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

COMM ARBITRATION APPLICATION (L) NO.15854 OF 2026

R.A. Ghule, through it's sole Proprietor
Rajabhau Apparao Ghule

... Applicant

Vs.

ATUL
GANESH
KULKARNI

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ATUL GANESH
KULKARNI
Date: 2026.09.07
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- 1. Sinnar Municipal Council**
- 2. The Chief Officer,
Sinnar Municipal Council**
- 3. State of Maharashtra**
- 4. Town Engineer, Sinnar
Municipal Council**

... Respondent

Mr. Manoj Harit with Ms. Saloni Bafna, Ms. Dhrishti Ostwal, and Mr. Niket Harit i/by Manoj Harit & Co., for the Applicant.

Mr. Mohit Jadhav, AGP for Respondents-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 2, 2026.

PRONOUNCED ON : SEPTEMBER 7, 2026

JUDGMENT:

1. The present Application has been filed by the Applicant under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an independent Arbitrator and constitution

of an Arbitral Tribunal in terms of Clause 8 of the Contract Agreement dated 26 August 2014. The disputes between the Applicant and the Respondents are stated to arise out of the said Contract Agreement.

2. The Contract Agreement was executed between the Applicant and Respondent No.1 on 26 August 2014. Pursuant thereto, Respondent No.1 issued a Work Order to the Applicant for execution of the project. The stipulated period for completion of the work was 24 months, and the work was therefore required to be completed on or before 25 August 2016. According to the Applicant, there was delay in handing over the site for carrying out the work. The Applicant contends that such delay occurred for various reasons, which, according to the Applicant, were attributable to the Respondents. It is the case of the Applicant that the delays were brought to the notice of the Respondents from time to time. In view of the delays which had occurred, the Respondents extended the time for completion of the project up to 31 March 2021. On 8 March 2021, a Final Work Completion Certificate was issued in favour of the Applicant. The said Certificate recorded that the project work had been completed to the satisfaction of the Respondents. Thereafter, on 15 March 2021, the Applicant issued a notice raising a claim of Rs.53,35,71,002/- towards compensation for delay and other amounts stated to be payable under the Contract Agreement. On 2 June 2021, the Applicant issued a further notice to the Respondents and reiterated its demand for payment of the outstanding amounts. On 23 June 2021, Respondent No.3, by a letter addressed to Respondent No.2,

directed that the initial deposit amount paid by the Applicant be refunded. According to the Applicant, however, the said amount was not released. On 20 September 2021, Respondent No.2 issued a letter denying the claims made by the Applicant. Respondent No.2 raised a counter-claim against the Applicant in the sum of Rs.1,64,30,16,836/-, which, according to the Applicant, was arbitrary. The Applicant, by its reply dated 4 October 2021, denied the counter-claim made by the Respondents. The Applicant reiterated that the work had been completed in accordance with the Contract Agreement and relied upon the Final Work Completion Certificate issued in its favour. As the amounts claimed by the Applicant were not paid and the Respondents had raised the aforesaid counter-claim, the Applicant filed Writ Petition No.15271 of 2022 before this Court seeking appropriate reliefs against the Respondents. The said Writ Petition was disposed of on 16 December 2025 after permitting the Applicant to withdraw the same, as the Applicant intended to invoke the arbitration agreement contained in Clause 8 of the Contract Agreement.

3. Accordingly, on 18 December 2025, the Applicant issued a notice invoking arbitration under Clause 8 of the Contract Agreement and called upon the Respondents to appoint an Arbitrator. According to the Applicant, after receipt of the arbitration notice dated 18 December 2025, the Respondents neither replied to the said notice nor took any steps for appointment of an Arbitrator. It is in these circumstances that the present Application has been filed.

