

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.51 OF 2024

Narie Constructions Pvt. Ltd.

... Petitioner

V/s.

S-Form India Private Ltd.

... Respondent

Mr. Rushabh Sheth a/w Ms. Ria Goradia & Ms. Akshata Kadam i/by Mulani & Company for the Petitioner.

Mr. Yogesh Nankavale for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 30TH JULY 2024

P.C. :

1. The present Arbitration Petition has been filed under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator.

2. Learned Counsel appearing on behalf of the Petitioner invites my attention to a copy of an Agreement dated 30th March 2018, under which, he submits that, the disputes and differences have arisen. From the Agreement, he points out that the same contains an arbitration clause, which is Clause 28 of the Agreement. He points out that the said Agreement is signed by both parties.

3. He then invites my attention to the first notice dated 4th May 2023 invoking arbitration, by which the Respondent was called upon to nominate an Arbitrator. He points out that this notice was not responded to by the Respondent. He then invites my attention to a subsequent notice dated 6th October 2023 by which the Petitioner once again called upon the Respondent to nominate an Arbitrator, which notice also went unreplied/unresponded. It is in these circumstances that the present Petition came to be filed.

4. The Respondent has filed an Affidavit in Reply opposing the present Petition, in which the principal ground of defence is that the Agreement under which arbitration was invoked is not the Agreement between the parties. He points out that the Agreement between the parties is in the Korean language and is annexed to the said Agreement at Page 101 of the Petition. It is the contention of Learned Counsel appearing on behalf of the Respondent that the Agreement in Korean language does not contain an arbitration clause and thus the question of referring parties to Arbitration does not arise.

5. Learned Counsel appearing on behalf of the Respondent does not however dispute or deny the fact that the Respondent has through its authorised representative executed the Agreement dated 30th March 2018, which contains the arbitration clause and under which the arbitration has been

invoked. His only contention as noted is that the Agreement by which the parties were governed was the one in Korean language.

6. Given this and in view of the order of the Hon'ble Supreme Court in the case of ***SBI General Life Insurance Co. Ltd. vs. Krish Spinning***¹, the Court at the stage of Section 11 has to determine the existence of the Agreement, I find that sufficient case has been made out for appointment of an Arbitrator since there is no dispute or denial to the factum of the execution of the Agreement dated 30th March 2018.

7. The next contention that was raised by Learned Counsel for the Respondent was that the invocation was belated. He points out that the final bill was issued in March, 2020 and invocation after three years. The Petitioner has today filed an Additional Affidavit in which the delay has been explained. He points out that as per the judgement of the Hon'ble Supreme Court in the case of ***Cognizance for Extension of Limitation, In re***² on account of intervening Covid-19 pandemic. I have considered the same and find that there is infact no delay.

1 Order dated 18th July 2024 in SLP(C) No.3792 of 2024 and 72220 of 2024.

2 (2022) 3 SCC 117

8. In view of the above, the Petition is allowed in terms of prayer clause (a), which reads thus :-

“a. that the Agreement 30th March 2018, being Exhibit ‘B’ hereto, be taken on file of this Hon’ble Court and that the Hon’ble Court may be pleased to appoint a sole Arbitrator to hear, adjudicate and order in the matter related to all disputes between the Petitioner and the Respondent, arising out of and/or in relation to any matters under the Agreement dated 30th March 2018, as per the provisions of the Arbitration and Conciliation Act, 1996;”

9. Since both parties are situated in Pune, it would be apposite to appoint a Counsel in Pune to act as Sole Arbitrator. I accordingly appoint Mr. Gautam Karnik, Advocate to act as a Sole Arbitrator on the following terms :-

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** Mr. Gautam Karnik, Advocate is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the Agreement dated 30th March 2018.
- (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 Petitioner within one week from the date this order is uploaded.

- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr. Gautam Karnik, Advocate**

Address C/o Karnik and Karnik,
Purshottam Apartments, 1120
Shivaji Nagar, Model Colony,
Pune 411 016.

Mobile 9822961310

Email office@karnikandkarnik.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioner will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the

learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Pune.

10. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)