



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

[COMMERCIAL DIVISION]

COMMERCIAL ARBITRATION APPLICATION
(LODGING) NO.25035 OF 2024

Rajuram Sawaji Purohit,]
Sole Proprietor of :]
M/s. Mactec Realtors & Developers,]
having office at A/15, Daruwala Wadi CHSL,]
31, Dr. D.B. Marg, Mumbai Central,]
Mumbai – 400 008.] .. Applicant

Versus

The Shandar Interior Private Limited,]
having registered office at Anuradha Apartment,]
64 Navi Peth, L.B. Shastri Road,]
Pune – 411 030] .. Respondent

Mr. Mayur Khandeparkar with Mr. Anuj Desai and Mr. Umesh Tawari,
Advocates, i/by S. Ashwinikumar & Co. LLP, for the Applicant.

Mr. Sheelang Shah with Mr. Nirmal Chopda, Advocates, i/by Vraj Legal, for
the Respondent.

CORAM : GAUTAM A. ANKHAD, J.

RESERVED ON : 3RD OCTOBER 2025.

PRONOUNCED ON : 10TH OCTOBER 2025.

ORDER :

1. Disputes have arisen under an Agreement for Purchase of salvage material dated 29th November 2011 (“**Agreement**”). The Applicant had paid a Security Deposit of Rs.51,38,000/- to the Respondent, which is the subject matter of legal proceedings including this one. After a round of Winding-up

Petition being Company Petition No.269 of 2016 and a Commercial Summary Suit No.721 of 2018, this Court in the said Suit, by consent of parties, referred the parties to arbitration (**first round**). An award was passed on 6th June 2022 by the Tribunal *inter alia* holding that the Applicant's claims are barred by limitation (**"Award"**). The Applicant's Section 34 Petition (Commercial Arbitration Petition No.305 of 2023) was allowed by this Court on 7th February 2024 and the Award was set aside in its entirety. The Applicant filed Interim Application (Lodging) No.10052 of 2024 for correction of order dated 7th February 2024. This was also rejected by the Section 34 Court by an order dated 11th July 2024. The Applicant has now filed this Section 11 Application seeking appointment of an Arbitrator to adjudicate the same disputes that have arisen between the parties under the said Agreement (**second round**). After this Application was filed, the Applicant has also filed a Section 37 Appeal (Commercial Arbitration Appeal (Lodging) No.31017 of 2024) in which the following order has been passed on 26th June 2024 :-

- "1. Learned counsel for the appellant submits that the controversy involved in the instant appeal is squarely covered by the Constitution Bench decision of the Supreme Court in Gayatri Balasamy vs. ISG Novasoft Technologies Limited, reported in 2025 SCC OnLine SC 986.*
- 2. Heard on the question of admission.*
- 3. Issue notice to the respondent, returnable on 28th July 2025.*
- 4. Mr. Shah, learned counsel appears on behalf of the respondent and waives service of notice."*

2. Mr. Khandeparkar, learned counsel for the Applicant submits that it is open for the Applicant to re-initiate arbitration and begin the entire process once again even though the Applicant's Section 37 Appeal is pending. He submits that the learned Arbitrator has held that although the Agreement is legal, binding and enforceable, the Applicant's claims have been dismissed as being barred by limitation. Consequently, the Tribunal has held that the Applicant is not entitled to the refund of Security Deposit of Rs.51,38,000/-. Upon the Applicant's challenge, the entire Award was set aside by the Section 34 Court. The second order dated 11th February 2024 passed in the Section 34 proceedings recognizes that the Applicant has to start the arbitration proceedings *de novo* in the following terms :

“13. Further, this Court cannot in exercise of jurisdiction under Section 34 of the Arbitration Act modify an Award by allowing the Petitioner's claim which is precisely what the present Application has called upon this Court to do. Although this results in an unfortunate circumstance, where though the Petitioner has succeeded on merits viz. Issue Nos.1, 2 and 3, being decided in its favour and the sole ground for setting aside the Petitioner's claim is limitation which ground has been set aside, the Petitioner is unable to have its claim decided in its favour. The Petitioner would have to resort to de novo arbitration in respect of all the issues. However, as the law stands, this Court cannot modify an Award, but can only uphold or set it aside the Award.”

