

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 272 OF 2024

MVK Properties Pvt Ltd

...Applicant

Versus

S k Enterprises

...Respondent

Appearance not received for the Applicant.

Mr. Mr. Piyush Raheja, a/w *Akash Loya, Jyoti Ghag, Shrinidhi Suryavanshi, Shailesh Prajapati, i/b. Dua Associates AOR, Mumbai for Respondent Nos. 1 to 4.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 22, 2025

PC :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***"the Act"***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under an agreement dated January 9, 2018. The arbitration agreement is contained in Clause 10 (found at Page 88 of the Petition). 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. After having heard the parties for some time, Learned

Counsel for the parties agree that all disputes and difference in connection with agreement dated January 9, 2018 executed between the Applicant and Respondent No.1 may be referred to arbitration by a sole arbitrator in the following terms:-

A) Justice (Retired) Akil Kureshi, a former judge 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;

Office Address:-

617, Raheja Chambers,
Nariman Point, Mumbai.
Email ID: akil.kureshi@gmail.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 the date on which this order is uploaded on the website of this Court. 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 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.

3. Respondent No.1 is a partnership firm and Respondent Nos.2 to 4 are partners in the partnership firm. Since the disputes and differences under the agreement are being referred to arbitration, any question of the need for privity of Respondent Nos.3 to 4 and the objections to making them a party, are issues eminently capable of being taken up before the arbitral tribunal appointed hereby. In these circumstances, all the disputes and differences relating to the Agreement dated January 9, 2018 between the Applicant and Respondent No.1 are hereby referred to arbitration as above.

4. A separate agreement between the Applicant and Respondent No.5, which is essentially a construction contract, also is subject of disputes and difference. Having seen that an arbitration agreement exists in this construction contract dated April 3, 2018, it is apparent that all disputes and differences relating to this construction contract are also be capable of being referred to the very same arbitrator since the construction in question was to be effected by Respondent No.5 on the very property that is acquired by the Applicant from Respondent No.1.

5. Such a combination of the two proceedings before the same arbitrator would achieve economies of scale and may also save time and

resources in dealing with matters of evidence. Consequently, all disputes and differences relating to the construction contract dated April 3, 2018 between the Applicant and Respondent No.5 also hereby stand referred to the very same sole arbitrator appointed above, leaving all contentions on merits open.

6. In these circumstances, this Application is ***finally disposed of*** in the aforesaid terms.

7. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter including the matter of Joginder of parties, or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

8. 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.]