

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 23 OF 2024

Supreme Infrastructure India Limited ...Petitioner

Versus

The Executive Engineer(Nur-II) Cidco Limited & ...Respondents
Ors

**Mr. Uday S. Samudral, a/w Anil Premchandani, for the
Petitioner.**

**Mr. Rahul Sinha, a/w Soham Bhalerao, Harshit Tyagi, i/b DSK
Legal, for Respondent Nos.1 to 4.**

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 2, 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 an agreement dated May 6, 2014 (***“Agreement”***). The arbitration agreement is contained in Clause 67 (found at Page 89 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. The key objection on behalf of the Respondents is that the dispute resolution clause is not at all an arbitration clause. Therefore, it is contended that it is misnomer to think that the parties had an intent to arbitrate. A careful reading of Clause 67 which deals with settlement of disputes between the parties would indicate that any dispute in connection with any of the provisions of the contract would need to be first referred to the Engineer, who would then take a decision within ninety days and communicate the same to the parties. If either party were dissatisfied with the decision of the Engineer, the disputes would then proceed to one round of appeal in terms of Clause 67.3, after which the decision would be “conclusive”. The appellate body for disputes of over Rs. 25 crores is the Managing Director. If either party were to be dissatisfied by the views of the Managing Director or if the Managing Director fails to resolve the disputes within thirty days, the dispute would then be referred to a “Dispute Review Board”, which would hear the matters and take a decision.

3. The Dispute Review Board is meant to consist of three members, one each appointed by each party and the two members selecting the third. Likewise, if either party does not nominate a

member of the Dispute Review Board, such nominee would appointed by the President of the Institute of Engineers.

4. The dispute between the parties is in the region of Rs. 50 crores. A plain reading of the foregoing provisions would indicate that the framework is essentially a framework for dispute resolution outside the Court system and is nothing but an agreement to arbitrate by a three-member tribunal, which would then take a decision in the matter. It is not necessary to use the word “arbitration” for the agreement or clause to be considered an arbitration agreement in substance. The terminology is the form while one must have regard to the substance. One must look at the substance of the contract and see whether it constitutes an arbitration agreement rather than look at the form and examine whether the label of arbitration is necessary for usage.

5. Considering the Respondents’ objection to the arrangement being regarded as an arbitration agreement, the Respondents was directed to file an affidavit to indicate whether other agreements had been treated by the Respondents as an arbitration agreement, considering that the agreement is a standard form agreement, used across multiple parties. Pursuant to such directions, an affidavit executed on August 30, 2025 has been filed and based on that affidavit

it is apparent that in the past three years, the said clause is contained in a total of 1143 tenders and it is stated that in none of these tenders has any dispute resolution been resorted to. In these circumstances, the affidavit does not shed any further light on the matter.

6. What is apparent is that the dispute resolution mechanism is evidently, in substance, an agreement to arbitrate, and therefore the refusal to arbitrate would lead to a Section 11 Application being maintainable. The very meaning of arbitration is that parties agree by contract to have disputes among them redressed by reference to a procedure outside of the conventional Courts, which is a private resolution process. The term “arbitration” need not be explicitly used and what needs to be examined is what the parties intend should be their approach to have dispute resolved.

7. The Petitioner has invoked arbitration on June 26, 2021 to which there has been no response. Despite requests to constitute the Dispute Review Board there has been no movement from the Respondents. It is seen from the record that the Petitioner has already nominated an arbitrator as seen in the invocation notice dated June 26, 2021. The Respondents has not nominated his nominee arbitrator.

8. 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 Supreme Court's decision rendered by 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.

9. 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 appoint a nominee arbitrator on behalf of the Respondents.

10. In these circumstances, Justice S.V. Gangapurwala, former chief justice of the Madras High Court and former judge of this Court is hereby nominated as the arbitrator on behalf of the Respondents leaving it to these two arbitrators to select the third arbitrator who shall act as a presiding arbitrator.

11. The Petition is *finally disposed of* in the aforesaid terms.

1 *In Re: Interplay Between Arbitration Agreements under the 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 SC 1754*

3 *Ajay Madhusudan Patel Vs. Jyotrindra S. Patel - 2024 SCC OnLine SC 2597*

12. A copy of this Order will be communicated to the nominee 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.

13. 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.

14. 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.]