

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

COMMERCIAL ARBITRATION APPLICATION NO. 397 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO. 158 OF 2025
(U/s. 9 of A & C Act, 1996)

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Aashirvad Projects (India)

...Applicant

Versus

Chiripal Poly Films Limited

...Respondent

Mr. Arnab Ghosh, for Applicant /Petitioner.

**Mr. Sharan Jagtiani, Senior Advocate a/w. Ms. Mansi Chheda i/b
Cyril Amarchand Mangaldas, for Respondent.**

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 25, 2025

PC:

1. This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) relating to the disputes and differences between the parties in connection with “Fixture Terms” said to have been agreed between the parties. The terms were circulated by the Applicant by email dated November 4, 2021 (Exh. B, found at Page 33) which appears to have been replied to, with a signed print out of the

same email being attached in an email, dated November 8, 2021 (Exh. C at Page 42).

2. A copy of the signed printed email signed by the counter party represented by one Mr. Manish Asnani is tendered across the bar and is marked “X” and taken on record.

3. It is seen from the signatures on the print out of the email, that there are two elaborations made in the signed print out, namely, that the port of discharge would be Hazira only, and that payments would be made within three banking days. Against the handwritten remarks towards this end, the same Mr. Manish Asnani has affixed his signature on the print-out of the email dated November 4, 2021.

4. The fundamental objection on behalf of the Respondent is that no arbitration agreement is in existence and that the arbitration clause may be considered to be non-existent, without the seat being determined or the applicable law being determined. Learned Senior Counsel for the Respondent objects to the application on the premise that no arbitration agreement is in existence. He would submit that there has to be a signed and executed arbitration agreement and even if

Mr. Manish Asnani has signed a print out of the email, the Applicant has not signed the same and sent it back to the Respondent. He would, therefore, submit the arbitration agreement is not reduced to writing.

5. We are unable to agree. Section 7(4)(b) of the Act provides as follows :

7. Arbitration agreement.—

(4) An arbitration agreement is in writing if it is contained in—

(a)

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement.

[Emphasis Supplied]

6. Section 7(4)(b) of the Act clearly provides for exchange of emails as a means of confirming and recording the agreement. Not only have the parties confirmed the position about the attachment sent to the said email containing the arbitration clause, but also the provision itself recognizes that the parties may communicate by exchange of communication, which can also be electronic, which would provide a record of the agreement. The existence of the arbitration agreement within the meaning of Section 7 of the Act is unmistakable.

7. As regards the other deficiencies, one of the options of the seat being Mumbai and the application having been filed here, the seat would be Mumbai. Other deficiencies, if any, in the arbitration clause are matters to be addressed before the arbitral tribunal.

8. Be that as it may, the arbitration clause provides unilateral arbitration which is in conflict with the law. In these circumstances, it would be appropriate for this Court to appoint an arbitral tribunal, is the submission on behalf of the Applicant.

9. Arbitration Petition No. 158 of 2025 is a Section 9 Petition. The same shall be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby.

10. In these circumstances, a sole arbitrator is hereby appointed in the following terms :

A] Ms. Priya S, a learned advocate of this Court [spriya@venkislaw.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 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.

11. 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.

12. The captioned proceedings as well as attendant interim application, if any, stands ***finally disposed of*** in the aforesaid terms.

13. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]