

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.88 OF 2025

Sany Heavy Industry India Pvt. Ltd.	...Petitioner
Versus	
Shree Balaji Enterprises & Anr..	...Respondents

Ms.Bijal Gogri *i/b. GNP Legal, Advocate for Petitioner.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 10, 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 March 10, 2022. The arbitration agreement is contained in Clause 16.4 (found at Page 52 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 Respondent committed a default in servicing the loan on May 31, 2024. It is seen from the record that defaults occurred under the Agreement and the arbitration agreement was invoked by Petitioner on January 17, 2025. Learned Counsel for the Petitioner

submits that the amount due under the Agreement, as claimed by the Petitioner from the Respondents is to the tune of Rs.32,88,525/-.

3. Learned Counsel for the Petitioner has tendered an affidavit of service, same is taken on record. It shows that Petition has been served on the Respondent but the Respondent has not entered appearance.

4. Learned Counsel for the Petitioner submits that there is an evident default, and despite issuance of a invocation notice there is no response from the Respondent.

5. 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 *Pate*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.

6. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness

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*

of things to refer the disputes and differences between the parties in connection with the aforesaid Agreement dated December 20, 2020 to arbitration by a Sole Arbitrator.

7. In these circumstances, this Petition is *finally disposed of* by referring all disputes and differences covered by this proceeding to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] The disputes and differences covered by this Petition are hereby referred to the Indian Law Society's Centre for Arbitration and Mediation, Pune (<https://ilsca.co.in>), in terms of its Institutional Arbitration Rules, to appoint an appropriate arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above and administer the same;

B] A copy of this Order will be communicated to the Indian Law Society's Centre for Arbitration and Mediation, Pune 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 Centre 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.

8. 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.

9. 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.]