panel of its arbitrators, who are retired officers having relevant experience and from which an arbitrator could be appointed in the present case. Learned counsel for the petitioner submitted, on instructions, that Shri Raghunath Prasad Tripathi, retired ADG of MES could be appointed as arbitrator.

8. As agreed between the parties, Shri Raghunath Prasad Tripathi, retired ADG of MES is appointed as sole arbitrator. His mobile number is **9425138470** and his email id is **trip1961@hotmail.com**.

9. The respondents undertake to inform the learned arbitrator about the order passed today.
10. 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.
11. The fees of the learned Arbitrator shall be fixed in terms of Fourth Schedule to the aforesaid Act.
12. All questions are left open to be decided by the learned arbitrator, including the dispute raised by the respondents herein that according to them, the petitioner has not completed the work as per the contract.
13. Petition stands disposed of in above terms.

(MANISH PITALE, J)

Priya Kambli