

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

ARBITRATION APPLICATION NO.116 OF 2024

Hitesh Coal Traders .. Applicant.
v/s.
Palahi Ispat Pvt. 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.

PC:-

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 and Debit Notes 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 15th February, 2017
- (b) Invoice dated 22nd February, 2017 and
- (c) Invoice dated 29th March, 2019.

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

3 Clause 7 of the Invoices dated 15th February, 2017 and 22nd February, 2017 contains an Arbitration Agreement, which reads as under:-

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

4 Clause 6 of the Invoice dated 29th March, 2019 also contains an Arbitration Agreement, which reads as under:-

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

5 Further, the Applicant issued the following two Debit Notes to the Respondent for freight and unloading charges:

- (a) Debit Note dated 15th February, 2017 and
- (b) Debit Note dated 22nd February, 2017.

6 These Debit Notes also contain an Arbitration Agreement, which reads as under:-

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

7 It is the case of the Applicant that the Respondent has not made full payments under the said Invoices and Debit Notes.

8 In these circumstances, the Applicant addressed a letter dated 15th December, 2021 to the Respondent, demanding balance payment of Rs.5,60,245/-, inclusive of interest. No reply was received from the Respondent to the said letter.

9 Thereafter, by a letter dated 23rd February, 2022 addressed to the Respondent, the Applicant invoked the Arbitration Agreement contained in the said Invoices and Debit Notes, suggested the name of an Arbitrator and called upon the Respondent to consent to the appointment of the Arbitrator. The Respondent did not reply to the said letter invoking Arbitration.

10 In these circumstances, the present Application was filed on 2nd December, 2023.

11 The learned Counsel appearing for the Applicant brought to my attention a letter dated 2nd January, 2024 which was addressed by the Respondent to the Applicant in respect of this Arbitration Application. A copy of this letter is taken on record and marked “X” for identification.

12 By the said letter, the Respondent stated that only a sum of Rs.50,775/- was outstanding and denied any further liability under the said Invoices and Debit Notes.

13 The fact that the Application has been served on the Respondent is demonstrated by the said letter dated 2nd January, 2024 addressed by the Respondent to the Applicant. Further, the Advocate for the Applicant has filed an Affidavit of Service dated 2nd August, 2024, proving service of the Application on the Respondent. The Advocate for the Applicant submitted that, even earlier, the Application was served on the Respondent. Despite the same, the Respondent has chosen not to appear today.

14 The said Invoices and Debit Notes contain an Arbitration Agreement. The Respondent has accepted the said Invoices and Debit Notes as also the supply of coal and the services of freight and unloading under the same. In these circumstances, the Respondent has accepted the said Invoices and Debit Notes and the Arbitration Agreement contained therein.

15 For these reasons, there exists a valid Arbitration Agreement between the Applicant and the Respondent. The correspondence exchanged between the parties shows that disputes and differences have arisen between the parties in respect of the said Invoices and Debit Notes. The Applicant has, by its letter dated 23rd February, 2022 addressed to the Respondent, invoked Arbitration.

16 In my view, 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 and Debit Notes.

17 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 and Debit Notes. 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.

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

(FIRDOSH P. POONIWALLA,J.)