

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.85 OF 2019

M/s.Solution Advertising	..Petitioner
Vs.	
Thane Municipal Corporation & Ors.	..Respondents

Mr.Avinash Fatangare i/b. Ms.Vishakha Pandit for Petitioner.
 Mr.Samrat Thakker for Respondent Nos.1 to 3.
 Mr.Aditya Andhorikar i/b. Jaideep Thakker for Respondent No.4.

CORAM : G.S. KULKARNI, J.

DATE : 11th SEPTEMBER, 2019

P.C.:

Heard learned Counsel for the petitioner, learned Counsel for respondent Nos.1 to 3 and learned Counsel for respondent No.4.

2. This Court has already passed an order on a Section 9 petition filed by the petitioner, whereby the Court has observed that respondent Nos.1, 2 and 3 are not parties to the arbitration agreement. Accordingly, they cannot be parties to the present Section 11 petition.

3. The agreement in question is dated 10 June 2013 (page 56) entered between respondent No.4 and the petitioner. Clause 67 of the said agreement is stated to be arbitration agreement between the parties which is required to be read in two parts. The first part provides that the parties will approach the Municipal Commissioner for amicable resolution of the disputes. Learned Counsel for respondent No.4 agrees that this first part of the said clause provides that for an amicable attempt to resolve the disputes by the Municipal Commissioner and that

such an exercise before the Municipal Commissioner is not an arbitration. Thus the petitioner's concern that the Municipal Commissioner may undertake any arbitration is not proper. Learned Counsel for respondent No.4 also states that if such a resolution before the Municipal Commissioner fails, then the arbitral tribunal is required to be appointed.

4. Admittedly, the petitioner is yet to approach the Municipal Commissioner with its grievances/disputes under the contract and the Municipal Commissioner is yet to apply his mind to an amicable resolution of the disputes so as to make an endeavour to resolve the same.

5. In these circumstances, learned Counsel for the petitioner submits that the present petition which has all the correspondence be accepted as a representation to the Municipal Commissioner so that the first part of clause 67 of the agreement, being the pre-arbitral exercise is complied. Learned Counsel for respondent No.4 is also agreeable to this course of action.

6. Learned Counsel for Thane Municipal Corporation and the Commissioner of Thane Municipal Corporation (respondent Nos.1 and 2) also state that this petition which is already served on them would be considered as a representation of the petitioner to the Municipal Commissioner and an attempt would be made to resolve the disputes. Let this exercise would be completed within three weeks from today.

7. At the first instance, the petitioner shall approach the office of the Municipal Commissioner, Thane Municipal Corporation on 18 September 2019 at 11.00 a.m. The Municipal Commissioner thereafter

shall schedule appropriate meetings and make an endeavour to resolve the disputes.

8. In case the disputes are not resolved, the petitioner is at liberty to file appropriate proceedings including under Section 11 of the Act. Accordingly, keeping all contentions of the parties open, the petition is disposed of in the above terms. No costs.

9. Parties to act on an authenticated copy of this order.

10. Learned Counsel for respondent Nos.1 to 3 and learned Counsel for respondent No.4 have taken note of this order and shall immediately address a communication of this order to their respective clients.

[G.S. KULKARNI, J.]