

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

COMMERCIAL ARBITRATION APPLICATION NO.442 OF 2024

R.K. Mishra & Sons

.. Applicant

Vs.

Union of India & Anr.

.. Respondents

Mr. Bernando Reis a/w Mr. Pratik Dixit i/b Dr. Prem Motiramani, Advocate for the Applicant.

Mr. Roopadaksha Basu a/w Ms. Heenal Wadhwa i/by The Law Point for Respondent.

CORAM : ARUN R. PEDNEKER, J.

DATE : 10th JUNE 2026.

P.C. :

1. Heard.
2. Learned counsel for the Applicant submits that the works contract was issued to the Applicant on 10th August 2018. Certain deposit amounts were retained by the Respondents. Subsequently, disputes arose between the parties. He submits that the tender document incorporates the General Conditions of Contract, and specifically refers to Clause 14.2, which provides for settlement of disputes through arbitration. He further draws attention to Clause 1.7 of the Instructions for Preparation and Submission of

Tender, which stipulates that the General Conditions of Contract are required to be carefully scrutinised and shall form part of the contract.

“ 14.2 Arbitration

Any dispute in respect of which

a) The decision, if any, of the Engineer, has not become final and binding pursuant to GCC Clause 14.1 and

b) Amicable settlement has not been reached within the period stated in GCC Clause 14.2

Shall be finally settled under the Rules of Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and rules made there under and for the time being in force. The Arbitration Tribunal shall be composed of three arbitrators and they will be appointed as per provision of the Act.

Neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to GCC Clause 14.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.”

3. Per contract, he submits that the disputes have been arisen between the parties and he has issued notice under Section 21 of the Arbitration Act. Per contra, learned counsel for the Respondent submits that the tender document

does not contain any specific arbitration clause. He refers to the statement at page 141 of the document, under “Conditions of Contract,” particularly Clause ‘F’, which reads as under:

“(f) ‘**Contract**’ means and includes the entire document comprising of the following.

1. Undertaking by the Tenderer
2. Tender Notice
3. Annexure ‘1,2,3,4,5,6,7 and 8 and proforma I, II, IIIA, IIIB.
4. Instructions for Preparation and Submission of Tender.
5. Conditions of Contract with Annexures.
6. Technical specifications.”

He contends that the General Conditions of Contract do not form part of the contract between the parties and, therefore, the dispute cannot be referred to arbitration. Prima facie, considering that the General Conditions of Contract contain an arbitration clause, and further that Clause 1.7 of the Instructions for Preparation and Submission of Tender refers to the applicability of the General Conditions of Contract, this Court deems it appropriate to appoint an Arbitrator and pass following order :

ORDER

(A) **Mr. Firoz Bharucha**, learned Advocate of this Court is appointed as the sole Arbitrator to adjudicate the disputes and differences between the parties

arising out of and in connection with the works contract/agreement referred to above. The contact details of the Arbitrator are as under :-

Address : No.2, 4th Floor,
Kermani Building,
Sir P.M. Road,
Fort, Mumbai

Mobile No. : 9820730480
Email id : firozbharucha@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicant within a period of one week from the date of uploading 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) Seat of the arbitration would be governed by the provisions of the agreement executed between the parties.

(D) 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 Advocate 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.

(E) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction 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, if any, 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.

(F) 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.

4. All contentions of the parties are left open to be adjudicated by the learned Arbitrator. All issues, including the existence and applicability of the arbitration clause, are expressly kept open.

5. With the above directions, Commercial Arbitration Application stands disposed of accordingly.

(Arun R. Pedneker, J.)