

transportation of empty containers, laden containers and cargo in containers owned/leased by SM IPL and an Agreement executed, comprised of the conditions that were agreed between the parties in the wake of understanding arrived between them. Clause 14 of the Agreement pertains to Dispute Resolution, which reads thus :

“14. **Applicable Laws, Dispute Resolution and Jurisdiction** :

This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to any conflicts of law provisions thereof that would result in the application of the laws of any other jurisdiction.

Any claims, differences or disputes arising out of or in connection with this Agreement, including but not limited to validity, construction and performance of this Agreement shall be settled as per the provisions of the Arbitration and Conciliation Act, 1996 by appointment of a Sole-Arbitrator by SM IPL, whose award shall be final and binding upon the Parties. The seat and venue of the arbitration shall be at Mumbai, India. The language of the Arbitration shall be English.”

4] In the wake of decision of the Hon’ble Apex Court in the case of **Perkins Eastman Architect DPC and Another vs. HSSC (India) Ltd.**, such appointment of an Arbitrator in the manner that is stipulated in the said clause is not permissible, the Applicant invoked the arbitration clause on 12.07.2020 suggesting the name of Sole Arbitrator to resolve the dispute between the parties. However, this notice was not responded to and hence the Applicant has approached this Court invoking Sub-Section (6) of Section 11 of the Arbitration Act, seeking appointment of Sole Arbitrator to be appointed for resolving the disputes arising under the Agreement for Carriage of Cargo dated 01.01.2017.

5] Since I am satisfied that the Agreement which is the basis of

dispute that has arisen between the parties comprise Arbitration clause, I deem it appropriate to pass the following order :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Mayur Agarwal, c/o Counsel Karl Shroff, Room No.316, 3rd Floor, Commerce House, Opp. Kalaghoda, Fort, Mumai-400 001, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : 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) Appearance before the Arbitrator : The parties shall appear before the Sole 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 26/12/2022. 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 information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. 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) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The Sole Arbitrator shall be entitled for the fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

Application stands disposed off in the aforesaid terms.

[BHARATI DANGRE, J]