

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 239 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO. 465 OF 2024

Usha Girish Joshi & Anr

...Applicants

Versus

Pravin Amritlal Joshi & Ors

...Respondents

Mr. Zubin Bheramkamdin, Senior Counsel, ia/w Vyom Shah, Aditi Bhargava, Shikha Jain, i/b Divya Shah Associates, *for the Applicants/Petitioners*.

Mr. Yuvraj Singh, a/w Ronish Mehta, i/b Vinod Mistry for Respondent Nos.1 to 3.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 21, 2025

PC :

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 Memorandum of Understanding dated September 14, 2002 (***“Agreement”***). It is seen from the plain review of the record that the arbitration agreement is contained in Clause 16 (found at Page 193 of the Application), which explicitly states that the parties shall not resort to Court proceedings and disputes and differences, if any, between them shall be decided by the arbitrator appointed on their behalf. 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 March 10, 2023. There is a reply dated March 20, 2023 filed to the said invocation.

3. Learned Counsel for the Respondents submits that the clause in question does not confirm to Section 7 of the Act. Having applied my mind to the principles laid down in *Jagdish Chander*¹ the submission does not lend itself to acceptance by me. It is noteworthy that the formal existence of the arbitration agreement is all that Section 11 (6A) confines my review to. On the basis of the material on record, it is discernible, in my opinion, that an arbitration agreement is in existence. It is now trite law that the scope of review by the Section 11 Court must necessarily be restricted to examining the formal existence of an arbitration agreement. Existential questions about the validity of the arbitration agreement falls squarely in the domain of the arbitral tribunal.

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*² followed by multiple others, including *SBI General*³ and *Patel*⁴ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed.

¹ *Jagdish Chander v. Ramesh Chander* - (2007) 5 SCC 719

² *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899* – (2024) 6 SCC 1

³ *SBI General Insurance Co. Ltd. v. Krish Spinning* – 2024 SCC OnLine SC 1754

⁴ *Ajay Madhusudan Patel v. Jyotrindra S. Patel* – 2024 SCC OnLine SC 2597

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. Commercial Arbitration Petition No.465 of 2024 (“**Section 9 Petition**”) relates to the very same matter between the very same parties, seeking certain interlocutory protective reliefs. The Section 9 Petition shall be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby. Given the efflux of time, the Petitioner is at liberty to modify or mould the contents of Section 9 Petition for its consideration as a Section 17 Application.

7. In these circumstances, the disputes and differences between the parties arising out of the aforesaid agreement are hereby referred to a Sole Arbitrator in the following order:

- a) Justice (Retd.) Naresh Patil, a former Chief Justice 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;

Office Address:-

63, Rajgir Chambers, 7th Floor,

Opposite Old Customs House,
Fort, Mumbai 400 001.
Email ID: nareshhpatil7@gmail.com

- b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates 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 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.

8. 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 including objections even to the jurisdiction of the arbitral tribunal under Section 16 of the Act are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

9. The captioned Section 11 Application and Petition under Section 9 of the Act are ***finally disposed of*** in the aforesaid terms.

10. 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.]