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

COMM. ARBITRATION APPLICATION (L) NO. 9695 OF 2025

1. Pratik Vira
 2. Jayesh Vira
 3. Kalpataru Advisory Services Limited
 4. Vira Consultancy Services
 5. Vira Realspace LLP
- Known as Vira Group

Having address at :

24 A, Haria House, First Floor, St. Paul
Street, Dadar (East), Mumbai - 400 014.

...Applicants

Versus

1. Atul Shamji Bharani
Office No.5, Floor-I, Plot-7, Sharda Sadan,
Swami Gyanjivancas Marg, Dadar Rly.
Station (East), Mumbai – 400 014.

2. Kashyap Mehta
2203, Artesia, Hind Cycle Road, T.V.
Estate, Worli, Mumbai - 400 030.
26/27 A-Wing Ahuja Tower.

3. Pancharatna Realtors Private Limited
13th Floor, B-1305, Kohinoor Square,
Plot No. 46, N.C. Kelkar Marg,
Opp Shivsena Bhavan, Dadar (West),
Mumbai – 400 028.

4. Sunshine Projects Private Limited
Office No.5, Floor-I, Plot-7, Sharda Sadan,
Swami Gyanjivancas Marg, Dadar Rly.
Station (East), Mumbai – 400 014.

5. Sun-N-Shine Entertainers Pvt. Ltd
1120, 11th Floor, B Wing, Panchashil Plaza,
Nyayamurti Sitaram Patkar Marg,
Gamdevi, Grant Road, Mumbai City,
Mumbai – 400 007.

- (6) Sunshine Technobuild Private Limited
5, Floor - 1, Plot No.7, Sharda Sadan,

Swami Gyanjivandas Marg, Dadar Rly.
Stn. Dadar (East), Mumbai – 400 014.

7. Sunshine Global Technologies Pvt. Ltd
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn. Dadar (East), Mumbai – 400 014.

8. Sunshine Tracon Private Limited
17/2, Kshetra Mitra Lane 3rd Floor,
Howrah, West Bengal, India – 711 106.
Also Corporate Office:
6th Floor, Sunshine Plaza, Naigaon Cross
Road, Dadar East, Mumbai - 400 014.

9. Sunshine Merchants Private Limited
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

10. Sunshine Foundation
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

11. Aarts Module International Private
Limited
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

12. Sunshine Infraserve Pvt. Ltd,
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

13. Navketan Premises Pvt. Ltd.,
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

14. Sunshine Realcon Pvt. Ltd.
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

15. Sunshine Crown Realty LLP
5, Floor - 1, Plot No.7, Sharda Sadan,

Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

16. Sunshine Housinginfra LLP
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

17. Orchid Housinginfra LLP
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

18. Sunshine Realspaces LLP
102, First Floor, A Wing, Sigma Emerald
Building, Off. Anand Nagar Vishal CHSL,
Santacruz (East), Mumbai 400 055.

19. Sunshine Hometown Construction
LLP
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

20. Orchid Planet Realty LLP
601, Sunshine Plaza, Naigaum Cross
Road, Dadar (East), Mumbai – 400 014.

21. Goldnest Spaces LLP
13th Floor, B – 1305, Kohinoor Square,
Plot No. 46 N.C. Kelkar Marg,
Opp. Shivsena Bhavan, Dadar (West),
Mumbai – 400 028.

22. Sunshine Urbainfra LLP
5, Floor - 1, Plot No.7, Sharda Sadan,
Swami Gyanjivandas Marg, Dadar Rly.
Stn., Dadar (East), Mumbai – 400 014.

23. Tangerine Construction LLP
Floor G-2, Plot-435, Navneet Bhavan,
Baburao Parulekar Marg, Dadar (West),
Mumbai – 400 028.

...Respondents

Mr. Zal Andhyarijuna, Senior Advocate a/w *Mr. Durgaprasad Sabnis,
Mr. Hiten Lala and Mr. Yashesh Pajwani i/b Lex Firmus for the Applicants.*

Mr. Sanjay K. Jain *a/w Mr. Hardik Jain i/b A.V.Jain Associates for Respondent No.2.*

Mr. Rushabh Sheth *a/w Mr. Pratik Amin and Mr. Pratik Poojary i/b Pratik Amin Associates for Respondent No.21.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 19, 2025

Oral Judgment :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*), seeking reference of disputes and differences between the parties under Memorandum of Settlement dated October 31, 2018 (*“MOS”*) to arbitration. The Applicants and the Respondents are parties who have executed the MOS after participating in the mediation at the Supreme Court’s mediation centre. It is the case of the Applicants that on the very same day, the parties also executed a side letter titled as Letter of Agreement (*“LOA”*) which, on the face of it, is signed by the very same parties.

