

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

ARBITRATION PETITION NO. 102 OF 2025
WITH
ARBITRATION APPLICATION NO. 215 OF 2025

Mahindra and Mahindra Financial
Services Limited

... Petitioner/Applicant

Vs

Shri Hari Enterprises & Anr.

.. Respondent(s)

Mr. Zerik Dastur a/w. *Khushil Shah and Jennifer Sanjana i/b Khushil Shah, for Petitioner/Applicant.*
None for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : July 10, 2025

Order :

1. Arbitration Application No. 215 of 2025 is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“*the Act*”) and Arbitration Petition No. 102 of 2025 is a Section 9 Petition.

2. The disputes and differences that are said to have arisen between the parties are under an Agreement dated March 31, 2023. The arbitration agreement is contained in Clause 24.11 (found at Page 72 to 73 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.

3. It is apparent from the record that the arbitration agreement was invoked by the Applicant on March 26, 2025, to which there is no response. The Respondents have not entered appearance. Service affidavit is taken on record.

4. 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.

5. 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

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*

refer the disputes and differences between the parties in connection with the aforesaid Agreement to arbitration by a Sole Arbitrator.

6. By an order dated April 9, 2025, certain *ad-interim* relief has already been granted to the Petitioner. Such *ad-interim* reliefs shall now be placed before Learned Arbitral Tribunal being constituted hereby for dealing with whether there is any need for further relief in terms of Section 17 of the Act. Proceedings under Section 9 stand converted into the proceedings under Section 17 of the Act. *Ad-interim* relief in terms of prayer clause g(i), as moulded, which read thus :

g. There shall be a debit freeze to the extent of the claim amount, on the bank account bearing account No. 1512433997 and IFSC Code KKBK0000191 of the Respondent No. 1 with Kotak Mahindra Bank, Delhi, Branch - New Delhi Karol Bagh.

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

A] Presolv360, an independent online dispute resolution institution is directed to appoint a sole arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above and administer the same;

B] The contact particulars of the Director, Presolv360 are set out below:-

Email id : info@presolv360.com

Contact No. - +91-9820167337

Address: 1st Floor, Esperanca Building, Shahid Bhagat Singh Road, Colaba, Mumbai – 400 001.

Website: www.presolv360.com

C] A copy of this Order will be communicated to Presolv360 by the Advocates for the Applicant within a period of one week from upload of this order on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to Presolv360 along with a copy of this Order;

D] It is clarified that Presolv360 being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to the administration of Presolv360.

E] The administration of Presolv360 is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F] 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 administration of Presolv360 and any other particulars as reasonably requested by the administration. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G] All arbitral costs and fees of the arbitration 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; and

H] The seat of the arbitration shall be deemed to be the same as the seat discernible from the Agreement while the arbitration shall primarily be conducted online.

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.]

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