

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 98 OF 2024**

Hitesh Coal Traders ...Applicant

Versus

Mahabir Fine Arts Pvt. Ltd. ...Respondent

COMMERCIAL ARBITRATION PETITION NO. 48 OF 2025

Mr. Feroz Patel, a/w Sandeep Kumar, i/b Rucha Jog, for the Applicant.

None for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 6, 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 in connection with coal supply. The arbitration agreement is contained in the Delivery Challans (found at Pages 56 to 58, 60 to 66 of the Application) and tax invoices (found at Pages 103, 122, 116, 114, 107 to 108, 118, 120, 128 to 130 of the Application) issued during the period August 27, 2022 to November 6, 2022. 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 a service affidavit on record and copy of email tendered today that the Respondent has indeed been served.
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 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.
4. 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 covered by this Application to arbitration by a Sole Arbitrator.
5. Commercial Arbitration Petition No. 48 of 2025 (“*Section 9 Petition*”) relates to the very same matter between the very same parties, seeking certain interlocutory protective reliefs. The Section 9 Petition shall be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby. Given the efflux of time, the Petitioner is at liberty to modify or mould the contents of Section 9 Petition for its consideration as a Section 17 Application.
6. In these circumstances, it is apparent that no useful purpose

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*

would be served in keeping these proceedings pending any further. Both the Section 11 Application as well as the Section 9 Petition are hereby ***finally disposed of***, in terms of the following order:

- a) Mr. Shilpan S. Gaonkar, 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:-

Office No.6, 2nd Floor,

Examiner Press Building,

Dalal Street, Fort,

Mumbai – 400 001

Email ID: ssg@gmail.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;

- 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 Advocates 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 Advocates 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.

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.]