

VS.

Through its partners:

Mr. Tushar Sonawane for petitioners.

Mr. Rajesh Datar, i/by. Druti Datar for respondents.

DATE : 23rd JANUARY, 2023

P.C. :

By this petition, filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioners have approached this Court, for appointment of arbitrator, in the context of arbitration clause in Development Agreement executed between the parties.

2. It is submitted that since disputes arose between the parties, invocation notice was issued on 2nd March, 2022 and another notice was also issued to the respondents, but there was no reply.

3. The arbitration clause in the present case reads as follows:

“32. In case of any disputes, doubts, or differences arising between the parties hereto, in respect of the any of the terms and conditions of this agreement or in respect of interpretation, of any of the terms or conditions of this presents or in respect of any other matter, cause or thing

whatsoever not contained herein otherwise provided for, the same shall be referred to adjudication to the Arbitration subject to the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modifications or **** thereof for the time being in force, and the parties shall abide by the decision of such arbitration.”

4. Upon notice being issued, the respondents have appeared through counsel. The arbitration clause is not disputed, although it is submitted that the claim, sought to be raised on behalf of the petitioner, is barred by limitation. This Court is of the opinion that such an objection can certainly be taken in the arbitration proceeding and that therefore, it cannot be a ground for refusing to exercise the jurisdiction under Section 11(6) of the said Act. This is particularly so, because the procedure agreed between the parties, for appointment of arbitrator, has failed. Hence, this Court is inclined to allow the petition.

5. The learned counsel for the parties have agreed upon the appointment of Mr. S. S. Deshmukh, Retired Chief Judge, Small Causes Court, Mumbai, available at Thane, as the sole arbitrator, for resolution of disputes between the parties.

6. Accordingly, Mr. S. S. Deshmukh, Retired Chief Judge, Small Causes Court, Mumbai, is appointed as the sole arbitrator for resolution of disputes between the parties. Details of the learned arbitrator are as follows:-

403, Jupiter Building No.9,
Gawand Baug, Pokhran Road,
Thane (West).

7. Parties undertake to inform the learned arbitrator immediately about the order passed today.
8. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be as per the Fourth Schedule to the said Act.
9. All questions, including the question of limitation, are left open to be decided by the learned arbitrator.
10. The petition stands disposed of.

(MANISH PITALE, J)

Priya Kambli