

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.31 OF 2022

Transport Corporation of India Limited ... Applicant
Vs.
Maharashtra Rajya Sahakari Dudh Mahasangh Maryadit... Respondent

Mr. Ajay Panicker a/w. Ms. Sherebanu Jasdanwala i/b. Ajay Law Associates for Applicant.

Mr. Vijay Nagare i/b. Nasscons Fintaxlegal for Respondent.

CORAM : MANISH PITALE, J.

DATE : AUGUST 30, 2023

P.C. :

. Heard learned counsel for the parties.

2. By this application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the applicant has approached this Court for appointment of arbitrator in the light of arbitration clause contained in an agreement dated 17.11.2017 executed between the parties. Under the said agreement, the applicant was to transport milk and milk products of the respondent at various places in India.

3. According to the applicant, on invoices being raised, the respondent was making payments from time to time, but it was found that some amount was outstanding upon the respondent.

4. In this backdrop, the applicant approached the respondent and there were certain meetings held with the officials of the respondent, including the managing director but the issue could not be resolved.

5. Eventually, on 25.06.2021, the applicant issued notice invoking arbitration and making a specific demand against the respondent. Admittedly, there was no response on the part of the respondent, due to

which, the applicant was constrained to file the present application before this Court.

6. The respondent entered appearance through counsel and filed affidavit in reply. According to the respondent, the documents filed along with the affidavit in reply demonstrate that all outstanding amounts were paid to the applicant and that since there are no outstanding amounts due, there is no arbitrable dispute in the present case, warranting appointment of the arbitrator in terms of the arbitration clause. Specific attention of this Court is invited to a table filed along with the affidavit in reply to demonstrate that payments were indeed made to the applicant and on a proper appreciation of the material on record, it would be evident that there are no outstanding amounts payable, and that therefore, there is no dispute to be referred for arbitration.

7. This Court has heard the learned counsel for the rival parties in the backdrop of the material on record. The emphasis on the part of the respondent appears to be on the aspect that while issuing the invocation notice and filing the present application, the applicant has taken a particular stand and after the affidavit in reply being placed on record on behalf of the respondent, the arguments are being advanced to artificially demonstrate as if there is an existing dispute that needs to be referred to arbitration.

8. Mr. Panicker, learned counsel for the applicant submits that from the material placed on record on behalf of the respondent, it has become evident that in the present case, the applicant while raising invoices did not add the portion of GST, but while making payments, the respondent deducted such amounts, as a result of which, over a period of time, substantial amounts stood deducted, constituting the outstanding claim of the applicant. In that regard, the learned counsel for the applicant

relied upon invoices placed at Exhibit C with the application and compared the same with table filed along with the affidavit in reply on behalf of the respondent at internal page 15 thereof.

9. This Court has perused the documents in order to specifically examine the contention raised on behalf of the respondent that no arbitrable dispute exists in the present case. A perusal of the document at Exhibit-C i.e. the invoice issued by the applicant shows that while the applicant raised demand of Rs.34,545/- on the respondent and in the invoice did show the amount of GST payable, the amount of GST was not actually added to the amount demanded from the respondent. A perusal of the table furnished by the respondent itself at page 15 along with the affidavit in reply, in the context of the very same invoice, shows that while the amount demanded under the invoice by the applicant was Rs.34,545/-, the respondent paid Rs.32,242/- while deducting amount towards GST. This illustration sufficiently demonstrates that the applicant has raised a dispute regarding shortfall in payment, which over a period of time, has led to the demand raised on behalf of the applicant.

10. In the light of the aforesaid material on record, this Court is convinced that an arbitrable dispute does exist between the parties.

11. Clause 17 of the agreement provides for resolution of disputes between the parties by appointment of an arbitrator, subject to jurisdiction of Mumbai. The invocation notice dated 21.06.2021 specifically invokes the arbitration clause, thereby indicating that this Court can certainly exercise jurisdiction under Section 11 of the said Act for appointment of arbitrator.

12. In view of the above, the application is allowed. Considering the extent of claims of the applicant, an advocate practicing in this Court can be appointed as the sole arbitrator.

13. Learned counsel for the parties jointly submit, on instructions, that Mr. Nishant Sashidharan, Advocate, may be appointed as the sole arbitrator.

14. Accordingly Advocate Nishant Sashidharan is appointed as the sole arbitrator for resolution of disputes between the parties. The details of the learned arbitrator are as follows:-

Advocate Nishant Sashidharan

C/o. Advocate Sanjay Jain
Oval House, 7th Floor,
Nagindas Master Road,
Opp. Commerce House,
Fort, Mumbai 400 001.

Mobile : 98209 95191, **Email**: nishantsasidharan@gmail.com

15. Learned Arbitrator is requested to communicate his consent and disclosure statement in terms of Section 11(8) and 12(1) of the aforesaid Act to the Prothonotary and Senior Master of this Court, within three weeks from today.

16. The statement of claim shall be filed within two weeks of appearance of the parties before the learned Arbitrator. Needless to say that the learned Arbitrator shall proceed with the arbitration in accordance with law.

17. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.

18. All questions are kept open for decision by the learned arbitrator.

19. The application is disposed of.

(MANISH PITALE, J.)