

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 183 OF 2024
WITH
ARBITRATION APPLICATION NO. 186 OF 2024

R. B. Krishnani (Contractor) ...Applicant

Versus

Honorable, Municipal Commissioner Municipal Corporation Of Greater Mumbai & Anr ...Respondents

Mr. Gauraj Shah, for the Applicant.

Mr. Girish Godbole, Senior Advocate, a/w Pooja Yadav, i/b Komal Punjabi, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 24, 2025

ORDER :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under a Work Order dated February 18, 2019 (“***Agreement***”). The arbitration agreement is contained in Clause 74 (found at Pages 152 and 153 of the Application). The said Work Order, which was indeed for the purposes of structural repairs to the Trombay High Level Reservoir (THLR) is located within the BARC

Premises, Anushakti Nagar. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. The only point for consideration in this matter is whether the disputes, as agreed between the parties, would at all be arbitrable. The tender document contained an instrument called Special Directions to Tenderers, which explicitly recorded that this contract being in the nature of a repairs contract would not be amenable to arbitration “under any circumstances”.

3. According to the Respondent this condition would be adequate to demonstrate that the parties never intended to arbitrate their mutual differences in connection with the said Work Order.

4. Learned Counsel for the Applicant would point to the fact that, when he raised the grievances about his mutual differences with the Respondent, the entire process entailed for a dispute resolution mechanism as provided for in Clause 73 of the general conditions of contract which was followed by the Respondent. It is only because the outcome was not satisfactory that he has invoked arbitration. It is seen that the decisions of the two rounds of committees were taken between December 2022 and December 2023. The invocation notice was issued

on January 23, 2024 and a reply was received on March 28, 2024, that the disputes between the parties were not meant to be arbitrable and there was no arbitration agreement.

5. Having heard Learned Advocates for the parties, it is writ large on the face of the record that the parties who bid for this project knew upfront that the disputes and differences relating to this project would not be amenable to arbitration. The sole scope of jurisdiction under Section 11 of the Act is the examination of whether there is an arbitration agreement in existence. On the face of it, the participation in the dispute resolution mechanism under Clause 73 would not constitute a waiver of the prohibition of arbitration; inasmuch as it is a means by which the parties could have resolved their disputes. If the resolution did not come about, it is not as if the Applicant is non-suited across all forums. The only evident outcome from the material on record is that such remedy would not bring within its scope, arbitration proceedings for resolution of the disputes and differences between the parties.

6. In these circumstances, having found that an arbitration agreement is not in existence, it would not be appropriate to appoint an arbitral tribunal for disposal of this Application. The submission about the Respondent having waived a requirement under the arbitration

agreement in terms of Section 4(b) of the Act also does not lend itself to acceptance, inasmuch as there ought to be in existence an arbitration agreement. Since the parties had upfront agreed that under any circumstances, disputes pursuant to the Work Order dated February 18, 2019 would not be amenable to arbitration, this Application cannot be allowed.

7. In my opinion, there is no arbitration agreement in existence. Needless to say nothing contained here is an expression of an opinion on the merits of the Applicant's case, he may pursue such other legal remedies as may be available to him in law.

8. The Application is *finally disposed of* in the aforesaid terms.

9. 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.]