**IN THE HIGH COURT OF BOMBAY AT GOA.**

**APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.10 OF 2025.**

GUEST HOUSER HOSPITALITY PRIVATE LIMITED REP. THR. AUTHORIZED REP. DEEPESH S. CHODANKAR **…APPLICANT.**

**~ VERSUS ~**

GOA TOURISM DEVELOPMENT CORPORATION LIMITED THR. ITS MANAGING DIRECTOR **…RESPONDENT**

**APPEARANCES:**

| | |
|---|---|
| **for the Applicant** | ***Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Jatin Ramaiya, Mr. Sagar Rivankar, Mr. Omkar Parab, Mr. Omkar Thakur, Advocates.*** |
| **for the Respondent** | ***Mr. Yogesh V. Nadkarni, Mr. Nilay Naik and Mr. Kunal Nadkarni, Advocates.*** |

**CORAM : AMIT S. JAMSANDEKAR, J.**

**Reserved on : 10th September, 2026.**

**Pronounced on : 21st October, 2026.**

## ORDER

1. By the present Application, the Applicant seeks appointment of a Sole Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (***the Act***). The dispute and differences have arisen between the parties under and in connection with the Agreement of Leave and License dated 21.03.2022 (***the said Agreement***).

2. According to the Applicant, the said Agreement contains an arbitration clause; therefore, the Applicant invoked arbitration and sent notice to the Respondent on 01.08.2025. The Respondent has not replied to the said notice sent by the Applicant. Therefore, the present Application.

3. A brief background leading to the filing of the present Application is as follows:

   a) There exists a property admeasuring 2823.69 sq. mts. of area surveyed under Sy. Nos. 212/5, 6, 7 and 11 of village Anjuna, taluka Bardez (***the said Property***). The Respondent is Goa Tourism Development Corporation Ltd(GTDC). The Respondent was desirous of appointing an operator to develop and implement a hospitality concept consisting of a Family Entertainment Centre along with a restaurant and tourism-

related activities by renovating the existing structures at the said Property. The said project was approved in the 167th Board Meeting of the Respondent held on 29.10.2020. Accordingly, the Respondent floated a Tender Notice dated 11.06.2021 for the "Development, Operations and Management of Family Entertainment Zone along with Restaurant and Tourism Related Activities" in respect of the said Property. Along with it, a draft Agreement was also floated containing the contractual understanding between the parties. According to the Applicant the draft agreement is the basis of contractual understanding between the parties.

b) The Applicant's parent entity, namely M/s. Guest Houser Pvt. Ltd., was the highest quoted bidder for the said tender. The Letter of Award dated 12.10.2021 was issued by the Respondent in favour of the said parent entity. In terms of the same, the parent entity constituted the Applicant as a Special Purpose Vehicle in order to enter into a contractual relationship with the Respondent and undertake the project contemplated under the said Tender. Accordingly, the parties entered into and executed the said Agreement dated 21.03.2022.

c) On account of certain disputes raised by the Respondent against the Applicant, the Respondent proceeded to issue a Termination Notice dated 05.06.2025 against the Applicant and terminated the said Agreement. Vide Letter dated 10.06.2025, the Applicant responded to the Respondent and sought clarification of the status with the Respondent. Thereafter, the Applicant invoked Section 9 of the Arbitration Act and approached the competent Commercial Court-cum-Civil Judge, Senior Division, "A" Court, Merces, in Arbitration Suit No.10/2025 filed on 16.06.2025.

d) Vide Order dated 20.06.2025, the Commercial Court directed the Respondent not to dispossess the Applicant from the said Property till the filing of the reply. In the interregnum, the Respondent proceeded to re-tender the subject project by issuing a fresh Tender Notice dated 21.08.2025. Accordingly, the Applicant moved an application for further interim reliefs, which was granted vide Order dated 23.09.2025.

e) Vide notice dated 01.08.2025, the Applicant invoked the Arbitration mechanism embedded in the said Agreement and nominated a Sole Arbitrator. The said letter/communication was not responded to by the Respondent.

4. Mr. Pereira, the learned Senior Counsel on behalf of the Applicant, submitted that Clause 13 of the said Agreement provides for Dispute Resolution between the parties. He submitted that Clause 13 is concisely structured in such a way as to provide for a mechanism to resolve the disputes through the Secretary of Tourism, though Clause 13 does not include the words "arbitration", "arbitrate" or "Arbitration Act". He submitted that the parties' intention was clear that all disputes and differences would be resolved through an alternative dispute resolution mechanism.

