

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.115 OF 2024

Hitesh Coal Traders .. Applicant.
v/s.
Swaraj India Industries Ltd., .. Respondent.

Mr. Chinmay Mehta i/b. Ms. Rucha Jog, for the Applicant.

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CORAM: FIRDOSH P POONIWALLA,J.
DATE : 10th SEPTEMBER, 2024.

P.C:-

This Application has been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”) seeking appointment of an Arbitrator to arbitrate upon all disputes and differences arising between the parties under certain Invoices issued by the Applicant to the Respondent.

2 The Applicant had supplied coal to the Respondent and, in respect thereof, had issued the following Invoices to the Respondent:-

- (a) Invoice dated 16th March, 2018
- (b) Invoice dated 9th July, 2018
- (c) Invoice dated 11th July, 2018
- (d) Invoice dated 6th August, 2018
- (e) Invoice dated 11th August, 2018 and
- (f) Invoice dated 13th August, 2018.

The Invoices are hereinafter collectively referred to as “the said Invoices”.

3 Clause 6 of each of the Invoices contains the Arbitration Clause and reads as under:-

“ Disputes, if any, subject to provisions of Arbitration and Conciliation Act, 2015 as amended to date.”

4 It is the case of the Applicant that the Respondent has not made full payment in respect of the said Invoices.

5 In these circumstances, the Applicant addressed a letter dated 14th February, 2022 to the Respondent demanding a sum of Rs.5,67,205/-, which was inclusive of interest till 27th August, 2019, and also demanding further interest on the principal sum.

6 Thereafter, by a letter dated 21st February, 2022 addressed to the Respondent, the Applicant invoked Arbitration under the said Invoices, suggested the name of the Arbitrator and called upon the Respondent to consent to the appointment of an Arbitrator.

7 Thereafter, the Respondent addressed a letter dated 7th March, 2022 to the Applicant. By the said letter, the Respondent replied to the Applicant’s letter dated 14th February, 2022. By the said letter, the Respondent denied any liability to make any payment to the Applicant.

8 In these circumstances, the Applicant has filed the present Application.

9 The Applicant has served a copy of the Application on the Respondent and has filed an Affidavit of Service dated 2nd August, 2024, proving service of the Application on the Respondent. The Applicant also submits that, even prior thereto, the Respondent had been served with a copy of the Application. Despite the same, the Respondent has chosen not to appear in the matter.

10 The Invoices which had been issued by the Applicant to the Respondent contain an Arbitration Agreement as mentioned in Clause 6 of the said Invoices. The coal supplied under the said Invoices has been received by the Respondent and the Respondent has accepted the said Invoices.

11 In these circumstances, there exists a valid Arbitration Agreement between the Applicant and the Respondent. The correspondence exchanged between the parties demonstrates that disputes and differences have arisen between the parties in respect of the said Invoices. The Applicant has, by its letter dated 21st February, 2022, invoked the Arbitration Agreement contained in the said Invoices.

12 In these circumstances, an Arbitrator will have to be appointed to arbitrate upon the disputes and differences arising between the parties under the said Invoices.

13 In the aforesaid circumstances, and for the aforesaid reasons, the following orders are passed:-

- (a) Mr. Rubin Vakil, an Advocate practising in this Court, is appointed as the Arbitrator to arbitrate upon all the disputes and differences arising between the parties under the said Invoices. The contact details of Mr. Rubin Vakil, who is appointed as an Arbitrator, are as under:-

Name :- Mr. Rubin Vakil, Advocate
Mobile No. :- 98201 88015
Email :- rubinvakil@gmail.com
Address :- 402, Hamam House,
Ambalal Doshi Marg, Fort,
Mumbai 400 001.

- (b) The Advocate for the Applicant shall intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order;
- (c) In addition, the Office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order.
- (d) The Arbitrator so appointed to make the disclosure as required under the provisions of the Act within a period of one week from the date of intimation of his appointment;

- (e) The Arbitrator shall charge fees as per the Rules framed by this Court in that regard.

14 The Arbitration Application is disposed of in the aforesaid terms. There will be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)