

rajshree

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

ARBITRATION APPLICATION (L) NO.34765 OF 2022

NMT Shipping Private Limited	]	..	Applicant
vs.			
Tolani Projects Private Limited	]	..	Respondent

Mr.Ashish Verma a/w Dhanraj Lodha for the Applicant.

Mr.Arnab Ghosh i/b Manoj Khatri for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 16th February, 2023.

P.C.

1] By the present Arbitration Application, filed under Section 9 of the Arbitration and Conciliation Act, 1996, the Applicant who is engaged in the business of providing logistics, transportation and freight forwarding services, seek appointment of a Sole Arbitrator to resolve the disputes that have arisen between the parties, since it was agreed between the parties vide exchange of emails that such disputes shall be made over to the Sole Arbitrator.

The Respondent who is engaged in the business of import of cargo, providing engineering services and solutions, was communicated vide email dated 21.12.2020 and 25.12.2020 about the terms and conditions and charges of the Ocean Shipping, Custom Clearance, Transportation at the Port of loading and dismantling/

stuffing services have been duly quoted. The parties arrived at an agreement and reduced the same into writing. It is also agreed in the very said communication that in case of any dispute/differences between the parties, the same shall be referred to a Sole Arbitrator.

2] There is invocation of arbitration on 31.05.2022 as regards the invoice mentioned therein and the dispute has been clearly set out in the notice invoking arbitration, with five names of counsels being suggested to be appointed as Arbitrator.

The said notice was responded to by the communication dated 28.06.2022 and though the Respondent did not dispute existence of arbitration clause between the parties to resolve the disputes, three other names were suggested to be chosen as Arbitrator, so that the disputes can be made over to them.

3] Though the arbitration clause is not disputed, the parties could not arrive at a consensus about the name of the Arbitrator who shall be appointed to adjudicate the disputes that have arisen between the parties.

Necessarily, this constrained the Applicant to approach this Court seeking relief of appointment of Sole Arbitrator in terms of arbitration clause, which was agreed between the parties.

4] In the wake of above, since the arbitration clause is not in dispute and there can be no consensus between the parties over name of the Arbitrator to be appointed, I deem it appropriate to exercise powers conferred under sub-section (6) of Section 11 of the Arbitration and Conciliation Act.

Hence, the following order :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Akshay Kolse-Patil, Advocate, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

The Respondent is also permitted to raise counter claim before the learned Arbitrator.

(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 06/03/2023. 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 Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 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]