

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

ARBITRATION APPLICATION NO. 246 OF 2024

Spartans Facility Management Services ... Applicant
Vs.
Maharashtra Public Services Commission .. Respondent

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Mr. Mayuresh Nagle, *for Applicant.*

Mr. Gaurav Sharma *i/b Ashutosh Kulkarni, for Respondent-MPSC.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : July 25, 2025

Order :

1. This is a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*).
2. 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 August 17, 2020 [*“Agreement”*]. The arbitration agreement is contained in Clause 3.10(2) (found at Page 44 (Tender or Providing Manpower Services dt. June 11, 2019 Pages 31 to 66) 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 the Applicant on May 25, 2024, to which there was no response.

4. The existence of an arbitration agreement pursuant to the tender for provision of Manpower Services is not in dispute. What Learned Counsel for the Respondent points out is that the Petitioner being covered by the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSMED Act**”), ought to go to the Micro and Small Enterprise Facilitation Council.

5. Such objection cannot be sustained in the Section 11 Court. Which forum to choose for arbitration is a matter of election by the Applicant. Learned Counsel for the Respondent submits that if the Applicant elects for arbitration outside the MSMED framework, he may not be entitled to interest at the rate set out in MSMED Act. That of course is for the Arbitral Tribunal to consider since that would be a matter of merits.

6. This Court is restricting itself to examining the existence of the arbitration agreement, which existence is not in dispute between the parties.

7. 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.

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

A] Presolv360, an independent online dispute resolution institution is directed to appoint a sole arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above and administer the same;

B] The contact particulars of the Director, Presolv360 are set out below:-

Email id : info@presolv360.com

Contact No. - +91-9820167337

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

Address: 1st Floor, Esperanca Building, Shahid
Bhagat Singh Road, Colaba, Mumbai – 400 001.

Website: www.presolv360.com

C] A copy of this Order will be communicated to Presolv360 by the Advocates for the Applicant within a period of one week of the upload of this order on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to Presolv360 along with a copy of this Order;

D] It is clarified that Presolv360 being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to the administration of Presolv360.

E] The administration of Presolv360 is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F] 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 administration of Presolv360 and any other particulars as reasonably requested by the administration. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G] All arbitral costs and fees of the arbitration 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

H] The seat of the arbitration shall be deemed to be the same as the seat

discernible from the Agreement while the arbitration shall primarily be conducted online.

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.]