

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.86 OF 2022**

Subramanya Construction & Development]			
Co. Ltd. & Anr.	]	..	Applicants
vs.			
Swan Energy Ltd.	]	..	Respondent

Ms.Punthi Shah a/w Arjun Makuny i/b Aarna Law LLP for Applicants.
Mr.Sidhesh Bhole a/w Aditya S. i/b SSB Legal & Advisory for Respondent.

CORAM : BHARATI DANGRE, J

DATE : 23rd NOVEMBER, 2022.

P.C.

1] The present application is filed by the Applicants who are infrastructure and Development Companies and through the said Application, they seek appointment of Arbitrator to arbitrate the disputes which have arisen out of Memorandum of Understanding (MOU) entered with the Respondent on 10.02.2012.

The Memorandum of Understanding placed on record contain arbitration clause, which is worded as under :

“9. This MOU shall be governed by and construed in accordance with the Indian Laws and in the event of any disputes, claims, questions, and differences whatsoever between the parties hereto arising out of or in connection with or incidental to or touching this MOU shall as far as it is

possible be settled by mutual discussions, failing which such differences or disputes shall be referred to and settled by Arbitration to be conducted by a Sole Arbitrator in accordance with Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The Award, which shall be final and binding, shall be entered into a Court of Mumbai Jurisdiction. The venue of such Arbitration shall be in Mumbai.”

2] The arbitration clause was invoked by issuing a notice to the Respondent on 01.02.2022 by clearly highlighting the dispute that has arisen and concurrence was sought for appointment of sole Arbitrator whose name was indicated in the notice, within a period of 15 days.

3] Since the existence of arbitration clause in the Memorandum of Understanding is not in dispute and similarly invocation of the said clause is also not in dispute, the learned counsel for the Respondent states that he is not agreeable to the name suggested by the Applicants. Instead he has suggested name of an Arbitrator, a retired Judge of this Court and learned counsel for the Applicant, on instructions, agreed for appointment of Mr.Justice S.J. Kathawalla (Retired) as an Arbitrator to resolve the disputes which have arisen under the MOU dated 10.02.2012, executed by the parties.

4] In the wake of above, following order is passed :

ORDER

(A) By consent of the parties, Mr.Justice S.J. Kathawalla (Retd.) is appointed as a sole Arbitrator to decide upon the disputes and differences between the parties under the Memorandum of Understanding dated 10/02/2012.

(B) The parties shall intimate Mr.Justice S.J. Kathawalla (Retd.) of his

appointment as a sole Arbitrator to resolve the dispute between them.

(C) The learned Arbitrator, within a period of 15 days 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.

(D) The parties shall appear before the arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 05/12/2022. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(E) Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(F) All rights and contentions of the respective parties including issue of notice which has been received by the Respondents, are expressly kept open.

(G) Parties agree that the arbitral costs and fees of the Arbitrator shall be borne by them in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

5] In the wake of the above order, the Arbitration Application is disposed off. There shall be no order as to costs.

[BHARATI DANGRE, J]