

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

ARBITRATION APPLICATION NO.50 OF 2018

M/s. Viraj Properties

through its Partner Aditya Dadhe

.. Applicant

v/s.

Matra Infra Project Private Limited

.. Respondent

Mr. Anshul Anjarlekar i/b. Raval-Shah & Co. for the applicant.

Mr. Sahil Mahajan for the respondent.

CORAM : A. K. MENON, J.

DATED : 28TH FEBRUARY, 2022.

P.C. :

1. This is the application for appointment of a Sole Arbitrator as per the provisions of Section 11 of the Arbitration and Conciliation Act, 1996. There are two agreements in writing. The first is a Memorandum of Understanding ('MOU') at Exhibit 'A'. The MOU contains clause 26 which provides for reference of disputes and differences to a Sole Arbitrator to be appointed by consent of parties failing which a reference is to be made to a tribunal of 3 arbitrators, one each to be nominated by the applicant and the

respondents. Perusal of the MOU reveals that there are two other parties who are individuals. Mr. Anjarlekar, on query from the court points out that the applicant has no claims against those individuals in the present reference.

2. The second agreement between the parties is a Joint Venture Agreement ('JVA') on stamp paper of Rs.500/- which is dated 16th October, 2009. Clause 26 of the Joint Venture Agreement also contains an arbitration clause identical to the one embodied in clause 26 of the MOU. Today, both parties have agreed that reference may be made to a Sole Arbitrator without prejudice to the respondents rights and contentions as regards insufficiency of stamps.
3. Be that as it may, by order dated 27th July, 2018 this court had directed the parties to submit the copy of the MOU original of which both parties state is not traceable at the moment and the original Joint Venture Agreement to the Prothonotary and Senior Master to forward the same to the Collector of Stamps, Bombay for adjudication of the stamp duty and penalty, if any. That proceeding is still pending.

4. Needless to mention there is a statutory appeal against any order of adjudication that may be passed, Mr. Mahajan states that this is not a case of an unstamped document rather it is a case of insufficient stamp duty and in that way the decision of the Supreme Court in *Intercontinental Hotels Group (India) Pvt. Ltd. & Anr. v/s. Waterline Hotels Pvt. Ltd. [2022 SCC OnLine SC 83]* provides for reference to arbitration.
5. Mr. Mahajan has further submitted that in *Intercontinental Hotels (supra)* the applicant had self-assessed the shortfall in duty and had paid such duty and penalty and that is not so in the present case. However, in view of the ratio of the judgment of the Supreme Court is that reference to arbitration need not be held up notwithstanding pending to an existing larger bench on the issue of resistance. In the present case, execution of MOU and Joint Venture Agreement is not in dispute, in fact it is admitted. In view of the parties acknowledging this aspect, both parties have agreed that reference be made to a Sole Arbitrator in modification of the provisions of clause 26.

6. Accordingly, I pass the following order;

- (i) By consent, Mr. Gautam Ankhad, Advocate, is appointed as Sole Arbitrator to adjudicate upon claims and counter claims, if any.
- (ii) The learned Arbitrator is requested to file his disclosure statement under Section 11(8) and Section 12(1) within four weeks with the Prothonotary and Senior Maser and provide copies to the parties.
- (iii) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.
- (iv) Fees payable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (v) Arbitration Application is disposed in the above terms.
- (vi) No costs.

(A. K. MENON, J.)