

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMM. ARBITRATION APPLICATION NO. 248 OF 2024

Hingna Kelzar Roadways Pvt. Ltd. ...Applicant

Versus

Executive Engineer Public Works Division

& 2 Ors.

...Respondents

WITH

COMM. ARBITRATION APPLICATION NO. 409 OF 2024

Patansawangi Hingna Roadways Pvt. Ltd. ...Applicant

Versus

Executive Engineer Public Works Division

& 2 Ors.

...Respondents

Mr. Rajesh Roshan *a/w. Vijay Singh and Digvijay Kachare i/b
Desai Legal LLP, for Applicant.*

CORAM: SOMASEKHAR SUNDARESAN, J.

Date : January 8, 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 arising out of the Concession Agreement dated October 15, 2018. The arbitration agreement in the said Concession Agreement is

contained in clause 38 with a detailed framework of pre-arbitration conciliation process followed by arbitration.

2. Towards this end, it is apparent that on February 24, 2024, the Applicant wrote to the Respondents, raising disputes in connection with payment obligations, which, according to him, were owed by the Respondents to him. This came to be rejected by a letter dated April 8, 2024 issued by Respondents. Thereafter, on May 13, 2024, the Applicant has evidently had to resort to the arbitration provisions and proposed appointment of a retired judge of the Supreme Court to act as an arbitrator.

3. In response, the Respondents, by a letter dated May 17, 2024, stated that in terms of the conciliation provisions preceding arbitration, they would constitute a committee and that all the claims would be discussed in an upcoming meeting, which would be scheduled shortly. It is the case of the Applicant that he has not received any intimation from the Respondents till date.

4. Against this backdrop, it would be relevant to examine the provisions of clause 38.2, containing the conciliation procedure. A plain reading of the clause would show that if the meeting for conciliation does not take place within seven days from such date, the

mediation by an independent engineer fails, or if after meeting, within fifteen days, the dispute is not resolved within fifteen days, the parties would be entitled to invoke arbitration.

5. It is seen from the correspondence between the parties and their conduct thereafter that indeed attempts had been made, first in writing, and then by a purported resort to formation of a committee to conduct the conciliation, all of which culminated way back in May 2024. Thereafter, till date, evidently, the disputes have not been resolved, and according to the Applicant, he is not even received an intimation of the next steps to be taken in respect of conciliation.

6. Considering that we are now in January 2025, I am of the view that no useful purpose would be served by further resort to measures of conciliation (that has evidently failed) and these Applications deserve to be allowed by reference to the arbitral tribunal. Since it is also clear that despite service and repeated listings, there is no response from the Respondents, and the Applicant has already nominated an arbitrator, as a last chance, the Respondents are given one week's time to nominate their arbitrator in terms of Article 38 of the Concession Agreement.

7. Should the Respondents not make such an appointment within a period of one week from today, this Court shall proceed to nominate an arbitrator on behalf of the Respondents after which, the two arbitrators so appointed shall nominate the presiding arbitrator.
8. The advocates for the Applicant shall serve a copy of this order on the Respondents at the particulars set out in the notices clause of the Concession Agreement, as well as by all possible means, by which he has customarily been corresponding with the Respondents, till date.
9. In these circumstances, stand over to ***January 20, 2025***.
10. 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.]