

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 773 OF 2024

WITH

COMMERCIAL ARBITRATION APPLICATION NO. 404 OF 2024

Capacite Infrasprojects Ltd.

...Petitioner/
Applicant

Versus

Sumer Buildcorp Pvt. Ltd.

...Respondent

Mr. Abhishek Tilak, a/w *Prakalathan Batney*, i/b *DMD*, for the
Applicant in *CARAP/404/2024* & for Petitioner in
CARBP/773/2024.

Mr. Ankit Lohia, a/w *Chirag Saraugi*, i/b *Tushar Govadia*, for
Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 21, 2025

PC :

1. Commercial Arbitration Petition No.773 of 2024 is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“*the Act*”) while Commercial Arbitration Application No.404 of 2024 is an Application under Section 11 of the Act.

2. Today, when the matter is called out, Learned Counsel for the parties are ad idem on the fact that the arbitration in question relates to

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a settlement agreement dated March 28, 2024 which contains an arbitration clause. Mr. Lohia, Learned Counsel on behalf of the Respondent submits that the matter can be worked out within a period of one week from today, and requests that the matter be stood over for a week, so that the dispute could be finally resolved without the need to pass orders under Section 9 or to appoint an arbitrator under Section 11. Learned Counsel for the Petitioner submits that multiple opportunities have been given to the Respondent and it is only because the matter is listed today with an indication that it would be disposed of, that the Respondent have briefed a Counsel to appear today.

3. The parties also agree that should an arbitral tribunal be appointed, the Petition under Section 9 may be treated as Application under Section 17 of the Act by the Arbitral Tribunal, with a pro tem ad-interim arrangement that may be made by this Court, before the arbitrator can be seized of the proceedings.

4. In these circumstances, considering the fact that parties do not contest the existence of an arbitration agreement, and evidently there are disputes and differences between the parties, an arbitral tribunal ought to be appointed in exercise of the power under Section 11

of the Act.

5. In these circumstances, it would be appropriate to dispose of the Application under Section 11 by appointing Justice S.J. Khathawalla, a former Judge of this Court, as a Learned Sole Arbitrator to adjudicate the disputes and differences between the parties, but with a condition that this order shall take effect only on January 31, 2025, taking into account the persuasive skills of Mr. Lohia and his insistence that the matter is eminently capable of being settled without having to trouble the Learned Sole Arbitrator hereby appointed.

- a) Taking into account inputs from officers of the Court, Justice S.J. Khathawalla, 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 Arbitration 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; and
- f) The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the

proceedings online through electronic mode.

6. In these circumstances, Commercial Arbitration Application No.404 of 2024 under Section 11 is hereby ***finally disposed of***.

7. List Commercial Arbitration Petition No.773 of 2024 under Section 9 on ***January 31, 2025***, on which date parties shall apprise the Court and inform the Court about the settlement if any. Any pro tem ad-interim measures to be considered before the arbitration shall be considered on the next date.

8. 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.]