

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO. 114 OF 2022**

R.M. Dasa Infrastructure Pvt. Ltd., through
Director R.M. Dasa .. Applicant
Vs.
Airports Authority of India, through
Dy. General Manager (Engg.-Civil) Western Region .. Respondent

Mr. Neel Kothari i/b. Mr. Rishabh Dhanuka for the applicant.
Mr. Rajesh Kothari a/w. Sagar Deb for the respondent.

**CORAM : G.S. KULKARNI, J.
DATE : JUNE 27, 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 between the parties, which have arisen under the Contract for *“Resurfacing of Runway, Shoulder, Stopway at C.A., Porbandar (Work Order No. AAI/DGM(E-C)/WR/PoR/Runway/135 dated 19 December, 2017”*. The arbitration agreement between the parties is contained in Article 4.0, which provides for settlement of disputes, which reads thus:

“Article 4.0 Settlement of disputes

It is specifically agreed by and between the parties that all the differences or disputes arising out of the Agreement or touching the subject matter of the Agreement shall be decided by process of settlement and arbitration, as specified in clause 25 of the General Conditions of the Contract at page GCC-45 & 46 and the provision of the India Arbitration and Conciliation Act, 1996 shall apply and Mumbai Courts alone shall have exclusive jurisdiction over the same.”

2. Learned counsel for the applicant has drawn the Court’s attention to the correspondence on record to submit that the pre-arbitral dispute

resolution mechanism stands worked out inasmuch as the Dispute Resolution Committee was constituted and the disputes could not be resolved. Ultimately the applicant was required to proceed for arbitration. The Court's attention is also drawn to relevant correspondence whereunder the respondent although agreed for referring the disputes to arbitration when called upon by the applicant to nominate an arbitrator from the respondent's panel as recorded in respondent's letter dated 30 December, 2020 which came to be responded by the applicant. However, no consensus could be arrived in regard to the sole arbitrator to be appointed. Hence, the present application was filed.

3. Mr. Kothari, learned counsel for the respondent has taken a fair stand. He would not dispute that there is an arbitration agreement between the parties as also there was correspondence in regard to appointment of arbitrator between the parties as placed on record. He would state that in the circumstances, as seen from the record, an arbitral tribunal can be appointed.

4. In the above circumstances, as there exists an arbitration agreement between the parties and also there is an invocation of arbitration agreement, the Court needs to exercise jurisdiction under section 11(6) of the Act and appoint an arbitral tribunal. The Application is accordingly allowed by the following order:

ORDER

(i) Smt. Justice Roshan Dalvi, Former Judge of this Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the “Resurfacing of Runway, Shoulder, Stopway at C.A., Porbandar (Work Order No. AAI/DGM(E-C)/WR/PoR/Runway/135 dated 19 December, 2017”.

(ii) The learned sole arbitrator, before entering the arbitration 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) 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 learned sole arbitrator;

(iv) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018 and shall be borne by the parties in equal proportion.

(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:

202, Siddhant, Madhusudan Kalelkar Road,
Kalanagar, Bandra (East), Mumbai - 23

[G.S. KULKARNI, J.]