

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 383 OF 2024

Sri Krishin Co Operative Housing Society Limited ...Petitioner

Vs.

Mishal Construction Private Limited & Ors. ...Respondent

WITH
COMMERCIAL ARBITRATION APPLICATION NO. 296 OF 2021
WITH
COMMERCIAL ARBITRATION PETITION NO. 671 OF 2021

Mr. Shanay Shah a/w Mubeen Sirkhot i/by Dhiren Shah for the Petitioner.

CORAM : ARIF S. DOCTOR, J.
DATE : 24TH OCTOBER, 2024

P.C.:-

1. The captioned Arbitration Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to decide disputes and differences between the parties arising out of a Development Agreement entered into between the Petitioner and the first Respondent company. Respondent Nos.2 and 3 are the Directors of Respondent No.1.

2. Mr. Shah, Learned Counsel for the Petitioner invited my attention to the arbitration clause contained in the said agreement. He has then invited my

attention to the notice invoking arbitration which is dated 5th August, 2021 and points out that there has been no response to the said notice. It is thus that he submits that the present Petition came to be filed for appointment of an Arbitrator.

3. I have heard Learned Counsel and considered the fact that the Respondents have been served and not appeared. I am also satisfied that today prima facie arbitration agreement exists between the parties. I find that a case is made out for appointment of an Arbitrator. Arbitration Application is thus allowed in terms of prayer clause (a) which reads thus:-

“(a) That this Hon’ble Court be pleased to appoint any other person as this Hon’ble Court may deem fit as an Arbitrator to adjudicate upon all the disputes and differences that have arisen between the Applicant and the Respondents under the said Development dated 8th November, 2010;”

4. Thus, I therefore appoint Mr. Rubin Vakil, an Advocate of this Court to act as Sole Arbitrator in respect of the disputes and differences between the parties.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr. Rubin Vakil is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.
- (b) **Communication to Arbitrator of this order:**

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.
- (ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Mr. Rubin Vakil

Address 402, Hamam House, Ambalal
Doshi Marg, Fort, Mumbai
400 001.

Mobile 9820188015

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.

- (f) **Interim Application/s:**
- (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The captioned Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
 - (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** All arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration:** The venue and seat of the arbitration will be in Mumbai.

5. Given that the invocation was of the year 2021 and termination of the year 2024, the invocation notice must be read with the termination notice.

6. The captioned Commercial Arbitration Petition No. 383 of 2024 and Commercial Arbitration Application No. 296 of 2021 are both disposed of in these terms. No costs.

7. At this stage, Learned Counsel for the Petitioner seeks leave to withdraw Commercial Arbitration Petition No. 671 of 2021. The same is dismissed as withdrawn.

8. Learned Counsel also submits that Respondent No.2 in the Commercial Arbitration Petition which is being referred to the arbitration is the erstwhile Architect appointed by the Developer. He submits that the Architect has in his possession certain original documents, planning permissions etc. which will be required by the Petitioner. Learned Counsel presses for an order in terms of prayer clause (d) only qua Respondent No.2 which reads thus:-

“d) That pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to order and direct the Respondents, their respective directors, agents, etc. to hand over to the Petitioner, all original documents available with the Respondents in connection with the new building constructed on the said property, including but not limited to:

(i) sanctioned plans including CAD files;

(ii) RCC drawings

(iii) Approvals;

(iv) Sanctions;

(v) Permissions;

(vi) Correspondence exchanged with MCGM, MHADA and/or all other concerned authorities in connection with the new building constructed on the said property."

9. Learned Counsel makes it clear that arbitration proceedings shall not be qua Respondent No.2. In view of this context and having satisfied myself that the Petition would be justified in seeking the prayer clause (d) I accordingly allow the same.

(ARIF S. DOCTOR, J.)