

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 25 OF 2022

M/s.Dana Anand India Pvt Ltd .. Petitioner
Versus
Raju Jamdar Proprietor of M/s.Akbar .. Respondent
Industries

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Mr. Prasad L. Gajbhiye for the petitioner.

CORAM: BHARATI DANGRE, J.
DATED : 15th MARCH, 2024

P.C:-

1 As directed by the order passed by this Court, in an Interim Application No. 13209/2023 taken out to serve the respondent by way of substituted service, the compliance has been accepted.

2 The affidavit of service to that effect affirmed on 1/9/2023 is taken on record. As per the said affidavit, the notice was published in two daily newspapers; Times of India (In English language) and Mahasatta (In Marathi language), Kolhapur Edition on 26/8/2023.

The affidavit is accompanied with the newspaper publications.

Despite the paper publications and the service being effected by substituted mode, the respondent has failed to appear. Hence, I have proceeded to consider the submissions of the petitioner, who seek a relief of appointment of Sole Arbitrator to resolve the disputes that have arisen between the parties, out of the sub-contract agreement dated 8/1/2016 between M/s.Spicer India Pvt Ltd (SIPL) (presently known as M/s.Dana Anand India Pvt Ltd), and the respondent, as SIPL was desirous of certain work/processes to be carried out as set out in the purchase order/scheduling arrangements and the respondent/contractor agreed to complete the work as assigned by SIPA and furnish all labour/material, power taxes, fees, tools, supplies, equipments etc. in consideration of price which was agreed to be paid as per the rates and terms and conditions in the purchase work/purchase order.

The said agreement contain Clause 21, which prescribe for the Governing Law and Dispute Resolution which reads thus :-

“21 GOVERNING LAW AND DISPUTE RESOLUTION

(a) This agreement shall be construed according to and governed by the laws of India.

(b) In the event of any dispute between the parties arising under this agreement, either party may notify the other in writing,

the substance of the complaint and the parties shall use their best efforts to resolve such dispute amicably through discussion.

(c) If the dispute is not settled within 30(thirty) days of notification, unless the parties otherwise agree in writing, such dispute shall be finally settled by arbitration in location where the concerned SIPL Plant is situated. The arbitration shall be conducted under the terms of and in accordance with the Indian Arbitration and Conciliation Act, 1996. The proceedings shall be conducted in English.

(d) The arbitration award shall be final and binding on each party and shall not be subject to any appeal and shall deal with the question of costs of arbitration and matters related thereto.”

3 Since there was a default on part of the contractor, the petitioner addressed a notice on 2/6/2021 demanding payment of sum of 87,61,577/- along with interest, by clearly setting out as to how the amount is due and payable and it remained outstanding and since there was failure to discharge the contractual obligations arising out of the sub-contract. Further on 5/8/2021, the Arbitration was invoked by addressing a notice by specifically invoking the relevant clause in the sub-contract and suggesting the names of the proposed arbitrators for settling the dispute. The respondent however, failed to take any cognizance thereof and this has constrained the petitioner to approach this Court seeking appointment of an arbitrator in exercise of power under sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996.

 Since the arbitration clause in the sub-contract is not in dispute and similarly, it is evident from reading of the petition that the arbitration has been invoked, but the respondent has

failed to respond and since the dispute persist between the parties, which deserve to be resolved.

It is made clear that the arbitration as per the relevant clause in sub-contract shall be conducted in Satara.

4 In the wake of the above, Advocate Nitin Manohar Wadikar is appointed as Sole Arbitrator to adjudicate the disputes and differences that have arisen between the applicant and the respondent. The details of the Arbitrator are as follows:-

Advocate Nitin Manohar Wadikar
68/15, Pratap Gunj, Behind Aikyapress,
Satara 415002.
Mobile 9822088572/8551899406

The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Prothonotary and Senior Master of this Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing and issue further directions as are necessary.

The Sole Arbitrator shall be entitled for the fees as per 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.

All rights and contentions of the parties are kept open.

(SMT. BHARATI DANGRE, J.)