

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.39 OF 2025

Anne Fernandes Thr Her
Power Of Attorney Holder
Patrick Rosario Fernandes

....Petitioner

Versus

Impulse Design Consultants
Private Limited Through
Mounesh Babubhai Almel

....Respondent

Mr. Sureshkumar R. Firodiya, *Advocate for Petitioner*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : AUGUST 8, 2025

ORDER :

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 April 27, 2023 (*"Agreement"*). The arbitration agreement is contained in Clause 19 (found at Page 63-64 of the Petitioner) of the Agreement. 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 invocation notice dated January 24, 2025 was issued to the Petitioner by the Respondent, to which the Petitioner had replied by a

Letter dated January 30, 2025, not questioning the existence of the arbitration agreement, but questioning the need to go to arbitration. That apart, Learned Counsel for the Petitioner also draws my attention to the Order dated January 8, 2025 passed under Section 9 of the Act by the District Judge – 2, Pune directing that all outstanding amounts including licensee fees accruing until that date would be payable and that arbitration must be invoked within 15 days of that order. It is pursuant to such order that the Respondent invoked arbitration.

3. Today, the Petitioner is desirous of proceeding to arbitration, and therefore, this Petition has been filed. Consequently, no useful purpose would be served in keeping this Petition any further.

4. 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.

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*

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] Justice (Retd.) S.P. Sathe, a former judge of this Court 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 referred to above;

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 of upload of this order. 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 Advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Petition and a copy of the same shall be furnished by the Advocates for the Petitioner to the Advocates for the Respondent;

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.]