

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 363 OF 2025**

3 Ciircles OPC Private Limited ...Applicant

Versus

Tata Projects Limited & Anr ...Respondents

**AND
COMMERCIAL ARBITRATION APPLICATION NO. 334 OF 2025
AND
COMMERCIAL ARBITRATION APPLICATION NO. 335 OF 2025**

Ms. Sonal, Counsel, a/w Jimish Shah, Nirvi Shah, for the Applicant.

Ms. Sushma Nagaraj (through VC), a/w Vibhuti Keny, Adyasha Das, for Respondent No.1.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : AUGUST 1, 2025

ORDER :

1. The captioned 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 the agreements in the captioned Applications.

2. Learned Counsel for Respondent No.1 submits that, without prejudice to all rights and contentions including the objection as to jurisdiction, she has instructions to agree to proceed to arbitration before a Learned Arbitral Tribunal appointed by this Court. The Arbitral Tribunal shall decide all matters, including the issue of jurisdiction of the Arbitral Tribunal.

3. Learned Counsel for Respondent No.2 submits that Respondent No.2 is not a party to the arbitration agreement. In contrast, Learned Counsel for the Applicant submits that the project that has been executed by Respondent No.1 was a project awarded by Respondent No.2 to Respondent No.1, and therefore, he would desire to satisfy the Learned Arbitral Tribunal about Respondent No.2 being a veritable party.

4. In view of the law declared in *ASF Buildtech¹* since the Learned Arbitral Tribunal is fully empowered to take a view on this position, this Court is not expressing a *prima facie* view one way or the other. Leaving all the contentions open, the Applicant and Respondent No.1 shall proceed to arbitration before the Learned Arbitral Tribunal

¹ *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited* 2025 SCC OnLine SC 1016

with the Applicant having liberty to convince the Learned Arbitral Tribunal about Respondent No.2 being a veritable party.

5. In these circumstances, taking on board the consent of the parties, the captioned Applications are ***finally disposed of*** referring the parties to arbitration in the following terms:-

A) Mr. Justice Shantanu Kemkar (Retired), 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;

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90 Feet Road, Mulund East,
Mumbai – 400 081

Email ID: justicekemkar@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. 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. 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.]