5. Clause 13 of the said Agreement reads as follows:

> *"**13. Dispute Resolution:***
>
> - *In the event of **any question, dispute or difference of opinion arising** under or out of or in any way relating to or concerning these presents or effects of these presents or in connection with the conditions herein contained or touching or concerning the meaning or effect thereof, or any matter contained therein as to the rights, duties or liabilities of the parties hereto, howsoever, in connection with this Agreement of Leave and License, **the same shall be referred to the Secretary Tourism, Government of Goa and the decision of***

***the Secretary Toursim, Government of Goa shall be final and binding on the parties****. If GTDC is* ***directed to pay interest vide the decision of the Secretary Toursim, the Government of Goa****, to the LICENSEE, the same shall be in the nature of simple interest to the maximum extent of 8% per annum. The liability to pay the interest shall commence from the date of the decision of the Secretary Toursim, Government of Goa. The Dispute could be referred to the Secretary Toursim, Government of Goa.*

- The LICENSEE acknowledges that it shall not raise any ***objection to such reference on the ground that the Secretary Toursim, Government of Goa, is a Government servant and that he had dealt with the matter to which this Agreement of Leave and License relates or that in course of his duties as such Government servant, he had expressed his views on all or any of the matters in dispute or difference***.

- *The LICENSEE hereby agrees that in case of any dispute between GTDC and the LICENSEE, GTDC shall not be restrained from retendering the*

*said Project during the existence of the dispute or during the pendency of proceedings. It is expressly agreed between the parties that no injunction shall be sought against GTDC for hindering the retendering of the project during the pendency of the proceeding before Civil Court."*

(emphasis supplied)

6. Mr. Pereira, submitted that in any case, the said Agreement has 10 Annexures. Annexure 8 to the said Agreement is the notice inviting e-Tender, along with a draft Agreement for Leave and Licence. Annexure 8 is an integral part of the said Agreement, and it contains an arbitration clause. Clause 14 of Annexure 8 to the said Agreement reads as follows:

*"14. Arbitration:*

*In the event of any question, dispute or difference of opinion arising under or out of or in any way relating to or concerning these presents or effects of these presents or in connection with the conditions herein contained or touching or concerning the meaning or effect thereof, or any matter contained therein as to the rights, duties or liabilities of the parties hereto, howsoever, in connection with this Agreement of Leave and License, the same shall be* ***referred to the sole arbitration of a person to be appointed by the Secretary***

***Tourism to the Government of Goa.*** *The Licensee shall not raise any objection to such appointment on the ground that the arbitrator so appointed is a Government servant and that he had dealt with the matter to which this Agreement of Leave and Licence relates or that in the course of his duties as such Government servant, he had expressed his views on all or any of the matters in dispute or difference. In the event of such arbitrator being transferred or vacating his office or refusing or being unable to act as such for any reason whatsoever, it shall be open to the Secretary Tourism to the Government of Goa to appoint another person in his place. The arbitrator so appointed shall be entitled to proceed with the reference from the stage at which it was pending. The arbitrator may, with the consent of both the parties to these presents, extend the time for making the award. The award of the arbitrator shall be final and binding on the parties to these presents. Save as aforesaid, the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1966) and the rules made thereunder shall apply to the arbitration proceedings under this clause and shall include modifications to or any re-enactment thereof, as in force from time to time. The venue of such arbitration shall be in Goa and the language of arbitration proceedings shall be English."*

(emphasis supplied)

7. Therefore, it is submitted on behalf of the Applicant that the said Agreement and all the Annexures, which are an integral part of the said Agreement, clearly provide for an arbitration mechanism, and the parties have agreed to such mechanism by expressly making the Annexures part of the said Agreement. Mr. Pereira, in support of these submissions, emphasised Clauses 1 and 2 of the said Agreement. He further submitted that Clause 13 of the said Agreement, by itself and, in any case, read with Clause 14 of Annexure 8 of the said Agreement, satisfies the requirements of Section 7 of the Act and therefore creates a binding arbitration clause between the parties.

8. In support of these submissions, Mr. Pereira, cited ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re,*** (2024) 6 SCC 1 and ***Mahanagar Telephone Nigam Ltd. v. Canara Bannk and Ors.,*** (2020) 12 SCC 767.

