
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 105 OF 2024

Ghodawat Ayurstar LLP Through Its Authorised Signatory Prashant Yashawant Patil ...Petitioner

Versus

New Panam Herbs Pvt Ltd ...Respondent

Mr. VV Krishnan a/w *Abhijeet Dixit, Chaitali Bhogle, Rishab Tiwari, Manthan Yadav, for the Petitioner.*

Appearance not received for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 18, 2025

ORDER :

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 a manufacturing agreement dated March 16, 2021. The arbitration agreement is contained in Clause 19 (found at Pages 41 and 42 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 June 13, 2023. A reply dated June 26, 2023 is filed to the said invocation.

3. Learned Counsel for the Respondent submits that a suit has been filed in the matter and towards this end he refers to a suit filed by a Ghodwat Consumer Private Limited (Ghodwat Ayurstar Division) and contends that the subject matter of the dispute sought to be covered in the arbitration is already a subject matter of the suit. The upshot is that, by filing the suit, the Petitioner has waived the arbitration agreement. The rejoinder filed on behalf of the Petitioner makes it clear that Ghodwawat Consumer Private Limited is a different entity, whereas this Petitioner is a related party but is a different and distinct entity. That apart, the reference to arbitration is sought in respect of the specific agreement dated March 16, 2021, which is only between the parties to these proceedings, and the rejoinder makes it clear that this Petitioner is not the plaintiff in those proceedings.

4. Learned Counsel for the Respondent submits that there would still be a subject matter overlap between the contents of the suit and what is sought to be raised here. Be that as it may, that may involve explaining such contention, along with facts and evidence relevant to

the merits of the matter, which fall squarely in the domain of the arbitral tribunal should an application under Section 16 be filed. Should the Respondent succeed in demonstrating to the tribunal that the dispute is not arbitrable by filing an application under Section 16, it is for the arbitral tribunal to take a view thereon. This Petition cannot be held up any further on this ground and, consequently, is *finally disposed of*.

5. 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.

6. 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

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

connection with the aforesaid agreement to arbitration by a Sole Arbitrator.

7. In these circumstances, both this Application as well as the Section 9 Petition are hereby ***finally disposed of***, in terms of the following order:

A) Presolv360, an independent online dispute resolution institution is directed to appoint a sole arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above and administer the same;

B) The contact particulars of the Director, Presolv360 are set out below:-

Email id : info@presolv360.com

Contact No. - +91-9820167337

Address: 1st Floor, Esperanca Building,

Shahid Bhagat Singh Road,

Colaba, Mumbai – 400 001.

Website: www.presolv360.com

C) A copy of this Order will be communicated to Presolv360 by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to Presolv360 along with a copy of this Order;

D) It is clarified that Presolv360 being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to the administration of Presolv360;

E) The administration of Presolv360 is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F) 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 administration of Presolv360 and any other particulars as reasonably requested by the administration . Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G) All arbitral costs and fees of the arbitration 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; and

H) The seat of the arbitration shall be deemed to be the same as the seat discernible from the Agreement while the arbitration shall primarily be conducted online.

8. 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.

9. 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.]