4. Mr. Manoj Harit, learned Advocate for the Applicant submits that Clause 8 is an arbitration agreement within Section 7 of the Act. It refers the disputes between the parties to a named authority for a decision that is to be final and binding on both parties, and it bars recourse to the civil court. Neither the absence of the word “arbitration”, nor the description of the authority as an “appellate authority”, nor the circumstance that the named authority is connected with a party, detracts from its character as an arbitration agreement. Clause 8 of the Contract:

“That SMC hereby agrees to pay the contractor the agreed sum. If dispute arises, the same shall be referred to the Principal Secretary, UD-2, Urban Development Department, Govt of Maharashtra, Mumbai (hereinafter referred to as the said authority) and the decision given by the said authority shall be final and binding on both the parties. In the event of disagreement by the contractor upon any decision taken by SMC in respect of the said terms and conditions, the said authority shall be acting as appellate authority and both the parties shall be at liberty to prefer an appeal against any decision of SMC. Decision taken by the said authority on any appeal shall be final and binding on both the parties. The contractor shall not be entitled to initiate any dispute in any court of law and in the event if the contractor initiate any dispute in court of law it will be treated as the breach of the said terms and conditions and in that event the contract awarded to the contractor shall stand automatically terminated.”

5. He submits that Section 7 of the Act prescribes no particular form for an arbitration agreement. What has to be seen is whether the parties intended that a dispute arising between them would be referred to and decided by a forum of their choice, that intention

being gathered from the substance of the agreement. In *Babanrao Rajaram Pund v. Samarth Builders & Developers*, (2022) 9 SCC 691, the Supreme Court held that a deficiency of words in an agreement which otherwise fortifies the intention of the parties to arbitrate cannot invalidate the clause, and that the substance of the agreement must be given greater weight. The same principle was laid down in *Rukmanibai Gupta v. Collector, Jabalpur*, (1980) 4 SCC 556, namely, that an arbitration agreement is not required to be in any particular form.

6. He submits that a clause by which a dispute is referred to a named authority whose decision is to be final and binding is an arbitration agreement, even though the word “arbitration” is not used, and even though the authority is an officer connected with a party. In *Chief Conservator of Forests, Rewa v. Ratan Singh Hans*, AIR 1967 SC 166, the contract provided that any dispute as to the performance or breach of the contract “shall be referred to the Chief Conservator of Forests whose decision shall be final and binding on the parties”. The Chief Conservator was a senior officer of the Government, which was a party to the contract. The Supreme Court held that the expression “shall be referred to” meant that the dispute was to be referred to that officer “as an arbitrator to decide the dispute”, and that the clause conferred authority upon him “to adjudicate upon disputes”. To the same effect is *Rukmanibai Gupta* (supra), where the dispute was to be “decided by the lessor whose decision shall be final”, the lessor being the State and a party to the lease, and the clause was held to spell out an arbitration agreement. Clause 8 stands on the same

footing: the dispute is to be “referred to” the said authority, whose decision is to be “final and binding on both the parties”.

7. The description of the said authority as an “appellate authority”, and the liberty of the parties to “prefer an appeal”, do not take Clause 8 out of arbitration. In *Ratan Singh* (supra), the decision of the officer was, under Rule 15(1) of the governing rules, “final and binding on the parties, except to the extent that it shall be subject to an appeal to the Conservator of Forests”, and was nonetheless treated as the decision of an arbitrator. A decision that is final and binding, and yet subject to an appeal, does not cease to be arbitral. The Supreme Court has since held, in *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.*, (2017) 2 SCC 228, that the expression “final and binding” does not preclude an appeal, and that parties are free to provide for an appellate or two-tier arbitral procedure.

8. The settled elements of an arbitration agreement are (i) a reference of disputes by either party to a forum other than a court for its decision; (ii) an enquiry by that forum with opportunity to both sides; and (iii) a decision that is final and binding on the parties, without recourse to any other remedy. In support, Mr. Harit relied on the judgments in *P. Dasaratharama Reddy Complex v. Government of Karnataka*, (2014) 2 SCC 201; *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573; and *Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd.*, (2003) 7 SCC 418. Clause 8 answers each of these. The dispute is referred to the said authority, a forum outside the court. The authority sits over an appeal preferred against the decision of SMC, which imports a hearing of

both parties. And the decision is “final and binding on both the parties”, the contractor being barred from initiating “any dispute in any court of law”.

