

HON'BLE SRI JUSTICE K. LAKSHMAN**ARBITRATION APPLICATION NOs.182 AND 199 OF 2024****COMMON ORDER:**

Both the applications arise from a common set of facts. Therefore, both the Applications were heard together and disposed of by way of this **common order:-**

2. Heard Sri Nizampur Chandrasekhar, learned counsel for the Applicant and Sri Sai Sanjay Suraneni, learned counsel for the respondents.

3. These Arbitration Applications are filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act, 1996') for appointment of a sole arbitrator to adjudicate the disputes between the parties under the ESOPS-13 Scheme.

Facts of the case:

4. The Applicant in both the applications is Shriram Life Insurance Company Limited. The two applications pertain to disputes with two former employees, i.e., Mr. Arvind Shivhare (respondent in Arb. Appln. No. 182 of 2024) and Sahil Khan (respondent in Arb.Appln.No. 199 of 2024). Both respondents

were previously employed with the Applicant company and were allotted ESOP shares under the ESOPS-13 Scheme, dated 23.06.2014, as a recognition of their services.

5. According to the Applicant, the ESOPS-13 Scheme mandates that any employee who resigns and wishes to sell their ESOP shares must first offer them to the Trust at the exercise price plus 6% IRR, as specified under Clause 13. However, the respondents allegedly sold their shares without offering them to the Trust, which the Applicant contends is a gross violation of the Scheme. Upon discovering the unauthorized sale, the Applicant issued legal notices to both respondents on 17.08.2021, demanding re-transfer of the shares to the Trust. Despite receiving replies from the respondents denying the allegations, the Applicant invoked the arbitration clause on 26.10.2021, appointing Sri P.V.V. Gopala Krishna Murthy, as the sole arbitrator.

6. The arbitration proceedings were terminated by the sole arbitrator, Sri P.V.V. Gopala Krishna Murthy, on 09.02.2023. The termination occurred due to non-cooperation from the respondents and concerns regarding the arbitrator's impartiality, particularly

after the respondents raised objections on the grounds of bias and lack of neutrality.

7. The Applicant herein contends that the unilateral transfer of shares without offering them to the Trust violates the terms of the ESOPS-13 Scheme. The ESOPS-13 clause establishes preemptive rights for the Trust, aimed at preventing dilution of ownership before the company's shares are listed on a recognized stock exchange. Further, the Applicant asserts that the respondents' act of selling shares to third parties, without honouring the right of first refusal, undermines the core objective of the Scheme.

8. The Applicant contends that after the appointment of the arbitrator, the respondents challenged the appointment on the grounds of bias and impartiality. Consequently, the arbitrator terminated the arbitral proceedings on 09.02.2023, citing non-cooperation and concerns over maintaining impartiality. The Applicant submits that this termination did not address the substantive dispute, leaving the matter unresolved, and hence seeks the appointment of a substitute arbitrator under Section 11(6) of the Act.

9. The respondent in Arb. Appln. No. 182 of 2024 contends that there is no valid arbitration agreement in respect of the reliefs sought, as the claimant trust is not a party to the arbitration agreement. The respondents assert that the Applicant demand for the transfer of shares to the Trust falls outside the purview of the arbitration clause. Additionally, the respondents also contends that the Applicant did not adhere to the proper procedure for the appointment of a substitute arbitrator as mandated under Section 15(2) of the Act.

10. In Arb. Appln. No. 199 of 2024, the respondent contends that the arbitration application is not maintainable as the dispute pertains to the transfer of shares to third parties who are not bound by the arbitration agreement. The respondents further contends that after termination of proceedings by the learned arbitrator, the Applicant should have issued a fresh notice under the arbitration clause before seeking intervention of Court.

11. From the contentions of the parties it is clear that there is a dispute regarding the sale of shares and about violation of the ESOPS-13 Scheme. The question whether dispute is outside the

purview of the arbitration clause can only be decided by the arbitrator. It is pertinent to note that the Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning**¹, has held that while deciding an application to appoint an arbitrator, the only test is to see whether a *prima facie* arbitration agreement exists. The relevant paragraph is extracted below:

114. In view of the observations made by this Court in *In Re : Interplay* (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia* (supra) and adopted in *NTPC v. SPML* (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out *ex-facie* non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *In Re : Interplay* (supra).

¹2024 SCC OnLine SC 1754.

12. Therefore, the contention of the respondent that the dispute falls outside the purview of arbitration and concerns third parties is to be adjudicated by the arbitrator.

13. Now coming to the other contention of the respondent that the applicant ought to have filed an application under Section 15 (2) and not Section 11. As stated above, the respondent contended that the earlier arbitrator had recused and withdrawn himself from the proceedings, therefore, a substitute arbitrator under Section 15 (2) ought to be appointed. The said contention cannot be accepted.

14. It is trite law that a substitute arbitrator is to be appointed in the same mode and manner as the earlier arbitrator. However, where an appointment of the earlier arbitrator was under a defective arbitration clause or where such an appointment was under an unlawful procedure, a new arbitrator under Section 11 can be appointed. In such cases, Section 12 (5) cannot be invoked. The facts of the present case make the position much clearer.

15. In the present case, the earlier arbitrator, i.e., Sri P.V.V. Gopala Krishna Murthy was appointed under the following arbitration clause (Clause 15.14):

All disputes arising out of or in connection with the Scheme or the right may be referred to Arbitration to a single arbitrator to be appointed by Shriram Life Insurance Company. Arbitration proceedings shall be in accordance with the provisions of the Arbitration and Conciliation Act 1996. And the place of arbitration shall be Hyderabad, India.

16. As can be seen above, the clause provides for unilateral appointment of arbitrator. In **Perkins Eastman Architects DPC v. HSCC (India) Ltd**², the Supreme Court had held that unilateral appointment of arbitrators is impermissible. Therefore, such clauses cannot be enforced. In the present case, the earlier arbitrator was unilaterally appointed under Clause 15.14. Therefore, such appointment, irrespective of the subsequent withdrawal by the arbitrator, was illegal.

17. As the earlier appointment of the arbitrator was under an unlawful clause, the procedure under the said clause cannot be reinvoked to appoint a substitute arbitrator. In other words, where

²2019 SCC OnLine SC 1517

the earlier arbitrator was appointed under an unlawful/illegal procedure, the said-same procedure cannot be invoked under Section 15 (2) to appoint a subsequent arbitrator.

18. Though Section 15 (2) of the Act, cannot be invoked in a case such as this, the intention to arbitrate still remains enforceable. Therefore, given Clause 15.14 and the disputes between the parties, this Court deems it appropriate to appoint a sole arbitrator to adjudicate the claims of the parties.

19. Therefore, the present Arbitration Applications are allowed. **Sri K.Sudharshan, Retired District Judge, H.No.8-7-97/85/P-II/74, Agriculture Colony, Hasthinapuram, Hyderabad-500079, Mobile No.9866415720**, is appointed as sole Arbitrator to adjudicate the disputes between the parties. The parties are at liberty to take all the defences before the learned sole Arbitrator.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE K. LAKSHMAN,

Date:09.06.2025

Vvr.