

PURTI
PRASAD
PARAB
Digitally signed by
PURTI PRASAD
PARAB
Date: 2025.03.25
19:26:01 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 368 OF 2024

A.A. Auctioneers And Contractors Private Limited ...Applicant

Versus

Mahanagar Telephone Nigam Limited & Ors. ...Respondents

Mr. Jamshed Ansari *for the Applicant.*

Ms. Nishka Shah *a/w Ms. Shruti Mehta i/b Solomon & Co. for the Respondents.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 6, 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 a LOI cum Purchase Order dated October 7, 2020 (***“Agreement”***). The arbitration agreement is contained in Clause 11 (found at Page 78 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. Evidently, on the face of the record an arbitration agreement executed between the parties is discernible. The particulars of the claim set out on Page No. 96 which shows that the claims relate to amount, additional holding or security amount, and liquidated damages. Learned Counsel for the Respondents submits that the liquidated damages must be read as a reference to “penalty” and disputes over the penalty are not arbitrable in terms of Clause 9 of the Agreement in question. On the face of it the claim in this regard relates to liquidated damages whether it in

substance constitutes a penalty or not is a matter of fact which can be determined only upon ascertainment of the evidence and by the Arbitral Tribunal and it would not lie in the domain of this Court exercising jurisdiction under Section 11 of the Act.

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 Supreme Court's decision rendered by 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 refer the disputes and differences between the parties in connection with the aforesaid Agreement dated October 7, 2020 to arbitration by a Sole Arbitrator.

5. An objection had been raised by the Learned Counsel for the Respondents that MSME Counsel has been approached by the same Applicant. On receiving instructions, Learned Counsel for the Applicant clarifies that the reference made to MSME relates to a completely different contract. Consequently, no useful purpose would be served by keeping the Application pending on the docket of this Court.

6. In these circumstances, this Section 11 Application is *finally disposed of* in the following terms:-

¹ In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 - (2024) 6 SCC 1

² SBI General Insurance Co. Ltd. Vs. Krish Spinning - 2024 SCC OnLine SC 1754

³ Ajay Madhusudan Patel Vs. Jyotindra S. Patel - 2024 SCC OnLine SC 2597

A] Mr. Aadil Parasrampura, 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;
Address: C/o. Mr. Karl Tamboly,
3, Brady House, Veer Nariman Road, Fort, Mumbai.
Email ID: aadil.parsurampuria@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 Respondents;

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. It is made clear that whether any part of the claim is not arbitrable in terms of the jurisdiction of the Arbitral Tribunal agreed between the parties is a matter that the Arbitral Tribunal is empowered rule upon under Section 16 of the Act. The parties are at liberty to approach the Arbitral Tribunal in this regard.

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 are expressly kept open to be agitated before the Arbitral Tribunal appointed hereby.

9. 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.]