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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO. 45 OF 2024

Garware Technical Fibres Limited

...Petitioner

Versus

Bigzen Developers Pvt. Ltd.

...Respondent

Mr. Malcolm Siganporia, *a/w. Mr. Malcolm Desai and Ms. Purvi Shrivastava i/b. J Sagar Associates, for the Petitioner.*

Mr. Mayank Arora, *a/w. Mr. Aditya Manjrekar i/b. Mr. Aditya Manjrekar, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE: JANUARY 15, 2025

PC :

1. Learned Counsel for the Petitioner has made submissions that according to him, an arbitration agreement is in existence. In a nutshell, he would submit that a pre-bid agreement dated September 16, 2023, was executed between the parties, pursuant to which, works were awarded by the Petitioner to the Respondent. Such agreement, he submits, contains an arbitration clause.

2. In terms of one of the recitals in such agreement, a contract was to be issued to the Respondent, which he submitted is in the form of a Letter of Intent (“LOI”). That LOI is evidently not signed by the

Respondent.

3. However, the Learned Counsel for the Petitioner submits that such LOI being an instrument pursuant to the pre-bid agreement dated September 16, 2023, the absence of signature of the Respondent on the LOI would not be fatal to the arbitration agreement. Towards this end, he also submits that many actions required to be taken under the LOI have actually been taken, demonstrating that, evidently an arbitration agreement between the parties is in existence.

4. Learned Counsel for the Respondent submits that the Petitioner has come to Court with unclean hands. He seeks to bring on record the Suit filed by him in a Civil Court at Gurugram and a Caveat filed by the Petitioner in that Court. According to him, he has a few documents to demonstrate that owing to the Petitioner having approached the Court with unclean hands, despite the scope of jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996 (**“the Act”**) being limited to examining the existence of an agreement, the inequitable conduct on the part of the Petitioner would be material for the Court to decide whether to non-suit him from exercising his right under Section 11 of the Act. Regardless, according to him, there is no arbitration agreement in place, which he will demonstrate through the affidavit that he intends to file.

5. Considering the limited scope of jurisdiction under Section 11 of the Act, the Respondent is given liberty to file a short and crisp affidavit specifically focusing on the existence (or the lack thereof) of the arbitration

agreement. Learned Counsel commits that it shall be done within a period of one week from today. Should such an affidavit be filed, the Petitioner shall have two days to file a rejoinder.

6. With the aforesaid directions stand over to ***January 31, 2025***. It is made clear that the parties are at liberty to appear online since it is an entitlement and not a matter of liberty to be granted by the Court.

7. 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.**]