

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.530 OF 2021

Proactive Ship Management Private Limited] .. Petitioner

vs.

Waterways Shipyard Private Limited] .. Respondent

Ms.Christabelle M.K. i/b Manoj Khatri a/w Arnab Ghosh for Petitioner.

CORAM : BHARATI DANGRE, J

DATE : 6th JANUARY, 2023.

P.C.

1] Pursuant to the order dated 29.06.2022, the Petitioner has placed on record Affidavit of Service, which indicate that the Respondent is served.

Apart from this, the report of Master (Adm.), Suit Board Department, dated 12.07.2022 clearly reflect that service is effected upon the Respondent.

The Respondent has chosen not to remain present and hence I deem it appropriate to hear the learned counsel for the Petitioner in support of relief sought in the Petition.

2] The Petition filed under Section 14(1)(b) read Section 11 and 15(2) of the Arbitration and Conciliation Act, 1996, seek following relief :

“(a) Terminate/Revoke the mandate of the learned Arbitrator,

Ms.Aditi Pawar to act as the sole Arbitrator in the impugned Arbitration proceedings.”

3] The dispute between the parties arise out of the Contract of Service entered on 11.07.2013, for technical management of vessel M.V. Surya Mukhi. The said contract contain clause for dispute resolution and based on this, this Court on 11.01.2018 appointed Ms.Aditi Pawar, an Advocate practicing in this Court, as the Sole Arbitrator to arbitrate the disputes and differences, if any arising out of and/or relating to the disputes in Admiralty Suit No.47/2016.

Pursuant to the appointment of Arbitrator, the Arbitration proceedings commenced and reached upto the stage of evidence. However, on 03.09.2019 the Sole Arbitrator, addressed a communication to the parties recusing herself on account of personal reasons.

This constrained the Petitioner to approach this Court on 17.09.2021, filing the present petition, seeking termination of the mandate of the erstwhile sole arbitrator and substitute with another Arbitrator to complete the arbitral proceedings from the stage where they are standing and on the date when the arbitrator recused herself.

4] Considering the fact the arbitrable disputes have arisen between the parties and in the Notice of Motion taken out by the Respondent in Admiralty Suit, on the suggestion of the Court, parties agreed to be referred for arbitration in the wake of Clause 14 contained in the Agreement entered between them, the Arbitration even commenced, but could not be completed since the Arbitrator recused, the disputes between the parties still continue to persist.

I deem it appropriate to substitute the Arbitrator, by Mr. Akshay

Kolse-Patil, as substitute Arbitrator, who shall continue with arbitration proceedings in terms of the order of this Court dated 11.01.2018 who shall carry forward the proceedings from the stage where they are presently lying.

Hence, the following order :-

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Akshay Kolse-Patil, Advocate, 14-C, Eaminur Press Building, First Floor, Dalal Street, Mumbai-400 001, 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.

Commercial Arbitration Petition is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]