

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

ARBITRATION APPLICATION NO. 10 OF 2017

**ESDS SOFTWARE SOLUTION PRIVATE LIMITED
VERSUS
THE COMMISSIONER, NANDED WAGHALA CITY MUNICIPAL
CORPORATION AND ANOTHER**

...

Advocate for the Applicant : Shri R. P. Karhadkar
Advocate for Respondent Nos. 1 and 2 : Shri M. D. Narwadkar
h/f. Shri M. V. Deshpande

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th MARCH, 2019.

...

PER COURT :

1. On 26/02/2019, the following order was passed :-

"1. I have heard the learned Advocates for the respective sides briefly. I have also perused the agreement dated 18.09.2012 between the parties. Clause 5 of the amended agreement dated 30.04.2014 indicates that earlier arbitration clause 12 of the contract would be replaced as follows :-

"The Arbitration Tribunal shall consist of one Arbitrator : the Commissioner, NWCMC or its appointee, made in consultation with both the parties".

2. *In view of the above, it is obvious that the Arbitrator can be appointed.*

3. *The learned Advocate for the Petitioner submits that since his first invoice of the outstanding amount is dated 22.03.2016, the limitation of three years would end on 21.03.2019 as he is*

expected to raise his claim before the Arbitrator within the said period.

4. In view of the above, stand over to 04.03.2019 for "passing orders". The Respondent/Corporation shall state the name of the Arbitrator on the said date."

2. As the matter was inadvertently not posted on today's board, a motion was moved at 10.30 a.m. and this matter was taken on the production board. The learned Advocates are present and are heard.

3. The learned Advocate for the applicant submits that, on 26/02/2019, he had inadvertently mentioned the date 22/03/2016 appearing in paragraph 3 of the order. It is actually 01/03/2016 and the three years limitation would, therefore, end on 28/02/2019. He prays that the delay if any, may be condoned.

4. The learned Advocate for the respondent Corporation submits that as per the arbitration clause, the Municipal Commissioner shall himself officiate as an arbitrator.

5. In view of the above, this application is partly allowed.

The Commissioner, Nanded Waghala City Municipal Corporation shall be the sole arbitrator. The litigating sides would appear before the Arbitrator on 25/03/2019 at 11.00 a.m.

6. As this application has been pending before this Court from 07/07/2017, the delay caused with reference to the limitation applicable in raising of the claim before the Arbitrator is concerned, the time spent in this Court till the appearance of the parties on 25/03/2019, shall be excused.

7. Needless to state, the Arbitrator would endeavour to decide the proceedings as expeditiously as possible and preferably, on or before 31/03/2020.

(RAVINDRA V. GHUGE, J.)

shp/-