



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

23 ARBITRATION APPLICATION NO. 6 OF 2023

M/S NIRMITI CONSTRUCTION THR ITS AUTHORISED REPRESENTATIVE UMESH
NARHARI PADWAL

VERSUS

UNION OF INDIA AND ANOTHER

Advocate for Applicant : Mr. G. K. Naik Thigale h/f Mr. A. B. Lokhande

AGP for Respondents-State : Mrs. K. R. Jamdhade

Advocate for Respondents No.1 to 4 : Mr. B. B. Kulkarni

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CORAM : ARUN R. PEDNEKER, J.

Dated : April 22, 2024

PER COURT :-

1. Heard the learned Advocate appearing for the parties.
2. The parties have entered into an agreement dated 28/12/2017 and General Conditions of Contract of July 2014 are applicable to the contract between the parties. Clause 63 and 64 of the General Conditions of Contract provides for an appointment of arbitrator in the dispute arising between the parties.
3. The dispute has arisen between the parties and the learned Advocate for applicant as such has applied for appointment of an arbitrator. Clause 64 which provides for the appointment of arbitral tribunal by the respondent has already been interpreted by this Court as being unenforceable. Unilateral appointment of arbitral tribunal by one of the parties is not permissible, and as such, this Court has declined to apply the clause 64 of the above General Conditions of Contract in the matter of ***S. N. Naik Brothers vs. Union of India, (Arbitration Application No.26 of 2023) decided on 03/04/2024.***
4. The notice issued for arbitration by the applicant dated 21/10/2022 was served on the respondent but the same was not responded by the

respondent. In the instant application filed for arbitration under 11 (6) of the Arbitration and Conciliation Act, 1996 has been responded by the respondents as under : -

"As per GCC Clause 63 and 64, any disputes/claims arising out of the works executed by Railways have to be settled firstly through Railway Arbitration only. If either of the parties are aggrieved with the decision of the Arbitral Tribunal, then only they can approach the Hon'ble Court for further jurisdiction. Although Railway Administration is willing to settle the disputes through arbitration (A-18), but the petitioner is not willing through Railway Arbitration (A-19).

5. The respondent has accepted the clause of arbitration but insist that the arbitral tribunal be appointed in terms of Clause 64 of the above General Conditions of Contract. However, since the same is not permissible, this Court would exercise power under Section 11 (6) of the Arbitration and Conciliation Act.

6. Mr. Justice Nirgude is appointed for Arbitration of the disputes between the parties in terms of applicants notice dated 21/10/2022. Accordingly, the arbitration application is disposed of with following order :

a] **Appointment of Arbitrator :-**

Mr. Justice A. V. Nirgude, is appointed to act as sole arbitrator to adjudicate upon the disputes between the parties.

b] **Communication to Arbitrator of this order :**

(i) A copy of this order will be communicated to the learned Sole

Arbitrator by the Advocates for the applicant within one week from the date this order is uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following post and email addresses :

Arbitrator : Mr. Justice A. V. Nirgude
Address : 48,5th Floor, Western India
House, Sir P M Road, Bombay
Store, Fort Mumbai 400001.
Phone No. : 9049399387
Email : avnlegal2016@gmail.com

c] **Disclosure :**

The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Registrar of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Registrar on the file of this application. Copies will be given to both sides.

d] **Appearance before the Arbitrator :**

Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates and the parties to obtain appropriate directions from the arbitrator in regard to fixing a schedule for completing pleadings, etc.

e] **Contact / communication information of the parties :**

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

f] **Interim Application/s :**

(i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

g] **Fees :**

The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

h] **Venue and seat of arbitration :**

Seat of the arbitration would be governed by the provisions of the agreement executed between the parties.

(ARUN R. PEDNEKER, J.)

vj gawade/-.