

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.122 OF 2024

Surface Protection And Restoration
Contractors Pvt. Ltd.

...Applicant

Versus

Grand Paradi Co-operative
Housing Society Limited

...Respondent

Mr. Apoorva Kulkarni *i/b. SSB Legal and Advisory, Advocate for Applicant.*

Mr. Kashish Mainkar *a/w. Mr. Aryan Dev Dhingra i/b. Wadia Ghandy & Co., Advocate for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 08, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking to refer the disputes and differences between the parties pursuant to Articles of Agreement dated October 1, 2018, under which various services were to be provided by the Applicant to the Respondent. Disputes and differences exist between the parties, and towards this end, the Applicant invokes

Clause 56 (at Page 150 of the Application), in terms of the dispute resolution clause contained therein.

2. Having examined the Arbitration Agreement, it is obvious that it has followed a template that was perhaps invoked during the jurisdiction of the 1940 Act. Learned Counsel for both parties agree that the arbitration may be by a Sole Arbitrator and shall be governed by the Act which repealed the 1940 Act.

3. However, the objection of the Respondent is that it is premature to refer this matter to arbitration because the arbitration agreement requires a reference to be made to an architect, who shall state his decision in writing.

4. In response, Learned Counsel for the Applicant points to Exhibit 'O', which is a letter dated June 22, 2023 (found at Page 243 of the Application), which demonstrates, according to him, at Para 4 that there is no unsatisfactory work left in the matter and all the works have been carried out under the architect's guidance. The arbitration clause does state that the written decision of the architect may be in the form of a final certificate or otherwise.

5. Upon a review of the record with the assistance of the parties, I have no doubt that this facet of the matter is a matter on merits, which

is to be dealt with by the arbitral tribunal, which deserves to be appointed by allowing this Application.

6. As agreed by the parties before this Court, the arbitral tribunal shall comprise a Sole Arbitrator and on this aspect, the parties have no dispute. The only dispute has been about the allegedly premature stage for a valid invocation to be made now.

7. It is now trite law that the jurisdiction of the Court exercising powers under Section 11 of the Act has been restricted to ascertaining the existence of the Arbitration Agreement, specifically with regard to Section 11(6A) of the Act. Lest there be any doubt, there is a spate of recent judgments where the Supreme Court has reiterated this principle, distilling it further in multiple situations. Suffice it to say, the law declared and applicable as of today is that the existence of the arbitration agreement is to be ascertained by a Section 11 Court by checking for its formal existence, in the form and manner of an executed document between the parties. Existential questions of substance are left to the arbitral tribunal to decide upon. Whether invocation is premature and whether the architect's letter would meet the requirements of the arbitration agreement are issues for the arbitral tribunal to deal with.

8. In these circumstances, being satisfied that the arbitration agreement is indeed in existence, leaving all contentions of both parties open, the Application deserves to be allowed in the following terms:-

a) Mr. Rohaan Cama, an Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact details of the Learned Sole Arbitrator are set out below:-

Address : Room No.17-18, 1st Floor,
Islam Building, 46-48,
Veer Nariman Road ,
Fort, Mumbai – 400 001.

b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

c) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the parties

within a period of two weeks from receipt of a copy of this Order;

d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

e] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs; and;

f) The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.

9. This Application is ***finally disposed of*** in the aforesaid terms.
10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]