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

ARBITRATION APPLICATION NO.414 OF 2026

Rajshree Build Tech Private Limited ... Applicant

Vs.

Indian Pharmaceutical Association ... Respondent

ATUL GANESH KULKARNI

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Date: 2026.10.19 13:34:52 +0530

Mr. Vilas Bombarde for the Applicant.

Mr. Kushan Kode i/by Mr. Kalpesh Turalkar for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 16, 2026.

PRONOUNCED ON : OCTOBER 19, 2026

JUDGMENT:

**1.** The present Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointing an independent Sole Arbitrator to decide the disputes which have arisen between the Applicant and the Respondent from the construction contract.

**2.** The Respondent's main objection is that under Clause 6.40.5 of the tender conditions, the Applicant cannot refer its claims to arbitration because it did not ask for arbitration within 90 days after receiving information that the final bill was released for

payment. According to the Respondent, this period ended around 29 July 2024. However, the Applicant sent its notice asking for arbitration only on 27 February 2025, which was received on 6 March 2025. Therefore, the Respondent says that there is no existing arbitration agreement under which these claims can now be decided.

**3.** I have gone through the pleadings of both parties, the relevant conditions of the tender and work order, the correspondence produced before the Court and the judgment of this Court in *M/s. Sowil Limited v. Deputy Chief Engineer (Construction), Bhusawal*, Commercial Arbitration Application No. 688 of 2025, decided on 28 January 2026, reported as 2026:BHC-OS:2407. The main issue which arises is whether Clause 6.40.5 can be used for preventing the Applicant from referring its disputes to arbitration, particularly when Section 28 of the Indian Contract Act, 1872, and the judgments explaining that section are required to be considered.

**4.** The Applicant's case is that the Respondent had given it the work of constructing the proposed office building of the Indian Pharmaceutical Association at Kalina, Santacruz (East), Mumbai. The Letter of Acceptance was issued on 12 April 2018, followed by the work order bearing reference No. IPA/110/118 dated 7 August 2018. The total contract amount was Rs. 7,32,96,669/-, excluding GST. The contract conditions are contained in the Item Rate Tender Form, Volume I, the Letter of Acceptance and the work order. The Applicant relies upon Clause 6.40 of the tender as the arbitration agreement. The Respondent is relying upon the

conditions of the same tender for opposing the Application. Therefore, there is no real dispute that the tender conditions are part of the contract between them. According to the Applicant, it completed the construction work and carried out additional work as instructed by the Respondent and its architect, M/s. Amit Valsangkar & Associates. The Applicant says that this additional work was approved, but payment for it has still not been made. It says that running bills and the final bill were submitted, and several requests were made to the Respondent to release the payment. Even after reminders and meetings, the amount claimed for the additional work was not paid. For this reason, the Applicant wants its claims relating to outstanding payments, escalation charges and interest to be decided.

**5.** The Respondent disputes what the Applicant has stated. It says that the construction was not completed within the time fixed under the contract. The work order required completion within 12 months from 7 August 2018, meaning by 7 August 2019. However, the Applicant has mentioned 8 February 2022 as the date of completion in its notice. According to the Respondent, the work was completed around two and a half years late and this caused financial loss to it. The Respondent says that there was no written approval for the alleged additional work, though such approval was required under the work order. It states that the contract price was fixed, and no price escalation was permitted. Its case is that the final account was settled by making payment to the Applicant.

**6.** From the submissions of both parties, it appears that disputes have arisen about payment for additional work, approval

of changes, the reasons for delay, price escalation, interest, and settlement of the final account. These disputes have arisen from the construction contract. Whether the Applicant will be able to recover the amounts claimed is a separate matter. At this stage, the Court has to consider whether these disputes can be referred to arbitration under the agreement between the parties and whether the objection raised by the Respondent under Clause 6.40.5 prevents the reference.

7. It is necessary to first look at the arbitration agreement between the parties. Clause 6.40 of the tender provides that disputes about the work, its execution or maintenance, and the rights and liabilities of the parties, whether arising during the contract or after its termination or closure, shall be referred to a Sole Arbitrator after written notice is given by one party to the other. The arbitrator is to be appointed in the manner stated in that clause. Clause 6.40.1 provides that disputes relating to the contract shall be referred to a Sole Arbitrator and that the party asking for arbitration must give details of the disputes and the amount claimed under each dispute.

