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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.18 OF 2022

Pochampad Construction Co. Pvt. Ltd. ...Petitioner

Versus

Solapur Smart City Development ...Respondent

Mr. Chirag J. Shah, Ekta Dalvi, Raj Adhia, Nidhi Boriya and Shyam
Jadhav for the Petitioner.

Mr. Anand Kulkarni for Respondent.

CORAM : R.I. CHAGLA J

DATE : 25TH MARCH, 2022

ORDER :

1. Heard learned Advocate for the parties. Affidavit in Reply
on behalf of the Respondent is tendered and taken on record.

2. By this Arbitration Petition, the Petitioner has sought
appointment of a retired Judge of this Court as a sole and
independent Arbitrator to adjudicate upon all the disputes and
differences that have arisen between the parties in connection with

agreement dated 9th September, 2019 and other bid / tender documents.

3. By the Arbitration Agreement under clause 28 of the Contract Agreement for augmentation to Solapur City Water Supply Project dated 9th September, 2019 between Petitioner and Respondent, the disputes were to be referred to Sole Arbitrator, namely the Secretary, Urban Development Department, Government of Maharashtra. There is an apprehension raised by the Petitioner in paragraph 30 of the Petition as to the independency of the Secretary, Urban Development Department, Government of Maharashtra. The law laid down by the Supreme Court has been referred to that a Court in a Section 11(6) Petition shall appoint an independent Arbitrator other than named Arbitrator in the interest of justice.

4. In the present case, the learned Advocate for the Petitioner has stated that the Secretary, Urban Development Department, Government of Maharashtra is necessarily exercising control over Solapur City Development Corporation and in that capacity there is apprehension as to his independency. The Respondent Solapur City Development Corporation is Company established vide Government Resolution No Smart City Solapur –

2016/SR-112/UD-23 dated 18th March, 2016 and though operates under the Companies Act, 2013, the majority shares are held by the Urban Development Department of the State Government. Further, the registered office of the Respondent is at District Planning Office, new Collector's Office Solapur premises stated to be the same as that of the District Urban Development Department / Planning Department. The Respondent is engaged in providing services to assist the Government to execute and implement various Government Schemes and projects for economic growth. Thus the present Arbitration Petition is filed for appointment of a Sole and independent Arbitrator to adjudicate upon all the disputes and differences arisen between the parties.

5. The learned Advocate for the Respondent has referred to the order passed by District Judge – 1, Solapur in Civil Miscellaneous Application No.51 of 2022, wherein it is recorded that the Advocates agreed to go before the Arbitrator as specified in Clause 28 of the agreement. The Applicant was granted 15 days time to go before the Arbitrator as per the said Arbitration Agreement.

6. Having considered the submissions the Supreme Court in

Indian Oil Corporation Ltd. & Ors. Vs. Raja Transport Pvt. Ltd.¹ held that a referred dispute to named Arbitrator shall be the Rule, but where there is a material to create a reasonable apprehension that the person mentioned in the arbitration agreement as arbitrator is not likely to act independently or impartially, this Court as designate may, after recording reasons for not following the agreed procedure of referring the dispute to the named arbitrator, appoint an independent arbitrator in accordance with Section 11(6) of the Arbitration and Conciliation Act, 1996.

7. It is to be noted that in the present case the named Arbitrator is the Secretary, Urban Development Department, Government of Maharashtra. The Respondent – Solapur City Development Corporation Ltd., though a Company operating under Companies Act, 2013 is controlled by the Urban Development Department. The official address of the Respondent is also District Planning Office, New Collector Office Premises, Near Govt. Milk Dairy, Saat Rasta, Solapur 413 003. There appears to be a reasonable apprehension on the part of the Petitioner that there is a possibility that independent decision making may not be exercised by the Secretary, Urban Development Department, Government of

¹ (2009) 8 Supreme Court Cases 520.

Maharashtra.

8. In the order of District Judge – 1, Solapur in Civil Miscellaneous Application No.3 of 2022, it had been noted that the Petitioner had moved the Petition before this Court. Accordingly, it would be in the interest of justice that an independent Arbitrator such a retired Judge of the High Court be appointed as Arbitrator to adjudicate the disputes between the parties in connection with the agreement dated 9th September, 2019 and other bid / tender documents.

9. The parties are agreeable for their disputes to be referred to Shri Shrikant R. Sathe, Retired Judge of this Court for adjudication under the Agreement dated 9th September, 2019.

10. In view thereof, following order is passed:-

(i) Mr. Shrikant R. Sathe (Retired High Court Judge) is appointed as a Sole Arbitrator to decide the disputes between the Petitioner and the Respondent arising out of the Agreement dated 9th September, 2019 and other bid / tender documents executed between them.

- (ii) The venue of arbitration shall be in Pune.
- (iii) Office to inform the Sole Arbitrator regarding his appointment.
- (iv) The Sole Arbitrator is requested to file his Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.
- (v) Parties to appear before the Sole Arbitrator on the date fixed.
- (vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.
- (vii) Arbitration Petition is disposed of in the above terms.

(viii) No costs.

[R.I. CHAGLA J.]