

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION (L) NO.24040 OF 2025

Profectus Capital Private LimitedApplicant

Versus

Airbex Systems Private Limited & Ors. ...Respondents

WITH
ARBITRATION PETITION NO.411 OF 2025
(NOT ON BOARD)

Mr. Nikhil Mehta, *Advocate for Applicant/Petitioner.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 10, 2025

ORDER :

1. *Arbitration Application (L) No.24040 Of 2025* 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 April 30, 2023 (*“Agreement”*). The arbitration agreement is contained in Clause 62 (Found at Page No.49 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 Applicant has invoked arbitration on May 27, 2024, to which there is no reply. It is seen from the record that the Applicant has filed a service affidavit dated August 13, 2025, which demonstrates service on the Respondents. Despite service, none appears for the Respondents. Consequently, no useful purpose would be served in keeping this Application any further.

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.

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

¹ *In Re: Interplay Between Arbitration Agreement under 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 1974*

³ *Ajay Madhusudan Patel Vs. Jyotindra S. Patel – 2024 SCC OnLine, 2597*

connection with the aforesaid Agreement to arbitration by a Sole Arbitrator.

5. In these circumstances, this Application is hereby ***finally disposed of***, in terms of the following order:

A] Resolve X, an independent online dispute resolution institution is directed to appoint a 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] The contact particulars of the Head Coordinator, Resolve X are set out below:-

Email id : info@resolvex.co.in
Address: 21-A, First Floor, Plot No. 15,
Contractor Building, Vaju Kotak Marg,
Ballard Estate, Mumbai - 400001
Contact No: +91 9967571374
Website: www.resolvex.co.in

C] A copy of this Order will be communicated to Resolve X by the Advocates for the Petitioner/Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner/Applicant shall provide the contact and communication particulars of the parties to Resolve X along with a copy of this Order;

D] It is clarified that Resolve X being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the

appointed Arbitrator and the parties, with appropriate notification to the administration of Resolve X;

E] The administration of Resolve X is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F] 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 administration of Resolve X and any other particulars as reasonably requested by the administration. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G] All arbitral costs and fees of the arbitration 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; and

H] The seat of the arbitration shall be deemed to be the same as the seat discernible from the Agreement while the arbitration shall primarily be conducted online.

6. ***Arbitration Petition No.411 of 2025*** is a Section 9 Petition filed by the Applicant and is not on Board today. However, Learned Counsel for the Applicant submits that the same may be converted into an application under Section 17 with interim reliefs already obtained thereon being presented for consideration by the Arbitral Tribunal

appointed hereby. The Section 9 Petition is so converted with the interim reliefs obtained hitherto having to abide by further directions from the Arbitral Tribunal appointed hereby.

7. Therefore, both the captioned proceedings are hereby ***finally disposed of*** in the aforesaid terms.

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.]