8. The Respondent says that Clause 24 of the work order, which was relied upon by the Applicant in its first notice, is not an arbitration clause. The relevant portion of Clause 24 reads:

> "That in the case of any dispute or difference or tendencies of any litigation or arbitration proceeding between the parties to this work order relating to the terms and conditions, the execution of the services shall not be stopped / prevented / obstructed in any manner, whatsoever by you."

**9.** To this extent, the Respondent's argument is correct because this part of Clause 24 does not provide a complete procedure for appointing an arbitrator. It mainly says that the work should not be stopped or obstructed because of any dispute or arbitration proceeding between the parties. However, the same clause states that the tender documents, minutes of the final negotiation meeting and the Bill of Quantities will form part of the agreement and must be read along with the work order. Therefore, Clause 24 cannot be read alone without considering the other documents forming part of the contract. The tender conditions are part of the contract, and Clause 6.40 of the tender provides for arbitration. The Respondent is relying upon Clause 6.40.5 of the tender to oppose the Applicant's request. It cannot rely upon the tender conditions for resisting the appointment of an arbitrator and, at the same time, deny that the arbitration clause in those conditions forms part of the agreement. I therefore find that an arbitration agreement exists between the parties under Clause 6.40 of the tender. The objection that Clause 24 of the work order is not independently an arbitration clause does not defeat the present Application.

**10.** The main issue between the parties concerns Clause 6.40.5. It reads as follows:

> "6.40.5 it is a term of the contract that if the Contractor does not make any demand for Arbitrator in respect of any claim within 90 days of receiving the intimation from the Owner that the final bill is released for payment, the claims if any received after 30 days' period shall be absolutely barred from reference to the Arbitrator".

**11.** The Respondent says that the Applicant is bound by this condition because it accepted the tender conditions. According to the Respondent, arbitration can be requested only within the period mentioned in the contract. Once that period has ended, the claim cannot be referred to arbitration. Therefore, the Respondent argues that this Court cannot appoint an arbitrator under Section 11 for claims which are barred by the contract. There is some substance in the Respondent's argument that parties are generally bound by the contract conditions which they have accepted. An arbitration agreement is based on the consent of the parties. A Court cannot compel parties to arbitrate a dispute which they have excluded from arbitration. But the conditions of the arbitration agreement must be read together and not separately. Clause 6.40.5 cannot be considered without looking at the other conditions under Clause 6.40 and the effect of the restriction placed upon the Applicant by this clause. The language of Clause 6.40.5 needs to be considered. The first part speaks about making a demand for arbitration within 90 days after receiving information that the final bill has been released for payment. But the later part refers to claims received after a “30 days’ period”. These two references do not match with each other. The clause does not explain why it first mentions 90 days and later refers to 30 days while stating the result of delay. The Respondent wants the Court to treat the clause as providing a period of 90 days. Even if the period of 90 days is accepted for the present Application, the important question remains whether the clause can take away the Applicant's right to seek arbitration after that period has ended.

**12.** The Respondent relies upon its letter dated 30 April 2024. It says that the letter informed the Applicant that the final account was settled, and the final payment had been released. The Respondent states that a cheque for Rs. 8,93,869 was issued towards the amount payable under the work order. According to it, the letter was sent to the Applicant by email and the Applicant has not denied receiving it. On this basis, the Respondent says that the 90-day period ended around 29 July 2024. The Applicant says that the Respondent must first prove that the event mentioned in Clause 6.40.5 took place before the period can be counted. According to the Applicant, the period cannot be counted only from the date when the work was completed or when the final bill was internally processed. The clause refers to receiving information that the final bill has been released for payment. Therefore, the nature of the communication and the date on which the Applicant received it are important matters.

**13.** There is substance in the Applicant's argument that the event mentioned in the clause must be established before the period is calculated. However, in the present case, the Respondent has relied upon its letter dated 30 April 2024 and says that the Applicant received it by email. It states that the letter informed the Applicant about settlement of the final account and release of payment. For deciding the main issue, even if I assume that the Applicant received this information on 30 April 2024, it is still necessary to consider whether Clause 6.40.5 can be enforced. If the 90-day period is counted from 30 April 2024, it would end around 29 July 2024. The Applicant's first notice seeking arbitration was dated 27

February 2025 and was received on 6 March 2025. Thus, the notice was issued after the period mentioned in Clause 6.40.5. The Applicant later issued another notice dated 27 June 2025, invoking Clause 6.40 of the tender and giving details of the amounts claimed. This notice was issued after the period relied upon by the Respondent. Therefore, the issue cannot be decided only by looking at which notice was issued first. What has to be considered is whether the contractual time limit can prevent the Applicant from seeking arbitration.