2. The LOA records that all terms and conditions of the MOS stand incorporated in it, and would govern it, and that the LOA would constitute an integral part of the MOS. The parties have also presented a joint application to the Supreme Court about the MOS since the settlement had been arrived at pursuant to the intervention of mediation center in the Supreme Court. They did not present the LOA to the Supreme Court, and it is evidently a side letter.

3. The case of the Applicants is that the parties have executed the MOS and the LOA, and they have consciously chosen to keep certain additional features in the LOA also executed by the parties, but they jointly agreed to keep it on the side.

4. Most of the Respondents constitute the 'Sunshine Group' while the Applicants constitute the 'Vira Group'. There are certain respondents who belong to neither group but are party to the MOS and the LOA.

5. The arbitration agreement is contained in Clause 17 of the MOS (found at Page No.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.

6. Learned Counsel for the Respondents comprising the Sunshine Group has made submissions at a great length, as to why this Court ought to dismiss this Application and not refer the parties to arbitration. His first contention is that the invocation of arbitration under the LOA could never be considered since it does not independently contain an arbitration clause. He would cite case law to point out that a mere reference to another agreement would be inadequate to constitute an arbitration agreement and there should be an explicit reference to the arbitration clause, specifically stating that it was being incorporated, for the conscious consent to arbitrate to manifest itself.

7. The second objection on behalf of the Respondents comprising the Sunshine Group is that the LOA itself does not exist. According to him, while on the face of it the LOA is signed by the Respondents represented by him, he would allege that the signatures are forged.

8. The third objection is that even if the LOA exists, it does not have an arbitration clause in it. Therefore, even if the existence of LOA is proven the existence of an arbitration agreement is not proven. Therefore, it would not be possible to refer disputes and differences arising out of the LOA to arbitration, since the *sine qua non* of existence of the arbitration agreement under Section 11(6A) of the Act is not met.

9. Towards this end, he would rely upon the decision of the Supreme Court in ***NBCC (India) Limited¹*** and the reliance placed therein on ***M.R. Engineers²***

10. Learned Counsel for Respondent No. 21, a Respondent said to not form part of the Sunshine Group, would make different a submission. He would submit that arbitration agreement contains the requirement of conciliation and that conciliation efforts have not been undertaken. Therefore, he would contend, the invocation of arbitration is premature.

11. Having heard Learned Counsel for the parties, at length disproportionate with the requirement for a Section 11 Application (only to

¹ NBCC (India) Limited Vs. Zillion Infraprojects Private Limited, (2024) 7 SCC 174

² M.R. Engineers & Contractors (P) Ltd. vs. Som Datt Builders Ltd. - (2009) 7 SCC 696

assuage any feeling that the vehement and strong objections are not permitted to be ventilated), I am afraid none of these objections warrant rejection of this Application.

12. The objections squarely relate to merits of the case, which squarely fall in the domain of the Arbitral Tribunal. On the face of the record, the LOA exists and the very same parties who have executed the MOS have executed the LOA. The existence of the LOA is being denied first on the premise that the signatures are forged. Thereafter, the absence of a separate arbitration clause in the LOA is sought to be relied on to contend that disputes under the LOA are not arbitrable. While the LOA indeed draws reference and purports to incorporate all provisions of the MOS into it and also purports to supplement the MOS, the arbitration clause is not explicitly reiterated in the LOA.

13. On the face of it, the LOA purports to supplement the MOS signed by the very same parties on the very same day. For whatever commercial reasons, the parties in their wisdom, chose to keep the bargain contained in the LOA out of the scope of the official MOS presented in their application to the Supreme Court, but it is for the Arbitral Tribunal to consider the interplay between these two instruments and determine whether the LOA forms an integral part of the MOA or the other way around.

