

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.15 OF 2024

Admirecon Infrastructure Pvt. Ltd.	Petitioner
Versus	
Fam Co-Operative Housing Society Ltd.	Respondent

Mr. Hasmit Trivedi *i/b Praxis Legal, Advocate for Petitioner.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 24, 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 the Arbitration Agreement dated February 10, 2019 (***“Agreement”***). The arbitration agreement is contained in Clause 48 (found at Page 116 of the reply to this Petition). In the interest of brevity, the arbitration agreements are not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. After the matter was argued for some time, it is apparent that the disputes and differences between the parties insofar as it relates to this Petition are not about the existence of the arbitration agreement, but revolve around the identity of the arbitrator.

3. Learned Counsel for the Respondent submits that the Petitioner has suppressed the general terms and conditions of contract, which explicitly names the consultant who is running the project, as the arbitrator. The arbitration agreement in this regard is contained in Clause 48 of the General Conditions of Contract (Page 116 in the affidavit of reply). It is noteworthy that the General Conditions of Contract appended to the reply are in fact printed on the letterhead of the very same consultant and the consultant is involved in all facets of facts and the conduct of the project. Therefore, evidently, this would pose an element of conflict of interest for the consultant, and even if he were to be totally independent, the final arbitral award may be rendered vulnerable, exposing both parties to serious expense of time and resources

4. In these circumstances, Learned Counsel for the Respondent points to a few suggestions made by the Respondent in the affidavit in reply and submits that one of those names may be appointed as an arbitrator. Learned Counsel for the Petitioner submits that he is not

comfortable with any of the three names and this Court must appoint an arbitrator on its own.

5. In these circumstances, having taken on record the contentions of the parties, no useful purpose would be served by keeping the Petition pending any further.

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 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.

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*

8. In these circumstances, this Petition is hereby *finally disposed of* in terms of the following order:

A] Mr. Aniesh Jadhav, 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;

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week 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.]