9. The decisions in which a similar-sounding clause was held not to be an arbitration agreement are of a different class and are distinguishable. In *State of U.P. v. Tipper Chand*, (1980) 2 SCC 341, *State of Orissa v. Damodar Das*, (1996) 2 SCC 216, and *Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd.*, (1999) 2 SCC 166, the clause made the decision of the Engineer final upon questions of specifications, drawings, quality, and the like. Those clauses conferred supervision and administrative control upon the officer, contained no reference of disputes, and were held to be administrative and not judicial in character. In *Tipper Chand* (supra), the Supreme Court recognized that a clause providing that “in matter of dispute the case shall be referred to the Superintending Engineer... whose order shall be final” would be an arbitration agreement. In *P. Dasaratharama Reddy* (supra), the clause failed for the further reason that the decision was made subject to the contractor's right to “approach the law courts”, and was therefore not final. Clause 8 falls on the other side of the line drawn in these very decisions, for it refers disputes, its decision is final and binding, and it excludes recourse to the court.

10. The said authority is the controlling authority of the Respondent No.1, and is arrayed as a Respondent, goes to his eligibility to act, and not to whether Clause 8 is an arbitration agreement. Such ineligibility is met by the appointment of an independent Arbitrator by this Court, the agreement to arbitrate

being severable from the mechanism of appointment. In support, Mr. Harit relied on the judgments in *Haryana Space Application Centre (HARSAC) v. Pan India Consultants (P) Ltd.*, (2021) 3 SCC 103; *TRF Ltd. v. Energo Engineering Projects Ltd.*, (2017) 8 SCC 377; and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760. The existence of the arbitration agreement is not touched by this.

11. He submits that in any event, at the stage of a reference under Section 11 the enquiry is confined to the prima facie existence of an arbitration agreement, and where the matter admits of two views the reference is to be made, the final determination being left to the Arbitral Tribunal. He relied on the judgment in *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1, and *In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899*, (2024) 6 SCC 1.

12. He submits that for the reasons set out above, Clause 8 constitutes an arbitration agreement within the meaning of Section 7 of the Act. It is respectfully prayed that this Hon'ble Court be pleased to hold accordingly, and to appoint an independent and impartial sole Arbitrator to decide the disputes between the parties.

13. He further submitted that *South Delhi Municipal Corporation of Delhi v. SMS Limited*, (2026) 1 SCC 545, does not govern Clause 8 of the Contract dated 26 August 2014 and is distinguishable. There, the Court held Article 20 of the concession

agreements not to be an arbitration agreement, for reasons that are absent here. The operative words of Clause 8 are these:

“...the same shall be referred to the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra and the decision given by the said authority shall be final and binding on both the parties the said authority shall be acting as appellate authority and both the parties shall be at liberty to prefer an appeal Decision taken by the said authority on any appeal shall be final and binding on both the parties. The contractor shall not be entitled to initiate any dispute in any court of law.”

14. Article 20 was a mediation clause, not an adjudication. Its operative section was titled “Mediation by Commissioner”, and it provided only for an officer of the Corporation to look into the written documents, which the Court held to be, at best, “an elaborate administrative fact-finding exercise, rather than an arbitral adjudication”. Clause 8 is not of that character. It refers the dispute to the said authority for a decision that shall be final and binding on both the parties, the said authority sitting in appeal against the decision of SMC. It provides for a binding adjudication, which is the very judicial element the Court found wanting in Article 20 in the South Delhi.

15. Article 20 preserved recourse to the civil court; Clause 8 excludes it. The Court in South Delhi relied on the circumstance that the contractors could always approach the civil Court, Article 20 containing no exclusion of the court, whereas the Court's own test requires an intention to refer disputes to arbitration excluding the jurisdiction of the civil courts. Clause 8 excludes the court in

terms, providing that the contractor shall not be entitled to initiate any dispute in any court of law. The very ingredient that Article 20 lacked, Clause 8 supplies.

