



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 ARBITRATION APPLICATION NO. 43 OF 2025

M/S PATIL CONSTRUCTION AND INFRASTRUCTURE PVT LTD
VERSUS
THE COMMISSIONER MUNICIPAL CORPORATION CHHATRAPATI
SAMBHAJINAGAR

Mr. Ajinkya S. Kale i/by Talekar and Associates for the Applicant
Mr. A. P. Bhandari, Advocate for the Respondents

CORAM : R. M. JOSHI, J.

DATE : 16th OCTOBER, 2025

P.C. :-

1. This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for the appointment of Arbitrator in furtherance of arbitration Clause 7(B) mentioned in the agreement dated 29/01/2013 to adjudicate upon the dispute/differences between the Applicant and the respondent.

2. It is the case of the Applicant that applicant is a registered company incorporated under the provisions of the Companies Act, 2013. It is claimed that the respondent had invited proposals by issuing a notice for undertaking the work of development of Bhaji Mandi on Build Operate Lease & Transfer Basis (BOLT) basis and the applicant had submitted his bid, which came to be accepted. Further, applicant and the respondent entered into a Concession Agreement dated 29/01/2013 for "Development of Bhaji Mandi on BOLT basis".

3. The applicant further claimed that the said development project was not completed within the scheduled time due to repeated obstructions by the Respondent-Corporation and land was not handed encumbrance-free and the respondent corporation insisted on payment of development charge and premium from PCIL (Patil Constructions & Infrastructures Limited).

4. It is further contended that as per clause 7(A) of the said agreement, if any, dispute or difference arises between the parties, then it will be first referred to the Commissioner or a mutually agreed-upon expert and in view of the same, applicant preferred a representation to the Commissioner of AMC on 27/06/2024 with reference to the settlement of issue regarding exemption of payment of development charges, under Section 124F of the Act.

5. The applicant further submits that as there was no response from the Commissioner for settlement of the issue regarding payment, the applicant issued a notice dated 11/09/2024 to the respondent corporation, invoking Article 7 (B) of the agreement, which provides for the settlement of issues to be resolved by an arbitrator who shall be appointed with the consent of both parties.

6. Since no communication was received from the respondent regarding their consent to any of the arbitrators recommended by the applicant in terms of clause 7(B) of the agreement. Therefore, on account of said inaction on part of respondent, has triggered the filing

of this petition seeking the appointment of Arbitrator U/s 11(6) of Arbitration and Conciliation Act, 1996 which provides for appointment of an arbitrator when one of the parties fails to act as required under the procedure. With these averments appointment of arbitrator is sought.

7. Heard learned Counsels for both sides. Amongst other contentions, learned Counsel for the Respondent raises objection with regard to the arbitrability of the dispute before the Tribunal on the ground that since the issue involved pertains to development charges, it is governed by the provisions of MRTTP Act and cannot be decided on the basis of agreement between the parties. This contention is opposed by the learned Counsel for the Applicant with submission that the arbitrability of the dispute is the matter within a domain of Tribunal and hence, no observations in that regard could be made by this Court.

8. There is no dispute between the parties with regard to the execution of agreement dated 29/01/2013. Clause 7(B) thereof provides for arbitration. *Prima facie* a dispute has arisen between the parties which could be referred to Arbitral Tribunal. The applicant has triggered the proceedings by filing this Application for seeking the appointment of Arbitrator U/s 11(6) of the Act on account of the said inaction on part of respondent to reply the notice dated 11/09/2024, invoking Clause 7 (B) of the agreement for adjudication of dispute raised.

9. It is settled law that, the Court, while exercising jurisdiction

under Section 11 of the Act, is *prima facie* required to consider as to whether there is an arbitration agreement between the parties with arbitration clause and dispute between them is apparently referable to Arbitration. This Court is only required to see whether prima facie there is a arbitrability dispute without deciding its arbitrability by way of adjudication. In view of this, the issue of arbitrability as sought to be raised by the Respondent is left to the adjudication to be done arbitrability.

10. It is an admitted fact that there is a concession agreement between the parties, which is signed by both parties, where there is an arbitration clause under clause 7(B), which provides for the settlement of issues to be resolved by an arbitrator who shall be appointed with the consent of both parties. There is notice invoking arbitration clause.

11. Therefore, this Court finds it appropriate to invoke Section 11(6) of the Act for the appointment of an arbitrator by this Court to resolve the dispute between the parties. Shri Justice S. V. Gangapurwala (Retired) is appointed as Arbitrator. Applicant to communicate this order to His Lordship.

12. Application stands disposed of in above terms.

(R. M. JOSHI, J.)

ssp