

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMM.ARBITRATION APPLICATION NO.84 OF 2020

Anupam Engineers. ..Applicant
Vs.
Municipal Corporation of Gr.Mumbai. ..Respondent
and

COMM.ARBITRATION APPLICATION NO.86 OF 2020

Anupam Engineers. ..Applicant
Vs.
Municipal Corporation of Gr.Mumbai. ..Respondent

Mr.Kishore M.Jawle, for the Applicant.

Mr.S.S.Pakale with Ms.Pooja Yadav i/b. Sunil Sonawane, for
MCGM.

Mr.Sandeep Holkar, Asstt.EGINEER, WSP, present.

**CORAM : G.S. KULKARNI, J.
DATE : JUNE 21, 2022.**

P.C.:

1. These are two applications filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “**the Act**”) whereby the applicant has prayed for reference of disputes to arbitration by appointing an arbitral tribunal. The disputes and differences have arisen between the parties under the contract awarded to the applicant by the respondent-municipal corporation for “Fabrication and Transport of all welded M.S.Pipes & Specials including transport of Plates, Structural etc.” by a letter dated 7 May 1990 and a formal contract which was signed between the parties on 9 July 1991.

2. Earlier, the disputes were referred to arbitration before the learned sole arbitrator which culminated into an arbitral award which were subject matter of challenge in the proceedings of Commercial Arbitration Petition Nos.1 of 2009 and 2 of 2009. The said petitions came to be decided by the learned Single Judge of this Court by an order dated 18 April 2019. By such order the arbitral awards came to be set aside for the reasons as set out therein, without the arbitration agreement being discharged. In paragraph 8 of the said order, while setting aside of the arbitral award, the Court specifically observed that it was open to the applicant (respondent no.1 therein) to adopt suitable steps to initiate a fresh reference of the disputes between the parties to arbitration.

3. Accordingly, the applicants have invoked the arbitration agreement afresh. As the respondent did not communicate its consent, as per the requirement of law and the invocation notice, the present applications praying for appointment of arbitral tribunal, have been filed.

4. Mr.Pakale, learned Counsel for the respondent-municipal corporation would not dispute the existence of the arbitration agreement between the parties, as also clearly seen from the previous background of the earlier arbitral proceedings. Also there is no dispute in regard to invocation of the arbitration agreement. Thus, the requirement for this Court to exercise jurisdiction under Section 11(6) of the Act and appoint an arbitral tribunal clearly exist.

5. As seen from the submissions advanced at the bar, the parties intend that they can make an attempt to resolve the disputes, within a

reasonable time frame from today. Failing any settlement being brought about, the parties can certainly proceed in arbitral proceedings. Accordingly, both the applications are disposed of by the following order:-

ORDER

- (i) Mr. Justice Anoop V. Mohta, former Judge of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the contract for “Fabrication and Transport of all welded M.S. Pipes & Specials including transport of Plates, Structural etc.” by a letter dated 7 May 1990 and a formal contract which was signed between the parties on 9 July 1991.;
- (ii) The learned sole arbitrator shall enter a reference after a period of six weeks from today, as within such period the parties to explore possibility of settlement.
- (iii) The learned sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these applications with a copy to be forwarded to both the parties;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator after a period of six weeks from today, on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties on merits of the matter are expressly kept open;

- (vi) The application is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

4-A, "SAMATA", Gen.J.Bhlosale Marg,
Near Bank of Baroda, Nariman Point,
Mumbai – 400021.
Off.: 229, DBS Business Centre,
Raheja Chambers, Free Press Journal Road,
Nariman Point, Mumbai-400021.
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[G.S. KULKARNI, J.]