14. There is no quarrel that an arbitration agreement is contained in the MOS. That arbitration agreement exists. The LOA purports to supplement the MOS. If on considering evidence, the Arbitral Tribunal concludes that the LOA is merely an insertion into the MOS, then the arbitration agreement that governs the MOS would govern the rights and obligations inserted into the MOS through the LOA. If the Arbitral Tribunal concludes that the LOA and the MOS are two distinct instruments, one not merging into the other, then the contention that the arbitration agreement does not exist insofar as disputes relating to the rights and obligations introduced through the LOA, would gain ground.

15. On the face of the record, an arbitration agreement exists in the MOS. On the face of the record, the LOA is an integral part of the MOS and is executed by the very same parties on the very same day. Denial of execution of the LOA is a matter of evidence and existential substance, which falls in the domain of the Arbitral Tribunal. On the face of it, the parties intended the LOA to be an appendage to the MOS and therefore it would only be fair to grant liberty to the parties to convince the Arbitral Tribunal about their respective stands insofar as the bundle of rights and obligations introduced through the LOA is concerned and make submissions about coverage by arbitration by appropriate application under Section 16 of the Act.

16. The reference to arbitration being made hereby is to the MOS, which has an admitted arbitration agreement. Whether the MOS includes

the LOA is a mixed question of fact and law, on which the parties would need to address the Arbitral Tribunal. If the MOS, upon appreciation of evidence, is held by the Arbitral Tribunal to include the LOA it would follow that the Arbitral Tribunal will consider the disputes and differences raised under the MOS as supplemented by the LOA. If the Arbitral Tribunal arrives at a view that the LOA is not an integral part of the MOS the consequences would follow in the arbitration proceedings.

17. None of these issues raised at this stage falls within the jurisdiction of this Court under Section 11 of the Act. Indeed, the legislature has made an explicit intervention in Section 11(6A) of the Act, confining the scope of jurisdiction of this Court to “examination” of the existence of an arbitration agreement. The conscious choice of legislature is that this Court must not “adjudicate” these matters but must “examine” i.e. inspect the record and examine if the arbitration agreement exists.

18. Paragraph No. 151 in the *Interplay Judgement*³ squarely states that the interpretation of Section 11(6) had a long and chequered history in that Court, particularly in respect of the nature of the function of the Court. The judgment goes on to articulate the varying levels of intervention effected by that Court while considering Section 11, and eventually squarely and explicitly posits that the scope of the jurisdiction of Section 11 Court must strictly be followed in terms of Section 11(6A) of the Act and in no other manner.

³ In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 - (2024) 6 SCC 1

19. In Paragraph No.165 of *Interplay Judgment*, the Supreme Court specifically uses the following statement :

“Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly, clarify the position of law laid down in Vidya Drolia in the context of Section 8 and Section 1 of the Arbitration Act”.

[Emphasis Supplied]

20. A plain reading of the foregoing would show that the examination of validity of an arbitration agreement should be restricted to checking the formal and valid existence i.e. as to whether the agreement is in writing. In the facts of the present case, both the MOS and indeed the LOA formally exist in writing and are formally signed by all the respective parties. Whether LOA is an integral part of the MOS and thereby whether its contents fall within the scope of the arbitration agreement, is a question of evidence that the Arbitral Tribunal must examine.

21. Learned Counsel for the Respondents comprising the Sunshine Group would submit that all these observations in the *Interplay Judgment* cannot be read in this manner. He would contend that all that this judgment did was to see if the scope of reference under Section 8 of the Act and Section 11 of the Act are identical in nature. I am unable to agree with this. A judgment should be read for the issues that are decided. Faced with

the Section 11 Courts delving deep into every facet of law connected to formation of contracts (including adequacy of stamp duty), the Supreme Court constituted a seven-judge bench to deal with this issue and that led to the judgment. This bigger context and purpose of formation of that bench cannot be lost sight of.

22. The principles of interpretation of statute are completely different from the principles of interpretation of judgments. The Supreme Court has taken pains to list out the journey of the law under Section 11 of the Act and has squarely articulated that Section 11 Court must not step outside the scope of Section 11(6A) of the Act.

23. Consequently, the reliance upon *NBCC (India) Limited*, which was rendered prior in time to the *Interplay Judgment* is of no assistance to the Respondents comprising the Sunshine Group.

