

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 ARBITRATION APPLICATION NO.46 OF 2019

M/S GHAI CONSTRUCTION
THROUGH ITS PROPRIETOR JASPALSINGH HARDAYALSINGH GHAI
VERSUS
MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION
T/H ITS VICE CHAIRMAN AND MANAGING DIRECTOR AND ANO

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Advocate for Applicant : Mr. Amol K. Gawali
Advocate for Respondent No.1 : Mr. S.V. Adwant

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CORAM : SANDEEP V. MARNE, J.

DATE : 24-11-2022

PER COURT :

. This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') for appointment of an Arbitrator.

2. Reliance is placed on Clause-39 of the Contract, which reads thus:

“39. **DISPUTES AND RESOLUTION:** In case of disputes or difference of opinion arising, the decision of the Vice Chairman and Managing Director shall be final and binding on, the Contractor. The Contractor shall be given reasonable opportunity to represent his case before the Vice Chairman and Managing Director.”

3. This Court, in **M/s. Ghai Construction vs. Maharashtra State Road Development Corporation**, Arbitration Application No.1 of 2015 decided on 09.07.2021 has already held that Clause-39 cannot

be considered to be an arbitration proceedings. The parties in Arbitration Application No.1 of 2015 were same as in the present application.

4. Faced with this difficulty, Mr. Gawali has placed reliance on the replacement agreement dated 29.01.2013 executed between the Maharashtra State Road Development Corporation, the applicant and the State Bank of Hyderabad to contend that clause 9.1 (v) thereof constitutes arbitration clause between the parties. No doubt, clause 9.1 (v) contains provision for resolution of disputes by way of arbitration. However, the replacement agreement is executed between the three parties only for the purpose of securing the rights of State Bank of Hyderabad in the event of any default being committed by the contractor. It is an admitted position that the claim sought to be raised by applicant against respondent no.1 does not flow out the replacement agreement and the same flows out the main agreement of work order dated 06.07.2013. Therefore clause 9.1 (v) of the replacement agreement cannot be construed as an arbitration clause for the purpose of determination of the disputes between applicant and respondent no.1. In absence of any arbitration clause, the applicant cannot seek appointment of an Arbitrator under Section 11 of the Act of 1996. The Arbitration Application is rejected. The

applicant however, is at liberty to adopt such proceedings as may be available to him under law to enforce his claim. All points on merits as well as the procedural aspects are left open.

(SANDEEP V. MARNE, J.)

GGP