16. The observation on finality does not assist against Clause 8. The Court accepted that the words "final and binding", which appear in the agreements, prima facie satisfy the requirement of finality, and that Article 20 failed on other grounds. The remark that "finality alone does not equate it to arbitration" is therefore of no application to Clause 8, which does not rest on finality alone, but couples finality with a reference of disputes, an adjudication on appeal, and an ouster of the court.

17. The designation of the said authority goes to eligibility, not to existence. The observations on neutrality in *South Delhi* were made of a clause that was, in substance, a mediation controlled by a party, providing for no adjudication at all, so that the want of neutrality there confirmed a process of internal resolution and not arbitration. Where, by contrast, a clause does refer disputes for a binding decision, the circumstance that it names an officer connected with a party goes to the eligibility of that officer, which this Court cures by appointing an independent Arbitrator, and not to the existence of the arbitration agreement: *Chief Conservator of Forests, Rewa v. Ratan Singh Hans*, AIR 1967 SC 166, where a reference to the Chief Conservator of Forests, an officer of the Government which was a party, was held to be a reference to him as an arbitrator; and *TRF Ltd. v. Energo Engineering Projects Ltd.*, (2017) 8 SCC 377; *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760; and *HARSAC v. Pan India*

Consultants (P) Ltd., (2021) 3 SCC 103. It is further relevant that South Delhi was decided by a Bench of two learned Judges and did not have occasion to consider Ratan Singh Hans, a decision of three learned Judges directly in point; on this question the decision of the larger Bench governs.

18. In sum, *South Delhi* turned on a mediation clause that preserved recourse to the civil court and provided no adjudication. Clause 8 refers the disputes for a decision that is final and binding, provides for an adjudication on appeal, and ousts the civil court. It answers each ingredient of the test in *South Delhi*, and the designation of the named authority is met by the appointment of an arbitration agreement.

19. On the other hand, Mr. Joshi, learned Advocate appearing for the Municipal Council, submitted that Clause 8 cannot be considered as a valid arbitration agreement. He further submitted that, in any case, Sinnar would be the seat and venue of arbitration, since the Agreement was executed and signed at Sinnar.

REASONS AND FINDINGS:

20. I have considered the submissions made by Mr. Harit, learned Advocate for the Applicant and Mr. Joshi, learned Advocate for the Respondent Municipal Council. The first question which arises is whether Clause 8 can be considered as a valid arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. Along with this, the question about naming of the Principal Secretary, UD-2, Urban Development Department,

Government of Maharashtra, and the question whether Mumbai can be taken as the seat or venue, are required to be considered.

21. Mr. Harit submitted that though the word “arbitration” is not used in Clause 8, the intention of the parties is clear from the way the clause is written. According to him, when there is a dispute, the same is required to be referred to the named authority and the decision is made final and binding on both parties. There is provision for appeal and the decision in appeal is again made final and binding. Therefore, if the clause is read as one complete provision, it amounts in substance to an arbitration clause. Mr. Joshi submitted that Clause 8 cannot be treated as an arbitration clause. According to him, the Principal Secretary is described as an “appellate authority” and the provision is more an administrative arrangement. Merely because the decision is stated to be final and binding, it cannot become an arbitration agreement.

22. While considering this issue, the substance of the clause and the intention of the parties seen from the agreement are required to be considered. Merely because some technical word is not used, the clause cannot be rejected if from the agreement it can otherwise be understood that the parties intended arbitration. The Supreme Court in *Babanrao Rajaram Pund v. Samarth Builders & Developers*, (2022) 9 SCC 691, after considering *K.K. Modi v. K.N. Modi*, has explained the features which are required to be seen for deciding whether there is an arbitration agreement.

