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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ARBITRATION APPLICATION NO. 159 OF 2024

Sheth Construction Co. ... Applicant
Versus
Municipal Corporation of Greater Mumbai ... Respondent

Mr. Yohaán Shah *i/b Negandhi Shah & Himayatullah, for Applicant.*

Ms. Pooja Yadav *i/b Komal Punjabi for Respondent-MCGM.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : January 8, 2025

P. C.

1. This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Arbitration Act***”), seeking appointment of an arbitrator in connection with disputes and differences relating to a Work Order dated August 24, 2018 (“***Agreement***”), which would be governed by conditions attached to the tender. The dispute resolution mechanism contained in the tender conditions stipulate a certain process for attempted settlement of disputes before the dispute is referred to arbitration.

2. Having heard the parties at some length, what becomes apparent is that, in terms of Clause 73 of the terms governing the pre-arbitration dispute

resolution attempts, the Applicant had written to the Respondent on December 28, 2023, raising the disputes. Once the Respondent was in receipt of such notice, it was required to form a committee to consider the merits of the dispute. That committee has been put to a deadline of sixty days in the tender condition. An appeal from such a decision would lie to the Municipal Commissioner within seven days, who would then form one more committee, which would decide within ninety days. If the outcome was still non-satisfactory, the parties would proceed to arbitration.

3. Despite the aforesaid detailed laborious process, it is common ground that after December 28, 2023, there has been no process undertaken by the Respondent under Clause 73 of the tender conditions. Learned Counsel for the Respondent fairly states that while the process has been initiated, it did not conform to the timelines referred to in Clause 73. Consequently, she requests that if the Application is kept pending and the matter is stood over further, she would be able to take instructions on the expected timeline for such action would be completed, after which the arbitration may be considered.

4. Having considered the issues presented by the parties and the material on record, the ends of justice would be met if the Application is allowed in the terms of appointment of an arbitral tribunal, particularly taking into account

the fact that more than a year has gone by since the process was initiated by the Applicant. However, the effective date of appointment of the arbitrator is hereby deferred for a period of ninety days, so that within the next ninety days, the parties may engage and resolve their differences, and should the need arise, approach the arbitrator hereby appointed.

5. Consequently, the following order is passed :
- a. Based on input from the officers of the Court, Dr. Vandana Bhatt, a Techno Legal Consultant, who is on the panel of Arbitrators 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.
 - b. A copy of this Order shall 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 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 Respondent;

- 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 Arbitral 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.
6. This Arbitration Application is ***finally disposed of.***
7. 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.]

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*** Corrected as per Order dated January 22, 2025*