

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.53 OF 2016**

M/s. PBA Infrastructure LimitedApplicant

Vs.

M/s. Nagpur Sical Gupta Road Terminal Ltd.Respondent

Ms. Aparna Devkar i/b. M P Vashi Associates for applicant.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd NOVEMBER, 2017**

PC.:

1 Respondent had issued a work order to petitioner for carrying out certain road work for Maharashtra Airport Development Company Ltd. (MADC) at Nagpur. Certain disputes arose under the contract. Clause 20 of the contract provides for claim, disputes and arbitration and the same reads as under :

"20 - CLAIM DISPUTES AND ARBITRATION

A. The following procedure shall be adopted in case of disputes or differences arising between the engineer and Contractor :

i. If either the employer or the Contractor disagrees with the decision of the engineer, the decision shall then be referred by the employer or by Contractor, within 14 days of the Engineer's decision to the Steering Committee constituted by the NSGRTL Ltd. The Steering Committee may call upon the engineer and Contractor to hear their case before giving its advice. The Steering Committee shall give its advice in writing within 28 days of receipt of notification by it. The employer shall then take appropriate decision on the said advice of the Steering Committee, which shall be binding upon the employer.

ii. If the decision of the employer reached on consideration of the advise of the Steering Committee is not agreeable to the Contract, the Contract shall notify the employer within 14 days of the receipt of the said

decision, failing which the decision of the employer shall be final and binding on the Contractor. The employer shall then refer such dispute or differences to the Arbitration, within 60 days of the receipt of the Contractor's Notice for non acceptance of Employer's decision. The dispute and differences as aforesaid shall be finally settled through arbitration by One Arbitrator, the Chairman of NSGRTL under the Arbitration and Conciliation Act, 1996 or any modification thereof. The decision of the above said arbitration shall be final and binding on Employer and Contractor. The said Arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, any decision of Steering Committee, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the Arbitrator any matter whatsoever relevant to the dispute. Neither party shall be limited in the proceeding before the arbitrator to the evidence nor arguments previously put before the Steering Committee to obtain decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Steering Committee shall be admissible in evidence in the arbitration. Arbitration may be commenced prior to or after completion of the works. The obligations of the parties, the engineer and the Steering Committee shall not be altered by reason of any arbitration being conducted during the progress of the Works."

2 As averred in the petition, Steering Committee was appointed after petitioner was compelled to move the Nagpur Bench of this Court. The Steering Committee, it is stated did not give its advice in writing within 28 days of receipt of notification and therefore, petitioner invoked arbitration by a letter dated 30th April, 2014. It is stated that the Chairman of NSGRTL, the appointing authority, failed to initiate arbitral proceedings and appoint an independent Arbitrator. Applicant, therefore, filed an application under Section 11 before the Nagpur Bench of this Court and Nagpur Bench came to a conclusion that it does not have jurisdiction and only the principal bench of Bombay High Court at Bombay will have jurisdiction. Accordingly, this application has been filed.

3 Applicant has filed three affidavits of service, first of which is affirmed by one Harishchandra Charkari on 31st July, 2017 confirming service of the application upon respondent at the address given in the MCA website. Applicant attempted to serve respondent at the other addresses of respondent and those packets have come back undelivered. The third affidavit is also filed of one Vishal Chavan affirmed on 2nd November, 2017 in which it is stated that copies of the application were sent to the Directors of respondent - Virendra Sunil Bagle, Prashant Gulabrao Tale and one Nagaraju Huchaveerappa. It is stated that the packet has been delivered to Virendra Sunil Bagle.

4 Nobody is present for respondent though served. As stated in the affidavit of service dated 31st July, 2017 the application has been served on respondent on 16th December, 2016. There is no affidavit filed in reply opposing the application. Therefore, the averments contained in the application are uncontroverted.

5 Therefore, Mr. Anoshak Daver, an Advocate, practicing in this Court and having his office at 46/C, Prospect Chambers Annex, Pitha Street, Mumbai - 400 001 (Mobile No.9833098777) is appointed as Sole Arbitrator to arbitrate on all disputes and differences arising out of or in connection with or relating to agreement as contained in the work order dated 27th January, 2008 read with tender document C.A.

No.NSGRTL/MIHAN/2008-2009.

6 The fees of the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicant and 50% by respondents and the same shall be subject to cost in the arbitral proceedings.

7 The Arbitrator to communicate to the Advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within three weeks of receiving a copy of this order from applicant's Advocates.

8 Liberty to apply.

9 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)