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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION APPLICATION NO. 5 OF 2025

Emcee Engineering Construction

...Applicant

Versus

Gammon Engineering And Contractors Pvt. Ltd.

...Respondent

Ms. Laxmi Mishra a/w Ms. Namrata Parmar i/b M/s. Kaushik & Co. for the Applicant.

None for the Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 14, 2025

ORDER :

1. This Application 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 Agreements dated September 7, 2010 and April 5, 2011 (***“Agreements”***). The arbitration agreement is contained in Clause 21 of the Agreements (found at Page No. 25 of the Application). 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. Clause 21 in the said Agreements has the heading ***“Arbitration”*** but it states that ***“the Mumbai Court”*** shall have jurisdiction to determine the disputes. However, in response to the invocation notice dated September 25, 2019, by a letter dated November 1, 2019 the Respondent

has in fact, dealt with the same clause and proposed a set of arbitrators from the panel maintained by the Respondent.

3. In these circumstances, although the content of the clause purporting to arbitration clause raises some doubt, it is clear from the exchange of correspondence that the parties had intended to proceed to arbitration. Therefore, even if the said clause entailed some doubt, the exchange of correspondence between the parties, in particular, the invocation notice dated September 25, 2019 and reply dated November 1, 2019 would speak to the existence of an arbitration agreement.

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 Supreme Court's decision rendered by 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.

5. The Section 11 Court is required to resist the temptation of delving into issues outside the scope of its jurisdiction – examination of

1 In Re: Interplay Between Arbitration Agreements under the 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 SC 1754

3 Ajay Madhusudan Patel Vs. Jyotrindra S. Patel - 2024 SCC OnLine SC 2597

existence of an arbitration agreement. 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 Agreements to arbitration by a Sole Arbitrator.

6. In these circumstances, this Section 11 Application is ***finally disposed of*** in constituting the Arbitral Tribunal in the following terms:-

A] Mr. Kapil Moye, a Learned Advocate 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 Agreements referred to above ;

Address : 65, Sonawalla Building, 2nd Floor,
Mumbai Samachar Marg, Fort,
Mumbai - 400 023.

E mail : kapilmoye@hotmail.com, kapilmoye@icloud.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant 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 Advocate for the Applicant 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 Application and a copy of the same

shall be furnished by the Advocate for the Applicant to 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.]