



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

**903 ARBITRATION APPLICATION NO. 5 OF 2025
WITH
ARBITRATION APPLICATION NO. 23 OF 2025**

Chhatrapati Sambhaji Nagar - Jalna Tollway Private Limited
VERSUS
Public Works Department, Government Of Maharashtra

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Advocate for Applicant : Senior Counsel Mr. V. D. Sapkal i/b Ms. Anamika
Singh, Mr. Rahul Totala, Mr. Swapnil Lohiya and Mr. Vedant KabraMr. Totala
Rahul Rameshwar

AGP for Respondents-State: Mr. K. B. Jadhavar

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CORAM : ARUN R. PEDNEKER, J.

Dated : December 23, 2025.

PER COURT :-

1. The learned Counsel for the applicant submits that the applicant entered into an agreement dated 20/12/2006 with the respondent in respect of the Aurangabad-Jalna Tollway and Chhatrapati Sambhajnagar-Jalna Tollway projects. It is submitted that the said agreement provide that any dispute arising out of or relating to the implementation of the said agreement is to be adjudicated through the mechanism of arbitration.

2. It is further submitted that the agreement provides for a pre-dispute settlement mechanism under Clause 3.4.17 and thereafter if there is no resolution by Arbitration. Clause 3.4.17, titled "*Settlement of Disputes*", reads thus :

" SETTLEMENT OF DISPUTES :

Under no circumstances, whatever shall the Entrepreneur be entitled to submit any claim for consideration of the Government on any account unless the Entrepreneur shall have given sufficient prior intimation and shall have submitted the details in

writing to the Engineer within one month of the cause of such claims.

(i) Except where otherwise specified in the contract document and subject to the powers delegated to him by the Government under the codes / rules then in force, the decision of the Superintending engineer of the Circle for the time being, shall be final, conclusive and binding on all parties to the contract, upon all questions relating to the meaning of the specifications, designs, drawings, and instructions herein before mentioned and as to the quality or workmanship of materials used on the work or as to any other question, claim, right matter or thing whatsoever if in any way arising out of or relating to the contract, designs, drawing, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of the work or after the completion or abandonment thereof or during operation of maintenance. The S.E. shall give his orders on the claim within 45 days of receipt of claim by the Engineer, failing which the entrepreneur may submit the claim directly to Chief Engineer irrespective of the amount of claim.

(ii) The Entrepreneur may within thirty days of receipt by him of any order by the Superintending Engineer of the Circle as aforesaid, appeal against it to the Chief Engineer concerned with the work/project. The C.E. shall give his orders on all claims referred to him within 30 days of receipt of claims. Where any dispute is not resolved as above or the Entrepreneur is not satisfied with the decision of Chief Engineer, the following provision shall apply.

(iii) Arbitration: Where any dispute is not resolved as above, the following provisions shall apply :

(a) At the request of either party by a written notice to that effect to the other party (a Notice of Reference) The dispute shall be submitted to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(b) the place of Arbitration shall be the city of head quarter of the Chief Engineer.

(c) The Arbitration shall take place before a panel of three arbitrators.

(d) The parties shall agree upon the identity of the Arbitrator(s) within thirty days of the receipt of the Notice of Reference by the relevant party. If the parties are unable to so agree upon the identity of the Arbitrator(s) then:

(i) The parties shall use their best endeavor to agree on to an appointing authority within thirty days of the receipt of the Notice of Reference by the relevant party, and

(ii) In the event that the parties are unable to agree as aforesaid upon an appointing authority, the Arbitrator(s) shall be appointed on the application of either party by the Secretary, Public Works Department, Government of Maharashtra, whose decision as to the identity of the Arbitrator(s) shall be final."

3. The learned Counsel for the applicant submits that disputes have arisen under the agreement and that the applicant invoked the arbitration clause by issuing notices dated 14/10/2024 in Arb. Application No. 5/2025

and 17/06/2025 in Arb. Application No. 23/2025, calling upon the respondent to appoint an arbitrator. It is further submitted that, despite such invocation, the respondent has failed to cooperate in the constitution of the Arbitral Tribunal.

4. It is further submitted that the arbitration clause provides for a panel of three arbitrators, with one arbitrator to be nominated by each party, and the third to be appointed by the two nominated arbitrators. The applicant suggested the name of Hon'ble Shri Justice Ramesh Deokinandan Dhanuka (Retired Chief Justice of this Court) as its nominee arbitrator and called upon the respondent to nominate its arbitrator. However, the respondent declined to do so on the ground that the pre-settlement dispute resolution mechanism was not exhausted.

5. The learned Counsel for the applicant submits that issues relating to compliance with the pre-dispute settlement procedure are themselves arbitrable and can be adjudicated by the Arbitral Tribunal. It is therefore submitted that refusal to appoint an arbitrator on that ground is unsustainable.

6. Reliance is placed upon the judgment of the Supreme Court in **Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.,**

reported in *(2020) 20 SCC 760*, to contend that unilateral appointment of arbitrators by one party is impermissible and that an independent and neutral arbitral process must be ensured, in terms of Clause 3.4.17 (iii)(d) (ii) of the agreement noted above.

7. The learned AGP, appearing for the respondent-State, submits that the applicant has not complied with the pre-settlement dispute resolution mechanism and that, in terms of Clause 3.4.17 (iii)(d)(ii), the appointment of arbitrators is required to be made by the Secretary, Public Works Department, Government of Maharashtra. It is therefore submitted that the present application is premature and liable to be rejected.

8. Having considered the rival submissions, this Court is of the view that the question as to whether the pre-settlement dispute resolution mechanism has been complied with is a matter which can be examined by the Arbitral Tribunal itself. At this stage, existence of an arbitration agreement and failure of the parties to constitute the Arbitral Tribunal is sufficient to warrant exercise of jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996.

9. Further, in view of the law laid down by the Supreme Court in

Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV), reported in (2025) 4 SCC 641, this Court is empowered to make an appointment to ensure neutrality and independence of the arbitral process.

10. Since the arbitration clause contemplates a panel of three arbitrators and the applicant has already nominated its arbitrator, this Court deems it appropriate to appoint Hon'ble Shri Justice Sanjay Gangapurwala (Retired Chief Justice of the Madras High Court) as the second arbitrator so as to facilitate the constitution of the Arbitral Tribunal.

ORDER

a] Appointment of Arbitrators:

- (1) Hon'ble Shri Justice Ramesh Deokinandan Dhanuka
(Retired Chief Justice of this Court) (appointed by applicant)
And
- (2) Hon'ble Shri Justice Sanjay Gangapurwala
(Retired Chief Justice of the Madras High Court), (Appointed by this Court)

are appointed as arbitrators. The two appointed arbitrators shall appoint the third arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

b] Communication of this Order:

- (i) The Advocates for the applicant shall communicate a copy of this

order to the learned arbitrators within one week from the date this order is uploaded.

(ii) The Registry shall also forward an ordinary copy of this order to the learned arbitrators within one week.

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 Arbitrators on such date and at such place as the learned Arbitrators nominates and the parties to obtain appropriate directions from the arbitrators in regard appointment of 3rd Arbitrator and 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 Arbitrators within one week of this order being uploaded. The information to include a valid and functional email address.

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 :

Sharing of cost will be as per the provisions of Arbitration Act.

j] Venue and seat of arbitration :

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

11. In view of the above, the arbitration applications stand disposed of.

(ARUN R. PEDNEKER, J.)

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