23. The relevant part of *K.K. Modi*, as quoted by the Supreme Court, reads:

“17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(1) The arbitration agreement must *contemplate* that the decision of the tribunal will be binding on the parties to the agreement,

(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration,

(3) the agreement must *contemplate* that substantive rights of parties will be determined by the agreed tribunal,

(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,

(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) the agreement must *contemplate* that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

18. The other factors which are relevant include, whether the agreement *contemplates* that the tribunal will receive evidence from both sides and hear their contentions or at least give the parties an opportunity to put them forward; whether the wording of the agreement is consistent or inconsistent with the view that the process was intended to be an arbitration, and whether the agreement requires the tribunal to decide the dispute according to law.”

(emphasis supplied)

24. From the above principles, it is clear that the Court has to see whether the parties intended that a dispute between them

should be decided by a private forum and whether the decision of such forum was intended to bind them. It is not necessary that particular technical words must be used in every case. What is important is the intention which can be gathered from the agreement as a whole.

25. The same position is seen from *Encon Builders*, as noticed in *Babanrao Rajaram Pund*:

“13. The essential elements of an arbitration agreement are as follows:

(1) There must be a present or a future difference in connection with some contemplated affair.

(2) There must be the intention of the parties to settle such difference by a private tribunal.

(3) The parties must agree in writing to be bound by the decision of such tribunal.

(4) The parties must be ad idem.”

(emphasis supplied)

26. If Clause 8 is considered with these principles, it is seen that the clause operates when there is a dispute between the parties. It is not merely giving administrative power to the Principal Secretary for supervision of work or for taking some decision during execution of the contract. It provides a manner in which a dispute between the contracting parties is to be decided. The clause says that the dispute “shall be referred to” the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra, Mumbai. These words have some importance. They show that once a dispute arises, the matter is required to go to the

named authority. It is not an option left to either party to approach the authority. The expression “shall be referred to” finds support from the decision in *Chief Conservator of Forests and Ors. v. Rattan Singh*. In that case, while considering a provision requiring reference of disputes to a named officer, the Supreme Court observed:

“It is conceded, and in our judgment counsel is right in so conceding, that the expression "shall be referred to" means "shall be referred to the Officer denominated" as an arbitrator to decide the dispute.”

27. The present Clause 8 contains the words “shall be referred to”. Therefore, the nature of the reference cannot be ignored merely because the word “arbitrator” is not used. The dispute is required to be referred to the named authority for decision. Clause 8 further provides that the decision of the authority shall be “final and binding on both the parties”. It is true that these words alone cannot make every clause an arbitration agreement. The Supreme Court in *South Delhi Municipal Corporation v. SMS Ltd.*, (2026) 1 SCC 545, has stated:

“A key argument advanced by the private contractors is that the decision rendered under Article 20 is “final and binding”, thereby making it akin to an arbitral award. While it is true that an arbitration clause must result in a conclusive determination, finality alone does not equate it to arbitration.”

28. Therefore, the use of “final and binding” by is not enough. The complete clause is required to be considered. When the other parts of Clause 8 are seen, it contains more than only finality. It

first requires that the dispute “shall be referred to” the named authority. It then provides for decision by that authority. It further provides an appeal. The decision in appeal is again made final and binding on both parties. After this, the clause says that the contractor shall not be entitled to initiate any dispute in any court of law. Thus, the clause has a connected arrangement. There is compulsory reference, then decision, then appeal, and thereafter finality. There is an express restriction against taking the dispute to a court. These features, when read together, make the clause different from administrative provision.

29. Mr. Joshi relied upon *South Delhi Municipal Corporation v. SMS Ltd.* and submitted that a final and binding decision cannot by amount to arbitration. This general proposition is correct. But the provision considered in that case was of a different nature. Article 20 was titled “Mediation by Commissioner”. The process was found to be essentially mediation and administrative fact-finding. The Supreme Court described it as:

“an elaborate administrative fact-finding exercise, rather than an arbitral adjudication”.

