

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

COMMERCIAL ARBITRATION APPLICATION (L) NO. 34700 OF 2025

Sakuma Exports Limited ,	]	
A Public Limited Company	]	
incorporated under the provisions of	]	
the Indian Companies Act, 1956	]	
having its registered office at	]	
A-301, Aurus Chambers S.S. Amrutwar	]	
Lane, Worli, Mumbai – 400 013.	]	Applicant.

V/s

Suzlon Energy Limited	]	
(Formerly SUZLON GLOBAL	]	
SERVICES LTD.)	]	
A Private Limited Company incorporated	]	
under the Companies Act, 2013	]	
having its registered Office at Suzlon 5,	]	
Shrimali Society, Near Shri Krishna	]	
Complex, Navrangpura, Ahmedabad,	]	
Gujarat – 380 009.	]	
Having Corporate Office at:	]	
5 th Floor, Godrej Millennium Building,	]	
9 Koregaon Park Road, Pune-411001,	]	
Maharashtra	]	Respondent.

WITH

COMMERCIAL ARBITRATION APPLICATION NO. 410 OF 2025

Suzlon Energy Limited	]	
(Formerly Suzlon Global Services Limited)	]	
A Company, incorporated under the	]	
provisions of the Companies Act, 2013,	]	
having its registered office at Suzlon, 5,	]	
Shirmali Society, Navrangpura, Ahmedabad,	]	
Gujarat – 380009	]	Applicant.

V/s

Sakuma Exports Limited	]
A Company, incorporated under the	]
provisions of the Companies Act, 2013,	]
having its registered office at 301 – A,	]

Aurus Chambers, S. S. Amrutwar Lane,]
Near Mahindra Tower, Worli,]
Mumbai – 400 013, Maharashtra]Respondent.

Mr. Bhuvan Singh with Mr. Santosh Thakur, Advocates for Sakuma Exports Limited - the Applicant in Commercial Application (Lodging) No.34700 of 2024 and for the Respondent in Commercial Application No.410 of 2025.

Ms. Priyanka Pandey, Advocate for Suzlon Energy Limited - the Applicant in Commercial Arbitration Application No.410 of 2025 and for the Respondent in Commercial Arbitration Application (L) No.34700 of 2024.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 15TH DECEMBER 2025.

P.C. :

1. This application is filed by Sakuma Exports Limited (hereinafter referred to as “**Sakuma**”) seeking appointment of the third / presiding arbitrator, as the parties are unable to agree upon the name of the arbitrator.

2. Ms. Priyanka Pandey, learned counsel for Suzlon Energy Limited (hereinafter referred to as “**Suzlon**”) submits that her client has also filed a Section 11 application, being Commercial Arbitration Petition No. 410 of 2025, arising out of the same contract between the same parties, and prays that the same be taken on board. In view thereof, although Commercial Arbitration Petition No. 410 of 2025 is not listed, by consent of the parties it is taken on board and heard

along with the present application. Both these applications are considered together and for the sake of convenience the parties are referred by their original names.

3. The common facts in both these Section 11 Applications are as follows:-

(a) On 10th September 2008, the parties executed two separate Operation and Management Agreements (Service Only) and two Maintenance (with Parts and Consumables) Agreements (hereinafter referred to as “**Agreements**”) in respect of Wind Turbine Generators nos. M518 and M537, respectively. Certain provisions of these Agreements were subsequently amended, but that is not relevant for deciding these Applications. The arbitration agreement contained at clause 11 of the Agreements under the heading ‘DISPUTE RESOLUTION’ reads as under:-

“11. DISPUTE RESOLUTION

The parties hereto shall attempt to resolve all differences and disputes first through mutual discussions and in keeping with the spirit of this Agreement. In the event that the Parties hereto are unable to settle the dispute or difference or fail to negotiate their differences whether relating to the interpretation, meaning, validity, existence or breach of this Agreement or any clause herein, the aggrieved Party shall by giving a Notice to the other Party be entitled to invoke the arbitration provisions of this agreement.

The reference shall be to three arbitrators, one to be appointed by SISL, the other to be appointed by the Company and the third being the presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The Parties shall be bound by the nomination of the presiding arbitrator.

The Notice should accurately set out the disputes between the Parties, the intention of the aggrieved Party to refer such disputes to arbitration as provided herein and the name of the person it seeks to appoint as an arbitrator with a request to the other Party to appoint its arbitrator within 30 days from the receipt of the notice. All notices by one Party to the other in connection with the arbitration shall be in writing and shall be made as provided in this agreement.

If the other Party fails to appoint an arbitrator within 30 days from the receipt of the request to do so from the aggrieved Party or if the two (2) appointed arbitrators fail to agree on the presiding arbitrator within 30 days from the date of the last appointment of the arbitrator, the Parties shall be free to approach the Court in Mumbai city for appointment of the arbitrator or the presiding arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the decision of such Court shall be final and binding on the Parties.

The Arbitrators shall hold their sittings at Mumbai.

The Award of the majority of the Arbitrators shall be final and binding on the parties.

The arbitration shall be conducted according to the provisions of the Arbitration and Conciliation Act 1996 or any statutory modification or reenactment thereof.”