**14.** Section 28 of the Indian Contract Act, 1872, as amended with effect from 8 January 1997, provides that certain agreements restricting proceedings are void. The relevant part provides:

> "Every agreement,—
>
> (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
>
> (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent."

**15.** The object of this amended provision is to prevent contract conditions which take away the rights of one party or free the other party from liability only because a shorter contractual period has expired. Parties may agree about the procedure for deciding disputes. However, such an agreement cannot be used to defeat

the protection given by law when the condition has an effect which Section 28 does not permit. In *Grasim Industries Ltd. v. State of Kerala, (2018) 14 SCC 265*, the Supreme Court considered a contractual condition relating to the time within which disputes could be raised. In paragraph 8, the Supreme Court observed:

> "Even otherwise, we are of the view, that in terms of Section 28 of the Indian Contract Act, 1872, such a stipulation in a contractual obligation would not be valid and binding."

**16.** This judgment shows that a condition cannot be enforced merely because it is written in the contract, if its effect is to impose a time limit which the law does not allow. The conditions of an arbitration agreement must be understood subject to the law.

**17.** The same issue was considered by the Delhi High Court in *D.D.A. v. Pandit Construction Co.,* FAO(OS) No. 382 of 2007, decided on 19 April 2012. The Court considered a clause which required the contractor to demand arbitration within 90 days after receiving information that the bill was ready for payment. If the contractor failed to do so, the claim was to be treated as waived and the employer would be released from liability. The Court held that, after the amendment of Section 28, a contractual condition which takes away a right or frees a party from liability after a specified period is void to that extent. In that case, the wording stated that the employer would be released from liability. The present clause uses different words. Still, the principle under Section 28 remains relevant. A contractual time limit cannot be used to defeat a right which the law protects from being taken away in this manner.

**18.** The Respondent may argue that Clause 6.40.5 does not take away the Applicant's actual monetary claim. According to it, the clause only prevents the claim from being referred to arbitration. This argument has to be examined along with the other conditions of the same contract. Clause 6.40.15 of the tender states:

> "The Owner and the Contractor hereby agree that arbitration under this Clause shall be a condition precedent to any right to action under the contract with regard to the matters hereby expressly agreed to be so referred to arbitration."

**19.** This condition is important because it says that arbitration must take place before a party can take action under the contract for matters agreed to be referred to arbitration. If Clause 6.40.5 is applied to prevent all the Applicant's claims from being referred to arbitration after 90 days, Clause 6.40.15 would create a serious difficulty for the Applicant in taking action for those claims. If both clauses are read in the way suggested by the Respondent, the agreed method of deciding the disputes would be taken away, and the Applicant would be left without an effective remedy under the contract for the claims covered by the agreement. This is different from a contract which keeps a particular type of dispute outside arbitration but allows the affected party to approach an ordinary civil court. Clause 6.40.5 does not exclude a particular kind of dispute from arbitration from the beginning. It applies to "any claim" and makes arbitration dependent upon the contractor making a demand within a short period after receiving information about release of the final bill. In effect, it prevents an existing claim from being referred to arbitration only because the contractual period has passed. When read with Clause 6.40.15, it

would take away the remedy which the parties had agreed upon for enforcing their rights.

**20.** I am unable to accept that such a restriction can be enforced only because the Applicant accepted the tender conditions. The contract was entered into in 2018, long after the amendment to Section 28 had come into force. Therefore, this statutory provision has to be applied while considering the clause. To the extent Clause 6.40.5 is relied upon to take away the Applicant's right to seek arbitration only because a demand was not made within 90 days, it cannot be enforced consistently with Section 28. The Respondent cannot use this clause to prevent the Applicant from seeking a decision on disputes which otherwise fall within the arbitration agreement.

**21.** The judgment of this Court in *M/s. Sowil Limited*, requires consideration. In that case, the contract contained a condition that claims exceeding 20 per cent of the contract value would not be decided through arbitration. This Court held that the parties had agreed to refer only claims within the specified value to arbitration. In paragraph 38, the Court observed:

> "It cannot be that once there is an arbitration agreement, every claim under the contract must be resolved through such arbitration especially when parties agree for exclusion of certain nature of claims."