9. Mr. Nadakrni, the learned Counsel appearing on behalf of the Respondent, opposed the Application on the ground that there is no arbitration agreement between the parties. According to Mr. Nadkarni, Clause 13 of the Agreement does not have the attributes or elements of an arbitration agreement. It only suggests an internal

dispute resolution mechanism rather than an external arbitration forum. Further, Clause 15 of the said Agreement stipulates that only the civil courts at Panaji, Goa shall have exclusive jurisdiction to adjudicate on the matters covered under the Agreement.

10. He further submitted that Clause 14 of the Draft Agreement (Annexure 8 to the said Agreement) cannot be relied upon because it was merely a draft agreement. Once the final agreement is executed, the draft cannot be relied upon. The final Agreement (the said Agreement) does not contain an arbitration agreement between the parties. He submitted that the said Agreement dated 21.03.2022 will always prevail over the Draft Agreement annexed to the tender notice and the true intent of the parties to refer disputes to arbitration can only be ascertained from the final Agreement. According to Mr. Nadkarni, in any case, Clause 2.3 of the Agreement provides for Priority of contract documents and errors/discrepancies. Clause 2.3(e) of the Agreement stipulates, *inter alia*, that "the Agreement at (a) above shall prevail over the agreements and documents at (b) to (d) above". "(a) above" is "the Agreement" viz. Agreement dated 21.03.2022. "agreements and documents at (b)" are "Schedules, Annexure and Appendices of the Agreement" which will include the Draft Agreement to the tender

notice at Annexure-8. It is submitted that there is a conflict between Clause 14 of the draft agreement to the tender notice and Clause 15 of the Agreement. As such, in terms of Clauses 2.3(a) and (b) of the Agreement, priority has to be given to Clause 15 of the Agreement.

11. Mr. Nadkarni further submitted that the scope and intent of Section 7(5) of the Act is that an arbitration clause in another document would get incorporated into a contract by reference if the condition is fulfilled that the arbitration clause should not be repugnant to any term of the contract. He submitted that even without going into the disputed facts and merely on a *prima facie* view of the matter, there is no existence of an arbitration agreement between the parties and, as such, this Hon'ble Court should reject the present application for appointment of an arbitrator.

12. Mr. Nadkarni, in support of his submissions, relied on the following judgments: ***Reliance Communications v. Maharashtra State Road Development Corporation Limited,*** 2018 SCC OnLine Bom 15287, ***South Delhi Municipal Corporation of Delhi v. SMS Limited,*** (2026) 1 SCC 545, ***NBCC (India) Limited v. Zillion Infraprojects Private Limited,*** (2024) 7 SCC 174, ***Maharashtra State Electricity Distribution Company Limited***

***v. R Z Malpani,*** 2026 SCC OnLine SC 553*,* ***Kalpataru Projects International Ltd. v. Municipal Corporation of Greater Mumbai and Another,*** 2024 SCC OnLine Bom 66.

13. I have heard the rival submission and perused the record.

14. The execution of the said Agreement is not in dispute. The existence of the arbitration agreement is. The scope of this Court's jurisdiction under Section 11 of the Act is limited to, *prima facie*, determining whether an arbitration agreement exists. It is well settled that the words Arbitration, Arbitrate, and/or reference to the said Act are not the criteria for determining the true nature of an Arbitration Clause, especially while deciding an application under Section 11 of the Act. An arbitration agreement is an independent agreement. I have approached the matter accordingly.

15. *Prima facie*, I am satisfied that the parties intended to refer their disputes to arbitration and that an arbitration agreement exists between them. My reasons are as follows:

a) In Clause 13 of the said Agreement, the parties have consciously used the words decisions, directions and attributed finality and binding nature to the decisions rendered by the Secretary Tourism, which would entail civil consequences. The Dispute Resolution embedded above was essentially an adjudicatory

process which attached finality to the decision of the third-party umpire, who was incidentally a Government servant. To determine the intention of the parties, Clause 13 cannot be read in isolation. The said Agreement will have to be read in its entirety and along with its Annexures. Clause 14 of Annexure 8 of the said Agreement contains an arbitration agreement. The aforesaid Agreement is embedded in the annexures to the said Agreement and consciously incorporated by the parties upon executing the same. It is pertinent that both the parties have executed and signed even Annexure 8 of the said Agreement.