(b) It is alleged by Sakuma that there were defaults in performance and hence Suzlon's invoices under the said Agreements were not paid. Sakuma has a claim for liquidated damages, penalty and

compensation due to breaches by Suzlon whereas Suzlon has a claim for unpaid invoices of Rs. 75,86,954/- with interest. There may be several other claims and counterclaims between the parties for costs, charges and damages. Disputes arose between the parties and on 3rd January 2025, Sakuma through its advocates invoked arbitration under clause 11 of the Agreements and nominated Mr. Ankur Lodha as its nominee arbitrator since the arbitration clause provides for a three-member Tribunal.

(c) Suzlon, through its advocate's letter dated 5th February 2025 denied the notice on merits and reiterated its claims. As regards the nominee arbitrator proposed by Sakuma, Suzlon recommended and suggested that a sole arbitrator be appointed to resolve the disputes between the parties. It was clarified that this is without prejudice to Suzlon's right to nominate an arbitrator under the Agreements in case Sakuma did not agree to the appointment of a sole arbitrator.

(d) On 12th February 2025, Sakuma by their advocate's letter reconfirmed the appointment of Mr. Lodha as their nominee arbitrator and proposed his name as the sole arbitrator. Sakuma called upon Suzlon to convey its consent if it desired to proceed with arbitration before Mr. Lodha as a sole arbitrator.

(e) On 18th February 2025, Suzlon's advocates rejected the proposal of Mr. Lodha acting as the sole arbitrator and *inter alia* stated as follows:

"2. Our client appreciates your client's willingness to mutually appoint a sole arbitrator instead of proceeding with a three-member arbitral tribunal, as originally stipulated under the O & M Agreements. However, our client does not give consent to the nomination of Mr. Ankur Lodha as the sole arbitrator to adjudicate the dispute that has arisen between the parties.

3. Instead, our client proposes name of Mr. Rajeev Singh, Advocate to be appointed as the sole arbitrator to adjudicate the disputes and differences that have arisen between the parties. Mr. Singh is an independent counsel having more than 16 years' experience in dealing with commercial disputes, particularly in international and domestic arbitration and related litigation. Our client requests your client to concur with the nomination of Mr. Rajeev Singh, preferably within seven (7) days from the date of receipt of this letter."

4. It is in these circumstances that both the Applications have been filed. In my view, the above correspondence demonstrates that:

(i) Both parties are *ad idem* as to the existence of the arbitration clause contained in the Agreements, copies whereof are placed at pages 181, 196, 214 and 228 of Commercial Arbitration Petition No. 410 of 2025; and

(ii) There was correspondence between the parties regarding the appointment of Mr. Ankur Lodha as a sole arbitrator. However, no consensus was arrived at on his appointment as a sole arbitrator.

Consequently, Sakuma reiterated the nomination of Mr. Ankur Lodha as its nominee arbitrator, while Suzlon proposed the name of Mr. Rajeev Singh as its nominee arbitrator to resolve the disputes that have arisen between the parties.

5. The arbitration agreement provides for a three-member tribunal. The arbitration agreement is in existence and both parties have appointed their respective nominee arbitrators in terms of the Agreements. The two arbitrators have failed to appoint/agree on the presiding arbitrator within 30 days from the appointment of the last nominee arbitrator. It is settled law as held by the Hon'ble Supreme Court in *Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re* (2024) 6 SCC 1 and followed in subsequent judgment in the case of *SBI General Insurance Company Vs. Krish Spinning*, (2025) 3 SCC (Civ) 567 that the Section 11 Court ought not to venture beyond the existence of a validly existing arbitration agreement.

6. Being satisfied that a valid arbitration agreement exists and that arbitration has been duly invoked, I refer all disputes and differences between the parties arising under the above Agreements to one arbitration by an Arbitral Tribunal comprising three members.

Since Sakuma has invoked the arbitration, it shall be the Claimant and Suzlon shall be the Respondent/Counterclaimant in the arbitration. In these circumstances, **Commercial Arbitration Application No. 410 of 2025** and **Commercial Arbitration Application (L) No. 34700 of 2025** are disposed of in the following terms:-

[A] Shri Justice Adarsh Kumar Goel, former Judge of the Supreme Court of India is appointed as a presiding arbitrator in a Tribunal comprising of Shri Ankur Lodha, Advocate and Shri Rajeev Singh, Advocate as co-arbitrators to adjudicate upon all disputes and differences between the parties arising out of and in connection with the Agreements referred to above. The contact details of the presiding arbitrator are “C-2/24, Ground Floor, Safdarjung Development Area, New Delhi-110016, Mobile Nos.9910213040 & 9540844151, E-mail:pstojusticeakgoel@gmail.com/adarshkgoel@gmail.com”.

[B] A copy of this order will be communicated to all members of the Tribunal by the Advocate for Sakuma within a period of one week from the date on which this order is uploaded on the website of this Court.

[C] The members of the Tribunal are requested to forward their statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the advocates for both parties to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statements on the file of this Arbitration Application;

[D] The parties shall appear before the Arbitral Tribunal on such date as indicated to obtain appropriate directions regarding conduct of the arbitration including fixing schedule for pleadings, examination of witnesses, schedule of hearings etc. All initial meetings including for directions shall be held in virtual mode. At such meeting, the parties shall provide a valid and functional e-mail address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such e-mail addresses shall constitute valid service of correspondence in connection with the arbitration;

[E] The fees of the Tribunal shall be as per the Fourth Schedule of the Act read with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018. 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.

[F] All issues, claims and counterclaims are kept open to be agitated before the Tribunal.

[G] The arbitration shall be held at Mumbai.

[GAUTAM A. ANKHAD, J.]

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