

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.152 OF 2023

Axiomglobal Oil and Gas Trading Pvt. Ltd. ... Applicant
Vs.
Vystar Enterprises ... Respondent

Mr. Anay Banhatti a/w. Mr. Parth Contractor for Applicant.
Ms. Pooja Thorat a/w. Mr. Kiran Singh for Respondent.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 04, 2023

P.C. :

1. By this application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the applicant is seeking appointment of arbitrator in terms of an arbitration clause contained in a charter party agreement executed between the parties. According to the applicant, disputes have arisen and that the respondent owes certain amount along with interest to the applicant. In that context, an invocation notice was issued to the respondent, to which there was no response.

2. When this application was taken up for consideration on earlier occasions, the learned counsel appearing for the respondent indicated to this Court that with the intervention of a third party, the entire dispute could be settled and the dues payable to the applicant could be paid within a reasonable period of time.

3. On that basis, hearing of this application was adjourned on a few occasions. But, nothing concrete was brought to the notice of this Court and ultimately on 29.09.2023, this Court took note of the said circumstances and fixed the application for consideration / hearing today, indicating that no adjournment would be granted.

4. The learned counsel appearing for the respondent, even today, referred to certain e-mails and suggested that since there is possibility of settlement of the dispute, this Court may consider adjourning hearing of the present application so that a proper settlement between the parties can be brought to the notice of this Court.

5. This Court is of the opinion that since the present application has been adjourned on more than one occasion in the past for examining as to whether the disputes could be settled, no purpose would be served in adjourning the hearing of the application awaiting settlement of disputes between the parties. Eventually if the disputes are settled, consent award can be passed in the arbitration proceedings.

6. A perusal of the charter party agreement shows that clause (Z) thereof specifically provides for resolution of disputes through arbitration. The documents on record include notice dated 10.05.2023 issued on behalf of the applicant, invoking the arbitration clause, in the light of disputes having arisen between the parties. Admittedly, there was no response on behalf of the respondent, necessitating filing of the present application under Section 11(6) of the said Act.

7. Considering the documents brought to the notice of this Court, jurisdiction under Section 11(6) of the said Act can certainly be exercised by this Court. The applicant has been able to make out sufficient grounds for this Court to allow the present application. There can be no specific objection raised on behalf of the respondent, for the reason that existence of the arbitration clause / agreement is admitted and it is found that the respondent failed to respond to the invocation notice issued on behalf of the applicant.

8. Considering the nature and extent of the claim raised by the applicant, it would be appropriate that an advocate practising in this

Court is appointed as sole arbitrator. Accordingly, Mr. Anish Wadia, Advocate is appointed as the sole arbitrator for resolution of disputes between the parties. The details of the learned arbitrator are as follows:

Advocate Anish Wadia

Kitab Mahal, 3rd Floor,
192- Dadabhai Naoroji Road,
Opposite New Excelsior Cinema,
Fort, Mumbai – 400 001.

9. The parties shall inform the said learned arbitrator at the earliest about the order passed today.
10. 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.
11. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.
12. All questions are kept open for decision by the learned arbitrator.
13. The application stands allowed in above terms.
14. The learned counsel appearing for the respondent undertakes to file *Vakalatnama* within a week from today.

(MANISH PITALE, J.)

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