b) The intention of the parties to have an arbitration agreement is further made clear by the parties by having Clauses 1 and 2 in the said Agreement, which define "Agreement" or "Agreement of Leave and License". It reads:

> *"'Agreement" or "Agreement of Leave and Licence" means this Agreement, its Recitals including the* ***Schedules and Annexures hereto, the "Letter of Award" issued by GTDC****, the written clarification to pre-bid queries,* ***addendums, amendments, etc. to the Request for Proposal Document issued to the Bidders and all other documents /***

***papers attached as annexure made in accordance with the provisions hereof."***

*(emphasis supplied)*

c) Similarly, Clause 2 of the said Agreement, under entry 'l', categorically records and provides that:

***"the Schedules and Annexures to the Agreement form an integral part of the Agreement and will be in full force and effect as though they were expressly set out in the body of the Agreement."***

*(emphasis supplied)*

d) The Tender Notice dated 11.06.2021 along with the Agreement forming part of the said Tender Notice and containing Clause 14 Arbitration Clause is categorically added as an Annexure, being Annexure 8 to the said Agreement and is thereby made a composite and integral part thereof by such express reference. Consequently, Arbitration Clause 14 is not an independent or extraneous clause which does not form part of the contractual arrangement between the parties. On the contrary, the said Arbitration Clause stands incorporated into the Agreement by virtue of the express reference to and incorporation of Annexure 8. The parties, while executing the said Agreement,

did not exclude or carve out the Arbitration Clause contained in the Tender documents. The Agreement executed has no stipulation in the said Agreement which expressly states that Clause 14 of the Agreement forming part of the Tender stands deleted, excluded or superseded.

e) Merely since the Arbitration Clause is not reproduced verbatim in the body of the executed Agreement does not mean that the same stands excluded, particularly when the very document containing the said Arbitration Clause has been expressly incorporated as Annexure 8 and made an integral part of the said Agreement.

f) On a holistic and harmonious reading of the said Agreement, it cannot be said that Arbitration Clause 14 is repugnant to the said Agreement. The said Clause is very much part of the contractual arrangement between the parties and cannot be separated or distinguished from the said Agreement in the manner sought to be done by the Respondent.

g) I reject submissions made by Mr. Nadkarni that by virtue of Clause 15 of the said Agreement, Clause 14 contained in Annexure 8 is repugnant to the said Agreement. *Prima facie*, that cannot be the interpretation because Annexure 8 also contains

an identical Clause (Clause 16) to Clause 15 of the said Agreement. *Prima facie*, there is no conflict between the Clauses as submitted by Mr. Nadkarni.

h) The intention of the parties has to be gathered from the Agreement as a whole and from the contractual documents forming part thereof. In the present case, the parties expressly agreed that the Tender documents and Annexures form part and parcel of the Agreement. The Arbitration Clause contained in the said documents cannot, therefore, be rendered otiose by placing an artificial construction upon the said Agreement. The said Agreement is a commercial contract and therefore it will have to be interpreted to make commercial sense. Any clause of the Agreement cannot be read in isolation; it should be read in its entirety to make commercial sense. Further, the Arbitration Agreement is an Independent Agreement, and therefore, I reject the submission of Mr Nadkarni that, in view of clause 2.3 of the said Agreement, priority will have to be given to clause 15 of the said Agreement.

i) The judgments cited by Mr. Nadakarni are not applicable to the facts and circumstances of the present case. In any case, the view taken by me is that, *prima facie*, all the disputed facts will

have to be adjudicated before the Arbitrator under Section 16 of the Act.

*16.* The said Agreement, read in its entirety and along with Annexure 8, satisfies the requirements of Section 7 of the Act. *Prima facie*, I am satisfied that the arbitration agreement exists between the parties and the parties always intended to resolve the disputes and differences through the arbitration proceedings.

*17.* Further, this is not a 'dead wood' case. Therefore, it would be justified to appoint a Sole Arbitrator to adjudicate the disputes and differences between the parties arising out of the said Agreement. The Sole Arbitrator can decide this issue by exercising his jurisdiction under Section 16 of the Act, which is the most appropriate course of action given the facts and circumstances of the present case.

