

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 42 OF 2016

M/s. Sas Infra Projects (India) Private Limited ... Applicant

Versus

New Consolidated Construction Company Limited ... Respondent

Mr. Abhijeet A. Desai a/w. Mr. Shantanu Khedkor and Mr. M.V. Maindad for the Applicant.

Mr. Sheelang Shah i/b. Equip Legal for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 12TH FEBRUARY, 2016

P.C.:

1. The Applicant – M/s. Sas Infra Projects (India) Private Limited has filed the above Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for the following relief :

“(a) That this Hon'ble Court be pleased to appoint an Arbitrator such person as this Hon'ble Court deems fit and proper as per the conditions stipulated in the Work Order dated 12th January, 2011 bearing reference number NCCCL/PGED/2010-11/001 and further be pleased to appoint Col. Bhanksar Tatwa wadi as the arbitrator to resolve / adjudicate the dispute between the Applicant and the Respondent on the other hand within such time period as this Hon'ble Court may deem fit and proper.”

2. Clause M of the terms and conditions annexed to the Work Order number NCCCL/PGED/2010-11/001, on which the Applicant seeks to rely upon, is reproduced hereunder :

“ M : Arbitration

All matters pertaining to agreement, contract or other document entered into or executed after this letter the Courts in the city of Mumbai shall alone have jurisdiction to try to resolve dispute / difference among both the parties.”

3. The Applicant by their letter addressed to the Respondent dated 20th September, 2013 sought to invoke the above purported arbitration clause. The Respondent by its letter dated 5th October, 2013 inter alia recorded as under :

“It is further stated that as per the said Work Order there is no Arbitration Clause and therefore, we are not liable to appoint an Arbitrator nor we are bound by the Arbitrator appointed by you.”

4. In my view, the stand taken by the Respondent is correct. The aforestated Clause can by no stretch of imagination be termed as Arbitration Agreement. Only by giving the caption “Arbitration” to a clause, upon further reading of which it becomes clear that the same is in the nature of only a jurisdiction clause, the same cannot be termed as an Arbitration Agreement. Since there is no Arbitration Agreement between the parties as alleged, the above Arbitration Application is disposed of as dismissed.

(S.J.KATHAWALLA, J.)