
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 139 OF 2024

Vijaykumar Sudarshan Sang & Anr.

...Petitioners

Versus

GTL Infrastructure Limited (GIL)

...Respondent

The Petitioners were represented but appearance not received.

Adv. Sangam Ghorpade, a/w Adv. Abhishek Thoke i/b
Alathea Law LLP, Advocate for the Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 23, 2025

PC :

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under an Agreement dated July 30, 2008. The arbitration agreement is contained in Clause 16 (found at Page 22 of the Petition). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. Having heard the parties, and having made attempts to examine if they would be willing to by consent proceed to the Small Causes Court or any equivalent Court specially vested with the jurisdiction in respect of Leave and License Agreement and such efforts

having failed, I must necessarily confine myself to examining the existence of the arbitration agreement leaving it to the parties to agitate disputes of arbitrability under Section 16 of the Act before the Arbitral Tribunal.

3. It is apparent from the record that the arbitration agreement was invoked by the Petitioner on December 9, 2023, to which there is no reply.

4. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions of a seven-judge bench in the ***Interplay Judgement***¹ followed by multiple others, including ***SBI General***² and ***Patel***³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

5. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid agreement dated July 30, 2008 to arbitration by a Sole Arbitrator.

6. The Learned Counsel for the parties by consent submit that the Arbitral Tribunal may have its seat in Mumbai, of course, without

¹ In Re: Interplay Between Arbitration Agreement under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 (2024) 6 SCC 1

² SBI General Insurance Co. Ltd. Vs. Krish Spinning, 2024 SCC OnLine 1974

³ Ajay Madhusudan Patel Vs. Jyotindra S. Patel, 2024 SCC OnLine, 2597

prejudice to the contentions about jurisdiction of the Arbitral Tribunal. In these circumstances, leaving all contentions open including the preliminary issue of arbitrability under Section 16 of the Act to the Arbitral Tribunal to consider, the Petition is hereby ***finally disposed of*** in terms of the following order:

A] Ms. Lizum Wangdi, a learned 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;

Office Address:- 205, 2nd Floor, Arcadia, NCPA Marg, Nariman Point, Mumbai – 400 021.

Email ID: lizumw@gmail.com

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 the date on which this order is uploaded on the website of this Court. The Petitioner 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.

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

8. 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.

[SOMASEKHAR SUNDARESAN, J.]