

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 71 OF 2024

Sayed Fatim Ali

...Petitioner

Vs.

M.S. Kirloskar Brothers Ltd.

...Respondent

Mr. Amey C Sawant for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 2ND DECEMBER, 2024

P.C.:-

1. The present Petition is filed under Section 11 of the Arbitration and Conciliation Act 1996 for appointment of an Arbitrator in respect of the disputes and differences that have arisen between the parties out of four purchase orders.

2. Learned Counsel appearing on behalf of the Petitioner has tendered an Affidavit of Service proving service upon the Respondent. Despite service, none appeared on behalf of the Respondent. The matter is thus taken up for hearing.

3. Learned Counsel has invited my attention to clause 26 of the purchase orders which provides for arbitration. He has also invited my attention

to the notice invoking arbitration which is dated 2nd March, 2023 and the response of the Respondent which is dated 20th March, 2023. From the response, it is noted that the Respondent has not denied the purchase orders or arbitration clause, but has inter alia contended that the claim of the Petitioner is barred by limitation as also the fact that the Petitioner had earlier tried to establish a nexus between two completely differently projects namely project of Kirti Nagar, Delhi and Koluva Project at Bhopal by clubbing both together in an arbitration which was invoked in the year 2022. Learned Counsel clarified that insofar as the arbitration which concerns the Koluva Project at Bhopal it is in respect of those purchase orders that the present arbitration has been invoked since the Respondent had in the arbitration proceeding pending in Delhi filed an application under Section 17 pursuant to which the claims made in respect of Koluva Project at Bhopal were rejected.

4. Having heard Learned Counsel for the Petitioner and having due regard to the fact that the Respondent has though served not appeared, I find that there is today no dispute as to the existence of the arbitration agreement.

5. Learned Counsel for the Petitioner pointed out that the purchase orders require for appointment of two Arbitrators which today is not permissible in law. He presses for appointment of a Sole Arbitrator.

6. I therefore allow the Petition in terms of prayer clause (a) and appoint Mr. Shridattprasad V. Abhang to act as Sole Arbitrator in respect of the disputes and differences between the parties on the following terms.

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Mr. Shridattprasad V. Abhang is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(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/s Mr. Shridattprasad V. Abhang

Address 61, Ashakiran Pan Mala
Vitthal Wadi Road, Tal Haveli,
District Pune 411030.

Mobile 9860058885

Email shriabhang@yahoo.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.

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

(ARIF S. DOCTOR, J.)