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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.49 OF 2022

Towell Engineering International LLP ...Petitioner

Versus

Shreeyash Engineering ...Respondent

Mr. Amey Sawant i/b Pravin Chandak and Nevase Rushidas for the
Petitioner.

None for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 17 JULY 2023

ORDER :

1. The Arbitration Petition had come up on 26th June, 2023 on which date it was noted that the Respondent had previously waived notice and requested for time to file Vakalatnama. Directions had been issued with regard to filing of the Vakalatnama within three weeks from the previous Order. However, none appeared for the Respondent on the said date. This Court had as and by way of last chance, adjourned the Arbitration Petition for final disposal. It was

made clear that in the event the Respondent does not remain present on the next date, the Arbitration Petition will be heard in the absence of the Respondent. Today, when the Arbitration Petition has come up, none appears for the Respondent. Accordingly, the Arbitration Petition is taken up for hearing in absence of the Respondent.

2. By this Arbitration Petition, the Petitioner is seeking appointment of Arbitrator to decide all disputes and differences between the parties.

3. There is an arbitration agreement i.e. Clause 39 of the Agreement for contract Work Order Nos.1906008 dated 17th June, 2019 and 1910004 dated 2nd October, 2019 between the Petitioner and Respondent. Under the clause it provides that any dispute arising out of or in connection with this contract shall be settled between the parties based on mutual discussions, including any question regarding the existence, validity or termination of the contract. In the event those disputes cannot be settled through mutual discussions, the same shall be referred to arbitration and finally resolved by an independent sole Arbitrator who shall be appointed by the Petitioner Company.

4. The place of the Arbitration shall be Pune and the Courts of Pune shall have exclusive jurisdiction with respect to any matter relating to arbitration.

5. The Petitioner has attempted to resolve the disputes with Respondent. The Petitioner had filed a criminal Complaint against Respondent for raw material 370.62 MT at Indapur Police Station under Section 420 and 406 read with Section 34 of the IPC. The Police upon lodging of the FIR had visited the factories at Pune and Solapur and seized and recovered total 188.92 MT from both factories. This Court had considered the Anticipatory Bail application and held that, the dispute is of civil nature and allowed the bail application and kept the contentions open and directed the Petitioner to file Arbitration Proceedings against Respondent for balance 181.70 MT raw material. The order of this Court is dated 15th February, 2021.

6. The Petitioner has stated in the notice invoking arbitration dated 7th September, 2021 that though attempts were made to resolve the disputes, the Respondent has failed to return 181.70 MT raw material. Accordingly, the Petitioner has invoked

arbitration under the Clause 39 of the said Agreement and nominated Mr. Vishwas B. Chaudhari, Retired District Judge as Sole Arbitrator to adjudicate the disputes between the parties.

7. There is no response to the notice invoking arbitration dated 7th September 2021. Further, the Respondent has failed to appear and / or file Vakalatnama.

8. Accordingly, relief sought for in the Arbitration Petition requires to be granted. Hence, the following order:-

(i) Mr. Vishwas B. Chaudhari, (Retired District Judge) is appointed as a Sole Arbitrator to decide the disputes between the Petitioner and the Respondent arising out of the Agreement dated 2nd October, 2019 executed between them.

(ii) The venue of arbitration shall be in Pune as per Clause 39 of the said Agreement dated 2nd October, 2019.

(iii) Office to inform the Sole Arbitrator regarding his appointment.

(iv) The Sole Arbitrator is requested to file his Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

(v) Parties to appear before the Sole Arbitrator on the date fixed.

(vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

(vii) Arbitration Petition is disposed of in the above terms.

(viii) No costs.

[R.I. CHAGLA J.]