

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN, UNDER ARBITRATION ACT. No 51 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

THE SANDESH LTD.

Versus

MYSORE PAPER MILLS LTD. & Ors.

Appearance:

1. PETN, UNDER ARBITRATION ACT. No. 51 of 2002
MR KUNJAL D PANDYA for Petitioner
MS KANAN LAKHIA for MR MIHIR A LAKHIA for
Respondent No. 1
NOTICE SERVED for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 27/06/2003

ORAL JUDGEMENT

By filing instant application under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has prayed to appoint an arbitrator to adjudicate the disputes which have arisen between the petitioner and the respondent No.1.

2. The petitioner and the respondent No.1 entered into an agreement dated August 28, 1993 for lease of the boiler by the petitioner to the respondent No.1 on the terms and conditions stated therein. After lease, disputes and differences arose between the petitioner and the respondent No.1, and it is the case of the petitioner that as breach of contract was committed by the respondent No.1, it is entitled to receive a sum of Rs.1,87,88,484/-. Therefore, the petitioner issued notice dated October 17, 1997 through its lawyer calling upon the respondent No.1 to make payment of Rs. 1,87,88,484/-. The respondent No.1 gave reply dated February 11, 1998 and made reference to arbitration clause contained in the lease agreement. Therefore, the petitioner addressed a notice dated July 17, 1998 intimating the respondent No.1 that the respondent No.2 was appointed as its arbitrator, and requested the respondent No.1 to appoint its arbitrator. In response to the said notice, the respondent No.1 addressed a letter dated August 11, 1998 proposing to appoint Shri G.Sudhindra, Chartered Accountant to be its arbitrator. The record shows that Shri G.Sudhindra was not inclined to act as arbitrator and this was intimated to the petitioner vide letter dated September 29, 1998, which was addressed by the respondent No.1. Therefore, by a subsequent letter dated November 25, 1998, the petitioner reminded the respondent No.1 to appoint an arbitrator without undue delay. However, the respondent No.1 did not make any appointment. Under the circumstances, the petitioner instituted Summary Suit No.4220 of 1999 in the City Civil Court, Ahmedabad against the respondent No.1 for recovery of sum due to it. In the said suit, the respondent No.1 made an application under Section 8 of the Arbitration and Conciliation Act, 1996, and requested the Court to refer the disputes between the parties to arbitration. The petitioner and the respondent No.1 finally agreed to refer the disputes and differences to arbitration. The petitioner appointed the respondent No.2 as its arbitrator, whereas the respondent No.1 appointed the respondent No.3 as its arbitrator. A joint purshis was filed on September 28, 2000 before the trial Court, on the basis of which, City Civil Court passed an order referring the disputes to arbitration. The petitioner has averred that arbitral proceedings

commenced on and from September 28, 2000. According to the petitioner, respondent Nos.2 & 3 were required to appoint a presiding arbitrator in order to complete and properly constitute Arbitral Tribunal and, therefore, the petitioner addressed a notice dated October 15, 2002 to the respondent Nos.2 & 3 calling upon them to appoint a presiding arbitrator. A copy of the said notice is produced by the petitioner at Annexure-A to the application. The petitioner has averred that the respondent Nos.2 & 3 are unable to agree to appoint a presiding arbitrator, and relied upon the letter dated November 14, 2002 addressed by the respondent No.1 as well as letter dated November 30, 2002 addressed by the respondent No.2 in support of the said averments. What is averred by the petitioner is that the respondent Nos.2 & 3 could not agree to the appointment of the presiding arbitrator in view of the letter dated December 21, 2002 addressed by the respondent No.2 to the respondent No.3. Under the circumstances, the petitioner has filed instant petition and claimed relief to which reference is made earlier.

3. On service of notice, the respondent No.1 has filed reply controverting the averments made in the application, and has sought permission to refer to and rely upon the contentions which were raised before City Civil Court, Ahmedabad in Summary Civil Suit No.4220 of 1999. In paragraph 6 of the reply, it is stated that the parties want to appoint presiding arbitrator to constitute Arbitral Tribunal and that the names suggested by the respondent No.1 may be considered by the nominee of the Chief Justice while making appointment of presiding arbitrator.

4. Heard the learned advocates of the parties. The fact that the disputes between the parties were referred for adjudication to the respondent Nos.2 & 3, is not in dispute. It is not in dispute that it was necessary for the respondent Nos.2 & 3 to appoint a presiding arbitrator in order to constitute Arbitral Tribunal properly. It is also not in dispute that the respondent Nos.2 & 3 have failed to appoint a presiding arbitrator. Having regard to the facts of the case, I am of the opinion that interest of justice would be served if Mr. Justice R.C. Mankad (Retired) is appointed as presiding arbitrator of the Arbitral Tribunal which consists of respondent Nos.2 & 3.

For the foregoing reasons, the application succeeds. Hon'ble Mr. Justice R.C. Mankad (Retired) is appointed as Presiding Arbitrator of Arbitral Tribunal

consisting of respondent Nos.2 & 3. The application accordingly stands disposed of. There shall be no orders as to costs.

(J.M.Panchal,J.)

(patel)