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

COMM. ARBITRATION APPLICATION NO. 219 OF 2025

Bagadiya Brothers Private Limited

...Applicant

Versus

Benita Industries Limited

...Respondent

Ms. Saloni Kapadia a/w *Mr. Karan Gandhi, Ms. Tanvi Jain i/b Cyril Amarchand Mangaldas for the Applicant.*

Mr. Karan Bhosale a/w *Ms. Laveena Tejwani and Mr. Yashwant Singh i/b NDB Law for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 14, 2025

ORDER :

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 multiple Purchase Orders executed on various dates (***“Agreements”***) referred to in the Application. The arbitration agreement is contained in all these Purchase Orders. 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. The prime objection on behalf of the Learned Counsel for the Respondent is that the claim is hopelessly barred by limitation, particularly, in view of pursuit of proceedings under the Insolvency and Bankruptcy Code, 2016 by the Applicant. After those efforts came to end with no fruition, this Application is said to have been pursued. According to the

Respondent, in view of the wastage of time by pursuing those proceedings, the Applicant should not be given any lenient view in relation to limitation. According to him, the cause of action arose way back in September 2019 and this Court must reject the Application on the ground of claim being hopelessly barred by limitation.

3. It is now abundantly clear in terms of the law declared by the Supreme Court that this Court must not enter upon answering issues on limitation in relation to pursuit of the cause of action. This Court must apply its mind to limitation pursuant to invocation of arbitration agreement. It is seen that the invocation was effected on March 7, 2025. Any arguments relating to the claim being barred by reason of limitation pursuant to the cause of action would constitute a submission on merits, for which the jurisdiction lies with the Learned Arbitral Tribunal under Section 16 of the Act.

4. Learned Counsel for the Applicant relied upon a decision of the Supreme Court in *HPCL Bio Fuel*¹. However, this would not carry the case any further because the Supreme Court has now made it abundantly clear that matters of limitation must not occupy the mind of the Section 11 Court, whose examination must be restricted necessarily to existence of the arbitration agreement and nothing else, leaving all other matters to the jurisdiction of the Learned Arbitral Tribunal.

¹ HPCL Bio Fuel vs. HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad - 2024 SCC OnLine SC 3190

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 Supreme Court's decision rendered by a seven-judge Bench in the *Interplay Judgement*² followed by multiple others, including *SBI General*³ and *Patel*⁴ 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 Agreements to arbitration by a Sole Arbitrator.

7. In these circumstances, no useful purpose would be served by keeping this matter pending any further on the docket of this Court. This Application is *finally disposed of* in the following terms :-

A] Mr. Rubin Vakil, 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 Agreements referred to above ;

² In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 - (2024) 6 SCC 1

³ SBI General Insurance Co. Ltd. Vs. Krish Spinning - 2024 SCC OnLine SC 1754

⁴ Ajay Madhusudan Patel Vs. Jyotrindra S. Patel - 2024 SCC OnLine SC 2597

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B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate 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 Advocate for the Applicant 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 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.]