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

COMM. ARBITRATION APPLICATION NO. 457 OF 2024

Lakhmichand Cooverji and Co.

...Applicant

Versus

Arshiya Logistics Services Limited

...Respondent

Ms. Gauri Ganesh Joglekar *i/b Meraki Legal for the Applicant.*

Mr. Ashish Mishra *i/b MZM Legal for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JUNE 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 two Work Orders dated February 13, 2019 and October 10, 2021 (collectively ***"Agreement"***) issued by the Respondent. The arbitration agreement is contained in Clause 11 of the Agreement (found at Page Nos. 32 and 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. The Applicant has invoked arbitration on October 4, 2023, to which there is a reply by the Respondent dated June 17, 2024. Affidavit in reply filed on behalf of the Respondent is taken on record. The only objection raised on behalf of the Respondent is that the disputes cannot be

considered to be arbitrable under the arbitration clause. A bare perusal of the arbitration clause would indicate that the first part of the arbitration agreement states that all disputes would be resolved by an officer nominated by the Respondent. The very next sentence indicates that such activity would constitute an arbitration by referring to such activity as “arbitration”. In these circumstances, it would not be possible to ignore the language “*the decision of the arbitrator shall be final and binding on both the parties*” placed right after the sentence stating that an authorised official of the company would decide the dispute.

3. Evidently, such authorised official was intended to act as an arbitrator as is seen from the very language of the instrument. In these circumstances, the objection raised is completely untenable and the Application deserves to be allowed.

4. Besides, this is an instrument issued by none other than the Respondent itself. Pursuant to this instrument, activity has been carried out, and disputes and differences have arisen in relation to such activity pursuant to this instrument.

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 Supreme Court’s decision rendered by a seven-judge Bench in the *Interplay*

Judgement^a followed by multiple others, including **SBI General^b** and **Patel^b** 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 Agreements to arbitration by a Sole Arbitrator.

7. 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. Mandar Soman, 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 : Office No.21, 3rd Floor, Bombay Mutual Building,

P.M. Road, Fort, Mumbai – 400 001.

E mail : mandar.soman82@gmail.com

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. Jyotindra S. Patel - 2024 SCC OnLine SC 2597

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 Respondent;

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.]