

Bombay High Court

M/S Krishna Industries A ... vs Steel Authority Of India Ltd And ... on 22 July, 2015

Bench: R.D. Dhanuka

kvm

1/5

100-ARBAP101.15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 101 OF 2015

M/s.Krishna Industries,)
a partnership firm incorporated under)
the Partnership Act, 1932 having its office)
at 9-25A, Chandawadi, 138 CP Tank Road)

Bombay 400 004) Applicant

VERSUS

1. Steel Authority of India Ltd.,)

a Government Company incorporated)
under the Companies Act, 1956 having)

its registered office at Ispat Bhavan,)
Lodhi Road, New Delhi 110 003 and also)
having inter alia one of its branch as well)

as office of its central marketing organization)
at Mumbai 8th, 9th floor, The Metropolitan,)
Bandra Kurla Complex, Bandra (E),)
Mumbai - 400 051)

2. Chief Executive of Central Marketing)

Organisation, Steel Authority of India Ltd.,)
Ispat Bhavan, Lodi Road,)
New Delhi - 110 003) Respondents

Mr.Kirit Munshi, a/w.Mr.Prashant Amre, i/b. Kartikeya & Associates for the Applicant.

Mr.S.C.Naidu, a/w. Mr.T.R.Yadav, Mr.Rahul Tanwani, i/b.C.R.Naidu & Co. for Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATED : 22nd JULY, 2015

JUDGMENT

By this application filed under section 11(6) of the Arbitration and Conciliation Act, 1996 the applicant seeks appointment of a suitable person as the kvm 100-ARBAP101.15 sole arbitrator to adjudicate the dispute between the parties.

2. Learned counsel appearing for the applicant invited my attention to clause 28 of the agreement entered into between the parties on 15 th December, 2004. My attention is also invited to the agreement dated 7 th November, 2012 entered into between the parties and more particularly clause (2) thereof. He submits that the tripartite agreement dated 15th December, 2004 including the arbitration agreement stood incorporated in the said agreement dated 7th November, 2012.

3. Dispute arose between the parties. The applicant invoked the arbitration agreement and issued a notice to the Chief Executive of Central Marketing Organization of the respondent on 15th September, 2014 and requested him to nominate such person as he deems fit and proper as a sole arbitrator. There is no response to the said notice. On 4th April, 2015 the applicant lodged this application under section 11(6) of the Arbitration and Conciliation Act for appointment of an arbitrator.

4. Mr.Naidu, learned counsel appearing for the respondent submits that on 25 th April, 2015, the respondent has already notified three names to the applicant for the purpose of appointing one of them as the sole arbitrator in terms of clause 28 of the terms and conditions of the contract dated 15th December, 2004. He submits that under clause 28.4 of the said agreement there is no time prescribed for notifying to the conversion agent three names of the arbitrators for the purpose of appointing one of them as the sole arbitrator by consent of parties. He led emphasis on the second

part of clause 22.8 and it is submitted that since 15 days time is prescribed for appointment of one of the arbitrator out of the three names, if sole arbitrator is not appointed, it is understood that the Chief Executive of kvm 100-ARBAP101.15 Central Marketing Organization could suggest three names within a reasonable period of time. He submits that the respondent being a public undertaking, even procedure for suggesting names of three arbitrators is a time consuming procedure and at the earliest point of time the respondent has already notified three names for the purpose of appointment of one of them as the sole arbitrator. Learned counsel placed reliance on the judgment of Supreme Court in case of Datar Switchgears Ltd. vs. Tata Finance Ltd. and another (2000) 8 SCC 151 and in particular paragraph 19 and it is submitted that application under section 11(6) of the Arbitration Act is maintainable only if there is a failure on the part of the other party to appoint an arbitrator as per agreed procedure. He submits that there is no failure on the part of the respondent to notify names of three arbitrators, the respondent has not lost its right to notify three names in terms of clause 28 even after filing of this application under section 11(6) of the Arbitration Act.

5. It is not in dispute that arbitration agreement exists between the parties. A perusal of the clause 28.4 indicates that the Chief Executive of Central Marketing Organization of the respondent has to notify to the conversion agent three names out of which one can be appointed as the sole arbitrator by consent of both the parties. If the applicant does not nominate any one name out of those three names, the Chief Executive has been empowered to appoint one of the persons out of the three notified persons as the sole arbitrator. It is not in dispute that the applicant had already issued a notice to the respondent on 15 th September 2014 requesting the appointing authority to appoint an arbitrator. It is also not in dispute that the names now notified by the respondents are after filing of the arbitration application under section 11(6) of the Arbitration Act by the applicant.

6. It is clear that for more than seven months, the respondent did not notify the kvm 100-ARBAP101.15 names of the three arbitrators. In my view there is no substance in the submission of the learned counsel for the respondent that respondent being a public body, the delay in communication of names in terms of clause 28.4 cannot be taken into consideration. In my view the period of seven months in merely notifying three names by the appointing authority who is designated under clause 28.4 by the Chief Executive of the Central Marketing Organization is not a reasonable period of time for selection of one of them as the sole arbitrator. In my view the Chief Executive of Central Marketing Organization who was appointing authority is not required to consult higher authority for the purpose of notifying the names of three persons to act as an arbitrator.

7. Under clause 11(6) of the Arbitration and Conciliation Act, 1996 if a party fails to nominate arbitrator in accordance with the agreed procedure, application can be made by other party for appointment of arbitrator before the Hon'ble Chief Justice.

8. Insofar as judgment of Supreme Court in case of Datar Switchgears Ltd. (supra) relied upon by Mr.Naidu learned counsel for the respondent is concerned, it is held by the Supreme Court in the said judgment that if the appointment is not made within 30 days from the date of receipt of notice of demand for appointment of arbitrator and in any case before the opponent filing application

under section 11(6) before the Hon'ble Chief Justice, the appointing authority loses its right to appoint an arbitrator. In my view since the respondent has not notified the three names in terms of clause 28 within a reasonable period of time from the date of receipt of notice and in any event till the arbitration application is filed by the applicant, the respondent has lost its right to nominate any arbitrator. The Chief Justice or his designate is accordingly empowered to appoint independent kvm 100-ARBAP101.15 arbitrator under the provisions of section 11(6) of the Arbitration and Conciliation Act, 1996. I, therefore, pass the following order :-

(a) Mr.Naushad Engineer, advocate is appointed as the sole arbitrator.

(b) Arbitration application is disposed of in the aforesaid terms.

(c) No order as to costs.

[R.D. DHANUKA, J.]