30. The present Clause 8 is not confined to mediation or settlement. It deals with a dispute, requires compulsory reference for decision, provides an appeal and makes the decisions final and binding. It contains the restriction against the contractor initiating any dispute in any court of law. In *South Delhi Municipal Corporation*, the Court found that the necessary intention to create an arbitral process was not there. In the present case, the intention has to be seen from the complete Clause 8. The parties agreed that

when a dispute arises, the same “shall be referred” to the designated authority and the decision will bind both parties. Thus, even though the word “arbitration” is not used, the arrangement made by the parties shows that the dispute is to be decided through that mechanism.

31. Mr. Joshi submitted that the description of the Principal Secretary as an “appellate authority” makes the clause non-arbitral. I am unable to accept this submission in that manner. The description of the officer cannot alone decide the legal character of the clause. The actual function which the officer is required to perform under the Agreement has to be seen. Here, the authority is required to decide the dispute between the parties and the decision is made binding. The provision for appeal forms part of the same mechanism. Therefore, the use of the words “appellate authority” does not remove the clause from the scope of arbitration.

32. The decision in *Rattan Singh* is useful in this regard. There, the Supreme Court considered a Government officer who was required under the contract to decide disputes concerning performance or breach. The Court considered the manner in which the officer was required to act. Where the contract required the dispute to be referred to the officer for adjudication, the reference was capable of being treated as arbitration. However, where the officer acted only in departmental or revisional jurisdiction, such decision could not be treated as an arbitral award. Clause 8 is directed towards disputes between the contracting parties. Therefore, the function given to the authority under the clause is

more important than the description given to him as an “authority” or “appellate authority”.

33. The next question is about the Principal Secretary being connected with the Government. Mr. Harit submitted that even if the named authority cannot act as arbitrator under Section 12(5) read with the Seventh Schedule, this would not destroy the arbitration agreement. The decision in *Haryana Space Application Centre v. Pan India Consultants (P) Ltd.*, (2021) 3 SCC 103, is relevant. In that case, the arbitration clause contemplated appointment of a Government officer. The Supreme Court held:

“We are of the view that the appointment of the Principal Secretary, Government of Haryana as the nominee arbitrator of Harsac which is a nodal agency of the Government of Haryana, would be invalid under Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule.”

34. The named person was therefore found ineligible. However, the arbitration agreement was not treated as having disappeared.

35. The further course adopted by the Supreme Court in that case is important. The Court recorded:

“The counsel for both the parties during the course of hearing have consented to the substitution of the existing Tribunal, by the appointment of a sole arbitrator to complete the arbitral proceedings.”

36. Thus, the difficulty concerning the person who was to act as arbitrator was considered separately. The arbitration mechanism was not rejected. The same position can apply here. If the Principal Secretary named in Clause 8 is found ineligible under Section

12(5) read with the Seventh Schedule, he cannot act as arbitrator. But that is a question concerning the person who is to perform the arbitral function. It is not the same as deciding whether the parties had agreed to arbitration. Therefore, the Respondent cannot succeed only on the ground that the named officer may not be legally eligible. An eligible and independent arbitrator can be appointed in accordance with law. The possible defect in the person named cannot by remove the agreement to arbitrate.

37. Thus, the submission of Mr. Harit that the appointment mechanism and the existence of the arbitration agreement are separate matters has force. The principles in *TRF Ltd. v. Energo Engineering Projects Ltd.*, *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* and *Haryana Space Application Centre* support the position that a person who is disqualified cannot act as arbitrator merely because the agreement had named him. But this does not mean that the underlying agreement to arbitrate comes to an end.

38. Mr. Harit submitted that the absence of the word “arbitration” cannot be made the ground to reject Clause 8. I find substance in this submission. The Court cannot create an arbitration agreement where there was no intention to arbitrate. But equally, a clause cannot be rejected only because it is not drafted in technical arbitration language, if its substance shows the necessary intention. The Supreme Court in *Babnrao Rajaram Pund* has observed:

“The deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration

clause.”

39. The Supreme Court has observed:

“the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause.”

