
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 101 OF 2024

Sachin V. Madkaikar

.Applicant

Versus

Sankalpan Infrastructure Pvt. Ltd.

.Respondent

Mr. Sujit S. Nikam, *for the Applicant*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : March 17, 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 revised order dated February 10, 2021 and subsequent additional orders (***“Agreement”***). The arbitration agreement is contained in Clause 44 (found at Page 31 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. It is apparent from the record that the arbitration agreement

was invoked by Applicant on December 26, 2023, to which there is no response from the Respondent. Learned Counsel for the Applicant submits that the amount due under the Agreement, as claimed by the Applicant from the Respondent is to the tune of Rs. 5,01,507/-.

3. Learned Counsel for the Applicant submits that there is an evident default, and despite issuance of an invocation notice there is no response from the Respondent. Despite service of this Application Respondent has not appeared today.

4. 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

5. 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.

6. In these circumstances, no useful purpose would be served by keeping this Application pending on the docket of this Court consequently, this Section 11 Application is ***finally disposed of***, in terms of the following order:

A] Mr. Anchit Hiranman Ojha, 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;

Email ID: ojhaanchit@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 today. 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;

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. The Arbitral Tribunal shall be free to conduct proceedings online;

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. 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.

8. 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.]