

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

ARBITRATION PETITION NO. 159 OF 2019

BVG India Limited through its Assistant
General Manager (Operations)

Sangarm S. Sawant

...Petitioner

V/s.

The Municipal Corporation of the City
of Navi Mumbai through its commissioner.

...Respondent

Mr. Sarthak Diwan i/b. Mr. Ashutosh M. Kulkarni, for the
Petitioner.

Mr. Tejesh Dande a/w. Mr. Pratik Sabrad, for the Respondent.

CORAM : MANISH PITALE, J.

DATE : 15 NOVEMBER 2022

P.C.

. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

2. The petitioner - company had entered into agreement with the respondent – Corporation for rendering services as contemplated in the subject agreement. Disputes arose between the parties. Since there is arbitration clause in the agreement, the present petition is filed.

3. It is pointed out on behalf of the petitioner that by notice dated 13/12/2018, the petitioner had invoked the arbitration clause pertaining to the agreement executed between the parties. The respondent – Corporation did not respond to the aforesaid notice.

4. This Court issued notice in the present petition, pursuant to which the Corporation has appeared through counsel.

5. Since disputes have indeed arisen between the parties, in the context of aforesaid agreement which consists the arbitration clause, the present petition can be entertained.

6. The arbitration clause reads as follows:

15.0 - Disputes and Arbitration :

The corporation and the contractor shall make every effort to resolve amicably by direct informal negotiation, any disagreement or dispute arising between them under or in connection with the contract. If a dispute of any kind whatsoever that cannot be resolved the same shall be referred to the sole arbitration of the Municipal Commissioner 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 as such Arbitrator, 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 provision of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

7. A perusal of the above quoted arbitration clause shows that it is hit by Section 12(5) of the aforesaid Act and therefore, this Court will have to appoint a neutral sole arbitrator for resolving the dispute between the parties.

8. The learned counsel for the rival parties, on instructions, have jointly requested for appointment of Mr. P. R. Bhavake Patil, a retired District Judge as the sole arbitrator. The details of the said arbitrator are as follows.

Shri. P. R. Bhavake Patil
3rd Floor, Building No.233,
Perin Nariman Road, In front of
Arya Samaj Fort, Ballard Estate,
Fort, Mumbai – 400 001.

9. In view of the aforesaid joint request made by the parties, Shri. P. R. Bhavake Patil is appointed as the sole arbitrator for resolution of the disputes between the parties. The learned arbitrator is requested to send his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks to the Registrar (Judicial) of this Court.

10. Parties to communicate this order to the learned arbitrator immediately.

11. All contentions of the parties are kept open.

12. The petition stands disposed of, in aforesaid terms.

MANISH PITALE, J.