40. Therefore, Clause 8 has to be understood from its substance and as part of the Agreement between the parties. At the same time, the caution in *South Delhi Municipal Corporation* cannot be left out. Every provision under which an officer's decision is made final and binding cannot become an arbitration clause. Some indication of an adjudicatory intention must be present. In the present case, such features are present. There is a dispute between the parties. There is compulsory reference. There is a decision by the authority. There is an appeal. The decision is final and binding. There is an express restriction on initiating a dispute in any court of law. When these provisions are read together, they show that the parties intended their disputes to be decided through the mechanism created in Clause 8 and intended to remain bound by the result. Therefore, the clause contains the necessary substance of an arbitration agreement. The Government status of the authority may raise a question about his eligibility to act. But that question is separate and does not alter the intention found in the Agreement.

41. The decisions relied upon by the Respondent, including *State of U.P. v. Tipper Chand*, *State of Orissa v. Damodar Das* and *Bharat Bhushan Bansal v. U.P. Small Industries Corporation Ltd.*, do not lead to a different conclusion. Those cases concerned decisions by

engineers or officers on matters such as specifications, quality, and other matters connected with execution of the work. Such technical decisions are different from a clause which requires disputes between the parties to be referred for decision. Clause 8 in the present case is directed to disputes between the contracting parties. It therefore cannot be treated merely as a provision for administrative supervision.

42. The reliance upon *P. Dasaratharama Reddy Complex v. Government of Karnataka* does not assist the Respondent. In that case, the parties retained a right to “approach the law courts”. Here, Clause 8 provides that the contractor shall not be entitled to initiate any dispute in any court of law. This difference is material and supports the submission that the parties intended the agreed mechanism to decide their disputes. The provision for appeal cannot by destroy the arbitration arrangement. Parties may agree to another stage of decision-making. What is important is the nature of the complete mechanism. In Clause 8, the original decision and the appellate decision are both included in the agreed dispute resolution process and both are made binding.

43. I now come to the question of seat and venue. Mr. Harit submitted that Mumbai is the seat and venue because Clause 8 requires the dispute to be referred to the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra, Mumbai. Mr. Joshi submitted that Sinnar should be treated as the seat and venue because the Agreement was executed and signed at Sinnar. 37. On this question, I find substance in the submission of Mr. Harit. It is true that Clause 8 does not state that “Mumbai shall

be the seat of arbitration”. However, the intention has to be gathered from the clause as a whole. The parties have selected a particular authority for deciding the dispute and have described that authority as the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra, Mumbai. Thus, the reference to Mumbai is not appearing somewhere separately in the Agreement. It is part of the very clause under which the disputes are required to be decided. The authority selected by the parties for deciding the dispute is connected with Mumbai. It is no doubt true that seat and venue are not always one and the same. A place may be used for holding hearings without becoming the juridical seat. But in the present case, the place mentioned in Clause 8 is connected with the authority selected by the parties for deciding their disputes.

44. The Supreme Court in *BGS SGS SOMA JV v. NHPC Ltd.*, (2020) 4 SCC 234, has explained the importance of the place selected by the parties for the arbitral process. Where a place is selected as the seat, the courts at that place exercise supervisory jurisdiction over the arbitration. In the present case, Clause 8 does not say merely that the authority may hold a meeting at Mumbai. It says that the dispute shall be referred to the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra, Mumbai. The decision is to be final and binding on both parties and the appellate decision is made final and binding. Therefore, Mumbai is directly connected with the authority which has been entrusted with deciding the dispute. It is not a convenient place for conducting some hearing. The dispute resolution

arrangement made by the parties is connected with Mumbai. On the other hand, there is no provision in the Agreement which says that Sinnar shall be the seat of arbitration. The Agreement being signed at Sinnar cannot, by, make Sinnar the juridical seat. The place of execution of a contract and the place selected as the seat of arbitration are different matters. The contract may be signed at one place and arbitration may have its seat at another place. Therefore, the mere fact that the Agreement was executed at Sinnar is not sufficient to hold that Sinnar is the seat. The place where the contractual work was to be performed does not by determine the seat. The work may be at Sinnar, but the arbitration may have its juridical seat elsewhere. The place of performance and the seat of arbitration need not be the same.

