
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 16 OF 2025
WITH
ARBITRATION PETITION NO. 24 OF 2025

Vinka Industries ...Applicant

Versus

Pandurang Krishna Korgaonker & Ors ...Respondents

Mr. Rubin Vakil, *a/w Atman Mehta, Vipul Patel, Rachit Bharwada, i/b Haresh Mehta & Co. for the Applicant.*

Mr. Shilpan Gaonkar, *a/w Vaibhav Shukla, Zain Ak Najam Es Sani, Shreem Pathak & Rohan Sathaye, i/b Vals Legal for respondent Nos.1 to 4.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 8, 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 the disputes and differences related to two instruments i.e MOU dated September 9, 2016 and the Deed of Reconstitution dated April 27, 2018. The arbitration agreement is contained in Clause 18 (found at Page 45 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. Each of the aforesaid instruments contains an arbitration clause with a different venue. Parties have agreed that the venue and the seat of the arbitration shall be Mumbai. Recording their consent to proceed to arbitration under both the aforesaid instruments in Mumbai, this Application is finally disposed of.

3. It is clarified from the avoidance of doubt that both these Petitions are filed by Vinka Industries and the disputes being referred to arbitration are the disputes under the specific instruments referred to above. The disputes and differences under these two instruments also relate to the same facets of the relationship between the parties, which Learned Counsel for the Petitioner submits already stand settled. Should that be so, he shall be entitled to address the arbitral tribunal about the arbitrability of that component in terms of Section 16 of the Act and the arbitral tribunal shall deal with the same having had occasion to examine the record presented to the arbitral tribunal.

4. It is apparent from the record that the arbitration agreement was invoked by the Applicant on October 19, 2024. A reply dated November 15, 2024 is filed to the said invocation.

5. 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.

6. 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 to arbitration by a Sole Arbitrator.

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

7. Learned Counsel for the Respondents submit that a Section 9 Petition is pending before the District Court in Goa, and he would withdraw that Petition, if it were permitted to be treated as an Application under Section 17 for consideration by the arbitral tribunal. Since a reference to arbitration is being made under this order, the aforesaid submission is also noted so that the arbitral tribunal has clarity about the full scope of the reference made in this order. The Section 9 Petition before the District Court in Goa shall be converted into a Section 17 application.

8. Arbitration Petition No. 24 of 2025 (“***Section 9 Petition***”) relates to the very same matter between the very same parties, seeking certain interlocutory protective reliefs. This Section 9 Petition too shall be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby. Given the efflux of time, the Petitioner is at liberty to modify or mould the contents of Section 9 Petition for its consideration as a Section 17 Application.

9. In these circumstances, both this Application as well as the Section 9 Petition are hereby ***finally disposed of***, in terms of the following order:

- a) Mr. Vishwajeet Sawant, Senior 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 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 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.

10. 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.

11. 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.]