18. Accordingly, the Application is allowed in the following terms:

(a) **Mr. Ajit Anekar**, is appointed as Sole Arbitrator to adjudicate the disputes and differences between the parties arising out of the said Agreement. The contact details of the Learned Sole Arbitrator are as follows:

Name: **Mr. Ajit Anekar,**
Chambers: 403, Ararat Bldg.,

N. M. Road, Fort, Mumbai
400001
Email: ajitanekar@gmail.com
Mobile: (+91) 9821089597

(b) A copy of this order shall be communicated forthwith to the Learned Sole Arbitrator by the Advocates for the Applicant by e-mail at ajitanekar@gmail.com

(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, in the form prescribed by the Sixth Schedule, to the parties within a period of one week from receipt of a copy of this Order. The disclosure shall be given to the Advocate for the Applicant, and the Advocate for the Applicant shall file it in the Registry of this Court after giving a copy to the Advocate for the Respondent. The Registry shall retain the said Statement on the file of this Application.

(d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated by him to obtain appropriate directions with regard to the conduct and procedure of the arbitration, including the fixing of a

schedule for pleadings, the examination of witnesses, if any, and the schedule of hearings. At such meeting, the parties shall provide a valid and functional e-mail address, along with the mobile and landline numbers, of the respective Advocates of the parties to the Arbitral Tribunal. The e-mail addresses shall constitute valid service of correspondence in connection with the arbitration.

(e) The fees of the Learned Sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018, and the arbitral costs and the fees of the Learned Sole Arbitrator shall be borne by the parties in equal shares. The Learned Sole Arbitrator shall be at liberty to call for deposits towards the costs of the arbitration under Section 38 of the Act, to be held and accounted for under his directions.

(f) The fees paid by the parties shall be subject to the final Award that may be passed by the Arbitral Tribunal.

(g) The seat/venue of the arbitration shall be as stipulated by the said Agreement, even if the arbitral proceedings, or any part of them, are conducted online or at any other venue.

19. All rights and contentions of the parties on the merits, including the existence of an arbitration agreement, are expressly kept open to be agitated before the Arbitral Tribunal appointed as above. The Learned Sole Arbitrator shall decide the existence of the arbitration agreement independently. The observations and findings in this judgment are *prima facie* and are for deciding the Application under Section 11 of the Act only.

20. Mr. Pereira, learned Senior Counsel on behalf of the Applicant, submits that the proceedings filed by the Applicant under Section 9 of the Act and pending before the Commercial Court cum Civil Judge, Senior Division "A" Court, Merces (Arbitration Suit no.10/2025) be converted into an Application under Section 17 of the Act. Mr. Pereira's submission is justified, as the Arbitral Tribunal is now constituted.

21. However, Mr. Nadkarni submitted that the interim order dated 23rd September 2025 passed by the Commercial Court cum Civil Judge, Senior Division "A" Court, Merces ( Arbitration Suit no.10/2025) is only operative until the present Application is decided or the Arbitral Tribunal is constituted. He further submitted that this Court cannot exercise jurisdiction to extend the interim protection granted under Section 9 of the Act. He further submitted that the

same will have to be exercised by the Commercial Court cum Civil Judge, Senior Division "A" Court, Merces.

22. The interim order is in operation in favour of the Applicant since 23rd September 2025. Therefore, the Applicant is at liberty to immediately apply for an extension of the same before the Commercial Court cum Civil Judge, Senior Division "A" Court, Merces. If the Applicant makes such an application, the Commercial Court cum Civil Judge, Senior Division "A" Court, Merces shall hear it on the same day for considering the application of the Applicant seeking an extension of the order dated 23rd September 2025, given the peculiar facts and circumstances of the present case.

23. Mr. Pereira further submitted that the Applicant shall request the Commercial Court cum Civil Judge, Senior Division "A" Court, Merces to convert the Applicant's application under Section 9 into an application under Section 17 of the Act so as to expedite the proceedings and consequently to dispose of the proceedings of Arbitration Suit No.10/2025.

24. In that situation, the learned Sole Arbitrator shall finally decide the Application under Section 17 of the Act within 45 days from the date of filing the application. The learned Counsel for the Applicant shall forthwith furnish a set of papers and proceedings (soft copies)

of Arbitration Suit No.10/2025 to the learned Sole Arbitrator.

25. **The Application is disposed of in the above terms.** No order as to costs.

26. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[AMIT S. JAMSANDEKAR, J.]**



**IBC Laws | www.ibclaw.in**