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

COMM. ARBITRATION APPLICATION NO. 46 OF 2025

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Jain Irrigation Systems Limited

...Applicant(s)

Versus

The New India Assurance Co. Limited

...Respondent(s)

Mr. Christopher D'souza *i/b Pradish Suvarna, for Applicant.*
Mr. Ayaan Hafiz *a/w. Rajiv Nevaskar, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : March 27, 2025

P. C.

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 February 15, 2021. The arbitration agreement is contained in Clause 7 (found at Page 45 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. It is apparent from the record that the arbitration agreement was invoked by Applicant on September 5, 2024, to which there is no response from the Respondent.

3. The Respondent's primary grievance is that the dispute is not arbitrable. It is made clear that nothing contained in this order is an expression of opinion on merits, including the question of arbitrability. All these issues are left open to the arbitral tribunal to consider. Learned Counsel for the Respondent submits that the Respondent does not accept liability for the entire claim amount. The Respondent accepted liability only to the extent, according to the Respondent, the claim was capable of being proved. The rest, according to him, was not proven and not being a quantum dispute, is not arbitrable.

4. Having heard the aforesaid objection, it would follow that the issue raised is one that involves examination of evidence since one would need to answer, a mixed question of facts and law. Such an issue of jurisdictional fact to determine arbitrability would fall within the domain of the arbitral tribunal in terms of Section 17 of the Act.

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***¹ followed by multiple others,

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

including *SBI General²* and *Patel³* 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 February 15, 2021 to arbitration by a Sole Arbitrator.

7. In these circumstances, no useful purpose would be served keeping this Application pending any further. Consequently, leaving all contentions open, the Application is ***finally disposed of***, in the following terms:

A] Mr Aditya Bapat, 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 within a period of one

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

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.

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.]