
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 37 OF 2025

Sany Heavy Industry India Pvt. Ltd.

...Petitioner

Versus

Hanumant Limbaji Gutte & Anr

...Respondents

Mr. Bijal Gogri, i/b GNP Legal, for the Petitioner.

Mr. Atish S. Kaningdhawaj, i/b K. Hanumant, for Respondent No.1.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 13, 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 Conditional Sale Agreement dated December 23, 2020 (***“Agreement”***). The arbitration agreement is contained in Clause 16.4 (found at Pages 49 and 50 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 Petitioner on September 26, 2024. There is a reply dated October 15, 2024 to the said invocation.

3. The primary objection from the Respondent is that by an order dated October 3, 2024, the Petitioner sought leave to withdraw an earlier Application filed under Section 11 of the Act and permission to withdraw was granted at that stage. No specific liberty to file afresh had been sought or given. Consequently, Learned Counsel for the Respondent submits that the ability to initiate arbitration proceeding has evaporated and the Applicant ought to be non-suited at least insofar as an Application under Section 11 of the Act is concerned.

4. Upon perusal of the record, it is seen that on September 26, 2024, a Learned Single Judge of this Court had asked the Applicant to point out where a proper and effective invocation of arbitration had been made. Consequently, Learned Counsel for the Applicant had sought time to take instructions and then withdrew the Arbitration Application.

5. Today, when these proceedings have been filed, Learned Counsel for the Petitioner has annexed an explicit invocation notice dated September 26, 2024, by which invocation of arbitration has been made (evidently on the same date as the last order). In reply to the invocation, the objection taken was that the arbitration clause was invalid and the signatures were obtained prior to the date of execution shown on the document. A contention was also raised that the Respondent was unable to read, write and understand English and since the Agreement had not been explained in Marathi to the Respondent, the arbitration agreement would not be considered to be valid. Another

contention taken was that the Agreement is inadequately stamped and therefore, the arbitration would not lie.

6. Upon a review of the record, I am of the view that all the aforesaid contentions are eminently issues that fall in the domain of the arbitral tribunal. As regards the issue about having withdrawn the earlier Application under Section 11 without liberty to file afresh, since the absence of invocation was the basis on which the earlier Section 11 Application was not dealt with and was withdrawn, in my opinion, it would now follow that the earlier application was premature and without basis. Now that the invocation has been appropriately effected, the application is no longer premature. If there had been a withdrawal when the matter was not premature and such withdrawal had been made without leave of the Court to file afresh, it could have been argued that a new application cannot be made. I am not satisfied that this is a case where the Applicant could be non-suited for purposes of Section 11 of the Act.

7. The ground on which the last Section 11 proceedings came to be withdrawn now stands addressed. That apart, it is now trite law that a judgment made under Section 11 of the Act would have no value as a precedent. The withdrawal in the specific factual context of this case would not prevent the Applicant from coming to Court in a compliant manner. Consequently, it cannot be said that the withdrawal of the earlier Application and that too on the ground of invocation not having been effected (which is now cured with an appropriate invocation) would disentitle the Applicant from appropriately complying with the Act and coming to Court afresh with invocation duly made.

8. Therefore, I am of the view that it would not be appropriate for this Court to hold this Petition pending any further.

9. 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.

10. 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.

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

- a) Mr. B.S. Kharade, 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 the Agreement

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*

referred to above;

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- 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.

12. Needless to say, nothing contained in this order is an expression of an opinion on the merits of the case, all facets of the matter including the arbitrability which involves a mixed question of fact and law necessitating appreciation of evidence lie in the domain of arbitral tribunal shall be agitated before the arbitral tribunal.

13. 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.]