

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

ARBITRATION PETITION NO. 8 OF 2022

Everest Construction. ...Petitioner
vs.
The Chairman/Secretary Pushkaraj-2
Co-op.Hsg.Soc.Ltd. ...Respondent.

And

ARBITRATION APPLICATION NO.11 OF 2022

Everest Construction ...Applicant
vs.
The Chairman/Secretary Pushkaraj-2
Co-op.Hsg.Soc.Ltd. ...Respondent.

Mr.Mahendru Shingade, for the Petitioner/applicant.

Mr.Kunal Mehta with Komal Patel i/b. J.Nishar & Co., for the Respondents.

CORAM : G.S. KULKARNI, J.
DATE : JULY 26, 2022.

P.C.:

1. Heard learned Counsel for the applicant and learned Counsel for the respondent.
2. These are two proceedings. Arbitration Petition No.8 of 2022 is filed under Section 9 of the Arbitration and Conciliation Act,1996 (for short 'the Act') and Arbitration Application No.11 of 2022 is filed under Section 11 of the Act.
3. I have heard learned Counsel for the parties for some time. The disputes and differences between the parties have arisen under the agreement dated 24 December 2014 titled as "Agreement for the Appointment of the Project Implementing Agency". Learned Counsel for the respondents has opposed both the proceedings including on the

ground that the document not being sufficiently stamped. According to him, the stamp duty of Rs.500/- is not the sufficient stamp duty. However, considering the law as laid down by the Supreme Court in **Intercontinental Hotels Group (India) Pvt.Ltd. Vs. Waterline Hotels, (2022 SCC OnLine SC 83)**, the parties have agreed that the disputes and difference between the parties and all contentions of the parties in regard to the stamping of the document, can be the subject matter of adjudication before the arbitral tribunal which the Court may appoint by an order to be passed on the Section 11 application. The respondent would not have any objection to the appointment of an arbitral tribunal. It is also agreed that the Section 9 petition be treated as an application under Section 17 of the Act to be adjudicated by the arbitral tribunal, keeping all contentions on such application expressly open.

4. In my opinion, the parties have taken a fair stand.

5. In view of the consensus between the parties, there ought not to be any impediment for this Court to refer the parties to arbitration and to accept the request that the Section 9 petition be permitted to be converted as an application under Section 17 of the Act to be adjudicated by the arbitral tribunal. Both the proceedings are accordingly disposed of by the following order:-

ORDER

(i) Ms.Dipti Panda, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the “Agreement for the Appointment of the Project Implementing Agency” dated 24 December 2014 ;

(ii) The learned sole prospective arbitrator, ten 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 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 7 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) Section 9 petition be converted into an application under Section 17 of the Act to be adjudicated by the arbitral tribunal.

(v) All contentions of the parties on any interim measures as also on final adjudication of the matter are expressly kept open;

(vi) Both the proceedings are 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:

address: 123, 3rd floor,
24-B, Rajabahadur Mansion,
Ambalal Doshi Marg,
Fort, Mumbai-400001.
Contact No.022-49721742.

[G.S. KULKARNI, J.]

Corrected as per speaking to minutes of the order dated 18 August 2022.