
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.71 OF 2025

Overseas Infrastructure Alliance (India) Pvt. Ltd. ...Applicant
Versus
Atlas Shipping Services Pvt. Ltd. ...Respondent

Mr. P.G. Sabnis a/w. *Ms Kashmira Khedekar, Advocates for Applicant (through VC)*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 13, 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 arising out of Agreement dated January 14, 2016 (*"Agreement"*). The arbitration agreement is contained in Clause 15 (found at Page 38 of this Application). In the interest of brevity, the same are not reproduced here. Suffice it to say that the matter falls within the jurisdiction of this Court.

2. Service Affidavit tendered by the Learned Counsel for the Applicant dated March 11, 2025 is taken on record. It is evident that service has been effected. It is also seen from the record that the

Respondent has not disputed the existence of an arbitration agreement. Instead, the Respondent seeks to defer the consideration of the application on the premise that the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 filed by the Respondent against the Applicant should be allowed to run its course. Such an objection is untenable for consideration in the jurisdiction under Section 11 of the Act. Consequently, no useful purpose would be served in keeping this Application pending any further in the docket of this Court.

3. 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 *Pate*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.

4. The Applicant has already nominated an arbitrator. Since the Respondent is refraining from nominating an arbitrator, Ms. Priya S. is

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*

hereby appointed as a nominee arbitrator on behalf of the Respondent. The parties shall approach the arbitral tribunal constituted hereby for further instructions in the matter.

5. In these circumstances, this Application is ***finally disposed of*** by referring all disputes and differences covered by this proceeding to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] Ms Priya S., a Learned Advocate of this Court is hereby appointed as a nominee Arbitrator on behalf of the Respondent.

B] A copy of this Order will be communicated to both the nominee Arbitrators 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.

C] As the two nominee arbitrators shall appoint the presiding arbitrator, preferably within a period of three weeks from today.

C] The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

D] The Learned Arbitrators are 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;

E] The parties shall appear before the Arbitral Tribunal 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.

6. 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.

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.]