

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

COMMERCIAL ARBITRATION APPLICATION NO.105 OF 2020

Raghunath Textiles	...Applicant
Vs.	
Variety Polyesters Ltd.	...Respondent

Mr. Vedchetan Patil for Applicant.
None for Respondent.

**CORAM : G.S. KULKARNI, J.
DATE : JULY 06, 2022.**

P.C.:

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) wherein the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties under an Agreement for Work dated 01 January, 2015.

2. It is the case of the applicant that the applicant has paid advances to the respondent and also supplied raw material for processing and conversion of yarn at the respondent’s mill in Thimmusamudram between the period from January to April 2015. It is contended that in May 2015, the respondent stopped all the work and failed to process the yarn. Also the respondent failed to return the advances or carry out the work as per the agreement. The applicant from time to time made demands and called upon the respondent to pay an amount of Rs. 1,02,09,457/-.

3. The respondent by its letter dated 16 June, 2016 contended that there was credit balance of Rs. 52,69,206/- with the respondent as on

31 March, 2016. The respondent acknowledged the payment of Rs. 8 Lakhs and out of which, Rs. 4 Lakhs were paid to Mr. S. M. Dakshinamoorthy for distribution of mill workers wages on 21 April, 2016 and Rs. 4 Lakhs were paid to its sister concern M/s. Saptagiri Association on 11 May, 2016 towards supply of spares to the mills.

4. As the respondent failed to pay the amount as demanded by the applicant, the applicant vide its letter dated 28 December, 2018 invoked the arbitration agreement. In such notice, the applicant also set out the amounts which had become due and payable by the respondent to the applicant, the details of which are set out in paragraph 11 of the said letter. The arbitration agreement as contained in clause 26 was invoked calling upon the respondent to agree to refer the disputes to arbitration by appointing an arbitral tribunal. As the respondent did not agree for appointment of an arbitral tribunal, the present application has been filed. Hence, the prayer is made to appoint an arbitral tribunal.

5. Learned counsel for the applicant has drawn the Court's attention to the jurisdiction clause wherein the parties have agreed on the jurisdiction to be on the Courts at Mumbai as also on the Courts at Hyderabad. As the Court at Mumbai is chosen as one of the Courts, it is submitted on behalf of the applicant that this Court has the jurisdiction to entertain this application.

6. The respondent despite service is not represented. On 03 September, 2019 this Court issued a notice to the respondent which was made returnable on 15 October, 2019. The applicant was permitted to serve the respondent by private notice by all permissible modes. There is an office report dated 04 October, 2019 stating that service envelop was returned with remark "no such company found". Thereafter this

application was listed before this Court on 08 June, 2022, when considering the contentions as urged on behalf of the applicant that the respondent would be required to be served by a substituted service, the Court passed the following order:-

“1. Considering the affidavit of service dated 6 June, 2022 of Mr.Nitin Bhuvad as placed on record on behalf of the applicant, learned counsel for the applicant has submitted that the respondent appears to be avoiding service, as notice packets are not accepted. He, accordingly, prays that the applicant be permitted to serve the respondent by publication. The request is required to be accepted. Accordingly, the applicant is permitted to serve the respondent by publication, by notice of the present proceedings to be published in two newspapers, one in English language and other in vernacular language in the area of circulation where the respondent is situated.

2. In addition to the publication, office to take steps to serve the respondent through the local Court within whose jurisdiction the respondent has his address. All steps in that regard be taken by the office. Let an affidavit of service proving notice by publication be placed on record on or before the returnable date on behalf of the applicant.

3. Accordingly, stand over to 29 June, 2022 (H.O.B). Office to take appropriate steps within one week from today”

7. The applicant having taken appropriate steps to serve the respondent by publication, came to be noted by this Court in the order dated 29 June, 2022 which reads thus:-

“1. Affidavit of Mr. Nitin Bhuvad dated 28 June, 2022 stating that the respondent stands served by publication which is by public notice in two newspapers i.e. Nava Telangana Telegu (in English) dated 25 June, 2022, Nava Telangana Telegu (in Telegu) dated 26 June, 2022 and Financial Express dated 25 June, 2022. Copies of the newspapers published are annexed with the affidavit of service. However, today the respondent is not represented.

2. To enable the respondent as a matter of last chance to appear in the present proceedings, stands over to **06 July, 2022 (H.O.B.).**”

8. As seen from the above order, ample opportunity was made available to the respondent to appear in the present proceedings. However, it appears that the respondent is not interested to contest the present proceedings. Also the averments as made in the application in so far as the existence of an arbitration agreement is concerned, are required to be accepted as uncontroverted.

9. The arbitration agreement is contained in clause 26 of the agreement in question which reads thus:-

“26. Any dispute difference or question which may arise at any time hereafter among the parties touching the true constructions of this agreement of the rights and the liabilities of the parties hereto shall unless otherwise herein expressly provided be referred to the decision of a single arbitrator to be agreed upon among the parties or in default of agreement to be appointed at the request of the either PARTY in accordance with and subject to the provisions of Arbitration Act 1940 or any statutory modifications or re-enactment thereof for the time being in force.”

10. Also in clause 30 of the agreement in question, the parties have agreed that Courts in Hyderabad and Mumbai would have jurisdiction. There is also invocation of the arbitration by the applicant's advocate's notice dated 28 December, 2018 which was not replied by the respondent. It is the applicant's case that the respondent has acknowledged the liabilities by its letter dated 16 June, 2016. The present application on such backdrop was filed on 29 August, 2019 which is in the prescribed period of limitation.

11. In the above circumstances, a case has been made out by the applicant for appointment of an arbitral tribunal, as there exists an arbitration agreement between the parties as also there is a lawful invocation of the arbitration agreement. The application is thus

required to be allowed. Hence, the following order:-

ORDER

(i) Mr. T. J. Pandian, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Agreement of Work dated 01 January, 2015.

(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 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:

“Address:- 201, Dhun Building, 2nd Floor, Janmabhoomi Marg,
Fort, Mumbai – 400 001.

Contact No. 9819352026

Email ID: tjpandian1408@gmail.com”.

[G.S. KULKARNI, J.]