

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

ARBITRATION APPLICATION NO. 230 OF 2021

Reliance Infrastructure Ltd.

..Applicant

Vs.

Prajwal Infrastructure Pvt. Ltd.

..Respondent

Mr. Agni Som for the applicant.

Mr. Shimpi for the respondent.

CORAM : G.S. KULKARNI, J.

DATE : 18 July, 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 for adjudication of the disputes and differences between the parties which have arisen under a Work Order No. SER/MS/23571721 dated 06 December, 2017 issued by the applicant to the respondent. The arbitration agreement is contained in the general conditions of the contract in clause 18.7 which is part of the clause 18 which pertains to “Claims, Disputes, Conciliation and Arbitration”. Clause 18.7 reads thus:-

“18.7 Arbitration

If the efforts to resolve all or any of the disputes, differences or controversy through negotiation fail, then such disputes or differences or controversy, whatsoever arising between the Parties, arising out of or relating to manufacture/construction, measuring operation or effect of the Contract or the breach thereof shall be referred to arbitration in accordance with the following provisions:

a) The arbitration shall be conducted in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and the rules there under and any statutory modification thereof. Matters to be arbitrated upon shall be referred to a sole arbitrator. The sole arbitrator shall be appointed by the

Employer. It is agreed however that the arbitrator shall not be an employee of the Employer or in any way financially interested in the Contract, dispute or claim.

b) The arbitration proceedings shall be held in Mumbai. The language of proceedings, documents and communication shall be English.

c) The award of the sole arbitrator or the award by majority of three arbitrators as the case may be shall be binding on all Parties.”

2. There is also invocation of the arbitration agreement by a notice dated 08 July, 2021 issued by the applicant.

3. Mr. Shimpi, learned counsel for the respondent, on instructions, would submit that his client has no objection if the disputes are being referred to arbitration by appointing an arbitral tribunal. Mr. Shimpi also submits that the respondent also has a claim against the applicant and hence, the respondent would also be filing a counter-claim before the arbitral tribunal.

4. It is thus clear that there is an arbitration agreement between the parties as also there is an invocation of the arbitration agreement by the applicant. If an arbitral tribunal is constituted, certainly it would be permissible for the respondent to file a counter-claim. The arbitration application is accordingly required to be allowed. Hence, the following order:-

ORDER

(i) Smt. Justice Nishita Mhatre, Former Acting Chief Justice of Calcutta High Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Work Order No. SER/MSC/23571721 dated 06 December, 2017.

(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) It is open to the respondent to raise a counter-claim before the arbitral tribunal.

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

(v) 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;

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

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

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

“ Smt. Justice Nishita Mhatre, Former Acting Chief Justice of Calcutta High Court

Address i) 4, “Matrusmruti, 13th Road, Khar (West),
Mumbai-400 052.

ii) Unit No.7, Ground Floor, Bandukwala Bldg., British
Hotel Lane, Off. Bombay Samachar Marg, Fort,
Mumbai – 400 001.

Contact No. 9821165948, 9830552311, 022-22655948

E-mail ID nishitamhatre20@gmail.com”.

[G.S. KULKARNI, J.]