

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

COMMERCIAL ARBITRATION PETITION (I) NO. 22440 OF 2022

Supreme Suyog Funicular Ropeways Pvt.Ltd. ..Petitioner
vs.
Government of Maharashtra & Anr. ..Respondents

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Mr.Akshay Patil with Onkar Chandurkar with Rajesh Devgharkar with Neha Patil with Meghnesh Birwadkar, Devika Madekar, Pallavi Kamble i/b. Akshay V. Kamble, for the Petitioner.

Ms.Jyoti Chavan, AGP for Respondent No.1-State.

Mr.Rony P.Joseph i/b. Rony & Co., for Respondent No.2 – SBI.

Ms. Deepali Ghorpade, Assistant Engineer, Grade I, PWD Sub-Division Ulhasnagar, present.

Mr.Manohar Bagul, Junior Engineer, PWD Sub-Division Ulhasnagar,
present.

Mr.Z.N.Shaikh, General Manager (Execution) present.

Mr.G.D.Lakhaney, VP Legal, present.

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CORAM : G.S. KULKARNI, J.
DATE : AUGUST 1, 2022.

P.C.:

1. I have heard Mr.Patil, learned Counsel for the petitioner for some time and Ms.Chavan, learned AGP for the respondents-State.
2. The dispute in the present proceedings is in regard to the contract which was awarded to the petitioner on Build, Operate and Transfer basis by respondent no.1-Government of Maharashtra for construction Funicular Railway at Haji Malang Gad, Taluka Ambarnath, District

Thane. It is the case of the petitioner that although the project was to be completed by December 2015, there were number of issues including land acquisition, difficulties due to landslides etc. Mr.Patil, learned counsel for the petitioner submits that substantial work was undertaken by the petitioner and an amount of about Rs.90 crores has been spent by the petitioner. It is his contention that the entire project is funded by respondent No.2-State Bank of India as per the contractual arrangement between the parties.

3. Mr.Patil submits that his client is in a position to still proceed with the project work however, the respondent-State (for short, “the State Government”) had not extended the time to complete the work. This contention of Mr. Patil is however disputed by Ms.Chavan, learned AGP for the State.

4. Be that as it may, as per the State Government, several breaches on the part of the petitioner resulted in the respondent no.1-State issuing a show cause notice to the petitioner as to why the contract be not terminated. After the petitioner was heard on the show cause notice, the State Government terminated the contract by its communication dated 16 June 2022 as addressed to the petitioner. The parties as they stand today are in a position that the contract in question stands terminated.

5. Mr.Patil, on instructions, would submit that despite the termination of the contract and considering the peculiarities involved, it is possible for the petitioner to complete the project by 31 May 2023. It is submitted that sufficient finances are also available with the petitioner. His submission is also that as the petitioner was on the project for many years, it would be beneficial for the State Government

to reconsider its position and permit the petitioner to complete the project. Mr.Patil states that the petitioner can submit a without prejudice proposal at the earliest which can be considered by the State Government and the Competent Authority may take an appropriate decision on such proposal.

6. In my opinion, before the Court proceeds to hear the parties on the present proceedings, considering the peculiar nature of the contract and keeping in mind the public interest, without prejudice to the rights and contentions of the parties there would be no harm if such proposal is submitted by the petitioner, and if it is considered by the competent authority of the State Government. Let this exercise be undertaken on or before the adjourned date of hearing.

7. Ms.Chavan, learned AGP has agreed to take instructions and place on record an affidavit on behalf of respondent No.1 as to the further course of action which may be taken by the State Government also considering the public interest. Let the same be done within a period of three weeks from today. List this petition on **05 September 2022. High On Board.**

8. It is surely permissible for the parties to have a discussion on all the issues so that none of the issues remain to be discussed and considered before a decision is taken by the competent authority of the State Government.

9. In the meantime, in the event any decision is taken by the State Government which is prejudicial to the petitioner and before the same is implemented, it be informed to the petitioner by notice of 48 hours.

[G.S. KULKARNI, J.]