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

COMM. ARBITRATION APPLICATION NO. 390 OF 2024
ALONGWITH
COMM. ARBITRATION PETITION (L) NO. 21813 OF 2023

Ashwini Prashant and Anr.

...Applicants/Petitioners

Versus

Deepak Ashok Kulkarni and Anr.

...Respondents

Ms. Shaista Pathan a/w *Mr. Shahbazkhan Sandi i/b YNA Legal for the Applicants/Petitioners.*

Mr. Nilesh S. Das for the Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 10, 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 the agreement dated April 1, 1992 (***“Agreement”***). The arbitration agreement is contained in Clause 19 of the Agreement (found at Page No. 53 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. Learned Advocate for the Respondents submit that he has no quarrel to proceeding to arbitration forthwith. He however points out that Respondent No.2 is not a party to the arbitration agreement. Considering the current position of law declared by the Supreme court in connection

with implications of arbitral proceedings for a non-signatory party – in particular *ASF Buildtech*¹, the contentions about the necessity or the lack thereof for making Respondent No.2 a party to the arbitral proceedings may be raised before the Learned Arbitral Tribunal. The decision on permitting Respondent No.2 to be made a party is left open for consideration by the Learned Arbitral Tribunal.

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*² followed by multiple others, including *SBI General*³ and *Patel*⁴ 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. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked among the other parties, 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.

1 ASF Buildtech Private Limited vs. Shapoorji Panllonji And Company Private Limited – 2025 INSC 616

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

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

4 Ajay Madhusudan Patel Vs. Jyotindra 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] Mr. Mohit Khanna, 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 ;

Address : 501, Oval House, Kala Ghoda, Fort,
Mumbai – 400 001.

E mail : mohitkhanna311@outlook.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. A Petition under Section 9 of the Act being Commercial Arbitration Petition (L) No. 21813 of 2023 has also been filed in connection with the same dispute. That Petition is not on today's board, but by consent of the parties the same is taken on board and converted into an Application under Section 17 of the Act for appropriate consideration by the Learned Arbitral Tribunal appointed hereby. Needless to say, given the efflux of time the parties shall be at liberty to supplement the pleadings in the Section 9 Petition before the Learned Arbitral Tribunal. Both the captioned proceedings are finally disposed of in the aforesaid terms.

7. 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.

8. 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.]