

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

COMM. ARBITRATION APPLICATION NO. 417 OF 2024

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PSP Construction Company

...Applicant

Versus

Afcons Infrastructure Limited

...Respondent(s)

Mr. Suraj Choudhary *a/w. Kunal Kanugo i/b Adv. Atishay Jain, for Applicant.*

Mrs. Sweta Gandhi, *for Respondent(s).*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : March 18, 2025

P. C.

1. This is an Application 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 agreements dated December 1, 2021 and August 26, 2021 (“***Agreement*- 2. It is apparent from the record that the arbitration agreement was invoked by Applicant on January 19, 2024. The existence of the arbitration agreement is not in dispute. However, the Applicant has asserted that he is a protectee under the Micro, Small and Medium Enterprises Development Act, 2006**

(MSMED Act). Learned Counsel for the Respondents has various grievances about the manner of pleadings in the application, including the fact that the MSME registration certificate is not appended. Likewise, she would contend that if the Applicant chooses to avail of the benefits of being an MSME, he ought to invoke arbitration before the MSME Facilitation Council and not invoke private arbitration.

3. In response, Learned Counsel for the Applicant submits that he is choosing not to proceed to the MSME Facilitation Council and consequently, he would place himself at the disposal of the arbitral tribunal in accordance with law particular in regard to the interest that may be awarded by the arbitral tribunal. In these circumstances, no useful purpose would be served in keeping this Application pending in further. Nothing contained in this order shall be expression of an opinion, on the merits of the matter or on the nature of the pleadings in the Application.
4. Learned Counsel for the Respondent also submits that this Application is one of many attempts to recover funds including an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016. Be that as it may, considering the narrow confines of the jurisdiction of the Section 11 Court, no useful purpose would be served in keeping this Application pending any further.
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* followed by multiple others,

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

including *SBI General²* and *Patel³* 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.

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 Application is *finally disposed of* in the following terms :

A] Mr. Akash Rebello, an 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:-11A, Examiner Press Buildings,
BSE Lane, Fort, Mumbai 400 001.

Email : akashrebello@11exp.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;

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

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. 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.
9. 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.]