

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

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COMMERCIAL ARBITRATION APPLICATION NO. 178 OF 2024

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 36313 OF 2023

LEAP India Pvt. Ltd.

...Applicant

Versus

Canpack India Pvt. Ltd.

...Respondent

Mr. Shanay Shah, a/w. Kunal Parekh, Ms. Nirali Atha i/b. Dua Associates, for the Applicant.

Ms. Anjali Shah, a/w. Ms. Ekta Tyagi and Mr. Pratik Thakkar i/b. DSK Legal, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 15, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking appointment of an arbitrator to adjudicate disputes and differences between the parties connected with an agreement dated January 10, 2022. It is evident that there are disputes and differences between the parties and the Respondent has terminated the agreement.

2. It is seen from the record that the arbitration clause was invoked

by the Applicant *vide* notice dated June 22, 2023, proposing the names of certain individuals to act as the arbitrator. In reply to the notice dated July 3, 2023, the Respondent has submitted that the arbitration clause contained in the agreement is ambiguous and vague and consequently, does not lend itself to be interpreted as unequivocal commitment to arbitrate disputes and differences between the parties. Learned Counsel for the Respondent articulates this reply in her submission, by stating that according to the Respondent, this provision contemplates potential arbitration, but it is not a commitment to arbitrate.

3. The Court exercising jurisdiction under Section 11 of the Act must examine whether the agreement has been executed and whether that agreement has a valid arbitration clause. It is seen from a decision of a Learned Single Judge of this Court made on April 29, 2024 in Commercial Arbitration Application No.9214 of 2023 (incidentally with the same party as an Applicant, executing a template of the same agreement), whereby this very language has been interpreted to hold that the clause is indeed an arbitration agreement. Having perused the decision rendered by the Learned Single Judge, I am in respectful agreement with the same, particularly because the law on Section 11 of the Act has been further declared and articulated, with multiple iterations by the Supreme Court stating that the Section 11 Court must not look at anything beyond whether an arbitration agreement has been executed.

4. Put differently, it will indeed be open to the parties to agitate all

issues before the arbitral tribunal including the existential substance of the arbitration agreement. Suffice it to say, having considered the arbitration clause, I am of the view that the parties have indeed agreed to refer their disputes to arbitration, since the provision states that an unresolved dispute *shall* be referred to arbitration and the provisions of the Act *shall* apply. The second limb of the clause, namely, that the parties are free to approach a Court for settlement of disputes could be interpreted, as has been done by the Learned Single Judge earlier, as an option available to one or both of the parties. Be that as it may, if a party chooses to invoke the arbitration clause, it would follow that the commitment contained in the initial part of the clause would get attracted on the parties to go for arbitration.

5. I have to state that these are *prima facie* observations, keeping open all contentions on merits, including jurisdiction, for the arbitral tribunal to adjudicate. It is up to the arbitral tribunal to rule on its own jurisdiction, particularly keeping in mind, Section 16 of the Act.

6. With the aforesaid observations, this Petition is finally disposed of, in the following terms :-

a) Mr. Bhavin Gada, an 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 shall be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. 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.

7. At this stage, the Court put to the parties, if they would be willing to refer the Section 9 Petition to the arbitrator, treating it as an Application under Section 17 of the Act, to be considered by the arbitral tribunal hereby appointed. Learned Counsel for the Petitioner in the Section 9 Petition (Commercial Arbitration Petition (L) No.36313 of 2023) submits that aforesaid course of action must be adopted and Section 9 Petition may be treated as an Application under Section 17 by the arbitral tribunal. Given

the efflux of time, liberty is granted to the Petitioner to modify or mould the reliefs sought in the Section 9 Petition, which shall be dealt with appropriately by the arbitral tribunal. The parties shall approach the Learned Arbitral Tribunal at a time and place convenient to him no later than January 30, 2025.

8. Needless to say, nothing contained in this order is an expression of an opinion on the merits of the matter and all the contentions of the parties are kept open to be agitated before the arbitral tribunal.

9. With the aforesaid observations, both the captioned Petitions are ***finally disposed of***. There shall be no order as to costs.

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.]