

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 137 OF 2021**

M/s. Krishnai Earth Movers through Proprietor
Shri. Rajendra Pandurang Patil **...Petitioner**
Versus
M/s. Shri Warana Minerals (India) Pvt. Ltd. &
Anr. **...Respondents**

Mr. Vinod Sangvikar i/b Mr. Deepak Arun Lad for the Petitioner.
None present for the Respondents.

**CORAM Dr. Neela Gokhale, J.
DATED: 2nd May 2024**

PC:-

1. By order dated 2nd January 2023, notice was issued to Respondents for disposing off the present Arbitration Petition. The office report indicates that the notices have been served on the Respondents. Despite service, none appear for the Respondents.
2. Mr. Sangvikar, learned Counsel appearing for Petitioner states that private notice has also been served on Respondents. He undertakes to file affidavit of service within a week from today.
3. The Petitioner seeks appointment of a sole Arbitrator to adjudicate disputes that have arisen out of an agreement dated 2nd October 2014.

4. The Petitioner is engaged in the business of providing services of soil compactors rental, JCB machines rental and earth moving equipment. Respondent No. 1 is a company involved in manufacturing of non-metallic Mineral products and Respondent No. 2 is its Director.

5. The agreement dated 2nd October 2014 is related to terms regarding excavating and transporting some quantity of BAUXITE to the designated stockpile at a distance of 6 kilometers and also to excavate and transport the reject material from mine to dump yard identified by SWMIPL at a distance of 3 kilometers.

6. Article 14 of the agreement provides for reference of disputes arising out of the aforesaid contract to Arbitration.

7. Disputes arose between the parties. Several notices were sent by Petitioner to Respondents demanding payment of money. Some of those notices were replied by Respondents. However, the disputes were not resolved and finally by notice dated 3rd September 2021, the Petitioner has called upon the Respondents to refer the matter to arbitration by invoking the relevant clause of agreement. The Petitioner conveyed its intention to appoint Mr. Madhukar W. Nayak, former Metropolitan Magistrate and Sessions Judge as a sole Arbitrator.

8. By reply dated 29th September 2021, Respondents denied all the allegations made in Petitioner's notice and indicated their refusal to nominate said Mr. Nayak as a sole Arbitrator. However in paragraph no. 11 of the reply, Respondents agreed that the

appointment of an Arbitrator shall be made in accordance with the provisions of Arbitration and Conciliation Act, 1996.

9. Since the service of notice is complete on Respondents, the matter is taken up for hearing.

10. Article 14 of the agreement reads thus,

“ARTICLE 14

ARBITRATION

Any controversy, dispute or claim arising out of or relating to this Agreement or the breach hereof shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification thereto or re-enactment thereof for the time being in force. In the event of resolution by arbitration, each Party hereto shall appoint an arbitrator, which two arbitrators shall thereafter appoint an umpire. Arbitration shall be conducted in the English language. The arbitrators shall be persons of repute and who are not directly or indirectly connected with any of the parties to this Agreement and who have prior experience as arbitrators. Judgment upon the award rendered by the Arbitrators may be entered in District court of Kolhapur jurisdiction thereof. Any remedy that would be available from a court of law or equity shall be available from the arbitrator(s). The arbitration hearing and all proceeding in connection therewith shall take place in Mumbai, India. After the submission of any dispute to arbitration, the Parties shall continue to exercise their remaining respective rights, and fulfil their remaining respective obligations under this Agreement, except insofar as the same may relate directly to the matters in dispute or difference. Notwithstanding the aforesaid or anything else contained in this Agreement, any Party may approach any court of competent jurisdiction to seek any urgent and/or injunctive relief (whether ad-interim, interlocutory or permanent) in order to prevent any grave and

irreparable harm to it, without recourse to arbitration. Such remedy shall be in addition of and not in lieu of the appropriate relief by way of monetary damages.”

11. From the averments in the Petition and upon perusal of the documents annexed thereto, I am satisfied that a sole Arbitrator be appointed to adjudicate disputes between the parties arising out of said agreement.

12. In the result, I pass the following order leaving all rights and contentions open, to be agitated before the Arbitrator :

ORDER

- a. **Ms. Ayushi Anandpara**, Advocate is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Agreement dated 2nd October 2014. The seat of the arbitration shall be Mumbai as agreed by the parties in the Clause 20(b) of the agreement.
- b. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act, 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this petition with a copy forwarded to both the parties.
- c. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the

date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.

- d. All contentions of the parties on merits of the disputes are expressly left open.
- e. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
- f. The petition is disposed of in the above terms. There will be no order as to costs.
- g. Office to forward a copy of this order to the learned Sole Arbitrator on the following address :

Office Nos. 17-18, Chambers of Rohaan Cama, Islam Building, 1st Floor, Veer Nariman Road, Opposite Akbarallys, behind Zara, Fort, Mumbai.

E-mail ID : ayushi.anandpara@gmail.com

Phone : 9833144496.

(Dr. Neela Gokhale, J.)

Digitally signed
by GITALAXMI
KRISHNA
KOTAWADEKAR
Date:
2024.05.03
18:25:46 +0545