
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 119 OF 2024

Mangal Credit And Fincorp Limited Through Its ...Applicant
Authorised Representative Mr. Dhirav Kishor Veera

Versus

GBL Chemical Limited & Ors ...Respondents

Mr. Pankaj Jain a/w Pradeep Purohit i/b P. D. Jain & Co. Jain & Co., for the Applicant.

Mr. Chirag Mody, a/w Yash Momaya, Parag Khandhar, Tapan Radkar, Anaheeta Verma i/b DSK Legal, for Respondent Nos.1 & 2.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 18, 2025

ORAL JUDGMENT :

1. This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking reference of disputes and differences between the parties pursuant to which the four Respondents have been designated as borrowers in respect of a loan extended by the Applicant. The Loan Agreement is dated March 30, 2024. The arbitration clause is contained in Clause 8.2 (found at Page 46 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 primary objection from the Learned Counsel on behalf of Respondent Nos.1 and 2 is that the factual matrix underlying the loan agreement would demonstrate that the loan was a product of fraud. Learned Counsel on behalf of these Respondents would even suggest that the Applicant may be party to the fraud. Consequently, he would submit that since fraud vitiates all solemn acts and would lead to disputes not being arbitrable, this Application under Section 11 ought not to be entertained at all.

3. Learned Counsel on behalf of Respondent Nos.3 and 4 would submit that since they are behind bars, she is unable to take instructions to make submissions on their behalf.

4. Having examined the record, it is apparent that allegations of fraud are indeed found in the course of the conduct between the parties. While the loan agreement is dated March 30, 2024, the loan agreement was recalled within three days on the premise that the documentation submitted for the borrowing being approved contained discrepancy and

inconsistency. However, Learned Counsel for the Applicant submits that as far as the Applicant is concerned, the loan was indeed disbursed, the document was executed by the then Chief Executive Officer and the whole time director, and the monies were indeed remitted into a bank account held by Respondent No.1 with a nationalized bank for the past one and half years.

5. Learned Counsel for Respondent Nos.1 and 2 submits that an entire device of fraud was unearthed upon investigations, and this discovery of such fraud is a matter of public record, since the fraud was also disclosed to the stock exchanges, Respondent No.2 being a listed company. He would also submit that there are judgments which would clearly indicate that serious allegations of fraud would not be arbitrable, particularly, the fraud goes to the very validity of the contract which contains the arbitration clause.

6. Toward this end, he would rely upon the judgments in the decisions in ***A. Ayyaswamy v. A. Paramasivam & Ors¹***, ***Rashid Raza v. Sadaf Akhtar²*** and ***Avitel Post Studioz Limited & Ors v. HSBC Holdings***

¹ (2016) 10 SCC 386;

² (2019) 8 SCC 710;

(Mauritious) Limited^B to contend that disputes involving serious allegations of fraud ought not to be arbitrable. The offshoot of this submission is that this Court sitting in the jurisdiction of Section 11 should take a note of a fact that there are serious allegations of fraud and forthwith dismiss the Application and not permit commencement of arbitration.

7. Having examined the record with the assistance of the Counsel and the march of the law in terms of the scope of the jurisdiction under Section 11 Court, I am unable to agree that, at the threshold, the Application should be dismissed because of the existence of allegations of fraud which are said to be serious. Indeed, the Counsel for Respondent Nos. 3 and 4 would submit that her clients are incarcerated on the ground of fraud, which would point to the fact that there is a fraud, and the Cuffe Parade Police Station has filed a charge-sheet based on the FIR lodged by Respondent Nos. 1 and 2. However, whether these should lead to the disputes being non-arbitrable essentially presents a mixed question of fact and law. To accept the contentions of the Respondent Nos.1 and 2, some forum would need to go into the veracity of the allegations and come to a finding that the case

³ (2021) 4 SCC 713

of fraud made out is of such a nature that the dispute is not arbitrable at all. For example (without meaning to pronounce upon the merits of this case) if it is found that a listed company had lacked internal processes which led to fraud, the implications for third party cannot become non-amenable to arbitration merely because of the existence of the charge-sheet in connection with the fraud, having taken place due to internal laxity of a party to the agreement. All these present facets of merit and mixed questions of fact and law, which will at least require a preliminary view to be taken by the arbitral tribunal, it is not for the Section 11 Court to examine evidence of this nature, particularly in view of Section 11(6A) which statutorily restricts the role of this Court to “examining” the existence of the arbitration agreement. The conscious choice of the word "examination" as opposed to “adjudication” points to intention by the legislature that this Court must examine if the formal agreement is in existence. The contention of the Applicant that the money was remitted to a bank account which was in existence for one and half years is also something only the arbitral tribunal can examine for its veracity and fruitfulness.

8. In these circumstances, considering the nature and scope of the jurisdiction of this Court, it would not be appropriate for the Section

11 Court to delve any deeper into the facet of fraud and write a finding about the fraud having vitiated arbitration at this stage. Needless to say, that is a facet left to the arbitral tribunal and, given the weight of the facts presented by Respondent Nos.1 and 2, the arbitral tribunal is requested to treat this as a preliminary issue and rule upon it up-front, so that the time and cost of the parties are saved. Should the tribunal eventually come to a view that the facts present a framework that renders the dispute not arbitrable.

9. 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*⁴ followed by multiple others, including *SBI General*⁵ and *Patel*⁶ 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.

10. Learned Counsel for Respondent Nos. 1 and 2 also submits

⁴ *In Re: Interplay Between Arbitration Agreement under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899* (2024) 6 SCC 1

⁵ *SBI General Insurance Co. Ltd. Vs. Krish Spinning*, 2024 SCC OnLine 1974

⁶ *Ajay Madhusudan Patel Vs. Jyotindra S. Patel*, 2024 SCC OnLine, 2597

that the aforesaid judgments never opposed or dealt with a case of fraud, and towards this end, he would also rely upon *Vidya Drolia and Ors v. Durga Trading Corporation*⁷ which also states that the contention of fraud cannot be dealt with by the arbitral tribunal. The law has moved on since *Vidya Drolia* and, in fact, *Interplay*, it has been acknowledged that *Vidya Drolia* did not notice the fact that deletion of Section 11(6A) was never notified. *Vidya Drolia* was rendered under the belief that the scope of jurisdiction of this Court was not restricted to examining the existence of the arbitration agreement, a facet which has been graciously acknowledged and articulated in depth in the *Interplay* judgment.

11. Consequently, it would follow that this Application deserves to be allowed, making it clear that the arbitral tribunal may frame whether the dispute is not arbitrable on account of fraud as a preliminary issue. The Application is *finally disposed of* in the following terms:-

A) Justice (Retired) Akil Kureshi, a former judge 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

⁷ (2021) 2 SCC 1

Agreement referred to above;

Office Address:-

617, Raheja Chambers,

Nariman Point, Mumbai.

Email ID: akil.kureshi@gmail.com

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 of upload of this order. 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.

12. 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.

13. 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.]