
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.233 OF 2025

Shree Siddhivinayak Classic
Construction Pvt. Ltd. & Anr.

....Applicants

Versus

IIFL Finance Limited & Anr.

...Respondents

Mr. Parimal K. Shroff, Senior Advocate *a/w. Sachin Randey i/b. M/s. Parimal K. Shroff & Co., Advocates for Applicants.*

Mr. Saurabh Nikalje *a/w. Nikita Menon i/b. Dua Associates, Advocates for Respondent No.1.*

Mr. Charles De Souza *a/w. Mr. Manaswi Agrawal, Advocates for Respondent No.2.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JULY 09, 2025

ORAL JUDGMENT :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***). The disputes and differences between the parties relate to a Settlement Agreement dated February 16, 2022 (***“Settlement Agreement”***), executed between Respondent No.1-IIFL Finance Limited (***“IIFL”***) and the Applicant No.1-Shree Siddhivinayak Classic Construction Pvt. Ltd. and Applicant No.2- K.D. Lite Developers Private Limited (***“Applicants”***).

2. The settlement pertains to a Loan Agreement which eventually stood assigned by IIFL to Respondent No.2-Assets Care and Reconstruction Enterprise Ltd. (***“ACRE”***) by an Assignment Agreement dated June 28, 2022 (***“Assignment Agreement”***). The entire bundle of rights and liabilities, including the rights flowing from the Settlement Agreement, stood assigned pursuant to the Assignment Agreement.

3. Learned Senior Counsel for the Applicants submits that the disputes and differences in terms of quantification as well as the attribution of payments made before and after the assignment need to be reconciled in the course of dispute resolution. Consequently, arbitration has been invoked by a Notice dated February 19, 2025.

4. The invocation is strongly resisted by IIFL on the ground that having assigned the rights flowing from the Loan Agreement, IIFL is no longer a party to any dispute or difference arising from it; and by ACRE, on the premise that the existence of an arbitration agreement is itself in doubt, owing to a subsequent settlement having been reached between the Applicants and ACRE, and that settlement not having been complied with by the Applicants. Specifically, it is the case of ACRE that in view of non-compliance with the terms of the second settlement and by the very terms of the second settlement with ACRE, the original arbitration agreement ceases to exist.

5. Proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*“SARFAESI Act”*) are also underway. Likewise, IIFL is said to have moved the Economic Offences Wing of the Mumbai Police against the Applicants.

6. Learned Counsel for the parties have made copious submissions in this regard. On the face of the record, it is apparent that a Settlement Agreement had been reached on February 16, 2022, between the Applicants and IIFL. The arbitration agreement contained therein provides for referral of any dispute arising out of, in relation to or in connection with any of the Financing Documents, including the Settlement Agreement itself in respect of any question regarding the existence, validity or termination of such documents to arbitration.

7. The assignment of the bundle of rights took place on June 28, 2022, from IIFL to ACRE by an Assignment Agreement. It appears that IIFL continued to collect payments pursuant to obligations owed under the Loan Agreement. Thereafter, on September 27, 2022, the Applicants wrote to ACRE proposing a settlement in respect of the balance amounts owed, and on September 30, 2022, ACRE wrote back to the Applicants sanctioning a settlement, stating that the Sanction Letter would supersede all earlier terms, conditions and

understandings including the Settlement Agreement dated February 16, 2022, between the Applicants and IIFL.

8. However, on February 21, 2023, ACRE revoked the settlement reached by exchange of letters in September 2022. Consequently, the issue that arises is whether the original supersession of the earlier Settlement Agreement stood superseded and whether the contention that the arbitration agreement came to an end would be undermined by the arbitration agreement coming back to life if at all it could be said to have expired.

9. Despite the length of arguments in the matter, what is writ large on the face of record is that there is a formally executed arbitration agreement contained in a settlement between IIFL and the Applicants. The Loan Agreement along with all attendant rights and obligations stood assigned to ACRE. Whether that agreement stood superseded; whether the supersession would bring to an end the arbitration agreement contained therein; whether subsisting disputes and differences between the Applicants and IIFL would not be subject to resolution by arbitration; and whether disputes and difference between the Applicants and ACRE would be covered by the arbitration agreement, are all questions of existential detail and not a matter of formal existence of a validly executed contract, which alone would fall

within the scope of examination by this Court under Section 11(6A) of the Act.

10. Having given my consideration to the foregoing, in my opinion, it would be appropriate to leave it to the parties to address the arbitral tribunal, that must necessarily be constituted on the basis of the existence of a formal arbitration agreement, on these issues. The issues being raised on behalf of the Respondents go to the root of existential validity and not formal existence of the arbitration agreement. In taking this view, the views expressed by a three-judge Bench of the Supreme Court in *Sanjiv Prakash vs. Seema Kukreja & Ors.*¹ would be instructive. Para 22 of the said judgment is extracted below :-

