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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION APPLICATION NO. 242 OF 2024**

Yash Technologies Pvt Ltd

...Applicant

Versus

Repro India Limited

...Respondent

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*Mr. Raghavendra Bajaj, Ms. Garima Bajaj, Ms. Chanan Parwani, Mr. Karan Kumar and Mr. Arjun Kadam for Applicant.*

*Mr. Kunal Mehta, Mr. Aditya Sheth i/b Sujit Lahoti & Associates for Respondent.*

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**CORAM: SOMASEKHAR SUNDARESAN, J.**

**DATE : JANUARY 22, 2025**

**PC :**

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”), seeking to refer disputes and differences between the parties in relation to an agreement dated April 4, 2017 (“***Original Agreement***”), which contains an arbitration agreement in clause 13 which is at page 60 of the Application. In the interest of brevity, the same is not being extracted here. Suffice it to say, that on the face of clause 13, this Court has jurisdiction in the matter.

2. The preliminary objection of the Respondent is that pursuant to the aforesaid agreement, a “Statement of Work” came to be issued on April 25, 2019, which contains the provision dealing with referring disputes to the International

Chamber of Commerce for arbitration. According to the Respondent, the Statement of Work being a subsequent instrument, admittedly executed in writing, it constitutes an amendment to the arbitration agreement contained in clause 13 of the Original Agreement. This issue lies at the heart of the objection from the Respondent to referring the disputes to arbitration.

3. It is seen from the record that in the very same Clause 13 of the Original Agreement i.e. the clause that also contains the arbitration agreement, the parties had explicitly agreed that should there be any conflict between the provisions of the Original Agreement and the Statement of Work that would be issued pursuant to the Original Agreement, the provisions of the Original Agreement would prevail.

4. Even on the plain reading of the material on record, *prima facie*, it would not be possible to hold that an arbitration agreement has not come into existence, and that such arbitration agreement forming part of the Original Agreement would prevail over any conflict with the Statement of Work. Consequently, should the Respondent have instructions to persist with the objections on the premise that a dispute should go to the International Chamber of Commerce because of the

Statement of Work, a subsidiary instrument that is in conflict with the Original Agreement, and that too in the teeth of the provision in the Original Agreement that in the event of conflict, the Original Agreement would prevail, I have no hesitation in dismissing such objection as not being tenable. Evidently, an arbitration agreement exists and that too in the Original Agreement, which is an instrument that would override the Statement of Work, by reason of explicit agreement between the parties.

5. Indeed, the Respondent would be at liberty to take up such objections before the arbitral tribunal appointed hereby, in view of the provisions of Section 16 of the Act, which empowers the arbitral tribunal to rule on its own jurisdiction. Needless to say, this is a commercial arbitration and the arbitral tribunal would have to have regard to the imposition of costs, factoring in the gravity and nature of the submissions made by parties.

6. With the aforesaid observations, without prejudice to the rights and contentions of the parties, this Application is hereby ***finally disposed of*** in the following terms :

[A] Mr. Yuvraj Narvankar([yuvraj.Narvankar@yahoo.com](mailto:yuvraj.Narvankar@yahoo.com)), an 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;

[B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant and the Respondent within a period of one week from date on which this order is uploaded on the official website of this Court;

[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; and

[F] It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.

7. 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.]**