



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

ARBITRATION APPLICATION NO. 11 OF 2024

M/s. Avis India Consultants Project Engineers
Having its address at:
Office No.21/22, 2nd Floor,
Royal Chambers, Paud Road,
Pune-411038,
Through its power of Attorney Holder
Mr. Nirajnan Vijay Kulkarni

.....APPLICANT

VERSUS

Shree Gajanan Maharaj Sugar ltd.
(Formerly Known as Utech Sugar Pvt. Ltd.)
Having its registered address at
Anant Residency, 1st Floor, 2054,
Pune-411030 (MH).

.....RESPONDENT

Mr. Omkar Nevgi a/w Mr. Vinayak Dahihande h/f Mr. B. K. Patil, Advocate for Applicant
Mr. S. B. Ghatol Patil, Advocate for Respondent

CORAM : ROHIT W. JOSHI, J.

DATED : 08TH AUGUST, 2025

ORAL JUDGMENT :-

. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking constitution of Arbitral Tribunal for resolution of dispute between the parties arising out of 'Tender for proposed 3500 TCD Sugar Factory

and 15 MW Co-generation Project for UTech Sugar Private Limited'. Clause 21.2 of the conditions of contract provides that resolution of disputes between the parties by way of arbitration. Clause 21.2 provides that all disputes and differences arising between the parties in connection with the work shall be referred to and settled by the 'Architect'. The term 'Architect' is defined under Clause 1.1(b) to mean Beri Architects and Engineers Private Limited. However, the matter could not be referred to the said Architect, since, the respondent has levelled personal allegations of bias and collusion against the Architect.

2. The applicant has issued notice dated 19.01.2023, raising demands with respect to the work executed. The respondent has replied to the notice on 14.05.2023, denying the claim. The applicant has thereafter issued a notice of concurrence dated 14.10.2023, invoking the arbitration clause. In this notice, name of Dr. Shalini Phansalkar Joshi, a former Judge of this Court is suggested to be appointed as sole-Arbitrator for resolution of the dispute. Since, the respondent did not concur with the name suggested, the present application is filed under Section 11(6) of the

Arbitration and Conciliation Act, 1996 seeking constitution of Arbitral Tribunal.

3. Perusal of Clause 21.2 of the Conditions of Contract will demonstrate that the parties have specifically agreed that the dispute will be referred to a technical person for adjudication of the same by way of arbitration. Clause 21.2 provides for reference of disputes to a sole-Arbitrator, who is a qualified technical person to be agreed upon and appointed by both the parties. As noted above, the parties are not in position to agree any name for appointment as sole-Arbitrator. Clause 21.2 further provides that if the parties cannot agree of a name to be appointed as sole-Arbitrator, a qualified technical person shall be appointed by each party to act as Arbitrator and the two Arbitrators so appointed shall before taking up the reference, appoint an Umpire (3rd Arbitrator).

4. Mr. Shahaji Ghatol-Patil, the learned Advocate for the respondent raises a preliminary objection that the claim of the applicant is barred by limitation and therefore question of appointment of Arbitrator does not arise. The question of limitation is a mixed question of law and facts. Disputed questions of facts cannot be gone into and adjudicated in a

proceeding under Section 11(6) of the Act. The contention raised is rejected at this stage, however, it will be open for the respondent to raise the issue of limitation before the learned Arbitral Tribunal.

5. Vide order dated 18.07.2025, both parties were directed to suggest names of Arbitrator/s to be appointed. Accordingly, both parties have suggested different names. However, they are unable to agree on any one name to be appointed as sole-Arbitrator. As a consequence of this, the Arbitration will have to be conducted by a panel of three Arbitrators.

6. Each party is entitled to appoint one Arbitrator. The learned Counsel for the applicant states that Shri Narayan Govind Sathe, who holds qualification of B.E.(Civil) and has 40 years of experience of working in sugar industry is appointed as Arbitrator on its behalf. Likewise, Mr. Shahaji Ghatol Patil states that the respondent appoints Mr. Ajay N. Kale, Ajay Kale and Associates as Arbitrator on behalf of the respondent. It is stated that Mr. Kale has experience of around 27 years of working as Arbitrator and Consultant.

7. The aforesaid two persons are appointed as Arbitrators by respective parties. As per Clause 21.2, the two appointed

Arbitrators have to appoint a third Arbitrator. In the event, the Arbitrators so appointed by respective parties are unable to agree on the name of third Arbitrator, it will be open for either party to approach this Court under Section 11 for appointment of third Arbitrator in order to complete the constitution of Arbitral Tribunal.

8. Arbitration Application No.11 of 2024 is disposed of accordingly.

(ROHIT W. JOSHI, J.)