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by RAJSHREE
KISHOR MORE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.81 OF 2021

Konark Darshan Constructions Pvt. Ltd.] .. Applicant

vs.

Excellent Realtor Developers & Ors.] .. Respondents

Mr.Hameed Kadiani a/w Arsalan Thaver and Riddhi Wagle i/b Vishal Lshriyan for the Applicant.

Mr.Depan Dixit for Respondent Nos.1, 2 and 4 to 10.

CORAM : BHARATI DANGRE, J

DATE : 2nd January, 2024.

P.C.

1] The service report dated 14.07.2023 confirm that notice issued by this Court is duly served upon Respondent Nos.3(a) to 3(e) as well as Respondent Nos.9 and 10.

The report indicate that the legal representatives of Respondent No.3 are served on 10.07.2023 and 12.07.2023 respectively by hand delivery and speed post as indicated in the service report placed before this Court by the Master(Admn.) Suit Board Department.

Despite service of notice, there is no appearance on behalf of Respondent Nos.3(a) to 3(e), through Respondent Nos.9 and 10 are represented by the learned counsel Mr. Deepan Dixit.

2] Heard the learned counsel for the Applicant and perused the Application which seek appointment of an Arbitrator to resolve the disputes that have arisen between the parties, through the mode of Arbitration as contemplated in Clause 20 of the Work Order.

It is pertinent to note that the Applicant was issued with a Letter of Intent on 14.02.2023 for undertaking the work of construction of residential premises and accordingly the Work Order Agreement of RCC Civil Works for proposed residential structure at Mumbai Central, Mumbai was issued in his favour. The Work Order specifically set out the scope of the work as well as the obligations to be discharged by the Applicant who was appointed as a Contractor to carry out the work.

3] Clause 20 of the Work Order prescribe Arbitration as a mode for settlement of any claims, disputes, differences or matters in question between the parties arising out of or relating to the Agreement or the breach thereof.

The clause also contemplate that attempt shall be made to settle the same, as far as possible amicably, failing which such claims, would be referred to the Panel of three Arbitrators; one to be appointed by each party and third to be designated as the Presiding Arbitrator to be appointed by the Arbitrators so appointed by each party, with finality and conclusiveness being attached to the Award.

In the wake of action on the part of Respondent restraining the Applicant from continuing the work at the site, the Applicant invoked Arbitration by notice dated 28.01.2020 and alleged breach of the Letter of Intent and the Work Order, claiming losses on account of the unpaid amounts from the RA Bills and interest thereon, as well as claiming compensation for the value of the material lying on the site which was sold by the Respondent.

Apart from this, loss caused due to idling of man power and machines during the subsistence of the Agreement, was also claimed. The crane hiring charges as well as the value of the material standing on the site was claimed, as it was categorically stated that breaches of the Agreement has resulted into foreclosure of the Agreement as contemplated by Clause 21 of the Work Order dated 18.10.2016.

The Respondents failed to respond to the notice invoking arbitration and this has constrained the Applicant to approach this court by invoking Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of Arbitrator.

4] The learned counsel for the Applicant, would however categorically make a statement that instead of the Panel of Arbitrators, the dispute shall be referred to a Sole Arbitrator, to be appointed by this Court. The learned counsel representing Respondent Nos.1, 2 and 4 to

10 has no objection in specific and he also join hands with the learned counsel for the applicant, in submitting that Arbitration can be made over to the Sole Arbitrator.

As far as legal heirs of Respondent No.3 are concerned, since there is no representation and pleadings in the application being not traversed by them, I deem it appropriate to consider the request made on behalf of the Applicant to make over the disputes to the Arbitrator, since the existence of the arbitration clause is evident from the 'Work Order' and invocation notice clearly indicate the disputes arose between the parties and that the Applicant has a claim against the Respondents.

5] In the wake of above, since the learned counsel for the applicant has suggested the name of Advocate Mr. A.K. Shende to be appointed as an Arbitrator and he has also tendered his profile and after going through the same, I deem it appropriate to nominate him as a Sole Arbitrator, in the wake of his experience in the field of arbitration and particularly his association with corporate companies and his dealings with Corporation and Commercial Laws.

His appointment shall be subject to the following : -

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Mr.A.K. Shende, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the Arbitrator shall fix up a first date of hearing in the week commencing from 22.01.2024. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(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) Fees : The Arbitrator shall be entitled for the fees as per the 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.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Commercial Arbitration Application stands disposed off in the aforesaid terms.

[BHARATI DANGRE, J]