

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**COMMERCIAL ARBITRATION PETITION NO.19 OF 2024**

Larsen And Toubro Limited ... Petitioner

V/S.

Nashik Municipal Corporation ... Respondent

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Mr. Naresh Thacker, with Alok Jain, Mr. Ashna Contractor and Atharva Diwe  
i/b Economic Laws Practice, for the Petitioner.

Mr. M. L. Patil for the Respondent.

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**CORAM :     ARIF S. DOCTOR, J.**

**DATE     :     17<sup>th</sup> DECEMBER 2024**

**P.C. :**

1.     The captioned Petition is filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 and seeks the appointment of a Sole Arbitrator in respect of disputes and differences between the parties which arise from an Agreement dated 14<sup>th</sup> January 2016. The arbitration clause in the said Agreement reads thus:

*"If either party to a dispute is not satisfied with the recommendation of the Superintending Engineer, it shall refer the dispute to the Commissioner, Nashik Municipal Corporation, Nashik, who will act as Sole Arbitrator and his decision in the matter shall be final and binding on all. No other form of Arbitration shall be applicable to this contract."*

2. This Court had on 5<sup>th</sup> April 2024, after noting that the Respondent Corporation in its Reply to the notice invoking arbitration, had infact admitted the arbitration clause but had only insisted on the appointment of the Commissioner, Nashik Municipal Corporation as a Sole Arbitrator, passed the following order viz.

*"I Learned counsel for the petitioner has invited my attention to the response of the Nashik Municipal Corporation to the notice invoking arbitration, and in particular, clause 8 therein.*

*Though there is no denial about the existence of the arbitration agreement between the parties, but the insistence is upon appointment of the Commissioner, Nashik Municipal Corporation as a Sole Arbitrator.*

*Such an appointment if permitted, effected shall admittedly be in teeth of the settled position of law, that the interested party to a dispute cannot be an Arbitrator as the appointment shall be in violation of Section 12 read with Schedule V and Schedule VII of the Arbitration and Conciliation Act, 1986*

2            *Learned counsel for the respondents seek some time, which I am inclined to grant but since the petition involve the limited issue, it is directed to be listed on 2/5/2024."*

3.        When the Petition was taken up for hearing yesterday Mr. Patil Learned Counsel appearing on behalf of the Respondent–Corporation sought to oppose the Petition primarily on two grounds. The first was that the claim was barred by limitation and the second on the ground of arbitrability. I then put to Mr. Patil as to how after having admitted the existence of the arbitration agreement, the Respondent could take such pleas to oppose the appointment of an arbitrator in view of the various judgments<sup>1</sup> of the Hon'ble Supreme Court which *inter alia* hold that once the existence of arbitration agreement is admitted, all other contentions can be left open to be decided in arbitration. It was then that Mr. Patil requested the matter be stood over to today.

4.        Today Mr. Patil has today submitted '*pursis*' which reads thus, viz.

*"Without prejudice to Respondent's right to challenge the order proposed to be passed by this Hon'ble Court in the above Commercial Arbitration Petition before the Hon'ble Supreme Court of India or any other Forum or Court of competent jurisdiction and by keeping all the contentions of the*

1 SBI General Insurance CO. Ltd vs. Krish spinning (2021) 2 SCC 1;  
Aslam Ismail Khan Deshmukh vs. Asap fluid private limited and another (2024 SCC OnLine SC 3191)

*Respondent open, and since this Hon'ble Court has indicated that the Hon'ble Court is inclined to exercise jurisdiction under section 11 of the Arbitration and Conciliation Act, 1996 and proposes to appoint an Arbitrator from the list of three Arbitrators suggested by the Petitioner, the Respondent Corporation submits as under:-*

*a) The Respondent suggests the names of two Arbitrators who are former Hon'ble Bombay High Court judges and currently reside in Nashik: Mr. V. G. Munshi and Mr. A. M. Dhavale. Either of them can be appointed as the Sole Arbitrator.*

