

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 195 OF 2024
WITH
ARBITRATION APPLICATION NO. 176 OF 2024

Vama Apparels (I) Private Limited ...Applicant

Versus

SSIPL Retail Ltd ...Respondent

Mr. Jamsheed Master *a/w Aniket Worlikar for the Applicant.*

Mr. Rubina L Dodhia, *a/w Alishan Naqvee, Rupal Bhatia, Saurav Chaudhary & Priya Singh for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MAY 6, 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 an agreement dated April 22, 2016. The arbitration agreement is contained in Clause 31 (found at Page 43 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. Both the captioned Arbitration Applications are jointly submitted by the parties as being identical in terms of what falls for adjudication within the narrow confines of this Court's jurisdiction under Section 11 of the Act. Consequently, they are dealt with by the same judgment.

3. It is common ground that the Applicant in both the matters had executed near identical agreements with the respective Respondents all dated April 22, 2016. The arbitration agreement is also identical and is contained in Clause 31 of the respective agreements (page 43 of the respective Applications).

4. It is apparent from the record that the arbitration agreement was invoked by the Applicant on February 12, 2024. A reply dated February 23, 2024 is filed to the said invocation.

5. Having heard the Learned Counsel for the parties, the objections fall in a very narrow compass. *First*, the objection is that the invocation under Section 21 is barred by limitation and therefore this reference must not be made. *Second*, in a suit filed by the Respondent in the Delhi High Court a written statement was not filed within the time permitted therefor. Therefore, although the suit was dismissed for want

of territorial jurisdiction, the Respondent contends, the Applicant is now bound by the jurisdiction flowing from the suit and cannot avail of the arbitration agreement executed between the parties.

6. Neither of the aforesaid objections withstand scrutiny simply because it is now trite law that the issue of limitation squarely falls in the domain of the arbitral tribunal, particularly when *prima facie*, they would entail determination of mixed question of fact and law. Whether there were any facets in the conduct of the parties or in correspondence between the parties that would negate the proposition that the claim is barred by limitation, is squarely for the arbitral tribunal to decide. Needless to say, this facet of the matter is completely kept open and it is for the Respondent to agitate the same before the arbitral tribunal as well.

7. As regards the proceedings in the Delhi High Court, the proposition is completely untenable inasmuch as these suits were filed by the Respondent (and not by the Applicant) in the teeth of being a party to the arbitration agreement. A non-filing of a written statement in the suit filed by the Respondent and that too in a Court which did not have a territorial jurisdiction, would point to the fact that this proposition is completely unsustainable. That Court returned the

Plaint for want of jurisdiction. If this proposition were to have any value, any party may move any forum and state that if the time for filing a written statement lapses, the arbitration agreement would be given a go-by by both sides.

8. On the contrary, it is at the instance of the Applicant that the suit was rejected under Order 7 Rule 10 of the Code of Civil Procedure, 1908 and the Applicant has obviously been vigilant to protect its interests in enforcing the arbitration agreement.

9. Learned Counsel for the Respondent submits that after rejection of the plaint by the Delhi High Court a suit has been filed by the Respondent in the Bombay High Court. If the Respondent has been advised to do so, it is the Respondent's prerogative. That cannot influence my decision while excising jurisdiction under Section 11 of the Act. The pendency of that suit has no implication whatsoever for examining whether an arbitration agreement is in existence.

10. Needless to say, when the parties have an arbitration agreement between them, they have committed to proceed to arbitration to the exclusion of all other avenues available to them. Merely because one party, in the teeth of the agreement, files suits in

multiple Courts, it would not follow that the arbitration agreement and the rights of the counterparty to the arbitration agreement would stand undermined.

11. 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.

12. 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 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*

13. In these circumstances, these Applications are hereby *finally disposed of*, in terms of the following order:

a) Ms. Aakanksha Saxena, 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;

Office address:-

C/o Aashish Kamat, 501, 5th Floor,

Oval House, Old British Lane,

Kala Ghoda, Fort, Mumbai – 400 001.

Email: aakanksha.saxena03@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 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.

14. 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.

15. 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.]