

PURTI
PRASAD
PARABDigitally signed by
PURTI PRASAD
PARAB
Date: 2025.07.04
12:18:28 +0530**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****COMM. ARBITRATION APPLICATION NO. 234 OF 2024**

Frigorifico Allana Pvt. Ltd.

...Applicant

Versus

Shrikrupa Trading Company and Ors.

...Respondents

Mr. Rohan Sawant a/w *Mr. Rahul Pillai i/b Pragnya Legal for the Applicant.*
None for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.**DATE : JUNE 27, 2025****ORDER :**

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 a Business Confirmation dated June 4, 2022 (***“Agreement”***). The arbitration agreement contained in the Agreement is at Page No. 38 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 seen from an order dated December 14, 2024 that a Learned Single Judge of this Court has dealt with an identical confirmation note issued by the broker to two parties which contains an identical clause and held it to be the arbitration agreement, taking note of the fact that intent to

arbitrate has been discerned from the aforesaid clause. The Learned Single Judge was pleased to refer the disputes and differences to arbitration. Since the arbitrator is already seized of a similar matter, and a Learned Single Judge has left all issues on merits open, having formed a *prima facie* view of the existence of the arbitration agreement, I am inclined to refer this matter as well to the same arbitrator.

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 Supreme Court's decision rendered by 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.

4. It is made clear that nothing contained in this order is an expression of an opinion on the merits of the matter and it shall be open to the Respondents to file an application under Section 16 of the Act, should it be so advised. Although, Respondents were represented on the last occasion, none appears today. Consequently, this matter is taken up and disposed of.

¹ In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 - (2024) 6 SCC 1

² SBI General Insurance Co. Ltd. Vs. Krish Spinning - 2024 SCC OnLine SC 1754

³ Ajay Madhusudan Patel Vs. Jyotrindra S. Patel - 2024 SCC OnLine SC 2597

5. In these circumstances, no useful purpose would be served by keeping this matter pending any further on the docket of this Court. This Application is ***finally disposed of*** in the following terms:-

A] Justice Shri. Amjad A. Sayed, former Chief Justice of Himachal Pradesh High Court and 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 Agreement referred to above;

Address : 225, DBS Business Center, 2nd Floor,

Raheja Chambers, Nariman Point,

Mumbai – 400 021.

E mail : sayamjad@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate 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 Advocate for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocate for the Applicant to the Respondents;

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.

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.]