**22.** The Court held that parties can agree that only certain disputes will be decided through arbitration. It held that the monetary restriction in that case did not take away the Applicant's remedy because the Applicant could still file a civil suit for claims

exceeding the specified value. The application was dismissed because the particular claim, which was substantially above the contractual limit, was not covered by the arbitration agreement. The principle laid down in that judgment is accepted. However, it has to be applied carefully to the present case. In *M/s. Sowil Limited*, the restriction concerned the value of claims which the parties had agreed to refer to arbitration. It was not a condition which took away the right to seek arbitration for a claim otherwise covered by the agreement only because a short period had expired. Further, the Court found that the contractor could still approach the ordinary civil court for relief.

**23.** In the present case, Clause 6.40.15 makes arbitration a condition before action can be taken under the contract for matters agreed to be referred. If Clause 6.40.5 is applied in the manner suggested by the Respondent, arbitration would not remain available after the specified period had expired. Reading both clauses together would leave the Applicant without an effective remedy under the contract. Therefore, the facts and conditions in the two cases are materially different. It is necessary to consider paragraph 29 of the judgment in *M/s. Sowil Limited.* While discussing a decision of the Rajasthan High Court, this Court recorded that a clause in the General Conditions of Contract which prevented the contractor from raising claims after 90 days from receiving information that the final bill was ready for payment had been held to be:

> "invalid and unenforceable in the light of provisions of Section 28 of the Indian Contract (Amendment) Act, 1996."

**24.** This observation was made while distinguishing the monetary restriction in that case from the time limit considered by the Rajasthan High Court. *M/s. Sowil Limited* did not decide whether a clause exactly like Clause 6.40.5 was valid. However, paragraph 29 recognises the difference between a condition which decides what claims can be referred to arbitration and a condition which seeks to take away the right to raise a claim after a particular period. This difference supports the conclusion reached above.

**25.** The Respondent has argued that the Applicant did not invoke the arbitration agreement in the proper manner. It points out that the first notice dated 27 February 2025 referred to Clause 24 of the work order, which is not an arbitration clause. The Respondent relies upon Clause 6.40.1, which requires the party seeking arbitration to state the disputes and the amounts claimed under each dispute. According to the Respondent, the amounts mentioned in the two notices are different. The first notice claimed Rs. 1,21,45,610.79/- as the balance amount and a total claim of Rs. 2,66,20,934.04/-. The later notice dated 27 June 2025 claimed Rs. 1,16,24,954.24/- as the balance amount, Rs. 38,52,333/- towards escalation and Rs. 1,30,00,921 towards interest. The total claim in the second notice was Rs. 2,84,78,208.24/-.

**26.** It is true that the amounts claimed in the two notices are different. The Applicant will have to explain why the amounts changed and give proper details of each claim. However, the second notice invoked Clause 6.40 of the tender and stated the amounts claimed under different heads. The fact that the amount

in the later notice is different from the earlier amount does not mean that there is no arbitration agreement between the parties. The requirement to mention the disputes and amounts claimed is meant to inform the other party about the claims which are being referred to arbitration. Whether the details are sufficient, why the amounts have changed and what amount is payable are matters which the arbitrator can examine. The notice cannot be treated as invalid merely because the Applicant will have to explain how the monetary claim was changed.

**27.** There is no dispute that the Respondent received the first notice on 6 March 2025 and the second notice on 7 July 2025. The Respondent replied to the notices and denied that the Applicant had an enforceable right to arbitration. Thus, the Applicant made a written demand seeking arbitration, but the Respondent refused to proceed with the appointment. Though the first notice referred to Clause 24 of the work order, the later notice relied upon Clause 6.40 of the tender. The later notice is sufficient to show that the Applicant wanted its disputes to be referred under the arbitration agreement. Therefore, the objection about the reference to Clause 24 in the first notice does not defeat the demand for arbitration. The Respondent says that under Clauses 6.40.2 to 6.40.4, it was required to send a panel of three names within 30 days, from which the Applicant could select one person. It argues that the Applicant did not follow this procedure because it asked the Respondent to jointly suggest a panel of three arbitrators within 14 days. This objection has to be considered along with Clause 6.40.1, which provides that the Sole Arbitrator is to be appointed by the

