
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.110 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO.245 OF 2025

Vadang Builders LLPApplicant
Versus
Ashwinkumar Liladhar Shah And 2 Ors.Respondents

Mr. Jamsheed Master *i/b Adv. Natasha Bhot, Advocate for Applicant.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 24, 2025

PC :

1. These Applications have 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 Arbitration Agreement dated December 14, 2010 (***“Agreement”***). The arbitration agreement is contained in Clause 38 (found at Page 47 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. The signatories to the agreement are the Applicants and Respondent Nos.1 and 2. Respondent No.3 is not a signatory to the said agreement. Consequently, pleadings on behalf of Respondent No.3 essentially take up the objection that not being privy to the arbitration agreement, they would not be amenable to arbitration proceedings pursuant to the said agreement.

3. To counter this, Learned Counsel on behalf of the Applicants points me to Clause 41 of the very same agreement, which indicates that the parties were meant to form a company and a certain chronology of actions to be taken by the parties, was set out. The company that was formed pursuant to the implementation of Clause 41 of the understanding is Respondent No.3.

4. Learned Counsel for Respondent No.3 also points out that the promoters of the Applicants were meant to become Directors of Respondent No.3 but they never became directors and consequently their obligations contained in Clause 41 not having been met, Respondent No.3 should not be a party to this application and thereby the arbitration proceedings.

5. It is also seen from the record that correspondence from the Applicants to the Respondents, by letter dated March 25, 2022 was in fact, replied to by Respondent No.3 on behalf of the Respondents and

in this regard, mixed questions of fact and law may be involved as to whether the non-signatory will necessarily be a party to the arbitration proceedings. *Prima facie*, since it is apparent that Respondent No.3 was a product of the agreement between the Applicants and Respondent Nos.1 and 2, a *prima facie* case is made out to enable the Applicants to convince the arbitral tribunal why they need to make Respondent No.3 a party. Consequently, no useful purpose would be served by keeping this application pending any further on this ground.

6. 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.

7. 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

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*

parties in connection with the Agreement, to arbitration by a Sole Arbitrator, also permitting that Respondent No. 3 be made a party to the proceedings.

8. In these circumstances, both this Application as well as the Section 9 Petition are hereby *finally disposed of*, in terms of the following order:

A] Mr. Vaibhav Sugdhare, 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 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 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.

9. Commercial Arbitration Petition No.245 of 2024, which is a Petition filed under Section 9 of the Act relating to the same disputes would stand converted into an application under Section 17 of the Act for immediate consideration by the arbitral tribunal. The parties may complete pleadings in the same before the Arbitral Tribunal and approach the Learned Arbitral Tribunal for such urgent interlocutory measures as they may desire.

10. In the aforesaid directions, both the captioned proceedings are finally disposed of in the aforesaid terms.

11. 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.

12. 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.]