

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

COMMERCIAL ARBITRATION PETITION NO.34 OF 2024

M/s. Zamil Construction India Pvt. Ltd. ... Petitioner

V/s.

KSB Pumps Ltd. ... Respondent

Mr. Jamsheed Master a/w Mr. Shrikant Pillai and Ms. Jyotika Rai Chandani i/by
M/s. Solomon & Company for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 09TH DECEMBER 2024

P.C. :

1. The present Commercial Arbitration Petition is filed under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996 for appointment of a Nominee Arbitrator on behalf of the Respondent.

2. Learned Counsel appearing on behalf of the Petitioner has invited my attention to the Letter of Intent dated 3rd May 2016 issued by the Respondent to the Petitioner for the supply and erection of steel structural for the Respondent's new manufacturing facility 'Project-URJA'. He also invited my

This order is modified/corrected as per order dated 11th December 2024.

Mugdha

attention to the arbitration clause contained in the said Letter of Intent and pointed out that the same provides that in the event of disputes, the Petitioner and the Respondent appoint their Nominee Arbitrator each, who in turn then appoint an Umpire.

3. Learned Counsel submitted that thereafter the Petitioner had invoked the arbitration and in fact the arbitration proceedings had commenced before the Tribunal, as contemplated in the said arbitration clause. He then submitted that thereafter the Nominee Arbitrator of the Respondent and the Umpire failed to act/discharge their duties as Arbitrators. This compelling the Petitioner to move the Additional Sessions Judge, Pune and the Petitioner had filed an Application under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996. He invited my attention to the order dated 18th July 2023 by which the Additional Sessions Judge, Pune partly allowed the Application. The said order reads as follows:-

"1. Application is partly allowed.

2. It is hereby declared that, the mandate by Co-Arbitrator nominated and appointed by the respondent namely Vishwas K. Choudhari, the umpire/presiding Arbitrator Mr. Padmakar G. Choudhary stands terminated.

3. The prayer of Clause 'c' is not considered and granted by this Court with directions that both parties should take appropriate steps in that regard."

This order is modified/corrected as per order dated 11th December 2024.

Mugdha

2 of 7

4. Learned Counsel has then invited my attention to a letter dated 23rd October 2023 by which the Petitioner's Advocates called upon the Respondent to appoint the Co-Arbitrator as per Clause 23 of the Tender Conditions. He submits that the Respondent's Advocates vide a letter dated 7th November 2023, in response, informed the Petitioner that the mandate of the previous Tribunal is terminated and that the Petitioner would have to approach the Hon'ble High Court under the provisions of the Arbitration and Conciliation Act, 1996. It is thus that the present Petition has been filed.

5. I have heard Learned Counsel for the Petitioner as also perused the Agreement and the relevant correspondence, which has been relied upon.

6. Having due regard to the fact that there is no dispute *qua* the existence of the Arbitration Agreement or the arbitration clause and the fact that the Respondent has today not appeared to oppose the Petition, though served, I deem it fit and in the interest of justice to allow the Petition in terms of prayer clause (a), which reads as follows:-

"a. That the Hon'ble Chief Justice of this Hon'ble or the Hon'ble Judge designated in this behalf by the Hon'ble Chief Justice may be pleased to appoint a co-arbitrator and refer all claims, disputes and difference between the parties arising out of or relating to the Letter of Intent dated

3rd May 2016 (Exhibit A) read with Purchase Order dated 21st June 2016 (Exhibit B) under Section 15(2) read with Section 11 of the Arbitrator and Conciliation Act, 1996;

7. The captioned Commercial Arbitration Petition is thus disposed of accordingly.

8. I however make it clear that the arbitration proceedings shall continue from the same stage they were. I also make it clear that this order shall not in any manner be construed to mean that this Court has extended the time of the Tribunal if the mandate of the Tribunal has infact expired. These both contentions are kept expressly open.

9. Learned Counsel appearing on behalf of the Petitioner tendered an Affidavit of Service which is taken on record.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr. Shridattprasad V. Abhang, is hereby nominated to act as a Co-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 Co-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 Co-Arbitrator at the following postal and email addresses:

Arbitrator 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 Co-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 Co-Arbitrator on such date and at such place as the learned Co-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 Co-Arbitrator. The information is to include functional email addresses and mobile numbers.
- (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) **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 Co-Arbitrator. Any such application will be decided in such manner and within such time as the learned Co-Arbitrator deems fit.
 - (ii) The learned Co-Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **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.
- (j) **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 Co-Arbitrator find it necessary.

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

(ARIF S. DOCTOR, J.)