“22. Judged by the aforesaid tests, it is obvious that whether the MoU has been novated by the SHA dated 12-4-1996 requires a detailed consideration of the clauses of the two agreements, together with the surrounding circumstances in which these agreements were entered into, and a full consideration of the law on the subject. None of this can be done given the limited jurisdiction of a court under Section 11 of the 1996 Act. As has been held in para 148 of Vidya Drolia, detailed arguments on whether an agreement which contains an arbitration clause has or has not been novated cannot possibly be decided in exercise of a limited prima facie review as to whether an arbitration agreement exists between the parties. Also, this case does not fall within the category of cases which ousts arbitration altogether, such as matters which are in rem proceedings or cases which, without doubt, concern minors, lunatics or other persons incompetent to contract. There is nothing vexatious or frivolous in the plea taken by the appellant. On the

¹ *Sanjiv Prakash vs. Seema Kukreja & Ors.* – 2021 9 SCC 732

contrary, a Section 11 court would refer the matter when contentions relating to non-arbitrability are plainly arguable, or when facts are contested. The court cannot, at this stage, enter into a mini trial or elaborate review of the facts and law which would usurp the jurisdiction of the Arbitral Tribunal.”

[Emphasis Supplied]

11. The Supreme Court is clear in its view that when there is nothing vexatious or frivolous in the pleas being taken by the Respondent, the Section 11 Court should simply examine whether the contentions relating to non-arbitrability are plainly arguable or whether the facts necessary to answer the issue are contested. At this stage of the Section 11 proceedings, it is not open to the Section 11 Court to conduct a mini trial or an elaborate review of the facts and the law. Such conduct would end up usurping the jurisdiction of the Learned Arbitral Tribunal.

12. Consequently, considering the complex nature of facts and the flow of events demonstrable from the record, and the fact that the parties have engaged in multiple rounds of settlement attempting to resolve their disputes and have also had multiple rounds of revocation, the question of existential validity of the arbitration agreement is left to the Learned Arbitral Tribunal. An appropriate application may be made by either or both the Respondents before the Learned Arbitral Tribunal under Section 16 of the Act. Whether to hear such issue as a

preliminary issue upfront or whether to have parties lead evidence to be able to answer the question even if it were a preliminary issue, is a decision that falls squarely in the domain of the Learned Arbitral Tribunal, and I do not intend to interfere with the same.

13. I have also given my anxious consideration to a judgment of the Learned Single Judge of the Delhi High Court relied upon by the Respondents in *B.L. Kashyap and Sons Ltd. vs. Mist Avenue Private Limited*² where the law has been summarized in the view of a Learned Single Judge, in Para 24 which bears reproduction :-

“24. For the purposes of the present case, the following principles emerge from these authorities:

- a. An arbitration clause contained in an agreement which is void ab initio cannot be enforced as the contract itself never legally came into existence.*
- b. A validly executed contract can also be extinguished by a subsequent agreement between the parties.*
- c. If the original contract remains in existence, for the purposes of disputes in connection with issues of repudiation, frustration, breach, etc., the arbitration clause contained therein continues to operate for those purposes.*
- d. Where the new contract constitutes a wholesale novation of the original contract, the arbitration clause would also stand extinguished by virtue of the new agreement.”*

[Emphasis Supplied]

² *B.L. Kashyap and Sons Ltd. vs. Mist Avenue Private Ltd. – 2023 SCC OnLine Del 3518*

14. In my opinion, there would be no cause for me to examine these issues in the jurisdiction in which these proceedings are being considered. Each of these principles may be considered by the Learned Arbitral Tribunal being constituted hereby.

15. Likewise, it would not be appropriate to adopt principles of law obtaining from a three-judge bench of Supreme Court rendered in the 1950s, in the case of *Union of India vs. Kishorilal Gupta & Bros*³ as cited by the Respondents. That judgement addresses the position in law obtaining under The Arbitration Act, 1940 ("**1940 Act**") while a significant departure has been made from the 1940 Act, with particular regard to the scope of intervention of a Court, particularly under Section 11 of the Act.

16. In these circumstances, in my opinion, it would be inappropriate to dwell into minute detail of the flow of claimed repudiations between the parties. Doing so would lead to conducting a trial to discern the existential substance of the arbitration agreement. The arbitration agreement having been reached between the Applicants and IIFL; that agreement having been assigned by IIFL to ACRE; IIFL having continued to collect amounts under the Loan Agreement even after the assignment (which may make it a veritable party even after assignment, although it was potentially a servicing agent for the loans assigned); the

³ *Union of India vs. Kishorilal Gupta & Bros – 1959 SCC Online SC 6*

relationship with ACRE having been governed by the Assignment Agreement for some time before a new settlement was reached between the Applicants and ACRE, it would be appropriate to refer the disputes and differences covered by this Application to a Learned Arbitral Tribunal.

17. In these circumstances, I do not see any reason not to refer the parties to arbitration leaving all contentions on arbitrability open for consideration before the Learned Arbitral Tribunal under Section 16 of the Act.

18. With the aforesaid observations and directions, this Application is hereby *finally disposed of*, in terms of the following order:

A] Justice (Retd.) V.C. Daga, a former judge 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;

Mumbai Office: 51 Rajgir Chambers, 6th Floor,
Opp. Old Custom House,
12/14 Shahid Bhagat Singh Road,
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 today. 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;

D] 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.

19. 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 Learned Arbitral Tribunal appointed hereby.

20. 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.]