

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION [ARB] NO. 776/2019.

M/s. V.K. Associates.

-VERSUS-

Slum Rehabilitation Authority and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri D.V. Chauhan, Advocate for the Applicant.
Shri J.B. Kasat, Advocate for Non-applicants.

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CORAM : VINAY JOSHI, J.

DATE : AUGUST 23, 2022.

Heard learned Counsel for the parties.

2. This is an application filed under Section 11[6] of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act" for short). The applicant – M/s. V.K. Associates, is a Project Management Consultant (PMC). The non-applicant no.1 Slum Rehabilitation Authority (SRA), has issued an advertisement thereby inviting interest for appointment of PMC for the proposed work of BSUP-JNNURM Scheme involving construction of slum rehabilitation.

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3. Pursuant to said advertisement, the applicant had applied and there has been an agreement in between the parties for execution of the work, namely providing consultancy services to non-applicants. The agreement contains an Arbitration clause, specifying that in case of any dispute, the same shall be referred for Arbitration under the provisions of the Arbitration Act.

4. In pursuance of the agreement, the applicant – PMC has provided services for total 4 projects. The applicant had initially submitted bills for payment of the consultancy fees for the project work. A consolidated bill was drawn to the tune of Rs.7,44,65,171/-. Since the bill remained due, the applicant has issued a legal notice on 03.09.2018, calling upon non-applicants to pay the entire bill amount and on its failure, called upon them to concur with the named Arbitrator, as a sole Arbitrator for adjudication of the dispute. It is the case of the applicant that the non-applicants neither paid the entire bill, nor agreed for appointment of arbitrator.

5. Non-applicants have resisted this application by contending that there is no arbitral dispute in between the parties, however, non-applicants had not disputed about

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existence of an arbitration clause in between the parties. It is submitted that after receipt of legal notice, there were meetings and negotiations. A joint scrutiny of all bills was undertaken, on which a reduced final bill to the tune of Rs.1,15,77,116/- was issued. Not only that the applicant had assured to withdraw the arbitration application on payment of said bill and to that effect filed an affidavit. It is submitted that as per the revised bill, non-applicants have disbursed revised bill amount on 19.10.2019 and thus, no dispute survives.

6. As against this, the applicant has straneously argued that whatever payment was made of revised bill was not full and final payment. It is emphatically denied that the applicant has agreed to finally settle for revised bill. It is submitted that though the revised final bill bears joint signatures, however, the applicant has withdrawn his stand even prior to disbursement of the final bill amount. In that regard, the applicant took me through various documents. Particularly, my attention has been invited to a letter dated 03.10.2019, wherein the applicant made it clear that the arbitration application would be withdrawn only upon release

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of entire payment and not on partial or reduced amount. Moreover, letters reiterating claim of remaining amount have been pressed into service.

7. Perusal of the affidavit indicates that the applicant has filed the affidavit along with a communication dated 17.10.2019, on which the payment appears to have been released. It is brought to the notice that after final bill, the applicant has communicated that the withdrawal of this application would be subject to full and final payment.

8. It emerges that there is no dispute between the parties regarding existence of an arbitration clause. The question remains as to whether there exist live dispute to be arbitrated. The applicant states that the entire bill amount has not been paid, whilst, the other side resisted said contention by stating that after joint meeting, final bill was reduced, which was accepted by the applicant and accordingly payment was released.

9. There are series of communication in between the parties, in which the applicant has kept his demand intact about entire bills. True, there appears to be a final bill signed by both the parties, however, the applicant has disputed that

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the said bill was though captioned as 'final', it is not the final bill.

10. The learned Counsel for the applicant has relied on several decisions to contend that the scope of arbitration application is quite limited. The Court is expected to look into the aspect regarding existence of an Arbitration agreement. It is for the learned Arbitrator to decide the existence and extent of claim. Primarily the jurisdiction of the Court under Section 11 of the Arbitration Act is to find out whether there exists a written agreement between the parties for resolution of a dispute through an Arbitrator, and a prima facie case of aggrieved party regarding existence of arbitral dispute.

11. As regards the existence of arbitration clause is concerned, there is no dispute between the parties. The communications do indicate that still there exists a live dispute. I may refer to the decision of Supreme Court in case of **Sanjiv Prakash .vrs. Seema Kukreja and others – [2021] 9 SCC 732**, wherein it is observed that the Court exercising powers under Section 11 of the Arbitration Act, would refer the matter to arbitration when contentions relating to non-arbitrability are plainly arguable or when facts are contested.

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Similarly in another decision of Supreme Court in case of **Mohammed Masroor Shaikh .vrs. Bharat Bhusan Gupta and others – [2022] 4 SCC 156**, it is expressed that when contentions are plainly arguable, such issue of non-arbitrability is left open to be decided by the Arbitral Tribunal, as the scope under Section 11 of the Arbitration Act is limited and restricted.

12. On the face of admitted position about existence of arbitration clause and the claim made by the applicant, which is repudiated by the non-applicants, the matter deserves to be referred to the Arbitrator. The objections raised by non-applicants regarding settlement of entire claim can be raised before the Arbitrator, who can decide the same in accordance with the law.

13. At this stage, learned Counsel appearing for the respective parties suggests name of Justice Mrs. Pushpa V. Ganediwala, (Former Judge), to be appointed as an Arbitrator.

14. Accordingly the Justice Mrs. Pushpa V. Ganediwala, (Former Judge), is appointed as Sole Arbitrator. It is made clear that the objections sought to be raised on behalf of non-applicants are kept open to be raised before the learned

Arbitrator.

15. Registry is directed to request the learned Arbitrator for consent letter and for disclosure statement as per the provisions of the Arbitration Act.

JUDGE