sg **IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.962 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.557 OF 2018

Slum Rehabilitation Authority ...Petitioner
vs
M.M. Project Consultants Pvt. Ltd. ...Respondent

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Mr. D. Khambata, Senior Advocate, a/w. Mr. M. Doctor, Senior Advocate, Mr. J. Jejeebhoy, and Ms. Anita Irani, i/b. Kanga & Co., for the Petitioner.

Mr. Haresh Jagtiani, Senior Advocate, a/w. Ms. Apurva Manwani and Ms. Bhavi Vora, i/b. Siddhesh Bhole, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 29 OCTOBER, 2018

P.C. :

. Heard learned Counsel for the parties. The arbitration petition challenges an award passed by an arbitral tribunal. There are many aspects of the impugned arbitration award, which require fuller and proper hearing. Hence Admit.

2. The disputes between the parties concern an agreement, under which the Respondent was appointed as a project management consultant for Dharavi Redevelopment Project to be implemented by the Petitioner Authority in accordance with the sanction granted to it by the Government of Maharashtra ('PMC Agreement'). The project had a sanctioned cost of about Rs.5,600 crores. The Respondent, as an

advisor/consultant for the project, was to receive fees at the estimate of 1%, as also a percentage of total premium received by the Petitioner Authority from the developers for implementing the project. The fixed fee was to be restricted to 1% of Rs.5,600 crores and was to be payable as per the schedule of payments annexed to the PMC Agreement. The schedule required 25% of the fees to be paid for pre-tender activities and 75% towards post-tender activities. It is not in dispute that 25% of the fees corresponding to pre-tender activities have been duly paid by the Petitioner Authority to the Respondent. The dispute firstly concerns the balance of 75% fees payable to the Respondent. According to the Petitioner, there was no tendering in the project and that the project, according to the Petitioner, came to an end before the tender could be floated and yet, the learned arbitrator has awarded the entire balance fees to the Respondent. The second aspect of the dispute concerns the variable component of fees to be paid in terms of percentage of total premium. The PMC Agreement required payment of 0.5% of the total premium received by the Petitioner Authority for implementing the Dharavi Redevelopment Project. It is the Petitioner's case that though the project conceived under the PMC Agreement was given up by it, a fresh tender for inviting bids from prospective developers was issued on a global basis and no bids were received in response thereto. It is submitted that the Authority, in the premises, did not receive any amount towards premium for the redevelopment project and, accordingly, there is no basis for claiming variable fees relating to total premium received by the Petitioner Authority. It is the grievance of the Petitioner that 0.5% fees, based on an estimate submitted by the Respondent, has been awarded by the arbitral tribunal. Even if one were to assume that the arbitrator's conclusion concerning the breach on the part of the Petitioner Authority of the PMC Agreement were to be correct, there are serious debatable issues concerning the measure of damages ordered by the arbitral tribunal. Prima facie, the Petitioner Authority has a good case to challenge the impugned award insofar as this measure of damages is concerned.

3. In the premises, I am inclined to consider an unconditional stay of the impugned award. The Petitioner is an authority, which is constituted by the State Government. The State Government is responsible for its finances as well as its administration. In case the impugned award is upheld in the arbitration petition, the amount will have to be paid by the Petitioner Authority with interest. There is nothing to suggest that the Petitioner Authority is not good for the money that it would owe to the Respondent under any award that may be passed against it.

4. Accordingly, pending the hearing and final disposal of the petition, the enforcement of the impugned award is unconditionally stayed. Notice of motion is disposed of.

5. At the request of the Respondent, the hearing of the arbitration petition is expedited. The parties would be at liberty to mention the petition in the first week of January 2019 for fixing a date of hearing.

(S.C. GUPTE, J.)