
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 65 OF 2024

Vijay Kashinath Tandel ...Petitioner

Versus

Mr. Neenad Nandkumar Hajare ...Respondent

Ms. Naina Sharma, a/w Ayesha Qureshi, for the Petitioner.

Mr. Sumit Khaire, a/w Somnath Thengdi, 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 Joint Venture Agreement dated March 16, 2020. The arbitration agreement is contained in Clause 10 (found at Page 179 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 September 22, 2023. There is no reply filed to the said invocation.

3. There is no objection to an appointment of an arbitrator. Since the existence of the arbitration agreement is not disputed, the parties have agreed to proceed to arbitration.

4. Each party has a request. The Respondent would request that the arbitration be conducted in Karjat. The Applicant would request that the arbitration be conducted in Mumbai.

5. Since the arbitration agreement entails arbitration in terms of the rules of Arbitration of the Indian Council of Arbitration, The Learned Arbitrator shall follow the rules in the conduct of the arbitration proceedings. Indeed, parties are entitled to agree to follow a different approach. It is left open to the parties to address the arbitral tribunal should they seek to deviate from the rules from procedure under the Indian Counsel of Arbitration Rules.

6. 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

¹ In Re: Interplay Between Arbitration Agreement under Arbitration and Conciliation

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.

7. 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.

8. In these circumstances, both this Petition is hereby ***finally disposed of*** by appointing the Learned Sole Arbitrator in terms of the following order:

- a) The Indian Council for Arbitration is directed to appoint an arbitrator in line with the arbitration agreement at the earliest, and in any event within three weeks from this Order being communicated to it

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

by the Petitioner. The Petitioner shall approach the Council immediately after the upload of this Order on the website of this Court; and

- b) 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.

9. All further instructions shall be given by the Council which would administer the arbitration.

10. 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.

11. 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.]