

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

ARBITRATION PETITION NO. 131 OF 2021

The Commissioner
Nashik Municipal Corporation

... Petitioner

V/s.

M/s. MIC Electronics Limited

... Respondent

Shri.R.S.Apte - Senior Advocate a/w Mr.Vaibhav Patankar and
Mr.Arjun Kulkarni i/b. Patankar & Associates for Petitioner.
Mr.Nihar Chitre for Respondent.

CORAM : G.S.KULKARNI, J.
DATE : 24TH AUGUST, 2022

P.C. :

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), whereby the petitioner has prayed that the disputes and differences which have arisen between the parties under the agreement dated 25th February, 2013 be adjudicated by appointing an arbitral tribunal, as agreed between the parties in an arbitration agreement as contained in Clause No.15.3 of the said Agreement being the dispute resolution clause.

2. The petitioner had earlier filed a Civil Suit in respect of

bank guarantee as furnished on behalf of the respondent before the Court of Civil Judge, Senior Division, Nashik. Also prior to this, the petitioner had filed proceedings under Section 9 of the Act against the respondent, before the Court of learned District Judge, Nashik (Arbitration Case No.157 of 2021). In such proceedings, the learned District Judge had passed an order dated 8th March, 2019 granting an injunction in favour of the petitioner. The respondent had approached the learned Principal District Judge by moving an application for vacating such interim orders which came to be rejected by the learned Principal District Judge, Nashik by an order dated 16th July, 2022.

3. In the Civil Suit filed by the petitioner before the Court of Civil Judge, Senior Division, Nashik, the respondents appeared and raised an objection to the maintainability of the Suit on the ground that there being an arbitration agreement between the parties, the petitioner needs to be referred to arbitration. By an order dated 19th March, 2022, such application as filed on behalf of the respondent, came to be allowed by the learned Civil Judge, Senior Division, Nashik, in the following terms:

“ORDER

- 1] Application is allowed.
- 2] In view of provisions of Section 8 of Arbitration and Conciliation Act, present dispute be referred to the Arbitration.
- 3] Both the parties are directed to appoint their respective Arbitrator as provided under Article 15 of the said Agreement before two (2) months from the date of this order.
- 4] The *Status quo* order, granted earlier, to be continued for appointment of Arbitrator and appearance of the parties before the Arbitration.
- 5] Both parties to take note.
- 6] The matter is disposed of accordingly.

Dated : 19/3/2022

(Jaydip G. Pande)

8th Jt. C.J.S.D. Nashik”

Be that as it may, it appears that prior to the said Section 8 Application filed by the respondent, the petitioner had filed this petition on 16th November, 2021, praying for appointment of an arbitral tribunal.

4. The respondent has placed on record a reply-affidavit opposing the present petition. The reply-affidavit interalia raises an issue of limitation, contending that the cause of action for the

petitioner had arisen by virtue of the termination of the Agreement as effected by the respondent on 20th May, 2015. It is the contention of the respondent that considering the date of termination, this petition ought to have been filed on 20th May, 2018 and hence, the reliefs proposed in the arbitration are time barred. Other contentions raised in the reply-affidavit are on the merits which need not be gone into in the present proceedings.

5. It is the settled principle of law that when the Court is called upon to exercise jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, primarily the Court would be required to examine as to whether there is existence of an arbitration agreement between the parties, and that the respondents had not agreed for reference of the disputes and differences to arbitration, after receipt of the invocation notice. [See: **M/s.Duro Fleguera, S.A. V/s. Gangavaram Port Limited**, reported in (2017) 9 SCC 729 & **M/s. Mayavati Trading Pvt. Ltd. V/s. Pradyuat Deb Burman** (2019) 8 SCC 714]. The Court in a given case may also examine whether the cause is a deadwood and/or it would be a manifestly unwarranted exercise to impose arbitration on a party when the Court is called upon to exercise jurisdiction

under Section 11(6) of the Act [See: “BSNL Vs. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738”, “A Ayyasamy Vs. A.Paramasivam & Ors, (2016)10 SCC 386)”]

6. On behalf of the respondent as urged before this Court, the principal objection appears to be on the claim of the respondent being barred by limitation. Certainly, such contention can be urged before the arbitral tribunal. It is always open to the arbitral tribunal to consider all claims and contentions in opposition to the claim as may be made by the petitioner, for appropriate orders to be passed by the arbitral tribunal on such objections.

7. It is thus quite clear that the respondents could not have any grievance for the disputes being referred to arbitration by appointing an arbitral tribunal, inasmuch as the respondent itself had taken a position before the Civil Court, in the Civil Suit filed by the petitioners that the disputes be referred to arbitration by appointing an arbitral tribunal by non-suiting the petitioners in their civil suit. Such contention of the respondent came to be accepted as observed in order by the learned Civil Judge, Senior Division in disposing of the Suit (supra). In these circumstances, it

would not be open for the respondent to contend that the dispute be not referred to arbitration.

8. In the light of the above discussion, it is clear that the requirements for this Court to exercise jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 are eminently present, as there exists an arbitration agreement between the parties as also there is a lawful invocation of the arbitration agreement and in fact it is the respondent who had taken a position that the disputes be referred for adjudication in arbitration.

9. At this stage, Mr.Apte, learned counsel for the petitioner would submit that there is already a connected dispute between the same parties under the same contract which is being adjudicated before an arbitral tribunal comprising of Justice (Retd.) Mr.Madan B. Lokur – Presiding Arbitrator, Justice (Retd.) Mr.E. Padmanabhan – Co-Arbitrator and Mr. T.C. Benjamin (Retd. IAS) – Co-Arbitrator. Mr.Apte states that the present disputes can also be referred to be adjudicated by the same tribunal. Learned counsel for the respondent is also fair in stating that the disputes may be referred

to the same arbitral tribunal. Accordingly, as consented by the parties, the petition can be disposed of by the following order:

: ORDER :

- (i) The disputes and differences between the parties under the subject matter of the proceedings and as arisen under the Agreement dated 25th February, 2013, are referred to an arbitral tribunal comprising of Justice (Retd.) Mr.Madan B. Lokur – Presiding Arbitrator, Justice (Retd.) Mr.E. Padmanabhan – Co-Arbitrator and Mr. T.C. Benjamin (Retd. IAS) – Co-Arbitrator.
- (ii) All contentions of the parties on merits of the disputes are expressly kept open.
- (iii) The parties shall appear before the learned arbitrator within a period of one month from today, on the date as may be mutually fixed by the learned arbitrator.
- (iv) The fees payable to the arbitral tribunal shall be borne by the parties in equal proportion.
- (v) Disposed of. No costs.

(G.S.KULKARNI, J.)