

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 19 OF 2020

Ajwani Infrastructure Pvt Ltd	...Petitioner
<i>Versus</i>	
The Navi Mumbai Municipal Corporation	...Respondent

Mr Dharam Jumaní, *with Mr Munaf Virjee, Mr Rushabh Parekh, Mr Akash Agarwal, i/b ABH Law LLP, for the Petitioner.*
Mr Sandeep V Marne, *for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 3rd March 2020

PC:-

1. The arbitration petition is under Section 11 of the Arbitration and Conciliation Act 1996. The contract in question is a work order dated 2nd September 2013. Clause 115 at page 137 has the following provision for arbitration.

“Clause 115 **ARBITRATION**

Except where, otherwise provided for in this contract, all questions and disputes relating to the meaning of instruction hear in before mentioned or as to any other question, claim, right, matter of handing whatsoever, if any arising out of or relating to this contract, specification, estimates, Instructions, orders or these conditions or otherwise concerning the works, or the execution or failure

to execute the same where arising during the progress of the work or after completion or abandonment thereof of any matter directly or indirectly connected with this agreement shall be referred to the sole Arbitration of the Municipal Commissioner of Navi Mumbai Corporation, C.B.D., Navi Mumbai and if the Municipal Commissioner is unable or unwilling to act as such, then the matter in dispute shall be referred to sole Arbitration or such other person appointed by the Municipal commissioner who is willing to act such Arbitrator. In case, the Arbitrator so appointed is unable to act for any reasons, the Municipal Commissioner in the event of such inability, shall appoint another person to act as Arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the state at which it was left by his predecessors. It is also a term of this contract that no person other than a person appointed by the Municipal Commissioner as aforesaid should act as an Arbitrator.

As aforesaid the provisions of the arbitration and conciliation act 1996 or any statutory modification or Re-enactment there of and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.”

2. The appointment of an arbitrator cannot be made in accordance with this clause in view of the recent decisions of the Supreme Court.¹ While Mr Marne has instructions to formally oppose he leaves the nomination of an arbitrator to the decision of the Court.

¹ *Perkins Eastman Architect DPC & Anr vs HSSC (India) Ltd*, 2019 (9) SCC OnLine SC 1517; *Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd*, (2017) 4 SCC 665; *TRF Ltd v Energo Engineering Products Ltd*, (2017) 8 SCC 377.

3. In view of this, subject to his acceptance, I nominate Mr Justice AV Sawant, former Judge of this Court and former Chief Justice of the Kerala High Court as the learned sole arbitrator to decide the disputes and differences arising out of the *2nd September 2013* work order.

4. Hence the following order:

(a) **Appointment of Arbitrator:** By consent, Hon'ble Mr Justice AV Sawant, former Judge of this Court and former Chief Justice of the Kerala High Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Work Order dated *2nd September 2013*.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Hon'ble Mr Justice AV Sawant,
former Judge of this Court and
former Chief Justice of Kerala
High Court.

<i>Address</i>	74-A Mittal Tower, A Wing, 7th Floor Nariman Point Mumbai 400 021
<i>Phones</i>	+91 22 2283 2425 2288 5858
<i>Email</i>	savantarvind@yahoo.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.
 - (ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(k) Venue and seat of arbitration: Parties agree that the venue and seat of the arbitration will be in Mumbai.

2. The petition is disposed of in these terms. No costs.

(G. S. PATEL, J)