24. That apart, even a plain reading of the *NBCC (India) Limited* judgment would show that in that case a separate document called a “Letter of Intent” contained an explicit clause that provided for jurisdiction over all disputes as belonging to Civil Courts having jurisdiction in Delhi alone. The Court was called upon to compare the Letter of Intent with another agreement which contained an arbitration clause. In that context, the Supreme Court ruled that unless the reference to the arbitration clause was explicitly reiterated in the second instrument under which the arbitration is

sought to be incorporated, the arbitration agreement would not exist. Therefore, the decision in *NBCC (India) Limited* is not something that would be of any assistance to the Respondents in this case in the context of the jurisdiction now being exercised in these proceedings.

25. As regards reliance upon *M.R. Engineers*, there can be no quarrel with the articulation on how to read the scope and intent of Section 7(5) of the Act. None of these can be quarreled with. Even in the facts of this case, whether incorporation of the arbitration clause in a document executed later in time is necessary, if the parties to the two documents are identically the same and in fact purport to supplement the very document that they have executed with an arbitration clause, is a matter of evidence, for which only the Arbitral Tribunal has power to examine the record to form a view. Therefore, even the ruling in *M.R. Engineers* would be of no assistance to the Respondents in asking for this Application to be rejected.

26. As regards, the objections made on behalf of Respondent No.21, it is now trite law that when a pre-arbitration conciliation procedure is stipulated, it must also be seen whether after invocation of arbitration, the other parties raising objection to pre-arbitration conciliation not having taken place, made any contributory steps to attempting conciliation. In the pre-arbitration conciliation provision, the parties have to engage and articulate potential consideration. It is seen that the invocation was done way back on December 7, 2024. When asked what Respondent No.21 took

to participate in conciliation efforts, the response was that it was not the Respondents' to attempt conciliation but it was for the Applicants to pursue it. This stand itself would indicate that the conciliation is illusory and the contention is only being made to postpone consideration of this Application.

27. Even in this context, the Supreme Court has clearly declared the law in *SBI General⁴*, where it was held that the Section 11 Court must not get into whether a party had discharged another under the contract containing the arbitration clause. That activity falls in the domain of the arbitral tribunal. By the same token, the contention about pre-arbitration procedures is a matter that can be raised before the Arbitral Tribunal.

28. In these circumstances, I am satisfied that no useful purpose would be served by keeping this Application pending any further, it deserves to be allowed since the existence of the arbitration agreement in the MOS is writ large on the face of record and is in fact not even denied. Whether the LOA forms an integral part of the MOS is a matter left to the Arbitral Tribunal to decide. The Applicants shall be at liberty to address the Arbitral Tribunal as to whether the LOA truly supplements the MOS and is an integral part of the same. The Respondents are at liberty to to address the Arbitral Tribunal as to why the LOA is an independent contract, necessitating a separate arbitration agreement and that the parties intended

⁴ *SBI General Insurance Co. Ltd. Vs. Krish Spinning – 2024 SCC OnLine SC 1754*

one bundle of rights and obligations to be covered by arbitration and another bundle not to be so covered. The Arbitral Tribunal shall have liberty to decide this issue in such sequence as it finds appropriate. If it comes a view that the LOA is an integral part of the MOS (as it purports to be), it is for the Arbitral Tribunal to decide whether to deal with the LOA. Needless to say, that the Respondents are at liberty to take out an application under Section 16 of the Act insofar as it relates to the scope of jurisdiction covering the LOA.

29. With the aforesaid directions, taking into account the inputs from the officers of the Court on the identity of the arbitrator, this Application is ***finally disposed of*** in the following terms:-

A] Justice (Retired) Shri. Akil Kureshi, a Former Judge of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties;

Address : 617, Raheja Chambers,
Nariman Point, Mumbai.

E mail : akil.kureshi@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate for the Applicants within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicants 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 Applicants 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 Applicants to the Respondents;

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.

30. Commercial Arbitration Petition No. 270 of 2024 is a Petition under Section 9 of the Act. The Section 9 Petition is converted into an Application under Section 17 of the Act for consideration by the Arbitral Tribunal. Any pleadings that the parties desire to make in relation to the Section 9 Petition may be made before the Arbitral Tribunal where the

proceedings would continue in the form of proceedings under Section 17 of the Act.

31. Both the proceedings are *finally disposed of* in the aforesaid terms.

32. 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.

33. 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.]