

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 94 OF 2025

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Zenal Construction Private Limited ... Applicant
Vs.
The Reserve Bank of India Employees
Kamdheni Co-operative Housing
Society Limited .. Respondent

WITH
CONTEMPT PETITION NO. 18 OF 2013
IN
NOTICE OF MOTION NO. 2182 OF 2010
WITH
NOTICE OF MOTION NO. 1821 OF 2015

The Reserve Bank of India Employees
Kamdheni Co-operative Housing
Society Limited .. Petitioner
Vs.
Prakash Barot & Anr. .. Respondents

Mr. Kalpesh Joshi a/w. Ms. Nisha Shah i/b Kalpesh Joshi Associates, for
Applicant in CARAP-94-2025.
Mr. Sanjiv Sawant a/w. Mr. abhishek Matkar and Malhar Bageshwar, for
Respondent in CARAP-94-2025 and for Petitioner in CP-18-2013.
Ms. Pooja Yadav i/b Ms. Komal Punjabi, for Respondent No. 2-BMC in
Contempt Petition No. 18 of 2013

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : June 25, 2025

Order :

1. This is an Application 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 Development Agreement dated May 18, 2005 (***“Agreement”***). The arbitration agreement is contained in Clause 36 (found at Page Nos. 53 and 54 of the Application). 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.

2. After having heard the parties for some time, it would be appropriate to refer the disputes and differences between the parties to arbitration. The parties have had disputes and differences in the past, where allegations about non-compliance with requirements under Municipal Law have been leveled by each side against the other. That led to the execution of Consent Terms, which were approved by an order dated March 2, 2016 passed by a Learned Single Judge of this Court.

3. It is seen that while the Contempt Petition is pending equally the arbitration agreement subsists. Consequently, if there are any disputes and differences about the manner of carrying out the activities envisaged in the Consent Terms, without prejudice to the contempt jurisdiction of this Court, as also whatever action that may be considered in those proceedings, it is only appropriate if the parties address their disputes and differences in terms of the subsisting arbitration agreement.

4. On the face of the said order, it is apparent that multiple actions were contemplated as part of the Consent Terms. Disputes and differences purported to have arisen in the implementation of those activities covered in the Consent Terms, have led to an invocation notice dated November 30, 2024 being issued by the Applicant, to which there was a holding reply December 12, 2024 by the Respondent. Thereafter, a reply dated February 24, 2025 essentially raising a doubt about whether any dispute can at all be said to have arisen has been filed. All of this can be considered by the Learned Arbitral Tribunal. There is no dispute about existence of the arbitration agreement.

5. In these Circumstances, the Section 11 Application is ***finally disposed of*** in the following terms :

A] Mr. Aseem Naphade, 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;

Office Add- 31, Shanti Building, 3rd Floor, Banaji
Street, Fort, Mumbai -400 001.

Email id – aseem1112@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 the date of upload of this order on the website of this Court. 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. 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.

7. The Contempt Petition No. 18 of 2013 is stood over to ***July 16, 2025***.
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.]