

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COM. ARBITRATION APPLICATION NO. 126 OF 2024

Dilip Buildcon Limited

...Applicant

Versus

Maharashtra State Road Development
Corporation Limited

...Respondent

*Mr. Amir Arsiwala a/w Ms Monica Tanna, Ms Dhara Modi
and Ms Nandita Dethe and Ms Harkirat Kaur i/b Singhania
Legal Services for Applicant.*

Mr. J. D'souza i/b Bulwark Solicitor for Respondent.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 22, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking to refer disputes and differences between the parties pursuant to an agreement dated November 19, 2018, in which the arbitration agreement is contained in article 26 and is found at pages 383 to 385 of the Application.

2. Today, when the matter is called out, it is apparent that the primary (if not sole) objection of the Respondent is that the timeline stipulated in the pre-arbitration conciliation proceedings had not been followed. The specific grievance of

the Learned Counsel for the Applicant is that on February 1, 2024, a request for amicable settlement under Article 26.1.3 was moved before the Vice Chairman and Managing Director of the Respondent. However, according to him, on the very next date the fallback provision of Article 26.2, which comes into play upon failure of an amicable settlement, was moved. Consequently, he has instructions to submit that this vitiates the invocation of the arbitration.

3. It is seen from the record that the parties had indeed engaged with each other and in fact they even formed a Steering Committee to address a potential resolution without having an arbitrator, as envisaged in Article 26.2, after this Application came to be filed in this court. Needless to say, the parties have indeed not kept quiet after February 2, 2024 and have attempted to resolve their disputes amicably and they eventually failed.

4. Therefore, I see no merit in the contention that the timelines in the pre-arbitration proceedings stand violated or that the pre-arbitration processes stand violated, and that too in a manner that vitiates the entire arbitral proceedings, by reason of Article 26.2 being invoked within one day of Article

26.1.3 being invoked. Whether these timelines and deadlines are mandatory or directory, is a question rendered moot, since admittedly the parties even formed a Steering Committee as required in Article 26.2, which indicates that the gap of one day between the two actions did not come in the way of the parties eventually engaging in pre-arbitration conciliation efforts.

5. In these circumstances, this Application, based on inputs from the officers of the court, is ***finally disposed of*** in the following terms:

[A] Justice A. Kureshi, a former Chief Justice of Rajasthan and Tripura High Court and former Judge 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;

Office Address: 617, Raheja Chambers,
Nariman Point, Mumbai-400 021.
Email id: akil.kureshi@gmail.com

[B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a

period of one week from today. The Applicant 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.

6. 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.]