

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.78 OF 2022

Reinforced Earth India Private Ltd.] .. Applicant

vs.

Gammon Engineers and Contractors Pvt.Ltd.] .. Respondent

Mr.Subhradeep Banerjee a/w Harsh Moorjani i/b Navin Sachanandani
for the Applicant.

Mr.R.C. Sahu, for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 4th JANUARY, 2023.

P.C.

1] The Applicant, a Company incorporated under the Companies Act, dealing in mechanically stabilized Reinforced Earth Retaining Walls/Precast Arch Structures, was allotted a work order by the Respondent in August, 2016 for construction of earth retaining structure for elevated road cum fly over in Goa.

On its perusal, it can be seen that the order is issued in the name of "Gammon India Limited". The work order contains a specific clause for contractual correspondence or notice for claim to be addressed to the authorized signatory of the company at its Registered Office at Mumbai.

2] Pursuant to this work order being issued, distinct three orders

were issued in favour of the Applicant and it is pertinent to note that this time by “Gammon Engineers and contractors Pvt. Ltd.”.

The same is reflected through the Affidavit in Reply of the Respondent where it is admitted that the work order dated 03.12.2016 and all documents were executed between the Applicant and “Gammon India Limited” and accordingly work had commenced, but subsequently, under the scheme of amalgamation between Gammon India Limited and Gammon Engineers and Contractors Pvt. Ltd., which was under the orders of NCLT dated 22.03.2017, subsequent orders are issued in the name of Gammon Engineers and Contractors Pvt. Ltd.

3] The first work order issued in favour of the Applicant contain a clause for “Dispute Resolution”. It contemplate resolution of the disputes through amicable settlement, but if it did not yield any reason, in that case all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions and as to the quality of workmanship or material used in the work or as to any other question, claim, right or matter arising out of or relating to Work Order/ Sub-contract, was to be referred to a Sole Arbitrator to be appointed by the Chairman and Managing Director or Director of the Company.

4] It is not in dispute that the said clause was specifically incorporated in the subsequent work orders issued by the Respondent. The existence of the arbitration clause is not in dispute, but the Respondent has made an attempt to raise grievance that arbitration cannot be invoked against it, since the first work order was issued by Gammon India Limited and it is an entity distinct from ‘Gammon Engineers and Contractors Pvt. Ltd.’

I do not find any force in the said submission. It can be clearly

seen from the distinct work orders issued in favour of the Applicant that after amalgamation, subsequent work orders are issued in favour of the Applicant by Gammon Engineers and Contractors Pvt. Ltd.

Not only this, but in the Affidavit in Reply filed by the Respondent, in order to answer the question of arbitrability of the disputes against the Respondent, made the following statement :

“I say that pursuant to the scheme of amalgamation and the order of Hon'ble NCLT, Mumbai Bench dated 22nd March 2017, the Respondent had taken over the Work Order dated 03rd December, 2016 from Gammon India Ltd.”

In the wake of above admission, I do not find that the submission of the learned counsel for the Respondent is worth consideration.

5] Since arbitration clause is not in dispute, I deem it appropriate to appoint a Sole Arbitrator to adjudicate the disputes, that have arisen between the parties out of the work order dated 03.12.2016 as well as subsequent work orders referred to as “Amended Work orders”.

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr. Rashmin Khandekar, Advocate is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 23/01/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The Sole Arbitrator shall be entitled for the fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All the rights and contentions of the parties are kept open.

Arbitration Application is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]