Managing Director of the Owner or his nominee and that the contractor shall have no right to object to the appointment. The conditions about appointment are not fully consistent with each other. Clause 6.40.1 gives the Managing Director of the Owner or his nominee the power to appoint the Sole Arbitrator. Clauses 6.40.2 to 6.40.4 provide for a panel procedure under which the Owner sends three names and the contractor selects one. Thus, the contract contains different provisions about the manner in which the appointment is to be made. The Respondent has taken the position that there is no enforceable arbitration agreement for the Applicant's claims and has refused to act on the Applicant's demand. In these circumstances, asking the Applicant to repeat its request in another form would not serve any useful purpose.

**28.** The law regarding unilateral appointment of a Sole Arbitrator must be considered. In *Perkins Eastman Architects DPC v. HSCC (India) Ltd.,* (2020) 20 SCC 760, the Supreme Court held that a party which has an interest in the outcome of the dispute cannot have the exclusive power to appoint the Sole Arbitrator. The appointment procedure cannot put one party in a position where it alone decides who will form the arbitral tribunal.

**29.** This principle was considered in *M/s. Sowil Limited*, where this Court noted that appointment of an arbitrator by the General Manager of the Railways could not be enforced in view of the later position regarding unilateral appointment.

**30.** Applying these principles, Clause 6.40.1 cannot be enforced in a way which gives the Respondent exclusive control over the

appointment of the Sole Arbitrator. The Respondent has refused to proceed with the appointment because, according to it, there is no arbitration agreement for the Applicant's claims. As a result, the parties have not been able to appoint the arbitral tribunal under the agreed procedure. Once the objection under Clause 6.40.5 is rejected, this Court can appoint an independent Sole Arbitrator under Section 11, so that neither party controls the decision-making process.

**31.** The Respondent's objection that the claim for additional work is outside the arbitration agreement cannot be accepted at this stage. Clauses 19 and 20 of the work order require prior written approval of the rates for additional work and written approval for any change from the tender specifications. The Respondent says that the Applicant has not produced such written approval. The Applicant, however, relies upon correspondence, instructions given by the architect and directions issued while the work was being carried out. Whether the additional work was properly authorised and whether the documents relied upon by the Applicant amount to the written approval required under the contract are matters which will need to be examined on the basis of evidence. The arbitration clause covers disputes about the work, its execution and the rights and liabilities of the parties arising from or connected with the contract. A dispute about payment for additional work said to have been carried out on the instructions of the Respondent or its architect comes within the wide wording of Clause 6.40. Whether the Applicant is entitled to payment will depend upon the evidence and the contract conditions. The claim

cannot be kept outside arbitration merely because the Respondent disputes the approval of the work or the Applicant's right to receive payment.

**32.** The same reasoning applies to the claim for price escalation. The Respondent relies upon Clause 2 of the work order, which says that the contract price is fixed and no price escalation will be allowed on any ground. The Applicant relies upon delay in receiving approvals from MCGM and changes which, according to it, were directed by the architect. The Applicant says that these circumstances increased the cost of steel and other construction materials. The parties have a dispute about why the cost increased and whether the contract permits payment on that basis. The condition which does not permit escalation may be a strong defence to the Applicant's claim. But the existence of such a defence does not mean that the dispute falls outside the arbitration agreement. The arbitrator will have to examine the relevant contract conditions and decide the claim accordingly.

**33.** The Respondent says that the Applicant completed the work only on 8 February 2022, although the contract required completion by 7 August 2019. It relies upon Clause 10 of the work order, which treats time as the essence of the contract and provides for liquidated damages at 1 per cent per week, subject to a maximum of 5 per cent. The Applicant says that the delay happened because approvals were not received in time and changes were made to the work. The completion date mentioned by the Applicant shows that the work was completed after the date fixed in the work order. However, this fact alone does not prove

that the entire delay was caused by the Applicant or that the Respondent is entitled to recover the damages claimed by it. The reasons for the delay and whether liquidated damages can be applied will have to be decided on the basis of evidence. The Respondent will be free to present its case and raise any counterclaim which is permitted by law before the arbitrator.

