

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

COMMERCIAL ARBITRATION APPLICATION NO. 454 OF 2024

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Allied Blenders and Distillers Limited

... Applicant

Vs.

Canteen Stores Department

.. Respondent

Mr. Cyrus Ardeshir *a/w. Sarosh Bharucha and Yashvi Panchal i/b Yashvi Panchal, for Applicant.*

Mr. R.V. Govilkar *a/w. Aniruddha A. Garge, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : July 30, 2025

Order :

1. This is an 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 Agreement dated October 16, 2019 [***“Agreement”***]. The arbitration agreement is contained in Clause 26 (found at Page 61 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 apparent from the record that the arbitration agreement was invoked by the Applicant on June 13, 2024. One of the objections on behalf of the Respondent is that the dispute has now moved on from being a dispute over a debit note to a dispute over the amounts covered by the debit note actually having been withheld or recovered by the Respondent. Therefore, Learned Senior Counsel for the Respondent would submit that the character of the dispute has undergone a change and this Application is infructuous and potentially a new application may need to be filed.

3. I cannot agree with this approach. It is evident that with the development in the form of appropriation of amounts from the balances remaining with the Respondent, the foundational character of the dispute does not change. Whether the debit note covered in the invocation notice was justified would remain the question and merely because the debit note is actually acted upon, the cause of action does not undergo a change. The stage in the journey of the dispute may have evolved further, but the cause of action remains the same.

4. In these circumstances, since the existence of an arbitration agreement is not in doubt and the pre-arbitration procedure having run its course without success, no useful purpose would be served keeping this matter 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*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.

6. In these circumstances, the Application is *finally disposed of* in the following terms :

A] Justice (Retd.) S.J. Vazifdar, former judge of this Court (shiaxvazifdar@gmail.com), 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;

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

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

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 Arbitral Tribunal in relation to costs.

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.]