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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.185 OF 2025
IN
APPLN. FOR APPOINTMENT OF ARBITRATOR
NO.4 OF 2025

AUDUTH TIMBLO AND 3 ORS. ... Petitioners.

Versus

RAVI KANT JAIPURIA AND 6 ORS. ... Respondents.

Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar and Ms. Neha Kholkar, Advocates for the Petitioners.

Mr. B. Sardessai, Advocate for Respondent Nos. 1 to 6.

CORAM: VALMIKI MENEZES, J.

DATED: 25th July, 2025

ORAL ORDER:

1. This is an application for clarification of clause 14(F) and 14(G) of this Court's order dated 08.07.2025.

2. The directions in clause (F) of the order were to the effect that the Third Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018.

3. In ***ONGC Ltd. v. Afcons Gunanusa JV*** reported in **(2024) 4 SCC 481**, the Hon'ble Supreme Court has laid down certain directions as to the manner in which orders under Section 11 of the Arbitration Act require to incorporate directions insofar as fees of the Arbitration Tribunal is concerned. The relevant paragraphs of the Judgment are quoted below:

> "*125. Preliminary meetings in arbitration proceedings entail a meeting convened by the arbitral tribunal with the parties to arrive at a common understanding about how the arbitration is to be conducted. It generally takes place at an early stage of the dispute resolution process, prior to the "written phase of the proceedings". Rules of certain international arbitral institutions provide for convening a preliminary meeting or case-management conference. The fees and expenses are typically addressed at this stage. We propose that this stage of having a preliminary hearing should be adopted in the process of conducting ad hoc arbitrations in India as it will provide much needed clarity on how arbitrators are to be paid and reduce conflicts and litigation on this issue.*
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> *128. We believe that the directives proposed by the amicus curiae, with suitable modifications, would be useful in structuring how these preliminary hearings are to be conducted. Exercising our powers conferred under Article 142 of the Constitution, we direct the adoption of the following guidelines for the conduct of ad hoc arbitrations in India:*
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> > *"1. Upon the constitution of the arbitral tribunal, the parties and the arbitral tribunal shall hold preliminary hearings with a maximum cap of four hearings amongst themselves to finalise the terms of reference (the "Terms of Reference") of the arbitral tribunal. The arbitral tribunal must set out the components of its fee in the Terms of Reference which would serve as a tripartite agreement between the parties and the arbitral tribunal.*

2. In cases where the arbitrator(s) are appointed by parties in the manner set out in the arbitration agreement, the fees payable to the arbitrators would be in accordance with the arbitration agreement. However, if the arbitral tribunal considers that the fee stipulated in the arbitration agreement is unacceptable, the fee proposed by the arbitral tribunal must be indicated with clarity in the course of the preliminary hearings in accordance with these directives. In the preliminary hearings, if all the parties and the arbitral tribunal agree to a revised fee, then that fee would be payable to the arbitrator(s). However, if any of the parties raises an objection to the fee proposed by the arbitrator(s) and no consensus can be arrived at between such a party and the tribunal or a member of the tribunal, then the tribunal or the member of the tribunal should decline the assignment.

3. Once the Terms of Reference have been finalised and issued, it would not be open for the arbitral tribunal to vary either the fee fixed or the heads under which the fee may be charged.

4. The parties and the arbitral tribunal may make a carve out in the Terms of Reference during the preliminary hearings that the fee fixed therein may be revised upon completion of a specific number of sittings. The quantum of revision and the stage at which such revision would take place must be clearly specified. The parties and the arbitral tribunal may hold another meeting at the stage specified for revision to ascertain the additional number of sittings that may be required for the final adjudication of the dispute which number may then be incorporated in the Terms of Reference as an additional term.

5. In cases where the arbitrator(s) are appointed by the Court, the order of the Court should expressly *stipulate the fee that arbitral tribunal would be entitled to charge. However, where the Court leaves this determination to the arbitral tribunal in its appointment order, the arbitral tribunal and the parties should agree upon the Terms of Reference as specified in the manner set out in draft practice direction (1) above.*

6. There can be no unilateral deviation from the Terms of Reference. The Terms of Reference being a tripartite agreement between the parties and the arbitral tribunal, any amendments, revisions, additions or modifications may only be made to them with the consent of the parties.

7. All High Courts shall frame the rules governing arbitrators' fees for the purposes of Section 11(14) of the Arbitration and Conciliation Act, 1996.

8. The Fourth Schedule was lastly revised in the year 2016. The fee structure contained in the Fourth Schedule cannot be static and deserves to be revised periodically. We, therefore, direct the Union of India to suitably modify the fee structure contained in the Fourth Schedule and continue to do so at least once in a period of three years."

129. Conscious and aware as we are that (i) Arbitration proceedings must be conducted expeditiously; (ii) Court interference should be minimal; and (iii) Some litigants would object to even a just and fair arbitration fee, we would like to effectuate the object and purpose behind enacting the model fee schedule. When one or both parties, or the parties and the arbitral tribunal are unable to reach a consensus, it is open to the arbitral tribunal to charge the fee as stipulated in the Fourth Schedule, which we would observe is the model fee schedule and can be treated as binding on all. Consequently, when an arbitral tribunal fixes the fee in terms of the Fourth Schedule, the parties

> *should not be permitted to object the fee fixation. It is the default fee, which can be changed by mutual consensus and not otherwise."*

4. In terms of what is held in *ONGC Ltd.* (supra), the nominee of the Hon'ble Chief Justice under Section 11, is empowered to direct the parties to follow the fee structure contained in Schedule 4. Schedule 4 binds the parties to pay the fees stated therein, which are guidelines to the parties. However, in terms of the law laid down in *ONGC Ltd.* (supra), the Arbitral Tribunal of each of the Arbitrators would not be bound to charge fees in accordance with Schedule 4 and are free to charge the parties to the arbitration, fees, a memo of which they may present to the parties at their wish. Considering the observations in para 129 of the aforementioned Judgment, it is clarified that clause (F) of the order dated 08.07.2025 shall now read as under:

> "The Third Arbitrator is free to charge his fees to the parties in terms of the agreement between the parties and the Arbitrator and the Third Arbitrator of arbitral costs and fees of the Third Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal."

5. Insofar as clause (G) is concerned, which fixes the venue of the arbitration at Margao, Goa, the parties now consent that the seat of arbitration shall be as decided by the Arbitrators. Clause (G) in order dated 08.07.2025 shall now read as under:

"G. The parties have agreed that the venue of the arbitration will be at a place/location as decided by the three Arbitrators appointed."

6. The application stands disposed of in the above terms.

VALMIKI MENEZES, J.

25th July, 2025