

MATTER UPDATE

HSA Advocates successfully represented Generic Engineering Construction and Projects Ltd. before the Bombay High Court concerning the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996

HSA Advocates successfully represented Generic Engineering Construction and Projects Ltd. before the High Court of Judicature at Bombay in a significant matter concerning the existence of an arbitration agreement and the right to seek appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, arising out of the wrongful termination of a civil construction contract by the Maharashtra Maritime Board.

The key issue before the Court was whether the dispute arising from the termination of the contract could be referred to arbitration, given the respondent's contention that no valid arbitration agreement existed and that an internal departmental appeal mechanism under Clause 36 of the Contractor's Bid prevailed over the arbitration clauses in the General Conditions of Contract (which was based on PW Circular No. CAT-1086-CR-110/Bldg-2 Dated 7.5.1986). The Court rejected these contentions and held that Clauses 25.2 and 25.3 of the GCC clearly established a valid arbitration agreement.

It was further held by the Court that the conscious deletion of Clause 3.3 of the Special Conditions of Contract, which had originally excluded termination disputes from arbitration, created a clear inference that such disputes were intended to be arbitrable. The Court also found that since the termination decision was taken by the CEO, who stands above the Chief Engineer in the organisational hierarchy, the internal appellate mechanism was wholly inapplicable and no mandatory pre-arbitration procedure remained to be exhausted. Hon'ble Justice Anuja Prabhudesai, former Judge of the Bombay High Court, was appointed as the Sole Arbitrator.

The ruling reinforces the principle that courts must rule in favour of arbitration where a clear arbitration agreement exists, and provides important comfort to contractors engaged with public bodies facing wrongful termination of construction contracts.

Our team was led by **Faranaaz Karbhari** (Counsel), supported by **Rahul Jain** (Counsel) and **Khushboo Rupani** (Associate Partner).