

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 129 OF 2024

Siemens Ltd. ... Applicant

V/s.

Marshall Machines Ltd. ... Respondent

Mr. Jehaan Mehta with Ms. Smruti Kanade i/b. Negandhi Shah & Himayatullah for the Applicant

CORAM : FIRDOSH P POONTWALLA, J.

DATE : 14 December 2024.

P.C. :

1. This Application has been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of an Arbitrator to arbitrate upon the disputes and differences arising between the parties.

2. The Applicant had issued nine Letters of Offer to the Respondent in respect of supply of machinery. The said Letters of Offer were accepted by the Respondent and nine purchase orders were issued by the Respondent to the Applicant. The nine Letters of Offer and nine Purchase Orders are hereinafter referred to as Letters of Offer and Purchase Orders. The details of the said Letters of Offer and Purchase Orders are as under :-

Sr. No.	Offer Letter	Exhibit/ Page No.	Purchase Order	Exhibit/ Page No.
1.	Offer letter dated 18 th August 2021 bearing reference no. 30/DB/BKY/Marshall/1808202 1/01	Exhibit "A-1" @ Pg. no. 34	P.O. dated 19 th August 2021 bearing reference no. PO/21-22/-975	Exhibit "B-1" @ Pg. no. 116
2.	Offer letter dated 25 th August 2021 bearing reference no. 30/DB/BKY/Marshall/2508202 1/1	Exhibit "A-2" @ Pg. no. 43	P.O. dated 26 th August 2021 bearing reference no. PO/21-22/-1002	Exhibit "B-2" @ Pg. no. 117
3.	Offer letter dated 19 th October 2021 bearing reference no. 30/DB/BKY/Marshall/1910202 1/01	Exhibit "A-3" @ Pg. no. 53	P.O. dated 26 th August 2021 bearing reference no. PO/21-22/-1194	Exhibit "B-3" @ Pg. no. 118
4.	Offer letter dated 15 th December 2021 bearing reference no. 30/DB/BKY/Marshall/1512202 1/01	Exhibit "A-4" @ Pg. no. 62	P.O. dated 15 th December 2021 bearing reference no. PO/21-22/-1409	Exhibit "B-4" @ Pg. no. 119
5.	Offer letter dated 20 th December 2021 bearing reference no. 30/DB/BKY/Marshall/2012202 1/01	Exhibit "A-5" @ Pg. no. 71	P.O. dated 20 th December 2021 bearing reference no. PO/21-22/-1434	Exhibit "B-5" @ Pg. no. 120
6.	Offer letter dated 21 st February 2022 bearing reference no. 30/DB/BKY/Marshall/2102202 2/01	Exhibit "A-6" @ Pg. no. 80	P.O. dated 22 nd February 2022 bearing reference no. PO/21-22/-1857	Exhibit "B-7" @ Pg. no. 122
7.	Offer letter dated 9 th February 2022 bearing reference no. 30/DB/BKY/Marshall/0902202 2/01	Exhibit "A-7" @ Pg. no. 89	P.O. dated 10 th February 2022 bearing reference no. PO/21-22/-1763	Exhibit "B-6" @ Pg. no. 121
8.	Offer letter dated 19 th April 2022 bearing reference no. 30/DB/BKY/Marshall/1904202 2/01	Exhibit "A-8" @ Pg. no. 98	P.O. dated 19 th April 2022 bearing reference no. PO/21-22/-50	Exhibit "B-9" @ Pg. no. 124
9.	Offer letter dated 2 nd March 2022 bearing reference no. 30/DB/BKY/Marshall/0203202 2/01	Exhibit "A-9" @ Pg. no. 107	P.O. dated 2 nd March 2022 bearing reference no. PO/21-22/-1895	Exhibit "B-8" @ Pg. no. 123

3. Clause 19 of each of the said Letters of Offer contains an Arbitration Clause which reads as under :-

“19. Dispute Settlement/Applicable Law

19.1. Negotiations

If a dispute arises in connection with this Contract, the responsible representatives of the Parties to such Contract shall attempt, in fair dealing and good faith, to settle such dispute. Upon request of a Party, a senior management representative of each Party shall participate in the negotiations. Each Party shall be entitled to terminate these negotiations by written notification to the other Party at any time within a period of 30 days from the date such Dispute is first notified by either Party to the other.

19.2 Arbitration

All disputes arising in connection with this Contract which are not resolved pursuant to the above clause, including any question regarding the termination or any subsequent amendment of this Agreement, shall be finally settled in accordance with the Arbitration and Conciliation Act, 1996 and any modification thereto and re-enactments thereof from time to time, by one arbitrator. The Parties shall mutually appoint the arbitrator. In case of a disagreement between the Parties in this regard, Parties shall approach the appropriate court for an appointment of an arbitrator.

19.3 The seat of the arbitration shall be Mumbai. The language to be used in the arbitration proceedings shall be English. Each Party submits to the jurisdiction of courts of Mumbai for the purposes only of compelling compliance with the above arbitration provisions and for enforcement of any arbitration award made in accordance with the above provisions. This Contract shall be governed by and construed in accordance with the law of India.”

4. Clause 19.1 of the Letters of Offer provided for the parties to enter into negotiations before proceeding to arbitration. Pursuant thereto, by an e-mail dated 20 September 2022 addressed to the Respondent, the

Applicant offered to initiate amicable discussions. However, no response was received from the Respondent to the said letter.

5. In these circumstances, as disputes and differences had arisen between the parties, by their letters dated 27 July 2023 and 7 March 2024, the Applicants invoked Arbitration.

6. There was no response from the Respondent to either of the said two letters.

7. The Respondent, despite service, has remained absent.

8. I have heard the learned Counsel for the Applicant.

9. In my view, there is a valid and binding Arbitration Agreement between the parties as contained in Clause 19 of the said Letters of Offer.

10. The correspondence filed by the Petitioner shows that disputes and differences have arisen between the parties. The Applicant has also offered negotiations as provided by Clause 19.1 of the Letters of Offer but the same has not been responded to by the Respondent. By its letters dated 27 July 2023 and 7 March 2024, the Applicant has invoked Arbitration. There has been no response to the same by the Respondent.

11. In these circumstances, in my view, an Arbitrator will have to be appointed to arbitrate upon the disputes and differences arising between the parties under the said Letters of Offer and Purchase Orders.

12. In these circumstances, the following order is passed:-

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

Mr. Rubin Vakil

Mobile No. 9820188015

Email Id : rubinrvakil@gmail.com

(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.

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

(FIRDOSH P. POONIWALLA, J.)