*b) Since the entire cause of action, if any, has arisen within the jurisdiction of the Principal Civil Court of Original Jurisdiction at Nashik by virtue of the facts that the Agreement was signed and executed at Nashik, the work under the Agreement was signed and executed at Nashik, the work under the Agreement was to be carried out at Nashik and the Respondent is a statutory corporation constituted for Nashik City urban area and has its office at Nashik, and as per the arbitration clause contained in the agreement the Commissioner, Nashik Municipal Corporation, whose office is at Nashik was to act as sole Arbitrator, the seat and venue or Arbitral Tribunal has to be Nashik. Therefore, from all aspects, including costs of the Arbitration proceedings, it would be just and convenient to appoint either of the aforesaid former Judges as sole Arbitrator.*

*c) Without prejudice to clauses (a) and (b) above, in case this Hon'ble Court proposes or decides to appoint any former Judge of this Hon'ble Court residing in Mumbai, the Respondent suggests either of the following former Judges be appointed as the Sole Arbitrator:-*

- i) Mr. Akil Kureshi, a former Judge of the Bombay High Court and former Chief Justice of the Rajasthan High Court and Tripura High Court.*
- ii) Mr. R. G. Ketkar, a former Judge of the Bombay High Court.*

*d) The Arbitral Tribunals fees shall be governed by the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018 or fees fixed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996."*

5. Mr. Patil then submitted that since the entire cause of action between the parties had arisen in Nashik, as also the fact that the arbitration clause provided for the Commissioner, Nashik Municipal Corporation, Nashik to act as arbitrator, an Arbitrator from Nashik be appointed.

6. *Per contra*, Mr. Thacker Learned Counsel appearing on behalf of the Petitioner submitted that an arbitrator from Mumbai be appointed. He then took me through the said Agreement and first pointed out that the 'witness

*clause*’ of the said Agreement mentioned that the same specifically mentioned that jurisdiction was of the Bombay High Court. He then also pointed out that the clause regarding the governing law also mentioned ‘*High Court@Mumbai Jurisdiction*’ and that the clause regarding compliance of laws provided ‘*jurisdiction shall be the competent courts in Nashik or the High Court at Mumbai*’. Basis this he submitted that an arbitrator from Mumbai be appointed. He however very fairly, did not beyond this press this contention. After having due regard to the submissions made, I deem it fit to appoint an Arbitrator from Nashik since it is not in dispute that the cause of action arose in Nashik, the contract was to be performed there as also the venue of arbitration would be Nashik even the clause contemplated that the Commissioner, Nashik Municipal Corporation, Nashik to act as Arbitrator.

7. Hence, I appoint Justice V. G. Munshi, Former Judge, Bombay High Court to act as the Sole Arbitrator to decide the disputes and differences of the parties on the following Terms and Conditions:

#### **TERMS OF APPOINTMENT**

- (a) Appointment of Arbitrator:** Justice V. G. Munshi, Former Judge, Bombay High Court is hereby nominated to act as a Sole

Arbitrator to decide the disputes and differences 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 Petitioner within one week from the date this order is uploaded.

(ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

**Arbitrator**      **Mr V. G. Munshi.**

*Address*      Nayantara    Empire,    Block  
No.13, 'B' Wing, Lavate Nagar,  
Near    City    Center    Mall,  
Nashik-422 005.

*Mobile*      9764007543

**(c) Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible.

The Advocates for the Petitioner will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a printout of the covering email is also to be filed in the registry.

- (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 to obtain appropriate directions 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. The information is to include functional email addresses and mobile numbers.
- (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. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

(ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

(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) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in **Nashik**.

8. It is made clear that the Respondents objections both on the aspect of limitation and on the aspect of arbitrability are kept expressly open to be decided in Arbitration.

9. The Commercial Arbitration Petition is disposed of in these terms.

No costs.

**(ARIF S. DOCTOR, J.)**