

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

COMMERCIAL ARBITRATION APPLICATION NO. 184 OF 2024

Rameshkumar Heeranand Bhatia & Anr ...Applicants

Versus

Mirador Construction Pvt. Ltd. ...Respondent

WITH

COMMERCIAL ARBITRATION PETITION NO. 462 OF 2024

Mr. Jacob Kadantot, a/w M.A. Amonkar, for the Applicant.

Respondent appeared through VC but not given appearance.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 11, 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 an Investment Agreement dated March 30, 2017 (***"Agreement"***). The arbitration agreement is contained in Clause 9 (found at Page 39 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. By consent of the parties, Commercial Arbitration Petition No.462 of 2024 (“**Section 9 Petition**”), a Petition filed under Section 9 of the Act, which relates to the same issues as involved in captioned Application is also taken up on Board.

3. It is apparent from the record that the arbitration agreement was invoked by the Applicant on February 12, 2024. There is no reply to the said invocation.

4. Today, when the matter is called out, it is apparent that the parties are at loggerheads on various grounds. The Respondent desires to file a detailed reply in the Section 9 Petition, to bring on record various facts including the existence of criminal proceedings between the parties. In my opinion, that would be unnecessary considering that the existence of the arbitration agreement is not disputed.

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, including *SBI General*² and *Patel*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.

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*

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 to arbitration by a Sole Arbitrator.

7. The Section 9 Petition shall be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby. All the submissions on merits including the reply that the Respondent desires to file in the Section 9 Petition may be filed before the arbitral tribunal when the tribunal considers the Section 9 Petition as an Application under Section 17. Given the efflux of time, the Petitioner is at liberty to modify or mould the contents of Section 9 Petition for its consideration as a Section 17 Application.

8. In these circumstances, both the Application under Section 11 as well as the Section 9 Petition are hereby *finally disposed of*, in terms of the following order:

- a) Mr. Anand Mohan, a learned 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;

Office Address:-

C/o Rashmin Khandekar,
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Kala Ghoda, Fort, Mumbai – 400 001

Email ID: anandmohan.law@outlook.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 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.

9. 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.

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.]