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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO. 04 OF 2013

Balaji Enterprises
Having office at CTS No.2964,
Plot No.16, Adarsh Dairy Compound,
Nehru Road, Shirpur, Dist. Dhule
Through it's Partner
Shri Tarachand K. Agarwal,
Age: 59 years, Occ: Business,
Having office at above mentioned
address ..APPLICANT

VERSUS

1. Maharashtra State Road
Development Corporation,
Through it's Managing Director,
Nepeon Sea Road, Priyadarshini
Park, Mumbai – 400 036.
2. The Executive Engineer (TMU)
M.S.R.D.C. Ltd.,
Toll Monitoring Unit, 322,
Arun Chambers, Tardeo,
Mumbai – 400 034. ..RESPONDENTS

Mr Amol K. Gawali, Advocate for applicant;
Mr S.V. Adwant, Advocate for respondents

CORAM : NITIN W. SAMBRE, J.

DATE : 19th SEPTEMBER, 2017

ORAL ORDER :

Heard.

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This Court, in view of the application moved by the applicant under Section 11 of the Arbitration and Conciliation Act, 1996 vide order dated 6th July, 2012 appointed an Arbitrator, who is Managing Director of the respondent.

2. The applicant submitted his claim before the Arbitrator and was awaiting response of the respondent on the same.

3. It is claimed by the petitioner, that since the Arbitrator was not proceeding with the matter, keeping in mind the object of Arbitration and Conciliation Act expeditiously, he wrote a letter to the Arbitrator on 20th February, 2013 narrating his experience in the Arbitration Proceedings thereby terminating mandate under Section 14 of the Arbitration and Conciliation Act.

4. In the aforesaid backdrop, the applicant thereafter moved this Court with prayer under Section 11(6) of the Arbitration and Conciliation

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Act for appointment of the Arbitrator.

5. Mr. Gawali, learned Counsel for the applicant, upon instructions, informs this Court that the mandate of the Arbitrator since was not terminated in accordance with the provisions of Section 14 of the Arbitration and Conciliation Act, he is withdrawing the contents of the communication dated 20th February, 2013 of termination of mandate and submits that he is ready and willing to go before the learned Arbitrator, provided Arbitrator should decide the proceedings within time bound manner keeping in view that the proceedings are pending since 2012.

6. Per contra, Mr. Adwant, learned Counsel for the respondents questioned the very maintainability of the arbitration proceedings on the ground that there is no arbitration agreement. In addition, he would urge that for the relief claimed by the applicant, remedy lies under Section 34 of the Arbitration and Conciliation Act and the

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applicant must approach before the District Judge. In addition, he would urge that mandate of Arbitrator was not validly terminated, when responding to the Court's query.

7. Mr. Adwant, learned Counsel for the respondents would urge that this Court must record findings whether there exists arbitration agreement or not and would invite attention of this Court to the judgment of the Apex Court in the matter of **NBCC Limited vs J.G. Engineering Private Limited**, reported in (2010) 2 SCC 385, particularly paragraphs-25 to 30, 32, 34 and 35 thereof.

8. I am afraid, such contention of the respondents cannot be gone into at this stage, particularly when respondents were party to the order of appointment of Arbitrator passed by this Court. The said order of appointment of Arbitrator was passed after hearing the present respondents and the respondents by their conduct submitted to the jurisdiction of such arbitrator. The fact

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remains that the respondents never objected to the jurisdiction of the arbitrator and it is almost after five years of period of appointment of arbitrator, the respondents are coming out before this Court with unreasonable stand that arbitration agreement itself does not exist, that too, in the proceedings initiated by the claimant before this Court. Again, Section 4 of the Arbitration Act is required to be appreciated.

9. In the wake of above, prayer made by learned Counsel for the applicant about withdrawal of the communication dated 20th February 2013 and also present proceedings, in my opinion, needs to be allowed. Parties to arbitration proceedings shall appear before the Arbitrator on 3rd October, 2017.

10. Keeping in mind that the appointment of Arbitrator was made and proceedings before him are pending for more than five years and even if presuming that present proceedings were pending before this Court, in which, the proceedings before

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Arbitrator was not stayed, it was expected of the Arbitrator to proceed ahead with the proceedings before it.

11. It was expected of the Arbitrator that though he is Managing Director of the respondent-corporation, to act reasonably and without any bias attitude. He is required to judge the dispute brought before him irrespective of the position that is held by him.

12. The Arbitrator, in the aforesaid appointment, and keeping in mind the object of the Arbitration and Conciliation Act, shall decide the proceedings within period of one year from the date of first appearance i.e. 30th November, 2017.

13. With above observations, the application stands disposed of.

(NITIN W. SAMBRE, J.)