

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.199 OF 2024**

Vascon Engineers Limited)
Vascon Weikfield Chambers, behind)
Hotel Novotel, opposite Hyatt Hotel,)
Pune Nagar, Pune, Maharashtra – 411 014.) ...Applicant

Versus

Peccadily Estate Pvt. Ltd.)
Having its registered office at :)
Gordhan Building – 11, 2nd Floor,)
12/14, Dr. Parekh Street,)
Prathna Samaj, Mumbai – 400 004.) ...Respondent

Mr. Ranjeev Carvalho, Mr. Anuj Jhaveri a/w Mr. Mihir Modi, for the Applicant.
Mr. Cyrus Ardeshir, Sr. Advocate a/w Mr. Akshay Sawant, Mr. Bharath Senah i/b.
I.V. Merchant & Co. for the Respondent.

CORAM : ADVAIT M. SETHNA, J.
DATE : 28 MARCH 2025

ORAL JUDGMENT:-

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “**ACA**”) for appointment of Arbitrator, more particularly, under clause 11(6) of the said Act.
2. Parties to this application had executed a contract in the form of a work order dated 3 November 2009. Pursuant thereto disputes arose between the parties and a notice invoking arbitration was issued by the advocate for the Applicant on 15 March 2024 which was responded to by the respondent’s

advocate on 31 July 2024. It was in such backdrop that the present application has been filed. Both the learned counsel for the parties are at *ad idem* that the disputes and differences arising under such work order/contract can be referred to the arbitration and a sole Arbitrator be appointed by the Court under Section 11(6) of the ACA. Parties draw my attention to clause R – ‘*Force Majeure*’ of the underlying agreement/contract which is in the nature of a dispute resolution clause. The respondent would dispute the existence of an arbitration agreement between the parties. Be that as it may, it is made clear that all issues including the maintainability, arbitrability, limitation as applicable, are expressly kept open before the sole arbitrator who shall hear the parties and decide all issues raised in accordance with law.

3. In light of the above, this Court under the provisions of Section 11(6) of the ACA appoints Mr. Aditya A. Thakkar, Advocate and counsel of this Court as the learned sole Arbitrator in these proceedings on the following terms and conditions:-

Appointment of Arbitrator:-

Advocate Mr. Aditya A. Thakkar, Bombay High Court is hereby appointed as learned sole arbitrator.

- i. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within ten (10) days 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. Aditya A. Thakkar,
 Address : 3rd Floor, East and West Insurance Building,
 49/55, Mumbai Samachar Marg,
 Fort, Mumbai – 400 032.
 Mobile : 9821534225
 Email : aat273@gmail.com

- iii. **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy, soft copy, the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to Advocates for the parties as soon as possible. The Advocates for the applicant will arrange to file the original statement in the Registry with the Prothonotary & Senior Master (Original Side) within three (03) days of it being made available by the learned sole arbitrator.
- iv. **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator decides to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- v. **Interim Application/s:** Interim Application, if any, filed under Section 17 of the Arbitration and Conciliation Act, 1996 shall be decided by the arbitrator, if and so when referred.
- vi. **Fees:** The arbitral tribunal's fees shall be governed by the Fourth Schedule to the Arbitration and Conciliation Act, 1996.

- vii. **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal proportion.
 - viii. **Venue of Arbitration :** Parties agree that the venue of arbitration shall be Mumbai.
4. This Commercial Arbitration Application No.199 of 2024, is allowed as per prayer clause (a) and in the above terms. No order as to costs.
5. Needless to mention that as noted above all contentions of parties on all issues are expressly kept open to be urged before the learned Sole Arbitrator.

[ADVAIT M. SETHNA, J.]