

Vidya Amin

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

ARBITRATION PETITION NO. 51 OF 2019

L.I.G.-1 Konkan Vasahat Co-op.
Housing Society Ltd.

... Petitioner

V/s.

Patel Group & Co.

... Respondent

Mr. Sandeep V. Bane a/w. Vidita Sawant, Akshata Satam and Ashok Singh for the Petitioner.

Mr. Pritesh Burad, Shruti Khandelwal, Yashashree Dharap i/b. M/s. Pritesh Burad & Associates for the Respondent.

CORAM : G.S.KULKARNI, J.

DATE : 3rd July, 2019

P.C.:

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. This is a Petition filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) whereby the petitioner prays for appointment of an arbitral tribunal to adjudicate the disputes which are stated to have arisen between the parties under the development agreement dated 30th December, 2010.

3. Learned counsel for the petitioner has drawn my attention to the arbitration agreement which is contained in Clause 39 of the said agreement, which reads thus:

“39. All the disputes and differences between the parties hereto

shall be referred to sole arbitrator. Such arbitration shall be governed by the Arbitration and Conciliation Act, 1996. The venue of the Arbitration shall be Mumbai. The arbitrator shall be appointed by both the parties hereto.”

4. The petitioner had number of grievances against the respondent for having breached its obligations under the agreement. The petitioner had approached this Court in a Section 9 petition seeking interim relief pending the arbitral proceeding which were disposed of. It is informed that an appeal against the Section 9 order is also rejected.

5. The petitioner by its advocate's notice dated 7th April, 2018 addressed to the respondent invoked the arbitration agreement and as specifically recorded in paragraph 13 also suggesting name of the arbitrator, who can be appointed to resolve the disputes between the parties. By a letter dated 5th June, 2018 of the respondent's advocate addressed to the petitioner, it was recorded that the respondent however intended to refer the disputes to another arbitrator and not to the arbitrators proposed to be appointed by the petitioner. As the parties could not reach an agreement in the appointment of arbitral tribunal, the present petition is filed.

6. Having heard the learned counsel for the parties and having perused the record, as noted above, it is not in dispute that there exists an arbitration agreement between the parties. There is also a proper invocation of the arbitration agreement by the petitioner's advocate's letter dated 7th April, 2018, which is also responded by the advocate for the respondent by his letter dated 5th June, 2018, agreeing that the

dispute be referred to arbitrator however by naming another proposed arbitrator.

7. In the above circumstances, it will be appropriate for this Court to exercise jurisdiction of Section 11(6) of the Act for appointment of arbitral tribunal. Hence, following order:

ORDER

- (i) Mr. R.M. Savant, Former judge of this Court is appointed as an arbitrator to adjudicate the disputes between the parties which have arisen under the development agreement dated 30th December, 2010.
- (ii) The learned prospective sole arbitrator, ten days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial-I) of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;
- (iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties including on merits are expressly kept open;

- (vi) The petition is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Shri Justice R.M. Sawant (Retd.)
Flat No. 103, Atur Terraces Co-op. Housing Society Ltd.,
Capt. Prakash Pethe Marg, 19-A, Cuffe Parade,
Mumbai – 400 005.
(M) : 9619555152
Email : rajendramsavant@gmail.com

(G.S.KULKARNI, J.)