
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 76 OF 2024

Sai Tools Pvt Ltd ...Applicant

Versus

Hindustan Petroleum Corporation Limited ...Respondent

Mr. Fraser Mario Alexander, for the Applicant.

Mr. Rashmin Khandekar, a/w Vijay Purohit, Anand Mohan, Pratik Jhaveri, Niyati Bhogyata, i/b P&A Law Offices, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 26, 2025

PC :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***).

2. Heard the Learned Counsel for the parties at some length, I am not satisfied that the objections raised by the Respondent are of a nature that would necessitate rejecting this Application filed under Section 11 of the Act.

3. In a nutshell, the contention of the Respondent is that the dispute sought to be referred to arbitration today could have been raised in the last round of arbitration and were indeed raised. There was already an arbitration between the parties before a Learned Sole Arbitrator which culminated in an award dated March 28, 2023.

4. On the face of it, the disputes relates to payments for the commissioning and performance of a Vapour Retrieving Unit (VRU) in Bengaluru and Mughalsarai. The contract under which arbitration has now been invoked relates to commissioning of a similar unit at Jaipur, Mathura and Ajmer. Learned Counsel for the Respondent submits that the Respondent had set off dues owed to it between the two contracts and effected a deduction of amounts payable or claimed under the second contract when making payment under the first contract. Therefore, his contention is that arbitration under the first contract necessarily entails examining the validity of the deduction made under the second contract, and consequently, the issue stands settled in terms of the arbitral award.

5. I am afraid that given the limited scope of jurisdiction under Section 11, where I must confine my examination to existence of an arbitration agreement, it would be difficult for me to pore through the

material on record and discover whether the earlier arbitration indeed, in terms of the assessment of evidence, factored in all that constitutes the cause of action today in the arbitration invoked.

6. Needless to say, this facet of the matter squarely falls in the domain of the arbitral tribunal. The scope of the Section 11 Court's review would be confined to existence of an arbitration agreement, and even if it were a second round of arbitration under the same contract the scope would then move to examining only the subsistence of the arbitration agreement. On the face of it, since the contract under which arbitration is now invoked is different from the contract under which arbitration was conducted earlier, it would be most appropriate to refer the parties to arbitration, leaving it to the arbitral tribunal and the parties to figure out the scope of arbitrability under Section 16 of the Act. Since such issues need examining evidence and answering a mixed question of fact and law, which falls in the domain of the arbitral tribunal.

7. Consequently, I have no hesitation in finally disposing of this Application appointing arbitral tribunal in the following terms:-

- a) K.J. Paratwar, District and Sessions Judge and Former Presiding Officer, Debt Recovery Tribunal, Mumbai, 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 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. Considering that issues of facts are being raised with specified regard to the arbitration already conducted, I have been mindful of ensuring that the best judge of the objections being raised would be the same arbitrator who adjudicated the dispute on the last

occasion. Consequently, the arbitral tribunal would be manned by the very same Learned Sole Arbitrator who passed the last award, so that it would not only achieve economies of scale but also parties would also be able to assist the arbitral tribunal in deciding whether the matters are truly dead wood or give rise to a new round of arbitration.

9. This Application is *finally disposed of* in the aforesaid terms.

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.]