

Mr. Shon D. Gadgil a/w. Mr. Murtaza Chherawala, Ms. Asmita Mogre, Ms. Fatema Plumber and Ms. Adwaita Bhagwat, i/by. CNS Juris for petitioner.

P.C. :

. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of arbitrator for resolution of disputes between the parties. On 14th December, 2022, this Court took on record an affidavit of service tendered on behalf of the petitioner, showing that the respondent was served on 16th November, 2022, by way of speed post and also by email. Since the respondent did not appear despite service, as a matter of last chance, the present petition was directed to be listed for final disposal today.

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3. The learned counsel for the petitioner points out that the present petition concerns identical arbitration clauses contained in work orders issued in favour of the petitioner by the respondent for carrying out Toll Operation Services along the Walajahpet-Poonamallee Highway, along the National Highway No.4 in the State of Tamil Nadu. It is submitted that certain disputes arose between the parties in respect of the three work orders, wherein the petitioner claimed certain amounts due from the respondent.

4. The parties initiated settlement talks and on reconciliation of amounts, ultimately, the respondent admitted to the liability of Rs.1,42,42,528. But, when the respondent was not forthcoming for payment of the said amount, the petitioner was constrained to file Company Petition No.4777/2018 before the National Company Law Tribunal, Mumbai Bench. The respondent offered to pay the aforementioned amount to the petitioner and in that light, the National Company Law Tribunal, Mumbai Bench, dismissed the Company Petition, recording that the claim of interest raised by the petitioner could not be considered, reserving liberty to the petitioner to approach the appropriate forum as per law. It is an admitted position that the respondent did pay the aforementioned amount to the petitioner, but the outstanding liability of interest, as claimed by the petitioner, was not satisfied.

5. It is in this backdrop that the petitioner issued legal notice dated 10th April, 2020 invoking arbitration clause pertaining to the said work orders, in response to which, the respondent refused to agree to appointment of arbitrator as proposed by the petitioner. On 10th June, 2020, the petitioner sent another notice, proposing the name of another arbitrator for resolution of disputes between the parties, but there was no response from the respondent.

6. As noted above, despite service, respondent failed to appear and contest the petition. This Court has considered the arbitration clause in the work orders. It reads as follows:

‘13. Arbitration: All disputes and differences arising between the parties hereto, including any disputes or difference in regard to the interpretation of any provision or term or the meaning thereof, or in regard to any claim of on party against the other or in regard and for obligations of any party or parties hereto under this Agreement or otherwise, however, shall be referred to a common Arbitrator if agreed upon by all or otherwise to two or more Arbitrators, one to be appointed by each party to the dispute or difference and such Arbitration shall be governed by the provisions of the Arbitration Act, for the time being in force. The venue will be Mumbai.’

7. A perusal of the aforesaid arbitration clause indeed demonstrates that the parties have agreed to resolution of disputes by way of arbitration. The documents on record, particularly the invocation notices issued by the petitioner, demonstrate that the procedure agreed between the parties did not lead to appointment of arbitrator and hence, the petitioner has approached this Court by filing this petition under Section 11(6) of the aforesaid Act for appointment of arbitrator. Considering the quantum of claim of the petitioner, it would be appropriate that an advocate is appointed as the sole arbitrator.

8. In view of the above, Mr. Amrut Joshi, Advocate is appointed as sole arbitrator. Details of the learned arbitrator are as follows:-

Mr. Amrut Joshi

302, B wing, Fort Chambers,
Above Stock Exchange Post Office,
Homi Mody Cross Lance, Fort,
Mumbai – 400 001.
E-mail: amorjos@gmail.com
Mob.: 9004 200 707

9. The petitioner shall inform the learned arbitrator immediately about the order passed today.
10. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be in terms of Fourth Schedule of the said Act.
11. All questions are left open to be decided by the learned arbitrator.
12. Petition stands disposed of in above terms.

(MANISH PITALE, J)