

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO.03 OF 2017

Patil Constructions & Infrastructure Pvt.,
through its Authorised Signatory
Siddhaling s/o Ramling Kore

Applicant

Versus

The Municipal Corporation,
Aurangabad & another

Respondents

**WITH
ARBITRATION APPLICATION NO.04 OF 2017**

Patil Constructions & Infrastructure Pvt.,
through its Authorised Signatory
Siddhaling s/o Ramling Kore

Applicant

Versus

The Municipal Corporation,
Aurangabad & another

Respondents

Mr.Kale, i/by Talekar & Associates, for the applicants.
Mr.R.S.Deshmukh, Senior Counsel i/by Mr.D.R.Deshmukh,
advocate for Respondents.

CORAM : AVINASH G. GHAROTE, J.

DATE : 12th July, 2021.

PC :

1 Heard Mr.Kale, learned Counsel i/by Talekar and
Associates for the applicants and Mr.R.S.Deshmukh, learned

Senior Counsel i/by Mr.D.R.Deshmukh, advocate for Respondents.

2 The arbitration clause, in the agreement dated 29.01.2013, reads as under:

7) Settlement of disputes:

A) If any dispute or different or claims of any kind arises between concessionaire bidder and AMC in connection with construction, interpretation or application or any terms and conditions or any matter or things in any way connected with or in connection with or arising out of this contract, or the right duties or liabilities of any part under this contract, whether before or after the termination of this agreement, then the parties shall meet together, in an effort to resolve such dispute, difference or claim between the parties and the decision of the Commissioner will be final.

The party may, in appropriate cases, may refer the matter to an expert appointed by them with mutual consent. The parties agree to abide by the decision/opinion of the expert. The cost of obtaining the services of the expert shall be born by the concessionaire/bidder.

B) All differences and disputes regarding to this project arising out of the agreement and if any party do not agree with the decision of the Commissioner/

expert, then it shall be resolved by arbitrator, and arbitrator will be appointed with the consent of both the parties, under Arbitration and Conciliation Act, 1996 or law providing in its place at the time and the decision of the arbitrator shall be final and binding on all the constituents.

3 It is, thus, apparent that before invoking clause 7(B), it is necessary, to invoke clause 7(A) and refer the matter to the decision of the Commissioner, only after which, clause 7 (B) can be invoked.

4 It is not in dispute that by a reply dated 03.05.2016, in response to the notice issued by the applicants, dated 11.04.2016, it was intimated that since the clause 7(A) was not invoked, the remedy of appointment of an arbitrator was not available and the applicants were called upon to act in consonance with clause 7(A) of the agreement.

5 It is an admitted position, that till date, the applicants have not invoked clause 7(A) of the agreement dated 29.01.2013. That being the position, invocation of clause 7(A), being a prerequisite for invoking clause 7(B) which contemplates appointment of an arbitrator, the application, clearly is not

maintainable. The same is, therefore, dismissed. Needless to say, that the applicants shall be entitled to avail any other remedy, as available to it under law, if so permissible.

6 Both the applications accordingly stand dismissed.

(AVINASH G. GHAROTE)
JUDGE

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