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

ARBITRATION APPLICATION NO. 91 OF 2025

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Tyger Capital Private Limited
[formerly Adani Capital Private Limited]

... Applicant

Vs.

I T Distributor & 2 Ors.

.. Respondents

Mr. Ahan Gadkari a/w *Vikas Mishra, i/b Mohit Gadkari & Co.,*
for Applicant.

None for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : June 25, 2025

Order :

1. This is an Application 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 Facility Agreement, and two Letters of Guarantee all dated August 30, 2019, and Working Capital Term Loan Facility Agreement dated December 14, 2021. The arbitration agreement is contained in Clause 16 of the Facility Agreement (found at Page 47 of the Application), Clause 12 of the Letters of Guarantee (found at Page 65 and 78 of the Application) and Clause 15 of Working Capital Term Loan Facility Agreement (found at Page 115 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. It is apparent from the record that the arbitration agreement was invoked by the Applicant on May 23, 2023, to which there is no response. The affidavit of service is taken on record. The Respondents have not entered appearance.

3. 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.

4. 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

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*

refer the disputes and differences between the parties covered by this Application to arbitration by a Sole Arbitrator.

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

A] ADReS Now, an independent online dispute resolution institution is directed to appoint a sole arbitrator to adjudicate upon the disputes and differences between the parties covered by this Application and administer the same;

B] The contact particulars of the Registrar, ADReS Now are set out below:-

Email id : registry@adresnow.com

Address: 63, Palace Road, Vasanthnagar, Bengaluru, 560001.

Website: www.adresnow.com

C] A copy of this Order will be communicated to ADReS Now by the Advocates for the Applicant within a period of one week from the date of upload of this order on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to ADReS Now along with a copy of this Order;

D] It is clarified that ADReS Now being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to the Registry of ADReS Now.

E] The Registry of ADReS Now is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F] 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 Registry of ADReS Now and any other particulars as reasonably requested by the Registry. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G] All arbitral costs and fees of the arbitration 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; and

H] The seat of the arbitration shall be deemed to be the same as the seat discernible from the Agreement while the arbitration shall primarily be conducted online.

6. 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.

7. 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.]