



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.70 OF 2026

G.S. Constro & Infra Pvt. Ltd.

...Applicant

V/s.

Nita Co-Operative Housing Society
Ltd. and Ors.

...Respondents

Mr. Chirag Chanani *for the Applicant.*

Mr. Jeet Gandhi *for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

DATED: 18 MARCH 2026.

P.C.:

1) This is Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) for appointment of Arbitrator for adjudication of disputes and differences between the parties arising out of Development Agreement dated 27 September 2018 and Supplementary Agreement dated 29 September 2018.

2) I have heard Mr. Chanani, the learned counsel appearing for the Applicant and Mr. Gandhi, the learned counsel appearing for Respondent No.1.

3) The case involves unique circumstances. Both the Applicant as well as the Respondent-Society have filed their respective Petitions under Section 9 of the Arbitration Act seeking interim measures. Both the arbitration Petitions were disposed of by learned Single Judge of this Court by order dated 2 August 2023 granting leave to invoke arbitration clause. The Applicant filed Arbitration Appeal (L) No.26565 of 2023 challenging the order of the learned Single Judge dated 2 August 2023. During pendency of the said Appeal, the Applicant -Company came to be admitted into Corporate Insolvency Resolution Process on account of order passed by the National Company Law Tribunal (**NCLT**). An Interim Resolution Professional (**IRP**) was appointed by the NCLT by suspending the Board of Directors of the Applicant-Company. When the Appeal came before the Division Bench of this Court on 7 March 2024, the same could not have been prosecuted by the suspended Director and could have been prosecuted only by IRP. However, erroneously the suspended Director gave consent before the Appellate Court for making the reference of dispute to Arbitrator. Recording consent of both the parties the Appellate Court passed order dated 7 March 2024 appointing Mr. Ziyad Madon as sole Arbitrator. Consent given on behalf of the Applicant before the Appellate Court on 7 March 2024 was invalidated as the Director, who gave the consent was suspended.

4) It appears that the Applicant-Company did not file Statement of Claim within time before the learned sole Arbitrator. For condonation of delay in filing the Statement of Claim, the Applicant filed Application dated 8 June 2024 signed by the suspended Director seeking adjournment of the arbitration proceedings for a period of three months

in order to secure appropriate directions from NCLT for continuation of arbitration proceedings. The Application was strenuously opposed by the Respondent-Society contending *inter-alia* that the suspended Director had no authority to file such Application. It was also contended on behalf of the Respondent-Society that the very appointment of the learned Arbitrator was vitiated as the suspended Director did not have authority to give consent for arbitration before the Division Bench. The Respondent-Society contended that its objections be treated as the one taken under Section 16 of the Arbitration Act. Taking note and upholding the objections raised on behalf of the Respondent-Society the learned Arbitrator proceeded to terminate the arbitration proceedings on the ground that the suspended Director did not have authority to file Application seeking extension of time for filing Statement of Claim. By order dated 27 March 2024 the learned Sole Arbitrator has accordingly terminated the arbitration proceedings.

5) Now the Resolution Professional appointed in respect of the Applicant-Company has filed the present Application for appointment of Arbitrator.

6) The Application is opposed by Mr. Gandhi on the ground that earlier arbitration proceedings are already terminated and there is no invocation of arbitration clause by the Applicant. He submits that the Applicant cannot seek one more reference to arbitration without the earlier arbitration proceedings are terminated. He also submits that in absence of invocation notice under Section 21 of the Arbitration Act, present Application under Section 11 cannot be maintained.

Alternatively, Mr. Gandhi submits that correct remedy for the Applicant would be to approach the Division Bench for seeking appropriate clarification.

7) I am not inclined to accept the submissions canvassed by Mr. Gandhi. Respondent-Society got the arbitral proceedings terminated on the ground that consent for arbitration was given by the suspended Director was invalid and that therefore appointment of the earlier Arbitrator was vitiated. Thus, the previous arbitral proceedings are vitiated and consequently terminated only because the consent to arbitration was given by the suspended Director of the Applicant. There is no adjudication of disputes on merits. Now the Resolution Professional of the Applicant, who is entitled and authorised in law to sue on behalf of the Applicant-Company has moved the present Application for appointment of an Arbitrator. In my view therefore, present Application is clearly maintainable in law.

8) So far as objection about absence of invocation of arbitration clause by issuance of notice under Section 21 of the Arbitration Act is concerned, it is seen that reference to arbitration is already made by the Division Bench of this Court *albeit* on the basis of consent given by the suspended Director of the Applicant-Company. Previous arbitral proceedings was vitiated on account of invalidity of consent to arbitration by the Applicant and not on account of any difficulty in the consent to the arbitration given by the Respondent-Society. The Respondent-Society has thus consented for resolution of disputes through arbitration. In that view of the matter, issuance of notice under

Section 21 of the Arbitration Act is not really necessary. In any case the Hon'ble Apex Court in *M/s Bhagheeratha Engineering Ltd V/s. State of Kerala*¹ has held that issuance of notice under Section 21 of the Arbitration Act is not fatal when there exists valid arbitration Agreement between the parties and disputes are arbitrable.

9) In my view, therefore, it would be just and proper to refer the disputes between the parties to arbitration by constituting arbitral Tribunal of a sole Arbitrator.

10) I accordingly, proceed to pass the following order:-

(A) Smt. Justice Anuja Prabhudessai, former Judge of this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Development Agreement dated 27 September 2018 and Supplementary Agreement dated 29 September 2018. The contact details of the Arbitrator are as under:-

Office Address:- 106, Aracadia Building NCPA Marg,
Nariman Point, Mumbai-400021.

Email ID:- justiceanujaprabhudessai@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of uploading of this order. The Petitioner

¹ 2026 INSC 4

shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith 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 2 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 by her, 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.

(E) The fees of the sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

11) All contentions of the parties including the issue of limitation are expressly kept open to be agitated before the Arbitral Tribunal.

12) With the above directions, the Application is **disposed of**.

[SANDEEP V. MARNE, J.]