

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 118 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO. 273 OF 2024

Sanjay J Desai ...Applicant

Versus

Yunushbhai Noormohmad Mansuri ...Respondent

Mr. Gauraj Shah, a/w Videsha Rohirha, Prince Vaishnav, i/b Pooja Gupta, for the Applicant.

Appearance not received for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 24, 2025

ORDER :

1. Arbitration Application No.118 of 2024 is an Application 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 August 7, 2013 (***“Agreement”***). The arbitration agreement is contained in Clause 6 (found at Page 59 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 March 30, 2024. There is no reply filed to the said invocation. Considering that the invocation itself has been effected over a year ago, there is no tearing urgency to grant interlocutory relief at this stage.

3. Be that as it may, it is to the arbitral tribunal to consider the Section 9 Petition as if it is an Application under Section 17. The Section 9 Petition being Commercial Arbitration Petition 273 of 2024 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. No comment is expressed on any facet of the merits of the matter. The parties are at liberty to explain their respective positions to the arbitrator.

4. As regards the Section 11 Application, the objections on behalf of the Respondent is that the agreement is forged and that the amounts recorded if having been received prior to the execution of the agreement and the amounts received after the execution of the agreement as set out in the proceedings relate to transactions not attributable to this agreement. This would present essentially a mixed

question of fact that falls within the domain of the arbitral tribunal. Whether the agreement is forged or not is also a facet that may be proven upfront to the arbitral tribunal.

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. 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 agreement to arbitration by a Sole Arbitrator.

7. In these circumstances, both this Application as well as the Section 9 Petition are hereby ***finally disposed of***, in terms of the

1 In Re: Interplay Between Arbitration Agreement under 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 1974

3 Ajay Madhusudan Patel Vs. Jyotindra S. Patel, 2024 SCC OnLine, 2597

following order:

A) Mr. Bhushan Deshmukh, 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;

Office Address:- 321, 3rd Floor, Vardhaman
Chambers, Cawasji Patel Street,
Fort, Mumbai – 400 001.

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 of upload of this order. 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 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.]