

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

COMMERCIAL ARBITRATION APPLICATION NO. 110 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION NO. 185 OF 2025

Urban Infrastructure Trustees Limited

...Applicant

Versus

Neelkanth Mansions and Infrastructure

Private Limited & Anr.

...Respondents

- Mr. Navroz Seervai, Senior Counsel a/w Mr. Aditya Bapat, Mr. Arup Pereira, Ms. Mumtaz Bandukwala and Mr. Hamd Bhati i/b Junnarkar & Associate, for the Applicant/Petitioner.
- Mr. Janak Dwarkadas, Senior Counsel a/w Mr. Gaurav Joshi, Senior Counsel a/w Mr. Kazan Shroff, Mr. Sharad Bansal, Mr. M.S. federal, Mr. Murtuza Federal, Ms. Rashne Mulla-Feroze and Mr. Nikhil Jalan i/b Federal & Company, for Respondent No.1.
- Mr. Dinyar Madon, Senior Counsel a/w Mr. J.S. Kini and Mr. Aum Kini i/b Miss Sapna Krishnappa, for Respondent No.2.

CORAM : MANISH PITALE, J.

DATE : 18th JUNE 2025.

P. C. :

1. This order shall dispose an application filed by Urban Infrastructure Trustees Limited under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator and a petition filed by the same party seeking interim directions under Section 9 of the said Act.

2. The applicant relies upon arbitration clause i.e. clause 19.2 contained in Shareholders Agreement dated 24th August 2007, executed between the parties read with clause 17 of Consent Terms dated 11th May 2018, also executed between the parties, to approach this Court for

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appointment of Arbitrator.

3. It is brought to the notice of this Court that although disputes that had arisen between the parties were settled as per the Consent Terms, but thereafter, further disputes have arisen and therefore, the occasion has arisen for appointment of an Arbitrator. By a notice dated 14th October 2024, the applicant invoked the said arbitration clause and proposed appointment of a named Arbitrator for resolution of disputes between the parties.

4. By a response dated 21st October 2024, the respondents opposed the invocation of arbitration on certain grounds, including a contention that the documents containing the arbitration clauses were not executed with the applicant.

5. In this situation, the applicant is constrained to approach this Court by filing the present application under Section 11 of the Arbitration and Conciliation Act, 1996 and the petition for interim directions under Section 9 of the aforesaid Act.

6. The respondents were served and they have appeared through counsel. The main contention sought to be raised on behalf of the respondents is that in view of subsequent events, since the beneficiaries of the original Trust have changed, the Trust itself has ceased to exist and a new

entity has come into existence, which is the applicant before this Court, thereby contending that the arbitration clause is not binding upon by the respondents. It is to be noted that an identical issue raised before this Court in the context of this very applicant was taken up for consideration by this Court in Interim Application No.1144 of 2021 in Commercial Execution Application No.194 of 2020. By an order dated 22nd April 2025, this Court rejected such an identical objection / contention to hold in favour of the applicant. Therefore, this Court finds no substance in the aforesaid objection raised on behalf of the respondents.

7. Having overruled the said objection, it is clear that there is indeed an Arbitration Agreement between the parties for resolution of their disputes. Upon disputes arising between the parties, by the aforementioned notice the applicant invoked the arbitration clause, but in the light of the response given by the respondents the agreed procedure for appointment of Arbitrator failed, necessitating filing of the application under Section 11 of the Arbitration Act.

8. This Court is convinced that the applicant has made out sufficient grounds for the application to be allowed.

9. The learned senior counsel appearing for the applicant suggested certain names from amongst whom the Arbitrator could be appointed. All the

names were those of retired Hon'ble Judges of this Court or the Supreme Court. But, the learned senior counsel appearing for the respondents submitted that he did not have instructions to either choose from the said names or to agree to a particular name and left it to this Court to appoint the Arbitrator.

10. In view of the above, **Justice Shiavax Jal Vazifdar**, (Former Chief Justice of Punjab and Haryana High Court and Former Judge of this Court), is appointed as a sole Arbitrator for resolution of disputes between the parties.

11. Details of the learned Arbitrator are as follows :

6 & 12A, Maison Belvedere (1st Floor),
107, Maharshi Karve Road, Mumbai.
(Next to Ayakar Bhuvan and the building adjoining
the Petrol Pump)
Mob. 9820102088
Email : shiavaxvazifdar@gmail.com

12. A copy of this Order will be communicated to the Learned Arbitrator by the Advocate for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to the Learned Arbitrator along with a copy of this Order;

13. The Learned 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 Respondent;

14. The parties shall appear before the Learned 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, 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 Learned Arbitrator. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration.

15. All arbitral costs and fees of the Learned Arbitrator 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 Learned Arbitrator in relation to costs.

16. As regards the petition filed under Section 9 of the aforesaid Act, the same is disposed of by granting liberty to the petitioner to raise such issues and seek appropriate interim reliefs before the learned Arbitrator, who has been appointed by this order, by moving an appropriate application under Section 17 of the said Act.

17. If such an application under Section 17 of the said Act is moved before the learned Arbitrator, he is requested to dispose of the same within a period of three months from the date the application is lodged with him.

18. It is further noted that at the stage of hearing of the aforesaid application as well as the petition, the learned senior counsel appearing for the respondents attempted to show certain documents in order to buttress the objection recorded hereinabove. This Court is of the opinion that the aforesaid documents can be presented before the learned Arbitrator in support of an appropriate application that may be moved by the respondents under the provisions of the said Act. All questions are kept open to be decided by the learned Arbitrator.

19. The application as well as the petition are disposed of in above terms.

(MANISH PITALE, J.)