



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

929 ARBITRATION APPLICATION NO. 23 OF 2023

SUJOY BHOWMIK

VERSUS

UNION OF INDIA, THROUGH SENIOR DIVISIONAL ENGINEER CO
ORD,NANDED DIVISION

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Advocate for Applicant : Mr. Muthiyan Namit Sunil
DSGI for Respondents: Mr. A. G. Talhar

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CORAM : ARUN R. PEDNEKER, J.

Dated : May 07, 2024

PER COURT :-

1. Head the learned Advocate for the parties.
2. The present application is filed for appointment of an arbitrator in terms of dispute that has arisen out of agreement dated 17/03/2020 executed between the parties. In terms of the said agreement between the parties, the dispute arising out of the agreement has to be resolved by arbitration as is provided under Clause 64 (3) (b) of the General Conditions of Contract.
3. In the instant case, dispute has arose between the parties and in terms of Clause 64 (3) (b) of the General Conditions of Contract, arbitration proceedings are also initiated. However, this Court in case of ***S. N. Naik & Brothers vs. Union of India, in Arbitration Application No.26 of 2023, decided on 03/04/2024, has*** held that the said clause provides for unilateral appointment of arbitrator at the hands of one party and it breaches the principle of impartiality and neutrality of the arbitrators and thus in violation of principles of law laid down by the various Judgments of the Supreme Court.
4. While interpreting the above clauses, in the case of ***S. N. Naik & Brothers vs. Union of India*** (Supra), at paragraph No.24 of the Judgment, this Court has observed as under : -

"24. Having considered the law on the subject the question as raised at para 8(1) can be answered as under : -

Clause 64(3)(b)(ii) of the General Conditions of Contract provides for unilateral appointment of arbitral tribunal at the hands of one of the parties and, thus, is in violation of the principles laid down in Voestalpine (supra), TRF (supra) and Perkins (supra) and also in violation of the law laid down in the case of Lombard (supra) and the said clause is ex-faice invalid and the tribunal constituted thereunder is non-est and void ab initio."

5. Paragraph No.28 of the Judgment in **S. N. Naik & Brothers vs. Union of India** (Supra) reads as under : -

"28. In the instant case, I have held that the agreement 64(3) (b) (ii) of the General Conditions of Contract is in violation of the principles laid down in TRF (supra), Perkins (supra) and Lombard Engineering (supra) and that clause 64 (3)(b)(ii) of the General Conditions of Contract provides for unilateral appointment of arbitrator at the hands of one party and it breaches the principle of impartiality and neutrality of the arbitrators. Thus, this court under section 11(6) of the Arbitration Act can exercise it's powers of appointment of arbitrator and need not relegate the parties to raise such defences before the arbitral tribunal constituted under the aforesaid clause 64(3)(b)(ii) of the General Conditions of Contract."

6. This Court has held that Clause 64 (3) (b) of the General Conditions of Contract cannot be invoked for constituting the arbitral tribunal, and thus, this Court has power under Section 11 (6) of the Arbitration Act to

appoint arbitrator in the above Judgment of ***S. N. Naik & Brothers vs. Union of India*** (Supra). Same is applicable to the facts of the instant case.

7. In view of the same, Mr. Justice Sunil P. Deshmukh is appointed for Arbitration of the disputes between the parties. Accordingly, the arbitration application is disposed of with following order :

a] **Appointment of Arbitrator :-**

Mr. Justice Sunil P. Deshmukh, 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 being 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 Sunil P. Deshmukh
Address	:	"Neel-Prabha", Next to Hotel Green Olive, Near Baba Petrol Pump, Station Road, Bhagya Nagar, Aurangabad 431 001.
Phone No.	:	9545028282
Email	:	sunilpdeshmukh@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] **Section 16 application :**

The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

g] **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.

h] **Fees :**

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

i] **Sharing of costs and fees :**

Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.

j] **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/-.