

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**COMMERCIAL ARBITRATION PETITION NO. 26 OF 2025**

Tejas Constructions And Infrastructure Private Limited Thr. Managing Director Mr. S. N. Agarwal ...Petitioner

***Versus***

Karmayogi Shankarraoji Patil Sahakari Sakhar Karkahan Ltd. Thr. Managing Director Mr. B. G. Sutar ...Respondent

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**Mr. Vikas Kapile, i/b Mirajkar & Associates, for the Petitioner.**

**Mr. Ramdas Hake Patil, a/w Atharva Nalawade & Jayraj Kakade, for Respondent.**

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**CORAM : SOMASEKHAR SUNDARESAN, J.**

**DATE : SEPTEMBER 26, 2025**

**ORDER :**

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties relating to an agreement dated January 24, 2011 which was executed pursuant to a tender floated on December 12, 2010. The

2. The terms of the tender explicitly contain an arbitration clause while the terms of the agreement do not. However, the agreement is based on the tender and the conditions of the tender are seen as

governing the award of the work which was reduced to writing in the agreement. The only difference between the agreement and the tender conditions is that the jurisdiction for the disputes is said to be in the Courts of Pune in the agreement, whereas in the tender conditions it is the Courts of Mumbai which are referred to as having jurisdiction.

3. Therefore, a view can be taken that the parties chose only to shift the jurisdictional Court by consent rather than give up the arbitration clause contained in the tender conditions. The arbitration agreement is contained in Clause 19 (found at Page 161 of the Petition). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

4. However, Learned Advocate for the Respondent has another objection, namely, that the claim is barred by limitation. He would point to the fact that a completion certificate had been issued way back in 2015 on November 9, 2015 and the cause of action should be treated as having arisen on that date. Whereas, according to him, the Petitioner has slept over it and raised a grievance in 2017 to file this Petition in 2020. He would submit that merely by having issued a letter, the period of limitation cannot be counted afresh. Whether or not this is barred by

limitation may need a littler deeper examination of the facts of the case, as to what transpired between November 9, 2015 and August 29, 2017 when the claim for Rs.3 crores was made by the Petitioner. This would fall within the domain of the arbitral tribunal.

5. The tribunal is requested to consider treating this as a preliminary issue, so that the issue can be decided upfront, without putting the parties to unnecessary expense should the Respondent be able to demonstrate, as he claims, that it would be easy to show *ex facie* that the claim is barred by limitation.

6. Learned Counsel for the parties confirm their consensus on designating the seat as being Mumbai and request that the arbitral tribunal be appointed in Mumbai.

7. With the aforesaid observations, this Petition is ***finally disposed of*** appointing the arbitrator in the following terms with the request as aforesaid:-

A) Mr. Drupad Patil, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement

referred to above;

Email ID: [drupadpatil@gmail.com](mailto:drupadpatil@gmail.com)

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of upload of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any,

schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

8. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

9. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

**[ SOMASEKHAR SUNDARESAN, J.]**