

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION NO.72 OF 2021

M/s. Mahindra Logistics Ltd.	..Applicant
Vs.	
M/s. Subramani Manpower Contractor	..Respondent

Mr. Aditya Khandeparkar with Ms. Krupa Joshi and Ms. Darshana Kunwar i/b. Khandeparkar Law Office for Applicant.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 29, 2022.**

P.C.:

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences which have arisen between the applicant and the respondent under an agreement titled as “Independent Service Agreement” dated 01 April, 2018. The agreement pertained to providing of logistic services. The term of the agreement was from 01 April, 2018 till 31 March, 2019. The arbitration agreement is contained in clause 14 of the said agreement which reads thus:-

“14. ARBITRATION CLAUSE

The Parties hereby specifically agree that, if any dispute or difference arise in relation to or connection with this Agreement, the Parties shall in the first instance try to settle the same by amicable settlement, failing which it shall be referred for arbitration by a single Arbitrator to be appointed

by MLL. The award of Arbitrator aforesaid (hereinafter referred to as "Arbitral Award"), shall be final and binding on the parties. The Parties expressly agree that neither the validity of Arbitration proceedings nor the Arbitral Award shall be challenged on the ground that the Arbitrator is an employee of or otherwise connected with or interested in the business of MLL. It is also expressly agreed that neither Party shall have the right to approach the court for any interim relief pending the grant of Arbitral Award as above. The venue of the Arbitration shall be Mumbai and the Arbitration proceedings shall be conducted in English Language."

2. It is the case of the applicant that the disputes and differences have arisen between the parties on the breach on the part of the respondent of clauses 5.5, 6.1 and 6.2 of the agreement under which the respondent was under an obligation to pay all the legal and statutory dues to the employees of the respondent so as to fulfill its obligations under the agreement. Also there was an obligation on the part of the respondent to maintain proper books of accounts, records and documents and submit the same for verification to the applicant.

3. It is the applicant's case that in order to clear the dues of the respondent under the said agreement, the applicant required the respondent to submit the proof of payment of PF, ESIC, GST alongwith a statutory audit clearance certification certifying that all the dues towards the employees had been paid. The applicant had addressed several emails to the respondent, to that effect requesting the respondent to produce the required documents. By a letter dated 28 October, 2019, the applicant requested the respondent to furnish sufficient proof and

evidence for the satisfaction of the applicant, as owing to the failure and negligence of the respondent, the GST input credit of the applicant for the financial years 2017-18, 2018-19 and 2019-20 which was withheld to the tune of Rs.2,71,09,166/- as on October 2020. The respondent was called upon to disburse the dues and settle the dispute by 29 October, 2019. It is contended by the applicant that however, all attempts to resolve such disputes were rendered futile. Hence by its letter dated 2 December, 2020, the applicant invoked the arbitration agreement as contained in clause 14 (supra) of the said agreement and suggested the names of the proposed arbitrators who can be appointed to arbitrate the disputes between the parties. The respondent did not reply to the notice invoking the arbitration agreement.

4. In the aforesaid circumstances, the present application came to be filed. On the earlier occasion when this application was heard on 15 March, 2022, the Court had passed the following order :-

“1. Learned counsel for the applicant informs that the respondent is served and affidavit of service to that effect is already placed on record. However, the respondent is not represented.

2. To enable the respondent, as a matter of last chance, to appear in the present proceedings, stand over to 29 March, 2022 (H.O.B.)

3. Learned advocate for the applicant is permitted to issue a fresh notice informing the respondent of the adjourned date of hearing and place on record affidavit of service before the returnable date.

4. It is clarified that if the respondent despite service is not represented on the adjourned date of hearing, the Court shall proceed to hear the applicant and pass appropriate orders.

5. Let a copy of this order be also forwarded along with the advocate's notice."

5. In pursuance of the above order, a fresh affidavit of service dated 22 March, 2022 is placed on record evidencing service of the proceedings on the respondent. However, again the respondent is not represented.

6. In the above circumstances, it appears that the respondent is not interested to contest the present proceedings. It is also required to be presumed that the averments as made in the memo of the application stand uncontroverted. As noted above, there exists an arbitration agreement as contained in clause 14 of the agreement in question. There is also an invocation of the arbitration agreement in the manner known to law and failure on the part of the respondent to accept the applicant's request to appoint an arbitral tribunal. The requirements for this Court to exercise jurisdiction under Section 11(6) of the Act are thus eminently present.

7. In the aforesaid circumstances, the application is required to be allowed. Hence the following order:-

ORDER

(i) Mr. Benny Chatterji, Senior Advocate of this Court, is appointed as

a sole Arbitrator to arbitrate the disputes and differences between the parties under the Independent Service Agreement dated 01 April, 2018;

(ii) The learned prospective sole arbitrator, before entering the reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(vi) The application is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“2nd Floor, 19th Bank Street, Sonawalla Building,
Near Jimmy Restaurant, Fort, Mumbai – 400 001.

Mobile No. 9820298615

E-mail ID – chatterjichamber20@gmail.com /
chatterjichamber@rediffmail.com ”

[G.S. KULKARNI, J.]