

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

COMM. ARBITRATION PETITION NO. 825 OF 2024  
(U/s. 9 of A & C Act, 1996)  
WITH  
ARBITRATION APPLICATION NO. 187 OF 2024  
(U/s. 11 of A & C Act, 1996)

Mahindra and Mahindra Financial  
Services Limited

...Petitioner/Applicant

*Versus*

RS Home Appliances India Private  
Limited & Ors.

...Respondent(s)

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**Ms. Pranjali Khemnar** a/w. *Vikrant Pandey*, for *Petitioner(s)/*  
*Applicant(s)*.

*None for Respondents.*

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**CORAM : SOMASEKHAR SUNDARESAN, J.**

**Date : March 18, 2025**

**P. C.**

1. These proceedings entail a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking certain interlocutory reliefs, and an Application under Section 11 of the Act, seeking appointment of an arbitral tribunal.

2. The proceedings relate to disputes and differences that are said to have arisen between the parties under an agreement dated February 11, 2022. The arbitration agreement is contained in Clause 24.11 (found at Page 87 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.

3. It is apparent from the record that the arbitration agreement was invoked by Applicant on March 20, 2024, to which there is no response from the Respondents. The Respondents have not entered appearance till date. From the affidavit of service filed on record, it is evident that the service has been effected.

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* followed by multiple others, including *SBI General*<sup>1</sup> and *Patel*<sup>2</sup> 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

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<sup>1</sup> *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

<sup>2</sup> *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

<sup>3</sup> *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

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. The Section 9 Petition shall be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby. As regards Section 9 Petition, prayer clause (a) and (b) of the Petition, which read thus :

(a) *That pending the hearing and final disposal of the arbitral proceedings, and until the execution of the arbitral award, the Hon'ble Court be pleased to pass an order of injunction, inter alia, restraining the Respondents by themselves, their servants, assigns, employees, agents, representatives, officers or any other person/s claiming through or under them or under any instrument, whatsoever, from in any manner selling, alienating, transferring, parting with the possession of, encumbering, dealing with, disposing off or creating any third party rights or interest of whatsoever nature and in any manner whatsoever in respect of their hypothecated assets i.e., "Hypothecation of Plant and Machinery out of finance from Mahindra Finance i.e., Machine Description :*

*i. Heavy Duty Super platen die cutting Embossing & Creating Machine Cost is 2250000/-*

*ii. High Speed Bearing Mounted oblique type paper corrugating Machine Cost is 1550000/-*

iii. *Digital Servo type NC. Roatary Type reel To Sheet Cutting Machine Cost is 750000/-*

iv. *45 Angular Single Pin Box Stitching Machine Cost is 85000/-*

v. *Palling Machine Cost is 3500001-".*

- (b) *That pending the hearing and final disposal of the arbitral proceedings, and until the execution of the arbitral award, the Hon'ble Court be pleased to allow the Petitioner or its representatives to enter upon the Respondents premises and take possession of the hypothecated assets more particularly mentioned in the prayer clause (a) with police assistance if required.*

7. Section 9 Petition would also stands ***disposed of*** in the aforesaid terms. Given the efflux of time, the Petitioner is at liberty to modify or mould the contents of Section 9 Petition for its consideration as a Section 17 Application.

8. In these circumstances, no useful purpose would be served in keeping this Application pending. Consequently, Section 11 Application is ***finally disposed of*** in the following terms :

A] The disputes and differences covered by this Application is hereby referred to the Mumbai Centre for International Arbitration (<https://mcia.org.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 Mumbai Centre for International Arbitration by the Advocates for the Applicant 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 Petitioner 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 Petitioner 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.]**