
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 38 OF 2025

Ayub Ibrahim Asar & Ors.

...Petitioners

Versus

M/s. Shah Developers Pvt. Ltd.

...Respondent

Mr. Ashutosh R. Gole, for the Petitioner.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 11, 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 for Assignment of Development Rights/Joint Venture dated August 23, 2006 (***“Agreement”***). The arbitration agreement is contained in Clause 33 (found at Page 40 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 Petitioners on September 23, 2024. There is no reply filed to the said invocation.

3. 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.

4. 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.

5. In these circumstances, no useful purpose would be served by keeping this matter pending any further this Petition is hereby ***finally disposed of***, in terms of the following order:

- a) Mr. Zerick Dastur, 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:-

5th Floor, Manek Mahal,

Churchgate, Mumbai – 400 020

Email ID: zerick@zdlegal.com

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

³ *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

- b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioners within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioners 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 Petitioners 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 Petition and a copy of the same shall be furnished by the Advocates for the Petitioners to the Respondent;
- 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.

6. 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.

7. 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.]