
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 122 OF 2025

Megastone Logiparks Pvt Ltd ...Applicant

Versus

Saeedahmad Gulammahammad Jambudiwala ...Respondent

Mr.Amit Padwal *a/w Arpit Singhvi, Sahil Saiyyed for the Applicant.*

Appearance not received for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 22, 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 under an agreement dated December 17, 2018. The arbitration agreement is contained in Clause 9 (found at Page 161 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 October 7, 2024 to which a reply dated November 6, 2024 was issued by the Respondent. It is seen from the record that the existence of the arbitration agreement was not extend by the Respondent.

3. Today when the matter is called out, Learned Counsel for the Respondent submits that a reply filed by him is still under the scrutiny by the Registry and therefore the matter may be stood over. That apart, Learned Counsel for the Respondent submitted that the arbitration agreement entails a pre-arbitration conciliation discussion which according to him is not complied with.

4. Having heard the parties and perused the record with the assistance of both counsel, neither are the objections worthy of holding up this Application any further nor is it appropriate to adjourn the matter. To begin with, the invocation took place way back on October 7, 2024. In reply, on November 6, 2024, the Respondent has not denied the existence of the arbitration agreement. It was also completely open to Respondent to initiate a discussion in conciliation to try and resolve the dispute.

5. We are now in the end of April 2025 and if parties have not resolved their disputes till date, it is evident that they are unable to resolve their disputes in a manner that an arbitration render unnecessary. Therefore, the objection on the ground that pre-arbitration conciliation has not taken place does not hold merit.

6. 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.

7. 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

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

Arbitrator. Should the Respondent be truly serious about attempting conciliation to resolve the disputes, he may do so from now until the expiry of four weeks from the upload of this order. The effect of this order is deferred until the expiry of four weeks from the upload of this order on this Court's website.

8. In these circumstances, this Application is hereby *finally disposed of*, in terms of the following order:

- a) Ms. Deepashika Godbole, 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:-

14-16, Gundecha Chambers,
Ash Lane, Nagindas Master Road,
Fort, Mumbai 400001

Email ID: Deepashikha.godbole@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 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.

9. If the parties to resolve their disputes within the aforesaid period of deferment, obviously there would be no need to proceed to arbitration, but failing such resolution, arbitration would commence in terms of this order.

10. 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.]