

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

ARBITRATION APPLICATION NO. 305 OF 2021

Doha Bank	..Applicant
Vs.	
M/s. MIPL through its Managing Director	..Respondent

Mr. Parikshit Desai i/b. SNG and Partners for Applicant.

**CORAM : G.S. KULKARNI, J.
DATE : JUNE 06, 2022.**

P.C.:

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes which have arisen between the parties under an Agreement/Work Order No. Chennai/02/2018 dated 06 March, 2018. The arbitration agreement between the parties is contained in clause 28(iii) of the agreement in question. Clause 28 in its complete form is required to be noted which reads thus:-

“28. Governing Law and Arbitration

(i) This Agreement is made under and shall be governed by and construed for all purposes in accordance with the Applicable Laws of India.

(ii) The courts of Chennai shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and each party submits to the [exclusive jurisdiction of the Courts in Chennai. Doha Bank shall have the right to initiate any legal proceeding against you in any other court, as it may

deem fit.

(iii) Any dispute or claim arising out of this Agreement shall be referred to the senior management of M/s. DODHA BANK. In case the dispute is not resolved to the satisfaction of Doha Bank then such legal Dispute or difference arising out of or connected with or relating to this Agreement shall be referred to arbitration under Arbitration and Conciliation Act, 1996 or any statutory modification or Re-Enactment thereof for the time being in force. The arbitration shall be referred to one arbitrator who will be a retired judge of any High Court in India. The venue of Arbitration will be Mumbai.”

2. The case of the applicant is that under the said agreement/work order in question, respondent was appointed to supply and install a Digital Signage and other brandings on facade of applicant's branch at Chennai. The total value of the work order was Rs.99,75,022/- including all taxes out of which, the applicant had paid an advance amount of Rs.89,77,520/- i.e. 90% value of the contract. The date of completion for all work was agreed to be 31 March, 2018.

3. The case of the applicant is that the respondent had represented that there was no requirement of any permission to be obtained from the Chennai Municipal Corporation for operating digital screens/ digital signage. However, after installation of the Signage, the respondent failed to obtain the statutory permissions as after inauguration of the branch, Chennai Municipal Corporation and Chennai Traffic Police raised an objection on the operation of the digital screens. The applicant accordingly terminated the agreement and demanded the entire amount from the respondent. Such is the nature of the dispute

which has been raised by the applicant seeking refund of the amount which were paid by the applicant to the respondent under the contract.

4. The applicant on this backdrop after having requested the respondent to resolve the dispute which could not be resolved, issued a notice dated 23 August, 2019 invoking the arbitration agreement calling upon the respondent to appoint an arbitral tribunal for adjudication of the disputes which have arisen between the parties. The applicant also set out the names of the proposed arbitrators. However, as there was no response from the respondent to such notice of the applicant invoking arbitration, the applicant approached this Court by filing Arbitration Application No. 153 of 2020. The said application was disposed of by this Court by an order dated 18 March, 2021 with liberty to the applicant to file such application before the Madras High Court. The applicant accordingly approached Madras High Court by filing Arbitration O.P. No.53 of 2021 which came to be disposed of by a detailed order passed by the learned Single Judge of Madras High Court by which the Court considering the decision of the Supreme Court in **BGS SGS SOMA JV Vs. NHPC Ltd.** (2020) 4 SCC 234, held that as the venue of the arbitration as agreed between the parties was Mumbai the seat of the arbitration necessarily was at Mumbai and hence the Court at Madras would not have jurisdiction. The application was accordingly dismissed as not maintainable, however, with liberty to the applicant to

re-approach this Court. Accordingly, the present application has been filed.

5. The present application was listed before this Court on 28 March, 2022 when the Court passed an order accepting affidavit of service tendered on behalf of the applicant to be taken on record and accordingly, the matter stood over to 04 April, 2022. The application is thereafter listed today for hearing.

6. Learned counsel for the applicant at the outset has pointed out that the respondent is served and there are two affidavits of service. First affidavit is being of Mr. Santosh Bavalekar dated 15 December, 2021 setting out the manner in which the respondent is served and secondly, again the affidavit of Mr. Santosh Bavalekar dated 25 March, 2022 proving service of present proceedings on the respondent. I have perused these affidavits.

7. It appears that the respondent despite service is not interested to appear in the present proceedings. Accordingly, the averments as made in the memo of application would be required to be accepted to be not disputed for want of any opposition from the respondent. It clearly appears that there is an arbitration agreement between the parties as noted above. There also appears to be lawful invocation of the

agreement.

8. In view of the above discussion, in my opinion, there are sufficient grounds which are made out by the applicant for this Court to exercise jurisdiction under Section 11 of the Act so as to appoint an arbitral tribunal. The application is accordingly disposed of in terms of the following order:-

ORDER

- (i) Mr. Hormaz C. Daruwalla, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Agreement/Work Order No. Chennai/02/2018 dated 06 March, 2018;
- (ii) The learned prospective sole arbitrator, before entering the 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 this application with a copy to be forwarded to both the parties;
- (iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties 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:

“Mr. Hormaz C. Daruwalla, Advocate
Chamber: Behramji Mansion, 3rd Floor,
Sir P.M. Road, Mumbai 400 001.
Mob. No. 9820004743
Email: hormaz@gmail.com ”

[G.S. KULKARNI, J.]