

RAJASTHAN HIGH COURT

D. S. Marbles Pvt. Ltd.

Vs.

M/s. Ajay Marbles and Minerals

Civil Misc. Appln. No. 25 of 2007

(Prakash Tatia, J.)

19.12.2008

ORDER

Prakash Tatia, J.

1. M/s. D. S. Marbles Pvt. Ltd., a Company registered under the Companies Act, 1956, having its registered office at National Highway No. 8 Pawamagri, Sukher, District Udaipur, submitted this application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') for appointment of an Arbitrator.
2. Notices were issued to respondents but no reply has been filed by them.
3. As per the facts mentioned in the application, the applicant entered into an agency contract with the respondents through contract dated 8-9-2000 for supply of superlite marble as per the rates mentioned in para 4 of the contract agreement which was for a period of five years. As per the terms of the contract, the applicant submitted a sum of Rs. 5,00,000/- by way of Demand Draft Dated 15-9-2005 as security amount and according to the applicant, that amount was refundable to the applicant after expiry of the period of the contract. Pursuant to the said agreement, the respondents supplied the marble blocks on two occasions, i.e. No. B-1 and B-2, dated 30-8-2000 in the amount of Rs. 13,996/- and Rs. 13449/- respectively and thereafter, the respondents did not make any supply of marble. According to the applicant, the respondents failed to carry out their contractual obligation according to the terms and conditions of the contract because of which the applicant suffered huge loss as the applicant had made commitments to the prospective buyers and that could not be fulfilled and the applicant had to get marble from other sources at a higher rates. The applicant further submitted that the non-applicant respondents have not refunded the deposit amount which was deposited by the applicant with the respondents by way of security deposit.

4. As per clause 17 of the contract, the applicant is entitled to get adjudication of dispute through arbitral proceedings and for that the applicant gave due notice to the respondents, copy of which has been placed on record as Annex. 1 and the applicant has also placed on record the copy of the postal receipts and acknowledgment receipts by which notices were sent and were received by the respondents. According to the applicant, the respondents failed to appoint arbitrator even after expiry of notice period after receipt of the notice. Therefore, this Court may appoint the Arbitrator by exercising power under Section 11 of the Act of 1996.

5. The applicant placed on record the copy of the agreement containing clause 17 which is a clause for referring the matter to the Arbitrator.

6. After service, the respondents have put in appearance through their counsel but none of the respondent has submitted reply to the application filed under Section 11 of the Act of 1996 by the applicant.

7. I am satisfied that the applicant is entitled to get the dispute decided through Arbitrator as the respondents failed to appoint Arbitrator after due notice Annex. 1 to the respondents and the applicant's claim is that it suffered losses because of the non-fulfillment of the commitments and non-refund of the security amount, however, it is made clear that the respondents shall be free to raise all their objections before the arbitrator.

8. The application under Section 11 of the Act of 1996 is allowed. Hon'ble Miss Justice Kanta Bhatnagar is appointed Arbitrator to decide the dispute between the applicant and the respondents within a period of three months from the date of receipt of the order. A copy of this order be sent to Hon'ble Miss Kanta *Bhatnagar*. The fees for the learned Arbitrator will be Rs. 50,000/-, which shall be payable equally by the applicant and the respondents and the applicant and the respondents shall pay Rs. 15,000/- as office expenses to the learned Arbitrator.

Petition allowed.