

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

Commercial Arbitration Application No. 245 of 2024

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KAMLESH
TALEKAR

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Aditya Birla Finance Limited

...Petitioner(s)

Versus

Ma Durga Hardware Stores

...Respondent(s)

WITH

Court Receiver Report No. 46 of 2024

IN

Commercial Arbitration Petition No. 447 of 2024

Aditya Birla Finance Limited

...Petitioner(s)

Versus

Ma Durga Hardware Stores

...Respondent(s)

WITH

Commercial Arbitration Petition No. 447 of 2024

(U/s. 9 of the A & C Act)

Aditya Birla Finance Limited

...Petitioner(s)

Versus

Ma Durga Hardware Stores

...Respondent(s)

Mr. Mohit Arora a/w. *Vishal Maheshwari, Shrishty Punjabi and Mihir Beradia i/b VM Legal, for Petitioner/Applicant.*

Ms. Nandini Y. Deshpande, 1st Asstt. to Court Receiver, present.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : April 1, 2025

P. C.

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 a Loan Agreement dated December 26, 2015 (***“Agreement”***). The arbitration agreement is contained in Clause 25 (found at Page 86 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 jurisdiction under Section 9 is to grant temporary interim measure and it is imperative that the arbitration must commence at the earliest. Since the Respondents are fully aware that the disputes and pre-arbitration proceedings are already underway.

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.

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*

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 refer the disputes and differences between the parties in connection with the aforesaid Agreement dated December 26, 2015 to arbitration by a Sole Arbitrator.

5. In these circumstances, no useful purpose would be served by keeping the Application pending any further. Consequently, the Section 11 Application is ***finally disposed of*** in the following terms :

A] Justice Sadhna Jadhav, former judge 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. The contact particulars are as under :

Office Address : 108, Seksaria Chambers,
Nagindas Master Road, Kala Ghoda, Fort,
Mumbai – 400 001.
Email : sjadhavo660@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 Advocates 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 Advocates for the Applicant to the Respondent(s);

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.

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. Arbitration Petition No. 447 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. A Learned Single Judge of this Court has been pleased to appoint a Court Receiver and the orders passed on the activities already conducted, form a part of the record.

8. It is seen from the report of the Court Receiver that it is highly possible that the inventory in question is now stored on the terrace and the Court Receiver was denied access to the terrace floor. On the basis of the aforesaid objection, the Court Receiver has not been able to examine anything on that floor.

9. The report of the Learned Court Receiver dated January 24, 2024, shows that the possession of the fourth and fifth floor has been taken and they are kept under the seal of the Court Receiver. However, it is likely that the inventory that may have been kept on the terrace, also said to have been covered. Consequently, the Court Receiver shall be entitled to make an inventory of whatever is stored on the terrace floor and file a report of whatever is found therein. The Officials of the Court Receiver shall be

entitled to have access to the terrace and assistance of the local police station shall be made available to the Court Receiver should the need arise. A copy of this order shall also be served to the jurisdictional Police Station in which the property lies to enable and ensure compliance of this order.

10. This matter now stands relegated to the arbitrator appointed hereby, the reliefs granted till now hereby shall abide by the outcome of the arbitral proceedings. Parties shall proceed to seek instructions from the arbitral tribunal appointed hereby on how to proceed further. The properties that are in possession of the Court Receiver shall continue to remain in the possession of the Court Receiver, pending conclusion of the arbitral proceedings.

11. Learned Counsel for the Petitioner submits that a merger of the Petitioner has been approved and a fresh certificate of incorporation is yet to be approved. The merger is taken note of. The parties shall intimate the arbitral tribunal appointed hereby about the merger and all benefits flowing to the Petitioner until now shall evidently be available to the benefit of the merged company.

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.]