

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 107 OF 2024
AND
ARBITRATION PETITION NO. 108 OF 2024
AND
ARBITRATION PETITION NO. 114 OF 2024

Shree Construction Co Thorough Its Partners ...Petitioner
Hasmukh Popatbhai Babaria

Versus

Union Of India & Ors ...Respondents

Mr. Mihir S. Raje, (through VC) for the Petitioner.

Mr. N.R. Bubna, for Respondents.

Mr. Rakesh Kumar Agrawal, Retired ADG, CPWD.

Mr. Akhilesh Kumar, Retired Spl.DG, CPWD.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 8, 2025

PC :

1. These Petitions have 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 the three different Agreements which are annexed to these Petitions. The arbitration agreement is identical in each of the Agreements and contained in Clause 70 of these

Agreements. 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 August 8, 2023. There is no reply to the said invocation.

3. The objection from the Respondent is not about the existence of the arbitration agreement but about the claim being *ex facie* time barred. According to him the invocation itself is hopelessly barred by limitation and consequently, the disputes are dead wood and must not be referred to arbitration.

4. It would be difficult for this Court to delve into the question of limitation since answering the question would involve examination of evidence as it necessarily presents a mixed question of fact in law.

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

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

followed by multiple others, including *SBI General²* and *Patel³* 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 connection with these Agreements to arbitration by a Sole Arbitrator.

7. In the specific facts of this case considering the submission that the matter is *ex facie* time barred. The arbitral tribunal is requested to examine this facet of the matter should it be so pointed as preliminary issue so that needless expenditure of resources of the parties need not be incurred. on 16 of the Act the Petition is finally disposed of.

8. In these circumstances, taking into account inputs from the officers of thie Court the captioned Petitions are hereby ***finally disposed of***, in terms of the following order:

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*

- a) Mr. V.K. Deshpande, Retired District Judge, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with these Agreements referred to above;

Office Address:-

Sairang Apartment, Flat No 603,

Near Paranjape nursery school,

Kothrud, Pune – 411 038

Email ID: vyankateshrao@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.

9. 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.

10. 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.]