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

ARBITRATION PETITION NO. 46 OF 2025

Balsunder Co Operative Housing
Society Ltd.

...Petitioner

Versus

SBM Developers Pvt Ltd.

...Respondent

Mr. Shrishailya S. Deshmukh, for the Petitioner.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 21, 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 a Development Agreement dated July 27, 2018 (***“Agreement”***). The arbitration agreement is contained in Clause 93 (found at Page No. 78 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 the Petitioner on December 22, 2022, to which there is no response from the Respondent. It is seen from the service affidavit

dated March 10, 2025 filed by the Petitioner that this proceedings have been served on the Respondent. The Respondent has not appeared today.

3. 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.

4. 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 dated July 27, 2018 to arbitration by a Sole Arbitrator. Since the arbitration agreement entails a three-member arbitral tribunal and the Petitioner has already nominated an arbitrator, Ms. Yogita Deshmukh, (Email ID: yogitadeshmukhoffice@gmail.com) a Learned Advocate of this Court is hereby appointed as a nominee arbitrator on behalf of the Respondent.

5. The two nominee arbitrators shall appoint the third arbitrator who shall be the presiding arbitrator. The Petitioner shall intimate both the nominee arbitrators about the passing of this order at

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

the earliest, preferably within two weeks of the upload of this order on the Court's website.

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

7. 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.

8. 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.]