

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 93 OF 2021
WITH
ARBITRATION PETITION NO. 94 OF 2021

Neev Infrastructure Private Limited ...Petitioner

V/s.

Kalyan Dombivali Municipal Corporation ...Respondent

Ms. Sweta R. Rathod i/b. Elixir Legal Services, for the Petitioner.
Mr. A. S. Rao, for the Respondent.

CORAM : C.V. BHADANG, J.
DATE : 14 SEPTEMBER 2022

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. This is an application for appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. There was a works contract allotted to the Petitioner by the Respondent – Corporation in respect of which a work order was issued on 17 June 2008. As per the terms of the contract, the work was to be completed within a period of 18 months. According to the Petitioner, there was a delay in execution of the work on account of the fact that Respondent – Corporation had

failed to deliver possession of the land on which the proposed construction was to come up.

3. The Petitioner raised certain bills in respect of which work had already done. As disputes and differences arose between the parties regarding execution of the contract, the Petitioner sent a notice to the Corporation on 31 January 2020 interalia seeking reference of the dispute to the Arbitrator as there is an arbitration clause contained in Clause No.28 of the tender document. The learned counsel for the Petitioner submitted that the Corporation has failed to comply with the requisition and even to issue a reply. It is in these circumstances that the Petitioner has approached this Court for appointment of an Arbitrator.

4. I have heard the learned counsel for the parties. Perused record.

5. The learned counsel for the Respondent – Corporation has raised two contentions. First is that, the arbitration agreement is contained in a separate document namely the tender document and the agreement is insufficiently stamped. Secondly, it is submitted that the dispute is stale and a deadwood as the contract has ended in 2011-2012 and no action has been taken till the year 2020.

6. The learned counsel for the Petitioner by placing reliance on the decision of the Supreme Court in *Intercontinental Hotels Group (India) Private Limited and Anr. Vs. Waterline Hotels Private Limited*¹ has submitted that it is for the Arbitrator to go into the validity of the document on the ground whether it is sufficiently or insufficiently stamped. It is pointed out that this is not a case where the document is completely unstamped. It is submitted that repeated correspondence was entered into with the Corporation and on account of delay in handing over site, the work was delayed.

7. I have considered the rival submissions.

8. In so far as the objection raised on the basis of insufficient stamping is concerned, the Hon'ble Supreme Court in *Intercontinental Hotels Group (supra)* has held thus in para 30 of the judgment.

30. It may be noted that the petitioners have themselves attempted to self-adjudicate the required stamp duty and have paid, on 29-7-2019, a stamp duty of Rs.2,200/- describing the HMA as a "bond". On 10-6-2020, the petitioners further purchased 11 e-stamps for Rs.200/- each, describing the HMA as an "agreement" under Article 5(j). Therefore, it falls upon the Court, under the Stamp Act to review the

¹(2022) 7 SCC 662

nature of the agreement in order to ascertain the stamp duty payable. From the above it is clear, that stamp duty has been paid, whether it be insufficient or appropriate is a question that may be answered at a later stage as this Court cannot review or go into this aspect under Section 11(6). If it was a question of complete non-stamping, then this Court, might have had an occasion to examine the concern raised in N. N. Global Case, however, this case, is not one such scenario.

It can thus be seen that it is only where the document is completely unstamped that the Supreme Court has found that the matter can be examined in the light of the decision in *N. N. Global Mercantile (P) Ltd. Vs. Indo Unique Flame Ltd.*² Else otherwise the question has left to be decided by the Arbitrator.

9. Even so far as the issue whether the claim is stale or deadwood, parties had entered various correspondence. The notice did not invoke any favourable response from the Corporation nor any reply was issued. There is a communication dated 25 February 2020 from the Corporation stating that the matter is under consideration of the Commissioner. The contention therefore cannot be accepted at this stage.

²(2021) 4 SCC 379

10. In such circumstances, the following order is passed.

ORDER

1. Hon'ble Smt. Justice Vasanti A. Naik, Former Judge of this Court is appointed as a Sole Arbitrator to adjudicate the dispute between the parties.
2. The learned Sole Arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial-I) of this Court.
3. At the first instance, the parties shall appear before the prospective Arbitrator within a period of three weeks from today on a date which may be mutually fixed by the learned Sole Arbitrator.
4. The fees payable to the Arbitral Tribunal shall be as prescribed under the Bombay High Court (Fees payable to Arbitrators) Rules, 2018 and shall be borne by the parties in equal proportion.
5. All contentions of the parties including on merits of the matter are expressly kept open.
6. The petitions are disposed of in the above terms, with no order as to costs.

7. Office to forward a copy of this order to the learned Arbitrator on the following address:

“Smt. Justice Vasanti A. Naik
Plot No.5, Samarth Nagar (W),
Wardha Road, Nagpur – 440 015.
Mobile No.9049399387 / 9867298758”

C.V. BHADANG, J.