



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.176 OF 2025

Urban Infrastructure Trustees Limited

...Applicant

V/s.

Neelkanth Mansions and Infrastructure
Pvt. Ltd. and Others

...Respondents

WITH
COMMERCIAL ARBITRATION PETITION NO.731 OF 2025

Urban Infrastructure Trustees Limited

...Petitioner

V/s.

Neelkanth Mansions and Infrastructure
Pvt. Ltd. and Others

...Respondents

Mr. Aditya Bapat with *Ms. Hamd Bhati i/b. M/s. Junnarkar & Associates for the Applicant/Petitioner.*

Mr. Kazan Shroff with *Mr. Sharad Bansal, Mr. M.S. Federal, Mr. Murtuza Federal, Ms. Rashan Mulla-Feroze, Mr. Aarooha Kulkarni and Mr. Nikhil Jalan i/b. M/s. Federal & Co. for Respondent Nos.1 and 2.*

Mr. J.S. Kini with *Mr. Aum Kini i/b. Ms. Sapna Shankar Krishnappa for Respondent No.3.*

CORAM: SANDEEP V. MARNE, J.

DATED: 22 JANUARY 2026.

P.C.:

1) These are proceedings filed under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 for interim measures and for

constitution of Arbitral Tribunal, respectively. The disputes and differences between the parties have apparently arisen out of Shareholders' Agreement dated 18 October 2008.

2) As the hearing of the proceedings progressed, it has transpired that disputes in respect of another agreement in relation to a different Special Purpose Vehicle (SPV) are already referred to arbitration by a learned sole Arbitrator.

3) Mr. Bapat, the learned counsel appearing for the Applicant/Petitioner is agreeable to reference of the disputes and differences between the parties arising out of Shareholders' Agreement dated 18 October 2008 to the same Arbitrator.

4) On the other hand, Mr. Shroff, the learned counsel appearing for Respondent Nos.1 and 2 submits that the disputes and differences are non-arbitrable on the ground that Petitioner /Applicant is stranger to the Agreement since the Trust no longer exists and therefore the Arbitral Tribunal cannot be constituted in exercise of powers under Section 11(6) of the Act.

5) It appears that order dated 18 June 2025 passed by this Court in Commercial Arbitration Application No.110 of 2025 constituting Arbitral Tribunal was challenged before the Supreme Court in SLP(c) No.18578-18579/2025. The main objection of Respondent Nos.1 and 2 before the Hon'ble Supreme Court was about arbitrability of the disputes. By order dated 5 August 2025, the Apex Court has directed that the issues formulated in paragraph 4 of

the order shall be decided by the Arbitral Tribunal. It would be apposite to reproduce order dated 5 August 2025 passed by the Apex Court as under:-

1. These petitions arise from the order passed by the High Court of Judicature at Bombay dated 18th June, 2025 in Commercial Arbitration Application No.110 of 2025 filed by the respondents herein under Section 11 of the Arbitration and Conciliation Act,1996 (for Petition Act by Court short "the Arbitration Act") with Commercial Arbitration No. 185 of 2025 filed under Section 9 of the Arbitration the respondent no.1, by which the impugned order the High Court allowed the Section 11 application and appointed an Arbitrator.
2. The petitioner is aggrieved by the impugned order passed by the High Court appointing an Arbitrator essentially on the ground that no Trust exists and there are no contributories and in such circumstances the High Court could not have asked the Arbitrator to resolve the dispute between the parties.
3. We heard Mr. Kapil Sibal, the learned senior counsel appearing for the petitioner and Mr. Neeraj Kishan Kual, the learned senior counsel appearing for the respondents.
4. Mr. Sibal has raised the following four questions of law for the consideration of this Court: -
 - "(a) Whether the issue of extinguishment of a trust in terms of the Trusts Act, which is an inherently non-arbitrable issue, could be left open for determination by the Arbitrator?
 - (b) Whether the issue of extinguishment of a trust had a direct bearing on the threshold maintainability of the Section 11 Application filed by Respondent No. 1?
 - (c) Whether a stranger i.e., Respondent No. 7, bearing the same name as that of the trustee of an extinguished trust, had any right to rely upon an arbitration agreement executed between the Petitioner and the extinguished trust?
 - (d) Whether the Petitioner was estopped from raising a dispute regarding the validity of the extinguished trust in light of the judgment dated 22 April 2025 passed in Urban Infrastructure Trustees Ltd. & Anr. v. Kishor N. Shah & Ors. , I.A No. 1144 of 2021 in Commercial Execution Application No. 194 of 2020 ("Order dated 22.04.2025"), to which the petitioner was not a party?"

5. Mr. Sibal strenuously urged before this Court to take into consideration the fact that whether a Trust exists or not cannot be resolved or looked into by an Arbitrator.

6. On the other hand, Mr. Kaul while opposing these petitions submitted that no error not to speak of any error of law could be said to have been committed by the High court in appointing the Arbitrator.

7. He would submit that all the four questions of law raised by the learned counsel appearing on behalf of the petitioner can be looked into by the Arbitrator and the Arbitrator can take an appropriate decision in that regard.

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not interfere insofar as the appointment of the Arbitrator is concerned. However, we request the learned Arbitrator to first hear the parties on the four questions of law which have been raised before us, referred to above.

9. The learned Arbitrator shall hear both the parties and take an appropriate decision in accordance with law.

10. With the afore-said, these petitions stand disposed of.

11. Pending application(s), if any, stands disposed of.

In my view, similar course of action can be adopted in the present proceedings as well by leaving open the objection to be decided by the arbitral tribunal.

6) Mr. Keni, the learned counsel appearing for Respondent No.3-SPV submits that hearing of the present proceedings be deferred till the Arbitral Tribunal decides the four issues formulated by the Apex Court in order dated 5 August 2025. He submits that the learned Arbitrator is at an advanced stage of deciding the said issues.

7) In my view, since issues involved are common to both the proceedings, ruling by the Arbitral Tribunal in the earlier reference on

the said four issues would apply in the present reference as well. It is therefore not necessary to defer the present proceedings.

8) At this stage, Mr. Bapat submits that if the Arbitral Tribunal is constituted, the Applicant/Petitioner shall pursue remedy under Section 17 of the Arbitration Act before the learned Arbitrator for seeking interim measures.

9) In my view therefore, Tribunal comprising of the same learned sole Arbitrator (Mr. Justice Shiavax Jal Vazifdar, former Chief Justice of Punjab and Haryana High Court) can be constituted for resolution of the disputes and differences arising out of Shareholders' Agreement dated 18 October 2008.

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

(A) Mr. Justice Shiavax Jal Vazifdar, former Chief Justice of Punjab and Haryana High Court is appointed as Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Shareholders' Agreement dated 18 October 2008. The contact details of the Arbitrator are as under:-

Office Address :- 6 & 12a, Mansion Belvedere, 1st floor, 107, Maharshi Karve Road, Next to Aayakar Bhuvan, Mumbai.

Mobile No. :- 9820102088

Email id :- shivaxvazifdar@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Petitioner 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 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 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.

(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.

11) As directed by the Apex Court, the learned Arbitrator is requested to decide the four issues formulated in paragraph 4 of the order dated 5 August 2025 in accordance with law.

12) All rights and contentions of the parties are expressly kept open to be agitated before the Arbitral Tribunal. The Applicant/Petitioner shall be at liberty to file application under Section

17 of the Arbitration Act for seeking interim measures, which application shall also be adjudicated on its own merits.

13) With the above directions, both, the application and Petition are disposed of.

[SANDEEP V. MARNE, J.]