

Corrected as per speaking to minutes of order dated 13.01.2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.20637 OF 2022

IN

ARBITRATION PETITION NO.50 OF 2016

Municipal Corporation of City of Pune through
the Municipal Commissioner ... Applicant

In the matter between:

Official Liquidator, High Court Bombay Liquidator
of Hanjer Biotech Energies Vasai Pvt. Ltd. ... Petitioner

Vs.

Municipal Corporation of City of Pune through
the Municipal Commissioner ... Respondent

Mr. Vishwanath Patil for Applicant.

Ms. Sutapa Saha i/b. Mr. Ansar B. for Original Petitioner in Petition and for
Respondent in IA.

CORAM : MANISH PITALE, J.

DATE : JANUARY 05, 2023

P.C. :

. This is an application filed on behalf of the original respondent under Section 14 of the Arbitration and Conciliation Act, 1996, seeking appointment of a substitute arbitrator in the peculiar facts and circumstances of the present case.

2. As per the arbitration clause in the agreement executed between the parties, there was to be a panel of three arbitrators wherein one arbitrator each was to be appointed by the parties and the third arbitrator was to be appointed by the two appointed arbitrators.

3. It appears that initially, a panel of three arbitrators proceeded with the arbitration. Since the arbitral award was not passed within the mutually extended period of 6 months by the parties, the applicant approached this Court by filing Civil Application No.12 of 2019, under

Section 29A of the Arbitration and Conciliation Act, 1996, for extension of time for passing arbitral award and by filing Company Application No.175 of 2019, seeking leave under 446 of the Companies Act, 1956 to continue the arbitral proceedings against M/s. Hanjar Biotech Pvt. Ltd. (in Liquidation). By the minutes of order dated 25th April, 2019, the parties agreed for appointing Justice Shri V. M. Kanade, former Judge of this Court, as the sole Arbitrator and the period for passing of the award was extended by a period of 15 months.

4. In the present application, it is pointed out that the learned arbitrator, Justice V. M. Kanade, informed the parties that in view of his appointment as the *Lok Ayukta* of the State of Maharashtra, it would not be possible for him to continue with the arbitration proceedings. Learned counsel for the applicant submits that in this situation, the applicant is constrained to move the present application.

5. The respondent has appeared through counsel. The parties proposed names of former judges of this Court to be appointed as the sole arbitrator but there was no agreement to a common name and in this situation, learned counsel for the parties, on instructions, left it to this Court to appoint the sole arbitrator to continue with the arbitration proceedings.

6. In this backdrop, Justice Anil Kumar Menon, former Judge of this Court, is appointed as the sole arbitrator in view of the agreement expressed on behalf of the parties that despite the stipulation in the arbitration clause, a sole arbitrator may be appointed for further proceedings.

7. The details of the learned arbitrator are as follows:-

Hon'ble Mr. Justice Anil Kumar Menon

Office Nos.4 and 5, Yashwant Chambers,
3rd Floor, 18/B, Burjorji Bharucha Marg,
Fort, Mumbai - 400 023.

8. The parties shall immediately communicate this order to the learned arbitrator. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Section 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court.

9. The learned arbitrator, now appointed, will take up the proceedings from the stage at which they were pending when the learned arbitrator Justice V. M. Kanade expressed his inability to continue with the proceeding.

10. With the consent of the parties, the mandate of the learned arbitrator is extended till 31.12.2024.

11. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.

12. All questions are kept open.

13. The application stands disposed of.

(MANISH PITALE, J.)

Minal Parab