

Respondent for the repairs, waterproofing and restoration of the Society building. The last recital of the Agreement dated 14th March, 2011 provides that “The tender document, revised tender document of the Contractor, the letter of acceptance of tender with their enclosures, which are hereto annexed form part of this “Agreement” though separately set out herein and are included in the expression Agreement herein used.”

3. Clause 22 of the said Tender document (Exhibit-C-2 to the Application), pertains to arbitration and is reproduced hereunder :

“22. ARBITRATION

a) If any time any question of dispute or difference shall arise between the owner and the contractor either party shall as soon as possible give to the other, notice in writing of the existence of such question of dispute or difference specifying its nature and the point at issue and the same shall be referred to the consultant to act as arbitrator of two parties to be agreed upon by each party or failing such agreement to an arbitrator appointed on the application of either or the parties hereto, in accordance with and subject to the provision of the Indian Arbitration Act or any statutory modifications or re-enactment thereof.

b) Performance of the contract continues during Arbitration proceedings unless the consultant shall order suspension thereof or any part thereof.”

4. According to the Applicant, as per the terms and conditions, the Applicant carried out the necessary jobs and raised their final bill on the Respondent amounting to Rs.6,39,340.72/- and requested the Respondent to release the payment at the earliest. Despite repeated requests and reminders, the Respondent failed and

neglected to pay an amount of Rs.6,39,340.72/-. The Applicant through it's Advocate letters dated 28th June, 2016 was therefore compelled to invoke Clause 22 of the Tender document (Exhibit-C-2 to the Application). The Respondent despite receipt of letter dated 28th June, 2016, failed and neglected to respond to the same thereby compelling the Applicant to file the above Arbitration Application under Section 11 of the Act for appointment of a sole Arbitrator to decide the disputes between the parties arising out the Agreement dated 14th March, 2011 and Tender document (Exhibits-C-1 and C-2 to the Application). The Applicant thereafter served a copy of the Arbitration Application on the Respondent by hand delivery, as can be seen from the Affidavit of Service dated 20th March, 2018. However, none appear for the Respondent. The Respondent has also not agreed to the name of the Arbitrator, suggested by the Applicant and has also not suggested the name of any other person to act as Arbitrator in the matter.

6. From the aforestated facts, it is clear that there exists a valid agreement between the parties to have their disputes arising out of the Articles of Agreement dated 14th March, 2011 and Tender document (Exhibits-C-1 and C-2 to the Application) adjudicated by appointment of an Arbitral Tribunal. The Respondent has failed to appoint an Arbitrator to resolve their disputes, thereby compelling the Applicant to file the present Application. Hence, the following order :

i. Mr. Aditya Pimple, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of Articles of Agreement dated 14th

March, 2011 and the Tender document (Exhibits-C-1 and C-2 to the Application).

- ii. The disclosure of Mr. Aditya Pimple, Advocate under Section 11 (8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 is taken on record.
- iii. The parties and / or their Advocate shall appear before the learned Arbitrator in his chambers on 10th September, 2018 at 5.00 p.m. and obtain necessary directions.
- iv. All contentions of the parties are kept open.
- v. The cost of arbitration shall initially be borne by the parties equally.
- vi. The venue of the arbitration shall be at Mumbai.
- vii. The Advocate for the Applicant shall forthwith forward a copy of this order to Mr. Aditya Pimple, Advocate as well as to the Respondent by hand delivery/Speed Post A.D..
- viii. All concerned to act on an ordinary copy of this order, duly authenticated by the Associate / Personal Assistant of this Court.
- ix. The above Arbitration Application is accordingly disposed off.

(S.J.KATHAWALLA, J.)