

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO. 160 OF 2024

Manoj Ornaments Pvt. Ltd.

...Applicant

Vs.

Oriental Insurance Co. Ltd.

...Respondent

Mr. Rushabh Vidyarthi a/w Chittesh Dalmia for the Applicant.

Ms. Chinmayee Ghag i/by Zastriya for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 16TH OCTOBER, 2024

P.C.:-

1. The present application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator in respect of disputes and differences that have arisen between the parties out of an insurance contract.

2. Ms. Ghag Learned Counsel appearing on behalf of the Respondent on instructions states that she does not choose to file any Affidavit-in-Reply to oppose the present application. She also does not dispute or deny the fact that the insurance contract contains an arbitration clause and that the same has been validly invoked by the Applicant. She however submits that today there is no dispute that is referable to arbitration since the Applicant has accepted the payment made under the said insurance contract without any demur or protest.

She submits that the Applicant has also not alleged fraud/coercion/undue influence basis which the said payment was accepted. She thus placing reliance upon the judgments of the Hon'ble Supreme Court in the case of ***M/s. ONGC Mangalore Petrochemicals Ltd. Vs. M/s. ANS Constructions Ltd. & Anr.***¹ and ***New India Assurance Company Ltd. Vs. Genus Power Infrastructure Ltd.***² submits that in these circumstances there is no dispute which can be referred to arbitration.

3. Per contra, Mr. Vidyarthi, Learned Counsel appearing on behalf of the Applicant submits that the issue of accord and satisfaction is one which would have to be ascertained by the Tribunal and not this Court since it is a mix question of fact and law. He submits that this issue is now no longer res integra and has been conclusively determined by the Hon'ble Supreme Court in the judgment of ***SBI General Insurance Co. Ltd. Vs. Krish Spinning***³, in which the Hon'ble Supreme Court has held as follows:-

114. In view of the observations made by this Court in In Re : Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re : Interplay (supra).

1 (2018) 2 S.C.R. 598

2 Civil Appeal No.10784 of 2014, Judgment dated 4th December, 2014

3 2024 SCC OnLine SC 1754

115. The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by “accord and satisfaction”.

116. The question of “accord and satisfaction”, being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.”

4. Basis the above, he submits that given the fact that there is no dispute to the arbitration agreement/clause as also to the invocation of the same, an Arbitrator must be appointed to decide the disputes between the parties.

5. Having heard Learned Counsel, I find the only ground to oppose the appointment of an Arbitrator is the fact that the Applicant has accepted the payment made by the Respondent without demur or protest and also without alleging fraud/coercion/undue influence etc. Hence, plainly the appointment is based on the ground of accord and satisfaction. This issue is now squarely covered by the judgment in the case of ***SBI General Insurance Co. Ltd.*** (supra). Hence, there is no merit in the opposition to the appointment of the Arbitrator.

6. I therefore appoint Mr. Ashish Bhatia to act as Sole Arbitrator in respect of the disputes and differences between the parties.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr. Ashish Bhatia is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.

(ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Mr. Ashish Bhatia

Address ANB Legal, DBS Heritage
House, Prescott Road, Fort,
Mumbai 400001.

Mobile 9819854968

Email ashish@anblegal.com

(c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Applicant will arrange to file the original

statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.

- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.

- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration.** Parties agree that the venue and seat of the arbitration will be in Mumbai.

7. The Application is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)