
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 127 OF 2024

Ekta Interiors ...Applicant

Versus

Darshan Sagar Developer ...Respondent

Mr. Aabha Dogre, a/w Vaibhav Jian, for the Applicant.

Appearance not received for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 12, 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 the Work Orders dated September 25, 2017, March 25, 2018 and January 8, 2019 (collectively, the ***“Agreement”***). The arbitration agreement is contained in Clause 15 (found at Page 34 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 sole objection from the Learned Counsel for the Respondent is that the claim is time-barred. However, in view of the law laid down by the Supreme Court this is a facet that would squarely fall within the domain of the arbitral tribunal. It is seen from the record that the arbitration was invoked on August 28, 2022 and this Application under Section 11 has been filed well within the expiry of three years from the date of the invocation notice.

3. In these circumstances, considering that this Court's jurisdiction is restricted to examining the existence of the arbitration agreement, which is not a fact in dispute, no useful purpose would be served in keeping this Application pending any further.

4. It is left to the arbitral tribunal as to whether it must consider the objection on the ground that the claim is time-barred as a preliminary issue. Should it be a writ large on the face of the record, it would be open to the arbitral tribunal to examine the time barred nature of the claim as a preliminary issue. This is a decision of sequencing the adjudication of issues, which also falls within the domain of the arbitral tribunal.

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.

7. In these circumstances, this Application is *finally disposed of* in the following terms:-

A) Ms. Anuradha Bhatia, a former Member, National Company Law Tribunal, is hereby appointed as the

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*

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: anubhatia60@yahoo.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 the date of upload of this order. The Application 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.

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.]