

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****ARBITRATION PETITION NO. 150 OF 2021**

Mr. Mukund Bhalchandra Abhyankar & Anr. ...Petitioners

Versus

Dr. Jayant Bhalchandra Abhyankar & Ors. ...Respondents

* * *

- Mr. Yogesh Patil i/by P.S. Legal, for the Petitioners.
- Mr. Avinash Bhuskute i/by Mr. Amol B. Jagtap, Ms. Ritika Gangwani, for Respondent Nos. 1 to 3.

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CORAM : MANISH PITALE, J**DATE : 15TH NOVEMBER, 2022.****P. C. :**

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of Arbitrator in terms of the Arbitration Clause in the Agreement dated 16th January, 2019, executed between the parties. The Petitioners and Respondent Nos. 1 and 2 are related to each other as the Petitioner No. 1 and Respondent No. 1 are brothers. The nature of differences that occurred between the parties leading to execution of the Agreement dated 16th January, 2019, are stated in clause v, which reads as follows :

“v. It has been a family business of the Abhyankar family and has been looked after by Dr. Jayant Bhalchandra Abhyankar and Mr. Mukund Bhalchandra Abhyankar. The above three companies have been owned by both the Groups in the manner mentioned hereinabove. The differences of opinions arose amongst the two

*owner member of the Groups as to running and management of the business of those companies. The business activities / work of the above three Group Companies have been complementary to each other and these companies have been entirely owned by the members of **Jayant Abhyankar Group and Mukund Abhyankar Group**. The two groups discussed the matter and Mukund Abhyankar Group offered sale of its/their stakes in the above three companies to Jayant Abhyankar Group and Jayant Abhyankar Group as a matter of amicable settlement has decided to accept such offer of sale of equity shares of all 3 companies on the following terms and conditions.”*

2. The above quoted narration clearly brings out the backdrop in which the parties executed the Agreement for resolution of the *inter-se* disputes that arose between them as regards the family business. There is no dispute about the fact that clause 10 of the aforesaid Agreement dated 16th January, 2019, reads as follows :

“10. All the disputes and questions about and in connection with this AGREEMENT arising, if any, between the Parties or between any of them at any time and from time to time, shall be settled by Conciliation or by Arbitration as provided under the Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing for determination of the same as aforesaid and the provisions of the said Act apply accordingly.”

3. It appears that in terms of the said Agreement, certain

amounts were indeed paid by the petitioners to the Respondent Nos. 1 and 2, but further payments were not made due to which, by notice dated 30th December, 2020, the petitioners called upon the Respondent Nos. 1 and 2 to abide by the terms of the Agreement and to make the balance payment. Thereafter, by notice dated 09th August, 2021, the petitioners invoked the above quoted Arbitration Clause and proposed the name of a retired Judge of this Court as Sole Arbitrator to resolve the disputes between the parties. Since there was no response from the Respondents in the matter, the present petition came to be filed.

4. Mr. Yogesh Patil, learned Counsel appearing for the Petitioners referred to the Arbitration Clause and the documents on record to contend that the conditions necessary for exercise of jurisdiction by this Court under Section 11 of the aforesaid Act were clearly existing in the present case and that therefore, this Court may allow the present petition.

5. In response, Mr. Avinash Bhuskute, learned Counsel appearing for the Respondents submitted that in the facts of the present case, no dispute could be said to be existing between the parties. Reference was made to the Clauses of the subject Agreement dated 16th January, 2019, to contend that on a proper interpretation of the same, it would be obvious that the dispute sought to be raised

on behalf of the Petitioners was non-existent and in the absence of the renewal of the Agreement, there was no question of invoking the Arbitration Clause. Reliance was placed on judgment of Hon'ble Supreme Court in the case of **M/s. Emaar India Ltd. Vs. Tarun Aggarwal Projects LLP & Anr.** (Judgment and order dated 30th September, 2022, passed in Civil Appeal No. 6774 of 2022).

6. This Court has heard the learned Counsel for the rival parties in the backdrop of the material placed on record. There is no dispute about the fact that the parties entered into the said Agreement dated 16th January, 2019, which contained the above quoted Arbitration Clause. This Court finds that in terms of the Clauses of the said Agreement, certain amounts were to be paid by the Respondent Nos. 1 and 2 to the Petitioners, which the Petitioners claim were not paid in entirety. The Petitioners raised a dispute in respect of the same, which is being denied by the Respondents.

7. Insofar as the aspect of there being no dispute in the matter, in the absence of renewal of the Agreement as claimed on behalf of the Respondents, reference to the above-mentioned judgment of the Hon'ble Supreme Court would show that it would be only in rare cases when it is found that the Arbitration Agreement itself is non-existent or invalid and where disputes are found to be non-arbitrable, that the litigation can be stopped at the initial stage

itself and in such rare cases, this Court may not exercise jurisdiction under Section 11 of the said Act. Relevant portion of the aforementioned judgment on which reliance was placed on record on behalf of the Respondents, reads as follows :

*“6.8. In the case of **Vidya Drolia** (supra), it is specifically observed and held by this Court that rarely as a demurrer, the Court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that **“the arbitration agreement is not-existent, invalid or the disputes are non-arbitrable”**, though the nature and facet of nonarbitrability would, to some extent, determine the level and nature of judicial scrutiny. It is further observed that the restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably **“non-arbitrable and to cut off the deadwood”**. It is further observed that the prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straightforward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage.”*

8. Having perused the material on record and upon hearing the learned Counsel for the rival parties, this Court is convinced that the present case does not fall within the rare cases referred to by the Hon’ble Supreme Court and that if all questions sought to be raised by the parties are kept open, this is a fit case for exercising jurisdiction

under Section 11 of the said Act for appointment of an Arbitrator.

9. The learned Counsel for the petitioners proposed the appointment of Justice S. R. Sathe, Retired Judge of this Court, as the Sole Arbitrator. The learned Counsel for the Respondents raised no objection to the aforesaid proposal. Hence, Justice S. R. Sathe, (Retired Judge of this Court) is appointed as the Sole Arbitrator for resolving the disputes between the parties. The details of the learned Arbitrator are as follows :

The Hon'ble Shri Justice S. R. Sathe

*A-802, Ruturang Apartment, Behind Paranjape School,
Kothrud, Pune - 411 038. Tel. 020 - 25396407.*

10. The learned Arbitrator is requested to communicate his consent and Disclosure Statement under Section 11(8) r/w 12(1) of the aforesaid Act, within four weeks to the Registrar (Judicial) of this Court.

11. The parties are directed to immediately communicate this order to the learned Arbitrator.

12. All questions are kept open to be decided by the learned Arbitrator.

13. The petition stands disposed of in above terms.

(MANISH PITALE, J.)