
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.343 OF 2024**

Sany Heavy Industry India Pvt. Ltd. ...Applicant
Versus
Dewidas Bhimraj Ghugarkar & Anr. ...Respondents

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

**CORAM: SOMASEKHAR SUNDARESAN, J.
DATE : JANUARY 29, 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 a Loan cum Hypothecation Agreement dated January 15, 2020 and an Amendment to the Facility Agreement dated September 30, 2021 (***“Agreement”***). The arbitration agreement is contained in Clause 23 (found at Page 43 and 50 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. The Respondents committed a default in servicing the loan on September 2023. It is seen from the record that defaults occurred under the Agreement and a demand notice was issued on May 16, 2024. It is apparent from the record that the arbitration agreement was invoked by Applicant on June 8, 2024. Learned Counsel for the Applicant submits that the amount due under the Agreement, as

claimed by the Applicant from the Respondents is to the tune of Rs. 37,77,573/-.

3. Learned Counsel for the Applicant has tendered an affidavit of service dated January 27, 2025, same is taken on record. It shows that Application has been served on the Respondents but the Respondents have not entered appearance.

4. Learned Counsel for the Applicant submits that there is an evident default, and despite issuance of a demand notice and invocation notice there is no response from the Respondents.

5. 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*^a followed by multiple others, including *SBI General*^b and *Patel*^c 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.

6. 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 and September 30, 2021 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

7. In these circumstances, this Section 11 Application is *finally disposed of*, in terms of the following order:

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 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 and;

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.

8. 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.

9. 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.]