
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 5 OF 2024

Fujifilm India Pvt.Ltd ...Petitioner

Versus

Metrostar Print Solutions Pvt Ltd ...Respondent

Ms. Ruchita Chavan, i/b Amit Karkhanis, for the Petitioner.

Ms. Riya Pichaya, i/b India Law LLP, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 26, 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 Purchase Agreement dated June 21, 2018 (***“Agreement”***). The arbitration agreement is contained in Clause 32 (found at Page 41 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. It is apparent from the record that the arbitration agreement was invoked by the Petitioner on July 27, 2023. The reply affidavit on

behalf of the Respondent dated February 21, 2025 is taken on record. The primary objection from the Respondent is that the Applicant has indulged in forum shopping. Toward this end, her contention is that the Applicant initiated proceedings before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016, which came to be rejected. Criminal proceedings were also attempted and they are still pending. The amount stated in each forum differs, according to the Learned Counsel for the Respondent. In these circumstances, the submission is that the Petition should not be entertained.

3. It is now trite law that the scope of review under Section 11 jurisdiction ought to be confined to the existence of an arbitration agreement. Since the existence of an arbitration agreement is writ large on the face of the record, it would not be possible for this Court to delve into with these issues. The scope of insolvency proceedings fall in a different realm of law and they are not recovery proceedings although they may have been intended to pressure recovery. However, issues such as the aforesaid are all matters of merits, which fall squarely in the domain of the arbitral tribunal and not the Section 11 Court.

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*^f followed by multiple others, including *SBI General*^g and *Patel*^h 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 to arbitration by a Sole Arbitrator.

6. Consequently, this Application is *finally disposed of* in the following terms:

a) Mr. Shyam Kapadia, a learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between

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

^g *SBI General Insurance Co. Ltd. Vs. Krish Spinning, 2024 SCC OnLine 1974*

^h *Ajay Madhusudan Patel Vs. Jyotindra S. Patel, 2024 SCC OnLine, 2597*

the parties arising out of and in connection with the Agreement referred to above;

Email ID: shyam.a.kapadia@gmail.com

- b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner 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.]