

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION APPLICATION NO.315 OF 2021
WITH
COMMERCIAL ARBITRATION APPLICATION NO.318 OF 2021
WITH
ARBITRATION PETITION NO.526 OF 2021
WITH
COMMERCIAL ARBITRATION PETITION NO.728 OF 2021**

Meena Advertisers].. Applicant/Petitioner

vs.

The Divisional Commercial Manager&An.].. Respondents

Mr.Rajesh Gehani a/w Mahendra Agvekar and Shsraddha Chavan for
the Petitioner/Applicant.

Mr.T.J. Pandian a/w T.C. Subramanian, for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 11th JANUARY, 2023.

P.C.

1] After lengthy arguments and deliberations upon whether arbitration has been rightly invoked by the Applicant, the learned counsel for the Applicant seek permission to withdraw his Applications/ Petitions, with liberty to invoke arbitration and then upon response of the Respondent, seek appointment of Arbitrator under Sub-Section(6) of Section 11 of the Arbitration and Conciliation Act.

2] I must state the brief background, to grant the aforesaid liberty.

Clause 21 of the Agreement entered between the parties contemplated Arbitration clause, which clearly stipulated that the disputes arising out of the construction or operation of the contract or the respective rights and obligations of the Parties on any matter in question, shall be resolved in terms of the General Conditions of Contract for works of Railways as amended from time to time and as per the provisions of Arbitration and Conciliation (Amendment) Act, 2015 and the Rules thereof, as amended from time to time. The parties agreed upon the final and binding effect of the Award. The place and language of arbitration was to be decided by Railways Administration.

In the sequence of events, it is seen that the Petitioner filed Writ Petition under the Ordinary Original Civil Jurisdiction raising his claim as well as monthly license fees for the advertising hoardings, which resulted in an order passed on 17.11.2021, where the Petitioner made a statement that he shall continue to pay monthly license fees as per the contract entered between the parties in accordance with the demand of Railway. As regards arrears, which was estimated to be around Rs.93 Lakhs, which was subsequently corrected as Rs.55,70,321/-, the Petitioner agreed to make a representation to the Senior Divisional Commercial Manager, for facility of payment in installments.

Upon the said statement being made, the Court granted two weeks time to make such representation and directed the Senior Divisional Commercial Manager to consider the Application and give the Petitioner or their Advocates opportunity of hearing and pass a reasoned order within four weeks thereafter.

3] In furtherance of the said direction, the Applicant preferred a representation on 02.12.2021, which is annexed as Exhibit D to the Petition and it can be clearly seen that the representation is made in compliance of the High Court order. This representation in the ultimate para refer to the dispute and difference that had arisen between the parties and it is also stated that since the Railways are not inclined to waive the full license fee, arbitration is being invoked, seeking appointment of an Arbitrator to adjudicate the disputes.

4] The learned counsel for the Petitioner/Applicant would state that this amount to invocation of arbitration.

However, in my opinion it does not.

The reason being very apparent that this is a representation preferred by the Petitioner in furtherance of the directions issued by this Court on 17.11.2021 read with the order dated 24.11.2021 and therefore it would not amount to invocation of arbitration since the Railways had never turned down the claim of the Petitioner/Applicant. Assuming that the Railways has not granted any concessional claim, the learned counsel for the Petitioner attempted to argue that this amount to invocation of arbitration.

I have clearly expressed that this would not amount to invocation as this was a representation made in pursuance to the order passed by this Court.

5] The learned counsel state that by invoking arbitration as required, he shall seek appointment of arbitrator. The learned counsel also clarified that by a further development which has occurred being termination of the Agreement of the Petitioner/Applicant, he is also desirous of invoking arbitration as regards the action of termination. In

that contingency, it is permissible for him to invoke arbitration clause in a composite manner since disputes arisen between the parties are based on the same Agreement that was executed between them.

6] As far as Section 9 Petition is concerned, it is informed that it has been rendered infructuous since limited relief sought was restraining the Respondents from invoking bank guarantees, and now that Bank Guarantees are already invoked.

Hence, after reserving the aforesaid liberty as prayed for, CARAP No.315/2021, CARAP No.318/2021 and CARBP No.728/2021 are disposed off.

ARBP No.526/2021 is disposed off as infructuous.

[BHARATI DANGRE, J]