3. It is submitted that after passing of the above Section 34 order, the law on modification/severing the award was settled in ***Gayatri Balasamy Vs. ISG***

Novasoft Technologies Limited, 2025 SCC OnLine SC 986. He submitted that it is open for Court to appoint an Arbitrator and all issues can be adjudicated by the Tribunal. Reliance was placed on the judgment of this Court in ***Wadhwa Group Holdings Private Limited Vs. Homi Pheroze Ghandy & Anr., [Commercial Arbitration Application No.414 of 2019, dated 7th March 2022]***, wherein this Court has appointed an Arbitrator in a second round pending Section 37 Appeal. It is submitted that the Section 11 Court is only required to examine the existence of a valid arbitration agreement. It is not required to examine the issue of *res judicata* and whether the issue is covered by the first arbitration and leave that for determination by the Tribunal. It is prayed that the present Arbitration Application ought to be allowed and this Court should appoint an arbitrator to adjudicate the disputes between the parties.

4. Mr. Sheelang Shah, learned counsel for the Respondent opposes this Application *inter alia* on the ground that there cannot be multiple rounds of litigation on the same issue. There must be a finality to litigation. The claim is time-barred. It is a finding of fact as determined by the Tribunal. The Award has been set aside by the Section 34 Court and is now under challenge in a Section 37 Appeal. The said Appeal is pending before the Division Bench of this Court. The Respondent's Section 37 Appeal is also pending. This

Application is premature and the Applicant must await the outcome of the Appeals. Also any order passed by the proposed Tribunal in the second round may result in conflicting orders/awards from what the Division Bench in the Section 37 Appeals or the Hon'ble Supreme Court may ultimately decide in the first round. The Applicant has also not issued fresh notice of invoking arbitration which is required under Section 21 of the Act. Thus, this Application is not maintainable and ought to be dismissed. In any case, a party cannot be put to unnecessary costs of litigation.

Analysis and Finding:

5. I have perused the record and heard the learned Counsels for the parties at length. Whilst the arguments advanced by Mr. Shah are appealing on a first blush, I am bound by the decisions of this Court where in similar situations, an arbitrator has been appointed by this Court. Apart from the judgment in ***Wadhwa Group Holdings Private Limited (supra)***, recently, this Court considered a similar argument in ***Batliboi Environmental Engineers Ltd. Vs. Hindustan Petroleum Corporation Ltd., 2023 SCC OnLine SC 1208*** and appointed an Arbitrator.

6. The jurisdiction of Section 11 court is now limited. It is only required to examine the existence of an arbitration agreement. This Court cannot conduct

an intricate evidentiary inquiry into questions of whether the claims raised by the Applicant are time barred or whether the issue is barred by principles of res judicata. Determination of these contested facts will have to be left to the arbitrator. Admittedly an arbitration agreement exists between the parties at clause 16 of the said Agreement. It is also pertinent to note that the section 34 proceedings have been concluded and the Award dated 6th June 2022 has been set aside. Whilst doing so, the Section 34 Court expressly held that the Applicant would have to resort to de novo arbitration in respect of all issues, since it had no power to modify the Award. The position of law has now been clarified in **Gayatri Balasamy (supra)**. Whilst the Section 37 Appeals are pending, this court presides in a limited jurisdiction under Section 11 of the Act, when an application for appointment of an Arbitrator is filed.

7. 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 examining the existence of an arbitration agreement. The pendency of any proceeding mentioned hereinabove cannot be an impediment

to appoint an arbitrator in this Application. All other issues must be agitated before the Arbitral Tribunal. In a similar situation, the Hon'ble Supreme Court in **"Cox and Kings v. SAP India Pvt. Ltd. & Anr."**, (2025) 1 SCC 611 has appointed an arbitrator, whilst the first arbitration was pending adjudication, the relevant portion of which reads as under:

"F. Analysis

27. *Having heard the learned counsel appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether the application of the petitioner for the appointment of an arbitrator deserves to be allowed.*

28. *On the scope of powers of the referral court at the stage of Section 11(6), it was observed by us in Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.[Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd., (2024) 4 SCC 341 : (2024) 2 SCC (Civ) 763 : 2023 INSC 976] as follows : (SCC p. 363, para 26)*

"26. Taking cognizance of the legislative change, this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd.[Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , noted that post 2015 Amendment, the jurisdiction of the Court under Section 11(6) of the 1996 Act is limited to examining whether an arbitration agreement exists between the parties — "nothing more, nothing less"." (emphasis supplied)

29. *A Constitution Bench of this Court in Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , speaking through one of us (Dr D.Y. Chandrachud, C.J.), considered the scope of judicial interference by the referral court in a Section 11 application. A few relevant*

observations made therein are reproduced hereinbelow : (SCC p. 62, para 88)

