

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION (L.) NO.342 OF 2019

Impact Design Group

..Applicant

Vs.

Mumbai Metropolitan Region Development Authority

..Respondent

Mr.Nilesh Tribhuvann, Mr.Gaurav Dua, Darshna Naval for Applicant.

CORAM : G.S. KULKARNI, J.

DATE : 27th AUGUST, 2019

P.C.:

Heard learned Counsel for the applicant.

2. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes and differences between the parties stated to be arising under the Architectural Consultancy Agreement dated 17 March 2010 and Project Management Consultancy Agreement dated 19 November 2010 for redevelopment of residential buildings entered with the respondent- Mumbai Metropolitan Region Development Authority.

3. The case of the petitioner is that there is arbitration agreement between the parties as per clause 6.2 of the contract which reads as under:-

“6.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to dispute Subject to arbitration in accordance with Clause GC 8 hereof.”

(emphasis supplied)

4. The petitioner has also referred to clauses 7.1 and 7.2 which read as under:-

“7. Settlement of Disputes

7.1 Amicable Settlement

The Parties shall use their best efforts to settle amicable all disputes arising out of or in connection with this Contract or the interpretation thereof.

7.2 Dispute Settlement

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SC.”

5. On a perusal of the clause 6.2 which although states that “*no failure to agree on any action pursuant to this Clause shall give rise to dispute subject to arbitration in accordance with Clause GC 8 hereof.*”, however, would

not assist the applicant in as much as Clause GC 8 does not provide for any arbitration between the parties or any procedure as agreed between the parties in that regard.

6. In my opinion what is relevant is clause (7) as noted above which provides for settlement of disputes and more particularly clause 7.2 under which the parties have categorically agreed that any dispute between the parties as to matters arising pursuant to the contract which cannot be settled within thirty days after receipt by one party of the other party's request for such amicable settlement may be submitted by either party for settlement in accordance with the provisions specified in the S.C. Learned Counsel for the petitioner has pointed out that the words "S.C." would refer to "Special Conditions" and in the special conditions, there is no arbitration agreement or any arbitration procedure agreed between the parties. He submits that the contract has not been properly drafted therefore, mere use of words arbitration in the contract be accepted.

7. I am afraid that the submission as made by the learned Counsel for the petitioner, cannot be accepted, considering the agreement between the parties as contained in clause 7 read with clause 7.2. In my opinion, there is no arbitration agreement between the parties. The

applicant would be required to take recourse to appropriate remedies.

8. Learned Counsel for the applicant has placed reliance on the orders passed by the Supreme Court in *Visa International Limited Vs. Continental Resources (USA) Limited*¹. The observations as made by the Court in the said order may not be of any assistance to the applicant considering the clauses as contained in the agreement in question, not providing for any arbitration between the parties.

9. The application is accordingly rejected.

10. All contentions of the applicant are expressly kept open.

[G.S. KULKARNI, J.]

¹ (2009) 2 Supreme Court Cases 55