

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.
20 OF 2022**

LAXMI RANGARAO MITNASALA ... Applicant.
VS
UNION OF INDIA THR THE EXECUTIVE
ENGINEER ...Respondent

Mr. J. A. Lobo and Mr. V. Naik, Advocates for the Applicant.
Mr. R. Chodankar, Deputy Solicitor General of India for
Respondent.
Mr. Karam Pal, Executive Engineer, present in Court.

CORAM: B. P. COLABAWALLA, J
DATED: 1st FEBRUARY 2023

P.C.

1. The above Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) seeking the constitution of the Arbitral Tribunal to decide the disputes and differences arising out of Agreement No.34/EE/GCD/2017-2018 dated 30th January 2018 which was for construction of an Academic Block for IIT Goa, temporary campus in GEC, Farmagudi, Ponda, Goa.

2. Both parties before me agree that there is a valid arbitration clause between the parties as reflected in clause 25(ii) of the said Agreement and neither party is disputing the validity of Arbitration Clause. The Arbitration Clause reads thus:-

- ii. *Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where Tendered amount is Rs.100 crore or less. Where Tendered value is more than Rs.100 crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.*

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the DRC.

It is also a terms of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996(26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996(26 of 1996) as amended in 2015 whereby the Counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and given separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds R.1,00,000/- the arbitrator shall give reasons for the award.

It is also a terms of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.

3. Notwithstanding what is stated in the arbitration clause, parties before me, on instructions, have agreed that the disputes between the parties can be referred to Sole Arbitrator. The parties have further agreed that Mr. Justice N.A. Britto, a Former Judge of this Court, be appointed as the Sole Arbitrator to adjudicate the disputes and differences between the parties under the said Agreement dated 30th January 2018.

4. In these circumstances, the following order is passed :-

- a. Justice N.A. Britto, a Former Judge of this Court, is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondent arising out of and/or in connection with and/or in relation to Agreement No.34/EE/GCD/2017-2018. The parties have agreed that even the counterclaim of the Respondent, if any, arising out of and/or in connection and/or in relation to the aforesaid Agreement shall be decided by the said Sole Arbitrator.
- b. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from today.
- c. The learned Sole Arbitrator is requested to

forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

- d. The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. 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 email address as well as the mobile numbers of the respective Advocates.
- f. The parties have agreed that the Sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the

fees of the Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.

- g. The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Sole Arbitrator find it necessary.
- h. The parties have agreed that the seat of the arbitration will be at Panaji, Goa. However, the venue of the Arbitration shall be decided by the Sole Arbitrator taking into consideration convenience of the parties as well as his convenience.

5. The Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
Date: 2023.02.01 18:28:37 +05'30'