

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 19 OF 2021

M/s. Ashoka Buildcon Limited
Through its Authority,
Shri. Harshadkumar J. Patel ...Petitioner

Versus

Maharashtra State Electricity Distribution
Company Ltd.
Through Its Chief Engineer (infra Plan/project) ...Respondent

* * *

- Mr. Ram Apte, Senior Counsel i/by Mr. Rahul Totala, Mr. Rajat Malu, Mr. Aniruddha A. Garge and Mr. Ashwin Poojari, for the Petitioner in all Petitions.
- Mr. J.P. Sen, Senior Counsel a/w Mr. Shardul Singh, Mr. Ravi Prakash, Mr. Kunal Vaishnav, Mr. Rahul Sinha, Ms. Udit Saxena and Ms. Sayali Sawant i/by DSK Legal for the Respondent (MSEDCL).

* * *

CORAM : MANISH PITALE, J

DATE : 09th FEBRUARY, 2023.

P. C. :

1. Heard learned Counsel for the rival parties.
2. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an arbitrator, in the light of an arbitration clause in contract agreement dated 29th March, 2012, executed between the parties. The arbitration clause reads as follows:

“17. Arbitration :

- a) All disputes or differences between the parties under or in connection with this Agreement or*

any breach thereof shall be sought to be referred to the Chief Engineer (ARDRP).

- b) If such differences or disputes as between the parties cannot be settled through Chief Engineer (APDRP) within 180 days of such disputes, they shall be settled by arbitration. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification thereof from time to time.*
- c) The language of the arbitration shall be English and the place of arbitration shall be Mumbai.*
- d) Notwithstanding the existence of any dispute referred to arbitration, the parties shall continue to perform their obligations under this Agreement.”*

3. The respondent contends that above quoted clause has to be read along with the arbitral mechanism under the general conditions of contract, particularly, clause 20.4 thereof.

4. The petitioner invoked the arbitration clause by issuing notice dated 26th May, 2020, to the respondent. On 16th June, 2020, the respondent did not agree with the assertions made on behalf of the petitioner, and stated that the dispute must first be raised before the Dispute Resolution Committee. As a consequence, the arbitrator could not be appointed, and the petitioner filed the present petition.

5. The respondent has appeared through counsel and it is submitted that there are various grounds on which the respondent can oppose the present petition. But, if such objections/grounds are kept expressly open for decision of the arbitrator, the present petition could be disposed of by appointment of an arbitrator.

6. In view of the above, Hon'ble Shri Justice Anil Kumar Menon, a former Judge of this Court, is appointed as the sole arbitrator for resolution of disputes between the parties. The details of the learned arbitrator are as follows :

*Hon'ble Shri Justice Anil Kumar Menon,
Office Nos. 4 & 5, Yashwant Chambers,
3rd Floor, 18/B, Burjorji Bharucha Marg,
Fort, Mumbai - 400 023.*

7. The parties undertake to inform the learned arbitrator immediately about the order passed today.

8. 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, within four weeks to the Registrar (Judicial) of this Court.

9. The fees of the Arbitrator shall be as per Schedule IV to the Aforesaid Act.

10. All questions are kept open, including the question of invocation of arbitration as per the clause, quoted hereinabove, and whether it has to be read with the mechanism of invoking arbitration under clause 20.4 of the general conditions of the contract pertaining to arbitration, as also the jurisdiction of the arbitrator, to be agitated before the learned Arbitrator.

(MANISH PITALE, J.)