**34.** The objection about settlement of the final account needs to be examined. The Respondent relies upon its letter dated 30 April 2024 and the cheque for Rs. 8,93,869. It says that the final account was settled, and no amount remained payable. The Applicant, however, says that payment for the additional work was not made. According to the Respondent's own case, its letter dated 30 April 2024 disputed the alleged additional work and rejected the Applicant's claim in that regard. This shows that there was a dispute between the parties. Merely paying the amount shown in the final account does not prove that every other disputed claim between the parties was settled. The material presently identified does not show that the Applicant accepted the cheque in full and final settlement of all claims or signed a separate document releasing the Respondent from all liability.

**35.** The Respondent relies upon Clause 22 of the work order, which requires a no-dues and no-claim certificate to be submitted along with the final bill. But the fact that the contract requires such a certificate does not prove that the Applicant signed it or that all claims were settled. Whether the Applicant gave any no-claim certificate, whether it covers the present claims and whether there was a full and final settlement between the parties will

depend upon the relevant documents and the surrounding circumstances. These matters cannot be decided only on the Respondent's statement that the final bill was paid. Therefore, the dispute about the outstanding payments still remains to be decided.

**36.** The Respondent argues that the claims are barred by limitation because the work was completed on 8 February 2022 and the notice seeking arbitration was received on 6 March 2025, more than three years later. This calculation alone cannot provide a complete answer to the Applicant's claims. The Applicant says that bills were raised in 2023 and that the Respondent's letter dated 30 April 2024 informed it about settlement of the final account and disputed the claims relating to additional work. The first notice seeking arbitration was issued in February 2025. The date on which each claim became payable, the date on which it was denied and the effect of the correspondence between the parties may be different depending upon the nature of the claim. Therefore, merely because the work was completed in February 2022, it does not automatically follow that every monetary claim became barred by limitation on that date. At the stage of deciding an application under Section 11, an objection based on limitation can defeat the application where the bar is clear from the admitted facts and does not require examination. In the present case, the record shows that the parties exchanged communications about payment and that the Respondent communicated its position about the final account in April 2024. The Applicant thereafter invoked arbitration in 2025 and filed the present Application in 2026. In

these circumstances, it cannot be held that all the Applicant's claims are barred under the ordinary law of limitation. The Respondent will be free to raise the limitation issue before the arbitrator. The arbitrator will decide it according to law and after considering the dates relevant to each claim. The finding that the contractual period of 90 days cannot be enforced does not mean that the Applicant's claims automatically fall within limitation under the Limitation Act, 1963.

**37.** The Respondent has questioned the authority of the person who affirmed the Application. It points out that there are defects in the verification and that a separate resolution authorising the signatory has not been attached. These objections do not concern the existence of the arbitration agreement or the question whether Clause 6.40.5 can be enforced. The Application contains a statement that Shri Kirti Kumar J. Sharma is authorised to sign and verify the pleadings. If proof of his authority is required, the Court can direct the Applicant to produce it. A procedural defect of this kind, if it can be corrected, would not be a reason to refuse reference of the disputes to arbitration, when the arbitration agreement otherwise exists and the appointment procedure has failed.

**38.** For these reasons, I find that the Respondent's objection under Clause 6.40.5 does not defeat the present Application. The arbitration agreement under Clause 6.40 remains enforceable. The Respondent has refused to proceed with the appointment of the arbitrator, and the contractual appointment procedure cannot be enforced in a manner which gives the Respondent exclusive

control over the appointment of the Sole Arbitrator. Therefore, this Court can appoint an independent Sole Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

**39.** The Application, therefore, deserves to be allowed. An independent Sole Arbitrator shall be appointed to decide the disputes arising from the contract, including the Applicant's claims for additional work, outstanding payments, escalation and interest, along with any counterclaims of the Respondent which fall within the arbitration agreement. The findings in this opinion regarding the merits of the claims are limited to the question of appointment of an arbitrator. The arbitrator shall decide the actual rights of the parties, the effect of the contract conditions, the question of ordinary limitation, the claim of full and final settlement, the delay in completing the work and the amount, if any, payable to either party. These matters shall be decided on the basis of evidence and according to law.

A) Mr. Dormaan Dalal, an Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

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B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. The Petition shall

provide the contact and communication particulars of the parties to the Arbitral Tribunal along with 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 two 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, to obtain appropriate directions 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 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;

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.

**40.** Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties.

**41.** All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

**42.** All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

**43.** The Application stands disposed off in above terms.

**(AMIT BORKAR, J.)**