
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.133 OF 2024

Unique Rehab Pvt. Ltd.

...Applicant

Versus

The Secretary,

Mahavir Nagar Shiv Shrushti Co-op.

Housing Society

...Respondent

Mr. Abhishek L. Tripathi *a/w. Mr. Bharat Tiwari, Advocate for Applicant.*

None for the 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 appointment of an arbitrator to deal with disputes and differences between the parties connected with certain works carried out by the Applicant for the Respondent in the nature of civil works, water proofing and painting.

2. The arbitration agreement is contained in Clause 16 of the Tender Conditions (Page 52 of the Application). In the interest of brevity, the same is not being extracted here. Suffice it to say that the arbitration clause is peculiarly drafted, and enables unilateral

appointment of an arbitrator by the Respondent in consultation with a Project Management Consultant (*“PMC”*).

3. The primary grievance of the Applicant is that the payments claimed by him are indeed due to him, since the PMC had already certified amounts as being payable, and the bills are validly raised, but payments are not being made.

4. It is seen from the record that, an advocate has filed a Vakalatnama on behalf of the Respondent, but none has appeared today. On October 1, 2024, a Learned Single Judge took note of this fact and deferred the matter to October 8, 2024, asking for a notice to be issued to the Respondent stating that the matter would be listed on October 8, 2024. Thereafter, owing to paucity of time or otherwise, the matter has been stood over and has eventually come up today.

5. Upon perusal of the record, it is apparent that arbitration has indeed been invoked by the Applicant by a letter dated April 13, 2024 addressed to the Respondent. In response, the Respondent has not denied the existence of the arbitration agreement, but has instead stated that the Respondent is not inclined to appoint an arbitrator, perhaps bearing in mind the fact that the arbitration clause enables unilateral appointment on the part of the Respondent. In the reply dated May 24, 2024, the Respondent has made a categorical statement

that he is not interested in invoking the arbitration clause and there is no question of appointing the arbitrator proposed by the Applicant.

6. Having seen the material on record, I find no reason to hold up this matter any further. The existence of the arbitration agreement is writ large on the face of the record and in fact, it is the Respondent who has the power to unilaterally appoint an arbitrator. It is now trite law that unilateral appointment of an arbitrator would be in violation of the Act pursuant a decision rendered by a five-Judge Bench of the Supreme Court in the case of ***Central Organization for Railways Electrification Vs. ECI SPIC SMO MCML (JV), A Joint Venture Company***¹

7. In these circumstances, this Application is allowed by passing the following order:-

a) Ms Gulnar Mistry, 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 :- 101, 1st Floor,
1Infinity (formerly known as
Ramnimi Fort),
Cawasji Patel Street,

Bombay 400 001.

Email id :- gm@mistrychambers.com

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 and Conciliation Act, 1996 to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Respondents;

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.

8. This 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.**]