

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 171 OF 2025
WITH
COMMERCIAL ARBITRATION PETITION (L) NO. 9766 OF 2025

Alsina Formwork India Private Limited ...Applicant

Versus

M/s. Dogus Soma JV ...Respondent

Ms. Archana Deshmukh, a/w Krishan Singhania, Srishti Singhania, Aayush Shah, i/b Singhania & Co., for the Applicant.

None for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 10, 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 Service Orders dated February 16, 2021, August 30, 2022 and September 4, 2021 (***“Agreement”***). The arbitration agreement is contained in Clause 14 (found at Page 34 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 December 2, 2024. There is no reply to the said invocation.

3. 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.

4. 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

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

connection with the aforesaid agreement to arbitration by a Sole Arbitrator.

5. As regards the Section 9 Petition, having heard the *parties*, it would be appropriate to grant ad-interim relief in terms of prayer clause (a) so that until the arbitral tribunal convenes to consider the very same Petition as an Application under Section 17 of the Act, the interest of the parties are protected. Consequently, there shall be ad-interim injunction restraining the Respondent from using, alienating, transferring, selling, hypothecating and disposing of the formwork and shuttering material of the Petitioner until the arbitral tribunal convenes to see whether the aforesaid arrangement needs to be varied or altered.

6. Both the proceedings are finally disposed of in the aforesaid terms. The arbitral tribunal is requested to convene within a week of being approached pursuant to this order being passed to issue directions for convening in respect of Section 17 Application.

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) Mr. Dinesh Bishnoi, 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;

Email ID: dinesh@bishnoiadvocates.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 of upload of this order. The Application 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 Advocates for the Petitioner 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 Advocates for the Applicant to the Respondent;

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.]