

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 452 OF 2024

Dhankiran Investment ...Applicant

Versus

Harmaya Developers ...Respondent

Mr. Hrishikesh Nabar, a/w Gargi Warunjikar, Poonam M., for the Applicant.

None for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 21, 2025

ORDER :

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 an agreement dated October 30, 2010 (***“Agreement”***). The arbitration agreement is contained in Clause 62 of the Agreement (found at Pages No. 63 & 64 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.

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July 21, 2025

Corrected pursuant to speaking to the minutes order dated August 6, 2025.

Ashwini Vallakati

2. The Applicant has invoked arbitration on September 8, 2023 to which there has been no response. The existence of the arbitration agreement is not in dispute. No useful purpose would be served by keeping this matter pending any further on the docket of this Court. It is seen from the record that the Applicant has already nominated Mr. Amrut Joshi an arbitrator as seen in the invocation notice dated September 8, 2023. The Respondent has not nominated his nominee arbitrator.

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.

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*

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 appoint a nominee arbitrator on behalf of the Respondent.

5. In these circumstances, Mr. Sumit Rai, a learned advocate of this Court (Email: sumit@theksr.com) is hereby nominated as the arbitrator on behalf of the Respondent leaving it to these two arbitrators to select the third arbitrator who shall act as a presiding arbitrator.

6. The Application is *finally disposed of* in the aforesaid terms.

7. A copy of this Order will be communicated to the nominee 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.

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.]