

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.151 OF 2024
WITH
COMMERCIAL ARBITRATION APPLICATION NO.143 OF 2024

MBPL KEC JV

...Applicant

Versus

Maharashtra Rail Infrastructure
Development Corporation Ltd.

...Respondent

Mr. Nitin Jain a/w. *Anuj Athalye & Rohan Gupta i/b. Legasis Partners, Advocates for Applicant.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 27, 2025

PC :

1. These Applications have 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 under a Contract Agreement dated January 16, 2020 and November 26, 2019 (***“Agreements”***). The arbitration agreement is contained in Clauses 4.29.2 of the Agreements (found at Page No. 124 and 118 of the Applications respectively). In the interest of brevity, the arbitration agreements are not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. It is seen from an Order dated July 22, 2022 that a Learned Single Judge of this Court was seized of the proceedings initiated under Section 9 of the Act. In those proceedings, there was no objection to jurisdiction on the ground that there is no arbitration agreement. Instead the parties worked out an arrangement and by consensus the Section 9 Petition was disposed of with specific directions contained therein. Consequently, no fruitful purpose will be served by keeping these applications pending on the docket of this Court any further.

3. In these circumstances, this Section 11 Applications are *finally disposed of*, in terms of the following order:

[A] Justice (Retd.) Gautam Patel, a 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;

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 Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the

same shall be furnished by the Advocates for the Applicant to the Respondents;

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 and;

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.

4. 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.

5. 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.]