

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

ARBITRATION PETITION NO. 141 OF 2021

M/s. G.S. Associates (New)
through its Partners
Anand Gorakh Thorat & Anr. ... Petitioners

Versus

Prathamesh City Estate LLP
through Partners
Abhay Arvind Mandhare & Ors. ... Respondents

Mr. Prathamesh Bhargude a/w Sumit Sonare for the Petitioners.
Mr. Siddharth C. Wakankar for the Respondents.

CORAM : R.I. CHAGLA, J.

DATED : 10th JUNE, 2022.

ORDER :

1 Heard the learned Counsel for the parties. By this Arbitration
Petition, the Petitioners seek appointment of an independent and
impartial Sole Arbitrator preferably from Pune to adjudicate the disputes
between the Petitioners and the Respondents arising out of Development
Agreement dated 10.12.2015 and the Supplementary Development
Agreement dated 16.03.2018.

2 The preliminary objection has been raised by the Respondents that the Supplementary development agreement has not been properly stamped and accordingly the Arbitration Petition may not be entertained unless and until the Supplementary Development Agreement dated 16.03.2018 and 05.12.2017 are impounded and proper stamp duty is paid by the Petitioner. However, it has been admitted by the Respondents that the Joint Development Agreement dated 10.12.2015 is duly stamped and registered.

3 The learned Counsel appearing for the Respondents has relied upon the decision of the Supreme Court in *Garware Wall Ropes Ltd. vs. Coastal Marine Constructions and Engineering Ltd.*,¹ and *M/s. N.N. Global Mercantile Private Limited vs. M/s. Indo Unique Flame Limited*,² in the context of his submission that an Arbitration clause contained in a contract does not exist as a matter of law until the contract is duly stamped. The Court must impound the instrument which has not borne the stamp duty and hand it over to authority under Maharashtra Stamp Act, who will then decide the issue qua payment of stamp duty and penalty. As soon as the stamp duty and penalty are paid on the instrument, any of parties can bring instrument to notice of this Court,

1 2001 SCC 209

2 2021 SCC 55

which will then proceed to expeditiously hear and dispose of the Section 11 application. He has submitted that in accordance with the law laid down by the Supreme Court, the Application under Section 11 cannot be entertained unless the document namely the Supplementary Development Agreement is impounded and proper stamp duty is paid.

4 The learned Counsel appearing for the Petitioners has submitted that there is an Arbitration Agreement in clause 25 of the Joint Development Agreement dated 10.12.2015. He has referred to clause 25 of the Joint Development Agreement which provides for reference of all disputes and differences to arbitration under the provisions of the Arbitration and Conciliation Act, 1996. He has submitted that there is no dispute that the Joint Development Agreement has been duly stamped and registered. He has submitted that the Arbitration Agreement having been contained in the Joint Development Agreement, the Supplementary Agreement dated 16.03.2018 is to be treated as part and parcel of the Development Agreement. This has also been provided for in clause 1 and clause 15 of the Supplementary Agreement. He has accordingly submitted that there is an Arbitration Agreement and that the disputes and differences between the Petitioners and the Respondents be referred to Arbitration under the Act. Arbitration and Conciliation Act 1997 as amended by Arbitration Amended Act, 2015.

5 Having considered the submissions, it is to be noted that there is an Arbitration Agreement under Clause 25 of the Joint Development Agreement dated 10.12.2015. There is no dispute as to the Joint Development Agreement containing the Arbitration Agreement being properly stamped and registered. The decision in *Garware Wall Ropes Ltd.* (supra) and *M/s. N.N. Global Mercantile Private Limited* (supra) relied upon by the Respondents in support of their preliminary objection to the entertainment of the Arbitration Petition on the ground that the Supplementary Development Agreement not being properly stamped will not come to the assistance of the Respondent. The Supreme Court in those decisions was mindful of the fact that the arbitration clause was contained in a contract which was not properly stamped and in that context held that arbitration clause contained in a contract does not exist as a matter of law until the contract is duly stamped. In the present case, the Joint Development Agreement containing the arbitration clause is duly stamped and registered. Hence, the Arbitration Agreement is valid and binding between the parties.

6 The reference by the learned Counsel for the Respondents on the Supplementary Development Agreement not being stamped cannot take the case of the Respondents any higher as the Supplementary Development Agreement does not contain the Arbitration Agreement. It

is only provided in the Supplementary Agreement that the agreement is supplemental to the Joint Development Agreement and to be treated as part and parcel of the Joint Development Agreement and binding upon the parties. Thus, the clauses in the Joint Development Agreement including the Arbitration Agreement contained therein is very much valid and subsisting and binding on the parties thereof. Thus, in my view there is a valid and binding Arbitration Agreement under which the dispute and difference between the Petitioners and Respondents are required to be referred to Arbitration.

7 Hence, the following order :

- i) The disputes and differences between the Petitioners and the Respondents is referred to Sole Arbitrator for adjudication of the disputes arising out of the Joint Development Agreement dated 10.12.2015 and Supplementary Development Agreement dated 16.03.2018.
- ii) Mr. U.D. Salvi (Retired High Court Judge) is appointed as Sole Arbitrator to commence the arbitration proceedings under the Joint Development Agreement dated 10.12.2015 and Supplementary Development Agreement dated 16.03.2018.

- iii) The venue of arbitration shall be Pune.
- iv) Office to inform the Sole Arbitrator regarding his appointment.
- v) The Sole Arbitrator is requested to file his Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.
- vi) Parties to appear before the Sole Arbitrator on the date fixed.
- vii) Fees of the Sole Arbitrator will be payable in accordance with Schedule IV of Arbitration and Conciliation Act, 1996 as amended by the Arbitration Amendment Act of 2015.
- viii) Arbitration Petition is disposed of in the above terms.
- ix) No costs.
- x) All rights and contentions of the parties are kept open.