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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 145 OF 2024

Sany Heavy Industry India Private Limited ...Applicant

Versus

Jayprakash M. Choughule and Anr. ...Respondents

Ms. Bijal K. Gogri *i/b GNP Legal, for the Applicant.*

Mr. Ashok B. Tajane *a/w Mr. Balaji Shinde and Mr. Yogesh G. Thorat, for Respondent Nos. 1 and 2.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 18, 2025

PC :

1. This is an Application 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 an agreement dated January, 15 2020. The arbitration agreement is contained in Clause 23 (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. Originally the agreement was executed between the Respondents and SREI Equipment Finance Limited. By an assignment of loan portfolio of SREI Equipment Finance Limited the current Petitioner came to acquire the loan assets along with all attendant rights contained in the contract by which the loans have been advanced. Pursuant to such assignment, by an amendment agreement dated September 30, 2021 the lender's name was changed from SREI Equipment Finance Limited to the name of the current Petitioner. The seat of arbitration too was changed from Kolkata to Pune.

3. On the face of the record it is seen that the Respondents

appears to have signed the amendment agreement dated September 30, 2021 effecting to the aforesaid changes. *Prima facie*, the signature of the Respondents in the main agreement and signature on the amendment agreement, appear to be the same.

4. Learned Counsel for Respondents submits that the fundamental objections as raised in the affidavit in reply is that the arbitration agreement has not been duly executed since the placeholders for place and date are blank. He would also submit that the original agreement is not with the Petitioner and that cuts to the root of the existence of the arbitration agreement. He would also submit that the signature on the amendment found at Page No.52 may not be his.

5. In my opinion, the aforesaid contentions have no bearing on the consideration of issues by a Section 11 Court. *Prima facie*, it is evident that the arbitration agreement was originally executed with Kolkata as the seat, and then that was explicitly amended to change the seat to Pune when the Petitioner took over the loan asset from the original lender. I am satisfied that the arbitration agreement that has been formally executed and is in existence.

6. 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 decisions of a seven-judge bench in the *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899*¹ followed by multiple others, including *SBI General Insurance Co. Ltd. vs. Krish Spinning*² and *Ajay Patel vs. Jyotrindra 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 (2024) 6 SCC 1

² 2024 SCC OnLine SC 1754

³ 2024 SCC OnLine SC 2597

7. 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 dated January 15, 2020 to arbitration by a Sole Arbitrator.

8. It is seen from the record that there is no denial of the existence of the arbitration agreement looking to the limited scope under Section 11(6) of the Act. In the aforesaid circumstances, leaving all contentions and merits open including the leading evidence to question the execution of the agreement, this Application is *finally disposed of* in the following terms:-

A] The disputes and differences covered by this Application is hereby referred to the Indian Law Society's Centre for Arbitration and Mediation, Pune (<https://ilsca.co.in>), in terms of its Institutional Arbitration Rules, to appoint an appropriate 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 Indian Law Society's Centre for Arbitration and Mediation, Pune 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 Centre 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 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.

9. 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.

10. 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.]