
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.17 OF 2025

M/S Smart Marine Services Pvt Ltd ...Petitioner

Versus

Mr Vishnu Agiwal ...Respondent

Appearance not received.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 8, 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 an agreement dated August 3, 2024. The arbitration agreement is contained in Clause 25 (found at Page 48 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 June 22, 2024. There is no reply to the said invocation.

3. The principal ground of objection from the Respondent is that the arbitration clause is contained in the Bill of Lading whereas the delivery of the containers given to the Respondent was pursuant to an import delivery order. It is common ground that the delivery order is indeed linked to the Bill of Lading, which is explicitly referred to in the import delivery order. It is a matter of commerce that a set of multiple instruments that are interconnected to one another would constitute the contract-forming documentation on the same subject. Being *prima facie* satisfied about the existence of an arbitration clause in the Bill of Lading, which is explicitly referred and deals with the deliveries made by the Petitioner to the Respondent, it is evident that the existence of a formal arbitration agreement is discernible from the record.

4. It is now trite law that this Court must confine itself to examining the formal existence of an agreement leaving existential questions about the agreement to the arbitral tribunal to consider. 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*^t followed by multiple others, including *SBI General*^p and *Patel*^b 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.

5. 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.

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

a) Mr. Siddhesh Bhole, a learned advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between

¹ *In Re: Interplay Between Arbitration Agreement under 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 1974*

³ *Ajay Madhusudan Patel Vs. Jyotindra S. Patel, 2024 SCC OnLine, 2597*

the parties arising out of and in connection with the Agreement referred to above;

Office Address:-

3rd Floor, Buona Casa,
Near Kashmir Emporium,
P. M. Road, Mumbai – 400 001.
Email ID: Siddhesh@ssbadvisory.in

- 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.

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.]