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

ARBITRATION APPLICATION NO. 107 OF 2024

Boston Institute of Analytics Global Education
Pvt. Ltd. ...Applicant

Versus

Educantum Through its Partner Vinayaka Pod-
dar and Manish Poddar ...Respondent

Mr. Aayush Kedia *for the Applicant.*

Mr. B.K. Barve *a/w Mr. Sandeep Barve, Ms. Anushka Barve and Ms. Simmy Sebastian i/b B.K. Barve & Co. for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 10, 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 multiple Loan Agreements executed on various dates (***“Agreements”***). The arbitration agreement is contained in all these Agreements. 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 only objection from the Respondent is that the Franchise Agreement pursuant to which the arbitration is sought and is annexed to the Application is not signed. However, it is seen from the material on record after the date of the Franchise Agreement the parties have

exchanged correspondence and have even transacted with funds movements, which appears to confirm the bargain between the parties. A non-disclosure agreement dated February 22, 2023 has also been signed containing an identical arbitration clause as is contained in the clauses set out in the Franchise Agreement of which reference has been sought under Section 11.

3. Learned Counsel for the Respondent submits that there may be correspondence from the Respondent positively expressing disagreement with the Franchise Agreement due to which the actual Franchise Agreement was not executed. However, despite a reply having been filed by the Respondent, there is no correspondence to this effect on the record to demonstrate the same. Therefore, it is left open to the Respondent to demonstrate the absence of existential substance in the agreement by bringing such material before the Learned Arbitral Tribunal.

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 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

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. Jyotrindra S. Patel - 2024 SCC OnLine SC 2597

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.

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 matter pending any further on the docket of this Court. This Application is ***finally disposed of*** in the following terms:-

A] Ms. Bijal Gogri, 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 ;

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B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate 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 Advocate 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 Advocate 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. 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.]