

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.300 OF 2021

M/s.Sudhir Power Limited	]	..	Applicant
vs.			
Hindustan Construction Co.Ltd.	]	..	Respondent

Mr.Manoj Mishra for the applicant.

Mr.MiteshJain i/b Vis Legis Law Practice for Respondent.

CORAM : BHARATI DANGRE, J

DATE : 4th JANUARY, 2023.

P.C.

1] The Application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seek appointment of an Arbitrator to adjudicate upon the disputes between the Applicant and the Respondent, which have arisen out of the work order issued in favour of the Applicant on 31.01.2019.

2] The Applicant is a public limited company and is engaged in the activity of manufacturing Gensets and it claim to be one of the prominent suppliers of Gensets in India. It also claim to deal in business of providing DG sets/AWP Machines/Forklift/ Boom Lifts on rental basis.

The respondent is alleged to be a company engaged in construction of buildings, particularly focusing on civil engineering.

Since the Respondent was interested in boom lifters, after due negotiations of renting the same on monthly payment, two letters of intent were issued in favour of the Applicant, on 06.09.2018 and 22.09.2018.

Pursuant to this, a work order was issued in favour of the Applicant on 31.01.2019 with stipulated terms and conditions.

It is the submission of the Applicant that pursuant to the work order, lifters were rented to the Respondent for 7 months alongwith driver and helper for the project work carried by the Respondent in Delhi.

The disputes have arisen out of this arrangement as the Applicant claim that the Respondent has defaulted in making necessary payments.

3] The work order issued in favour of the Applicant comprise of a clause providing for settlement of disputes and clause no.19 as well as Clause 32 provide for "Settlement of Disputes", wherein, it is stipulated that in case of any dispute arising in connection with or arising out of the sub contract , it shall be settled amicably through the Offices of Project Controller/Project Manager, failing which it shall be resolved in accordance with Arbitration and Conciliation Act, 1996 through a sole Arbitrator, to be nominated by the Chairman and Managing Director of HCC Mumbai, and venue of the arbitration was fixed as Mumbai.

On account of the amount remaining unpaid, the Applicant served legal notice upon the respondent asking it to clear the

outstanding amount alongwith interest, but when there was failure to comply, the Applicant invoked arbitration vide its communication dated 05.04.2021 addressed to the Respondent.

4] Perusal of the clause contained in the work order invariably make a reference to arbitration as a medium to resolve the disputes. Arbitration has also been invoked by the Applicant, and since the Respondent failed to respond to the notice invoking arbitration, the Applicant has approached this Court seeking appointment of sole arbitrator.

5] The learned counsel for the Respondent has placed on record Affidavit dated 03.01.2023, where there is no denial of existence of clause No.19 in the work order dated 31.01.2019. The learned counsel would however submit that the Applicant has invoked arbitration clause in the Letter of Intent which is inappropriately stamped document and therefore as per him the clause cannot amount to a valid arbitration agreement.

The argument advanced is completely misconceived as particularly from the letter of Intent which was subsequently translated into work order, a similar clause is to be found. Since the parties proceeded on the basis of work order which comprise Clause 19, which make it imperative to refer the dispute for arbitration, I deem it appropriate to grant the Application in the following manner :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Shailesh Naidu, 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]