

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 98 OF 2023

Ashwini Infradevelopments Pvt. Ltd.

...Petitioner

Versus

Navi Mumbai Municipal Transport

...Respondent

* * *

- Ms. Janhavi Joshi and Mr. Jayesh Joshi, for Petitioner.
- Mr. Sandesh Deshpande, for Respondent

* * *

CORAM : MANISH PITALE, J

DATE : 25th APRIL, 2023

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MALANI

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P. C. :

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Petitioner has approached this Court for appointment of a sole Arbitrator for resolution of disputes between the parties.

2. The Respondent undertaking engaged the Petitioner for construction of a bus terminus and commercial complex. The contract contained an Arbitration Clause for resolution of disputes between the parties.

3. It appears that disputes arose between the parties and eventually by a notice dated 28th September, 2022, the Petitioner invoked Arbitration Clause, requesting the Respondent to appoint a sole Arbitrator for resolution of disputes between the parties.

4. On 08th December, 2022, the Respondent undertaking sent a reply to the notice, disputing the claims of the Petitioner, particularly the claim pertaining to escalation on the basis that the conditions of the contract specifically prohibited grant of any such relief to the Petitioner.

5. As the appointment of Arbitrator could not take place as per the procedure agreed between the parties, the present petition came to be filed.

6. This Court has heard learned Counsel for the parties. There can be no dispute about the fact that in the contract awarded to the Petitioner clause 115 provides for resolution of disputes through Arbitration and the Jurisdiction Clause records that any claim or disputes arise between the parties shall be deemed to have arisen at Navi Mumbai.

7. A perusal of the Arbitration Clause shows that the disputes between the parties were to be referred to Arbitration of the Transport Manager of the Respondent undertaking and in the event the Transport Manager was unable or not willing to act then the matter in dispute was to be referred to a sole Arbitrator or some other person appointed by the Transport Manager.

8. The said clause is clearly hit by Section 12(5) read with

the Seventh Schedule to the said Act. Therefore, only a neutral sole Arbitrator could be appointed. The exchange of communications between the parties does show that there was invocation of the arbitration clause on the part of the Petitioner, but it did not lead to appointment of a sole Arbitrator. This Court is convinced that jurisdiction can be exercised in disposing of the present petition.

9. The learned Counsel for the Respondent raised specific objection that insofar as the claim towards escalation was concerned, the same was not an arbitrable dispute, because the terms of the contract specifically prohibited grant of any such amount towards escalation. This Court is of the opinion that such an objection can certainly be raised before the learned Arbitrator, to be considered and disposed of on merits. It is also significant that the notice invoking the Arbitration Clause raises claims other than the claim towards escalation.

10. In the light of the above, considering the nature of claims raised on behalf of the Petitioner and the fact that the jurisdiction clause specifies Navi Mumbai as the place where the cause of action is deemed to have arisen, an Arbitrator available at Thane ought to be appointed in the interest of justice.

11. Accordingly, Mr. Sadashiv S. Deshmukh, retired District

Judge available at Thane, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

Mr. Sadashiv S. Deshmukh,
403, Jupiter, Building No. 9,
(Gavanndbaugh), Pokharan Road 2,
Thane (W) - 400 610.
Mob. No.9820553525

12. The parties undertake to inform the learned Arbitrator, at the earliest, about the order passed today.

13. The learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) r/w Section 12(1) of the said Act, within four weeks to the Registrar (Judicial) of this Court.

14. The fees of the Arbitrator shall be as per Schedule IV to the Aforesaid Act.

15. All questions, including the aforementioned objection raised on behalf of the Respondent undertaking, are kept open for decision of the learned Arbitrator.

16. The petition stands disposed of in above terms.

(MANISH PITALE, J.)