45. Here, while making the dispute resolution clause, the parties referred the dispute to the Principal Secretary at Mumbai. That part of the contractual wording has to be given due consideration. The distinction between seat and venue does not prevent Mumbai from being treated as the seat. Even if some hearings or other proceedings are held at Sinnar or at another place for convenience, that circumstance by will not change the seat. The seat has to be understood from the contractual arrangement and the intention of the parties.

46. The submission of the Respondent that Sinnar must be treated as the seat because the Agreement was executed there therefore cannot be accepted. Clause 8 contains no selection of Sinnar as the seat. On the other hand, Mumbai is mentioned together with the authority to whom the disputes are to be

referred. The indication in the Agreement in favour of Mumbai is therefore more direct than the mere fact of execution of the Agreement at Sinnar. I cannot completely ignore the word “Mumbai” appearing with the description of the Principal Secretary. The parties have referred to the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra, Mumbai, as the authority to whom the dispute is required to be referred. The authority and the place are therefore mentioned together in the dispute resolution clause. This wording must have some meaning. It cannot be treated as if Mumbai was mentioned without any connection to the agreed dispute resolution mechanism. When Clause 8 is read as one provision, it indicates that the dispute between the parties is to be referred to the Principal Secretary of the Urban Development Department at Mumbai for decision. The decision is made final and binding. The appellate mechanism forms part of the same arrangement. Therefore, the dispute resolution mechanism agreed by the parties is connected with Mumbai. In these circumstances, I find that Mumbai is not merely a place for holding a meeting. It is the place with which the agreed adjudicatory mechanism is connected. I therefore hold that Mumbai is the juridical seat of arbitration under Clause 8 of the Agreement dated 26.08.2014. The fact that the Agreement was signed at Sinnar does not change this conclusion. Similarly, the fact that the work was to be performed at Sinnar does not amount to selection of Sinnar as the arbitral seat. Once Mumbai is held to be the seat, the legal consequences attached to the seat will follow. The courts at Mumbai will have

supervisory jurisdiction over the arbitral proceedings. The parties, from the wording of Clause 8, have selected Mumbai as the place with which the agreed dispute resolution mechanism is connected. This finding does not mean that each hearing must take place physically at Mumbai. Seat and venue have to be understood separately. The arbitral tribunal may, subject to the Act and the circumstances of the proceedings, hold hearings or other proceedings at another place. Such arrangement for convenience will not change Mumbai as the seat.

47. I, therefore, hold that Clause 8 contains an arbitration agreement and that Mumbai is the seat of arbitration. The reference to the Principal Secretary, UD-2, Urban Development Department, Government of Maharashtra, Mumbai, when read with the compulsory reference of disputes, the final and binding nature of the decision, the appellate mechanism and the restriction against approaching a court, shows the intention of the parties to create a binding adjudicatory mechanism connected with Mumbai. The objection of the Respondent that Sinnar should be treated as the seat because the Agreement was signed there is therefore rejected. The place of execution cannot by override the indication contained in the dispute resolution clause. The fact that the underlying work relates to Sinnar does not change the seat. The question regarding eligibility of the Principal Secretary under Section 12(5) read with the Seventh Schedule is separate from the question of seat. If the named officer is ineligible to act as arbitrator, he cannot act as such. An independent and impartial arbitrator can be appointed in accordance with law. Such

substitution will not change the seat of arbitration, which remains Mumbai.

48. In view of the aforesaid, the present Application filed under Section 11 of the Act, is disposed of by passing the following order:

A) Justice Avinash Gharote former judge 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;

Office Address:- Plot No.49, Ground Floor, Shreenarayan Complex, Besides Punjab National Bank, Bajaj Nagar, Nagpur 440010

Email ID:avinashgharote.arb@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant 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 Advocates 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 Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) 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;

E) 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;

49. 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.

50. All contentions of the parties on the merits of their respective claims and disputes are kept open for consideration by the learned Arbitral Tribunal in accordance with law.

51. 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.

(AMIT BORKAR, J.)