

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

**ARBITRATION PETITION NO. 38 OF 2019**

M/s Sun Publicity,  
Through its Proprietor,  
Vishal Jugalkishor Pallod

...Petitioner

**Versus**

The President,  
Pune Cantonment Board & Anr.

...Respondents

\* \* \*

- Mr. Mandar Limaye, for Petitioner.
- Mr. Ashok B. Tajame, for Respondent Nos. 1 and 2.

\* \* \*

**CORAM : MANISH PITALE, J**

**DATE : 11<sup>th</sup> APRIL, 2023.**

**P. C. :**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to resolve the disputes between the parties.

2. The Petitioner in the present petition was engaged by the Respondent – Board for construction of Bus Shelters within the limits of the Board. There was an Arbitration Clause in the Agreement, indicating that disputes between the parties shall be resolved by Arbitration before a Committee Constituted as per Section 327 of the Cantonments Act, 2006.

3. Disputes arose between the parties and the Petitioner sent a notice raising certain claims against the Respondents. In the reply,

the Respondents denied the claims of the Petitioner. Eventually by notice dated 18<sup>th</sup> July, 2018, the Petitioner invoked the Arbitration Clause and called upon the Respondents to constitute a committee in terms of Section 327 of the Cantonments Act, 2006, failing which the Petitioner would be constrained to initiate legal proceedings for appointment of Arbitrator in accordance with law. It is an admitted position that there was no response to the said notice invoking Arbitration.

4. Thereafter, the present petition was filed in the year 2019, wherein notice was issued and the Respondents have appeared through Counsel. It appears that during the covid-19 period, this petition could not be taken up for consideration and thereafter, it was listed before this Court, but could not be taken up due to paucity of time.

5. Today, the petition is listed for consideration, when the learned Counsel for the rival parties have been heard. The learned Counsel for the Petitioner submits that although the Arbitration Clause does provide for constitution of a Committee of Arbitrator(s) as per Section 327 of the Cantonments Act, 2006, the Respondents having failed to respond to the invocation notice and the Petitioner having filed the present petition, as per law laid down by the Hon'ble Supreme Court in the case of *Datar Switchgears Ltd. Vs. Tata Finance*

*Ltd.*<sup>1</sup>, the Respondents have forfeited their right to insist upon the agreed procedure for appointment of an Arbitrator and that this Court may consider appointing a sole Arbitrator available at Pune for resolution of disputes between the parties.

6. The learned Counsel for the Respondents submitted that some time may be granted to file reply affidavit. It was submitted that in the reply to the initial notice issued on behalf of the Petitioner, it was demonstrated that the Petitioner was at fault and that no claim could be raised against the Respondents herein.

7. Having heard the learned Counsel for the rival parties, this Court is convinced that disputes have indeed arisen between them. The Arbitration Clause does provide for constitution of a Committee of Arbitrator(s) as per Section 327 of the Cantonments Act, 2006. The notice invoking Arbitration also called upon the Respondents to constitute such a Committee, failing which the Petitioner would be constrained to initiate legal proceedings for appointment of Arbitrator in accordance with law. Thereafter, the present petition came to be filed.

8. As per law laid down by the Hon'ble Supreme Court in the case of *Datar Switchgears Ltd. Vs. Tata Finance Ltd. (supra)*, followed subsequently in the judgments in case of *Punj Lloyd Ltd. vs Petronet*

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<sup>1</sup> (2000) 8 SCC 151

*MHB Ltd.*<sup>2</sup> and *M/s. Deep Trading Company Vs. M/s. Indian Oil Corporation & Ors.*<sup>3</sup>, it is now a settled position of law that if in such circumstances, the Respondent fails to respond to the invocation notice issued by the Petitioner and a petition under Section 11 of the said Act is filed before this Court, the Respondent forfeits its right to insist upon appointment of Arbitrator(s) in terms of the procedure prescribed in the Arbitration Clause. This Court is of the opinion that the said position of law applies in the facts of the present case and the Respondents are held to have forfeited their right to insist upon constitution of Committee of Arbitrator(s) as per Section 32<sup>7</sup> of the Cantonments Act, 2006.

9. In view of the above, this Court is inclined to allow the present petition for appointment of a sole Arbitrator available at Pune. Considering the nature of the claims made on behalf of the Petitioner, it would be appropriate that Dr. Justice Shalini Phansalkar-Joshi, a former Judge of this Court, is appointed as the sole Arbitrator for conducting the proceedings at Pune.

10. Accordingly, Dr. Justice Shalini Phansalkar-Joshi, former Judge of this Court is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

**Hon'ble Smt. Dr. Justice Shalini Phansalkar-Joshi,**

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<sup>2</sup> (2006) 2 SCC 638

<sup>3</sup> (2013) 4 SCC 35

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11. The parties are directed to immediately inform the learned Arbitrator about the order passed today.
12. The learned Arbitrator is requested to communicate her 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.
13. The fees of the Arbitrator shall be as per Schedule IV to the Aforesaid Act.
14. All questions are kept open.
15. The petition stands disposed of.

**(MANISH PITALE, J.)**