“88. One of the main objectives behind the enactment of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process by confining it only to the circumstances stipulated by the legislature. For instance, Section 16 of the Arbitration Act provides that the Arbitral Tribunal may rule on its own jurisdiction ‘including ruling on any objection with respect to the existence or validity of the arbitration agreement’. The effect of Section 16, bearing in view the principle of minimum judicial interference, is that judicial authorities cannot intervene in matters dealing with the jurisdiction of the Arbitral Tribunal. Although Sections 8 and 11 allow Courts to refer parties to arbitration or appoint arbitrators, Section 5 limits the Courts from dealing with substantive objections pertaining to the existence and validity of arbitration agreements at the referral or appointment stage. A referral court at Section 8 or Section 11 stage can only enter into a *prima facie* determination. The legislative mandate of *prima facie* determination ensures that the referral courts do not trammel the Arbitral Tribunal's authority to rule on its own jurisdiction.”

30. In a recent decision in *SBI General Insurance Co. Ltd. v Krish Spg.* [SBI General Insurance Co. Ltd. v Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , it was observed by us that the Arbitral Tribunal is the preferred first authority to look into the questions of arbitrability and jurisdiction, and the courts at the referral stage should not venture into contested questions involving complex facts. A few relevant paragraphs of the said decision are extracted hereinbelow : (SCC paras 101, 117 & 128)

“101. What follows from the negative facet of arbitral autonomy when applied in the context of Section 16 is that the national courts are prohibited from interfering in matters pertaining to the jurisdiction of the Arbitral Tribunal, as exclusive jurisdiction on

those aspects vests with the Arbitral Tribunal. The legislative mandate of prima facie determination at the stage of Sections 8 and 11, respectively, ensures that the referral courts do not end up venturing into what is intended by the legislature to be the exclusive domain of the Arbitral Tribunal.

117. *In view of the observations made by this Court inInterplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , 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. ...*

128. *We are also of the view that ex facie frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."*

(emphasis supplied)

- 32.***As discussed above, the respondents have raised a number of objections against the present petition, however, none of the objections raised question or deny the existence of the arbitration agreement under which the arbitration has been invoked by the petitioner in the present case. Thus, the requirement of prima facie existence of an arbitration agreement, as stipulated under Section 11 of the 1996 Act, is satisfied.*

33.*Once the Arbitral Tribunal is constituted, it shall be open for the respondents to raise all the available objections in law, and it is only after (and if) the preliminary objections are considered and rejected by the tribunal that it shall proceed to adjudicate the claims of the petitioner.*

35.*In view of the aforesaid, the present petition is allowed. We appoint Shri Justice Mohit S. Shah, former Chief Justice of the High Court of Judicature at Bombay to act as the sole arbitrator. The fees of the arbitrator including other modalities shall be fixed in consultation with the parties."*

I am bound by the above judgment as well as the view taken already by this Court in Wadhwa Group Holdings (supra) and Batliboi Environmental Engineers (supra).

8. The Respondent's issue of financial burden caused by the second round of arbitration is indeed a legitimate concern. However, the same can be agitated by the Respondent before the learned Arbitrator, who shall be at liberty to pass appropriate orders for payments of fees and costs of arbitration. The fees of the learned Sole Arbitrator shall be as per the Fourth Schedule of the Act read with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

9. Being satisfied that an arbitration agreement is in existence, I refer all disputes and differences between the parties under the above Agreement for

Purchase of Salvage Material dated 29th November 2011 to arbitration by a Sole Arbitrator. In these circumstances, the Commercial Arbitration Application (Lodging) No.25035 of 2024 is disposed of in the following terms:-

[A]. Mr. Anish S. Karande, 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. The contact details of Mr. Anish Karande, the Sole Arbitrator, are “*Off.Add. : Chambers of Rohaan J. Cama, Office Nos.17-18, 1st Floor, Islam Building, 46-48, Veer Nariman Road, Fort, Mumbai-400001, Mobile No.9870153610, E-mail : karande.anish@gmail.com*”.

[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 Arbitration Application and a copy of the same shall be furnished by the Advocate for the Applicant to the Respondents;

[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 schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. 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]. All issues are kept open to be agitated before the
Tribunal.

[F]. The arbitration shall be held at Mumbai.

[GAUTAM A. ANKHAD, J.]