

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ARBITRATION APPLICATION NO. 87 OF 2020**

M/s. Khurana Constructions

...Applicant

Vs.

Jindal Drugs Ltd.

..Respondent

Mr. Nikhil Dongre i/b. Mr. Shailendra Kanetkar for Applicant.

Mr. Durgaprasad Poojari i/b. PDS Legal for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 21, 2022.

P.C.:

1. Leave to amend to delete the reference to Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) and incorporate the reference to Sections 14 and 15 of the Act as contended on behalf of the applicant, as the prayers as made in the application are for appointment of a substitute arbitrator. Amendment be carried out forthwith.
2. By consent of the parties, the application is taken up for hearing.
3. There is no dispute in regard to the arbitration agreement as contained in a Work Order dated 18 May, 2006. Earlier an arbitral tribunal was appointed by an order dated 12 February, 2016 as passed by this Court (S. J. Kathawalla, as his Lordship then was) in Arbitration Application No. 136 of 2014. The learned arbitrator so appointed has resigned from the arbitration.
4. Learned counsel for the respondent also fairly submits that his client, in these circumstances, would not have any objection for a substitute arbitrator to be appointed.

5. In the aforesaid circumstances, the application is required to be allowed. It is accordingly allowed by the following order:-

ORDER

- (i) Mr. J. P. Sen, Senior Advocate of this Court is appointed as a substitute Arbitrator to adjudicate the disputes and differences between the parties as arisen under the Work Order dated 18 May, 2006.
- (ii) The learned substitute arbitrator, fifteen 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 Registrar, to be placed on record of this application with a copy to be forwarded to both the parties.
- (iii) The substitute arbitrator shall carry forward the proceedings from the stage the proceedings had reached before the erstwhile arbitral tribunal.
- (iv) The claimant is directed to place before the learned substitute arbitrator all the record and proceedings which was filed before the erstwhile arbitrator.
- (v) At the first instance, the parties shall appear before the prospective arbitrator within 15 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 fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
- (viii) The parties have solemnly agreed that they shall cooperate each other in early disposal of the arbitral proceedings and in any situation where the arbitral tribunal finds that there is lack of co-operation and some attempt to delay the arbitral proceedings, a firm stand can be taken and appropriate orders can be passed and more particularly considering that the Arbitration Act is a complete code in itself.

- (ix) With such caution, the application is disposed of. No costs.
- (x) Office to forward a copy of this order to the learned Arbitrator at the following address:-

“Address: 26, 4th Floor, Kamer Building, 38, Cawasji Patel Street,
Fort, Mumbai – 400 001.

Mobile No. 9820070691.

E-mail : jpsen1@gmail.com”

[G.S. KULKARNI, J.]