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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 97 OF 2023

Relcon Infraprojects Limited

...Petitioner

Versus

The Pune Cantonment Board

...Respondent

* * *

- Ms. Gargi Bhagwat i/by Divekar Bhagwat & Co., for Petitioner.
- Dr. G.R. Sharma, Senior Counsel a/w Mr. Gaurav Sharma and Mr. Gulab Yadav, for Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 16th MARCH, 2023.

P. C. :

1. Heard, learned Counsel for the parties.

2. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Petitioner has prayed for appointment of a fit person as the Arbitrator for adjudicating the disputes between the parties.

3. The Petitioner was engaged by the Respondent for construction of an automated parking. The agreement contained an Arbitration Clause, which reads as follows :

“17. Law Governing the Contract:

The Contract shall be governed by the Indian Laws. All disputes between the parties to this contract or being out of or relating to the Contract, other than those for which the decision of the accepting officer is final and conclusive shall after the written notice given by

either party to the other be referred to the sole arbitrator as appointed by the Cantonment Board Pune. The award of the Arbitrator shall be final, conclusive and binding on both parties to the contract.”

4. It is relevant that under clause 19 of the agreement, disputes between the parties were specified to be within the jurisdiction of the Pune District.

5. It is the case of the Petitioner that while certain dues were indeed paid by the Respondent – Board, certain other amounts due were not paid, as a consequence of which, the Petitioner was pursuing the matter with the Respondent – Board.

6. It is the case of the Petitioner that despite the reminders, when the Respondent – Board failed to make the payments, by notice dated 23rd April, 2022, the Petitioner was constrained to invoke the Arbitration Clause. There was no response from the Respondent – Board, as a result of which, the Petitioner was constrained to file the present petition.

7. The Respondent appeared through Counsel and specific objections were raised to the prayer made in the present petition. It was submitted that in the first place no amounts as claimed by the Petitioner are due and that even if a dispute has arisen regarding the same, it ought to be governed by the above quoted arbitration clause.

It is submitted that the said clause specifically provides that a sole Arbitrator would be appointed by the Respondent – Board and that this Court may consider the provisions of the Cantonments Act, 2006, particularly sections 325 to 327, pertaining to committees of Arbitration. It is submitted that the Petitioner may be directed to follow the said procedure so that an appropriate Arbitrator or Arbitral Tribunal can be appointed for resolution of disputes between the parties.

8. The learned Counsel appearing for the Petitioner has opposed the said contentions raised on behalf of the Respondent – Board. It is submitted that in view of the fact that the Respondent – Board failed to respond to the notice issued by the Petitioner specifically invoking arbitration, it could not be heard to say that the procedure of Arbitration insisted upon by the Respondent – Board be followed or the Arbitral Tribunal be appointed in terms of the provisions of the Cantonments Act, 2006.

9. This Court has considered the material on record, in the backdrop of the submissions made on behalf of the parties. It is found that the Petitioner did invoke the Arbitration Clause by issuing notice dated 23rd April, 2022. The Respondent – Board failed to respond to the same. In this backdrop, the Petitioner was constrained to file the present petition under Section 11 of the Arbitration and Conciliation

Act, 1996.

10. As per the judgments of the Hon'ble Supreme Court in the cases of *Punj Lloyd Ltd. Vs. Petronet MHB Ltd.*¹, *Deep Trading Company Vs. Indian Oil Corporation & Ors.*² and *Datar Switchgears Ltd. Vs. Tata Finance Ltd & Anr.*³, it is settled law that once a party fails to respond to invocation of arbitration, 30 days expire thereafter and the party invoking arbitration files a petition under Section 11 of the Arbitration and Conciliation Act, 1996, the other party forfeits its right to insist upon the procedure of appointment of arbitrator mandated under the Arbitration Clause or arbitration agreement executed between the parties.

11. In the light of the admitted facts in the present case, this Court is of the opinion that the Respondent – Board forfeited its right to insist upon the procedure specified in the above quoted arbitration clause. For the same reason the Respondent – Board cannot insist upon operation of Sections 325 to 327 of the Cantonments Act, 2006, in the facts and circumstances of the present case.

12. In any case, the Arbitration Clause stipulates that a sole Arbitrator would be appointed by the Respondent – Board, which is in the teeth of Section 12(5) of the Arbitration and Conciliation Act,

1 (2006) 2 SCC 638

2 (2013) 4 SCC 35

3 (2000) 8 SCC 151

1996.

13. In view of the above, this Court is convinced that a neutral sole Arbitrator ought to be appointed for the Arbitration proceedings to be conducted at Pune.

14. Considering the nature of disputes between the parties, this Court is of the opinion that a former District Judge can be appointed as a neutral sole Arbitrator.

15. Accordingly, **Mr. V.P. Utpat**, retired District Judge is available at Pune, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

Mr. V.P. Utpat,
C-70, Mahaveer Park, Behind Nexa Showroom,
Pune – Satara Road, Pune – 411 037.
Mob. 9423044478

16. The arbitration proceedings shall be conducted at Pune with the consent of the parties.

17. The parties undertake to inform the learned Arbitrator immediately about the order passed today.

18. The learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) r/w Section 12(1) of the said Act, to the Registrar (Judicial) of this Court, within four weeks.

19. The fees of the learned Arbitrator shall be as per Schedule IV of the Arbitration and Conciliation Act, 1996.
20. All questions are kept open.
21. The petition stands disposed of.

(MANISH PITALE, J.)