

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.20 OF 2025

SMGK Constructions

...Petitioner

Versus

State Bank of India Staff Shiv Sagar
Co-operative Housing Society Ltd.

...Respondent

Mr. Naushad Engineer, *Senior Advocate a/w. Mr. Sharad Bansal, Mr. Murtuza Federal, Ms. Urali Bodaji & Ms Palomi Vatsyayan i/b. Federal & Company, Advocate for Petitioner.*

Mr. Karl Tamboli *a/w. Mr. Cyrus Jal i/b. Mr. Sanjeev Hariakar, Advocate for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 21, 2025

PC :

1. This Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking various reliefs in connection with an agreement claimed to be in existence by the Petitioner and which agreement is denied by the Respondent. The issue at the heart of the matter is whether the development agreement in question is in existence, for the arbitration clause in it to be relevant.

2. An Application under Section 11 of the Act being Commercial Arbitration Application (L) No.37845 of 2024 has also been filed and is pending clearance of objections with the Registry.

3. Today, when the matter is called out, Learned Counsel for the parties jointly submit that without moving an inch from their respective positions, they would be willing to have even the question of whether an arbitration agreement has been formed, to arbitration keeping the issue of substantial existence of the agreement open as the first issue to be dealt with by an arbitral tribunal. Towards this end, they jointly submit that they would be willing to proceed to arbitration by an arbitral tribunal comprising Mr. Piyush Raheja, a Learned Advocate of this Court.

4. In these circumstances, the parties are referred to arbitration, by consent, to the arbitral tribunal hereby appointed. It is made clear that nothing contained in this order would be the slightest indication of an opinion on merits, in particular, about the existence of an arbitration agreement, since the parties have themselves agreed that even that issue could be determined by the arbitral tribunal hereby appointed.

5. Consequently, the Petition filed under Section 9 of the Act is disposed of without any directions, leaving it open to the parties to canvass their contentions before the arbitral tribunal and the aforesaid

Application under Section 11 of the Act is also hereby disposed of on the basis of the arbitral tribunal hereby constituted.

6. Taking into account inputs from the officers of this Court, the following order is hereby passed:-

a] Mr. Piyush Raheja, 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;

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 the 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 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;

f] 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.

7. With the aforesaid directions, this Petition under Section 9 of the Act and Commercial Arbitration Petition No.20 of 2025 are ***finally disposed of*** in the aforesaid terms.

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.]