

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

**924 CIVIL APPLICATION NO.5194 OF 2023  
IN CARBA/2/2022 WITH CA/10992/2022 IN CARBA/2/2022**

**HULE CONSTRUCTIONS PRIVATE LIMITED THR ITS MANAGING  
DIRECTOR VISHWANATH DAGDOBA HULE  
VERSUS  
THE CHIEF ENGINEER AND CHIEF ADMINISTRATOR COMMAND  
AREA DEVELOPMENT AUTHORITY AND ORS**

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Advocate for Applicant : Mr. V. P. Latange h/f Mr. J. N. Singh  
AGP for Respondent/State : Mr. P. K. Lakhotiya  
Advocate for Respondent : Mr. Amit A Yadkikar

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**CORAM : RAVINDRA V. GHUGE  
AND  
Y. G. KHOBRAGADE, JJ.**

**DATED : 07<sup>th</sup> JULY 2023**

**PER COURT : -**

1. The applicant is a beneficiary of the arbitration award dated 02.02.2019, delivered by the sole Arbitrator.
2. The appellant before us is aggrieved by the said award as well as by the judgment and order dated 12.04.2022 delivered by the learned District Judge - 2 / Commercial Court - B, in Civil Miscellaneous Application No. 53 of 2019.
3. While passing the first order dated 27.07.2022, we have considered the submissions of the learned advocates for the respective sides and by a speaking order, we have directed the appellant to deposit

50% of the amount mentioned in the attachment warrant dated 30.06.2020. In pursuance thereof, the said amount has been deposited.

4. We have considered the submissions of the learned advocates for the respective sides. The learned advocate for the appellant strenuously submits that the arbitral award is unjustified and unsustainable. If the appeal is heard, the appellant has every hope that this court would allow the appeal and quash and set aside the arbitration award. He further submits that there was no arbitration clause in the agreement between the litigating parties and only because the advocate for the applicant gave his no objection that the matter was referred to the Arbitrator.

5. The learned advocate for the applicant submits that though there was absence of the arbitration clause, the matter was referred to Arbitration by consent of the parties. During the entire arbitration proceedings, the appellant did not raise an issue that the arbitration proceedings are *non est*. This ground also was not raised before the District Court. The consent by the appellant to refer the matter for the arbitration is proved not only by way of documents, but also by conduct. The appellant is, therefore, estopped from taking this ground to oppose the present application.

6. We find from the pleadings of the parties that the appellant carries a view that no amount was payable to the present applicant in the arbitration proceedings. It is the State Exchequer, which has to shoulder the burden of depositing such large amounts that are granted in arbitration proceedings. Per contra, the applicant submits that the arbitral award is well-reasoned and even the District Judge / Commissioner Court did not find any reason to cause an interference in the said award.

7. Hence, in these circumstances, we deem it appropriate to balance the equities by permitting the applicant to withdraw an amount of Rs. 5.00 Crores ( about 50% of the deposited amount )only subject to filing an affidavit / undertaking that if it is eventually concluded that the applicant is not entitled for this amount, the applicant would re-deposit the withdrawn amount / excess amount in this court within six weeks from the date of such order.

8. As such, **this application is partly allowed.** The applicant shall withdraw an amount of Rs. 5.00 crores with an affidavit / undertaking as noted above. The application duly signed and identified by the advocate shall be filed by the authorized representative of the applicant for seeking withdrawal. A copy of the Aadhaar and the income tax PAN Card shall be placed on record.

9. List the appeal for final hearing on **19.10.2023**.

**[Y. G. KHOBRAGADE]**  
**JUDGE**

**[RAVINDRA V. GHUGE]**  
**JUDGE**

SG Punde