



Mayur/Shubham

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

ARBITRATION APPLICATION (L) NO. 29984 OF 2023

Mangal Credit and Fincorp Limited)
A public limited Company incorporated)
under the provisions of the Companies)
Act 1956 and having its registered office)
at 1701/02, 17th Floor, Lotus Corporate)
Park, Off. Western Express Highway)
Goregaon East, Mumbai 400 063.) ...Applicant

Versus

Ulka Chandrshekhar Nair)
Gunvant Villa, 7 Bungalows, Versova)
Andheri West, Mumbai 400 061.) ...Respondent

Mr. Pankaj Jain, a/w Pradeep Purohit i/by P. D. Jain & Co., for the Applicant.

Mr. Reshant V. Shah, i/by Lex Conseiller Shah, for the Respondent (appeared online).

CORAM : **ADVAIT M. SETHNA, J.**
RESERVED ON : **26 SEPTEMBER 2025**
PRONOUNCED ON : **1 OCTOBER 2025**

JUDGMENT:

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“**ACA**” for short) praying for an appointment of a sole arbitrator under Section 11 of the ACA. This is to adjudicate disputes between the Applicant and the Respondent, arising out of the

Mortgage Deed dated 28 December 2020 (“**The said Mortgage Deed**” for short) which entails an Arbitration Clause.

Issue:-

2. The intriguing Issue that falls for determination in these proceedings revolves around the existence, maintainability and entertainability of the arbitration clause/agreement contained in the said Mortgage Deeds, given the Respondent’s contention that on account of criminality, fraud touching upon the underlying Mortgage Deeds the disputes are *ipso facto* non arbitrable.

Factual Matrix:-

3. The Applicant is a Non-Banking Financial Company incorporated under the Companies Act, 1956 and the Respondent is the borrower who has allegedly secured a loan under the said Mortgage Deed.

4. According to the Applicant, the genesis of the dispute revolves around the said Mortgage Deed, in respect of the immovable property i.e., the Bungalow (“**subject property**” for short) as described in the said Mortgage Deed, executed between the Applicant and the Respondent. The arbitration clause in paragraph 21 as referred to in the given Application, reads thus:

“21. In case of any dispute and/or any difference of opinion between the parties hereto in any manner, either in implementation and/or giving effect to the true meaning and proper interpretation thereof, the same shall be referred to Arbitration & Conciliation under the provisions of Arbitration & Conciliation/Jurisdiction of

Mumbai Courts. The same shall be held in Mumbai under the guidance of an Arbitrator as may be decided by the Mortgagees.”

5. According to the Applicant, it had sanctioned a loan for the principal amount of Rs. 3 Crores, which is reflected in the sanction letter dated 28 December 2020, issued by the Applicant to the Respondent. Further, as per the Applicant, the Respondent further availed a loan of Rs. 44,62,570/- which is reflected in another sanction letter dated 16 February 2022 issued by the Applicant to the Respondent. Thus, the Applicant would state that the total principal loan amount sanctioned to the Respondent is Rs.3,44,62,570/- to be secured against the subject property of the Respondent.

6. Pursuant to the above, it is the Applicant's case that the said Mortgage Deed was executed with the Respondent against the subject immovable property, to the extent of Rs. 3 Crores. Also that, for the top up loan of Rs. 44,62 Lakhs (approx) availed by the Respondent, another Mortgage Deed dated 16 February 2022 is stated to be executed between the parties.

7. The Applicant issued a Notice dated 7 January 2023 styled as Notice under Section 21 of the ACA invoking arbitration. This is in terms of the dispute resolution – Arbitration Clause contained in the said Mortgage Deed. The Notice stipulated a time period of three days to the Respondent to raise her objections, failing which the

arbitrator would be appointed under the provisions of the ACA.

8. Pursuant to the above, the Respondent issued a letter of its Advocate dated 14 January 2023, in response to the Applicant's Notice to invoke arbitration dated 7 January 2023. By such response, the Respondent pleaded ignorance of the said Mortgage Deeds, sanction letters and sought disclosures of the said documents. The Respondent also denied to submit the disputes to arbitration. This is followed by another letter dated 20 January 2023 addressed by the Respondent to the Applicant in connection with the Notice invoking arbitration dated 7 January 2023 issued by the Applicant to the Respondent. By the said response, the Respondent denied the steps taken by the Applicant under the SARFAESI Act, *inter alia*, under Section 13(2) thereof, including the Public Notice dated 8 January 2023, as also the documents evidencing the loan availed by the Respondent.

9. It is in the above factual backdrop, that I have heard the submissions of the learned counsel for the parties respectively which are encapsulated below :-

Rival Contentions:-

10. Mr. Pankaj Jain, learned counsel for the Applicant would at the very outset submit that this Application under Section 11 of the ACA ought to be referred to arbitration for resolution of disputes between the parties. This is as prescribed in the arbitration clause contained in the said Mortgage Deeds.

11. Mr. Jain would submit that the Respondent has duly received the loan installment/s of Rs.16,00,000/- disbursed to the Respondent. This according to him is clearly reflected in the bank account statement of the Respondent which is annexed to the Respondent's Affidavit-In-Reply dated 12 February 2024. For such reason, the Respondent cannot deny, much less dispute such receipt of the loan amounts after having received the same from the Applicant.

12. Mr. Jain would place much reliance on the Notice of Intimation regarding Mortgage by way of Deposit of Title Deed dated 4 February 2021. He would specifically refer to the payment details as stated in the said document. According to him, the charges in this regard totaling to Rs.62,600/- are clearly debited from the bank account of the Respondent against the name of the Applicant. This according to Mr. Jain would clearly go to show that such statutory charges pursuant to the Mortgage Deeds were duly paid by the Respondent to the Applicant. Mr. Jain would also place reliance on Demand Promissory Note dated 28 December 2020 to state that further to the said Notice of Intimation regarding mortgage by way of Deposit of Title Deed of the same date, the Respondent promised to pay a sum of Rs. 3 Crores as principal amount of the loan availed by her.

13. Mr. Jain would thus submit that the Respondent has duly received such amount, paid the statutory charges pursuant to execution of the said Mortgage Deeds as would be clear from the

bank account statement of the Respondent. It is therefore not open to the Respondent to deny and dispute her liability arising from the said Mortgage Deeds. Such dispute, would squarely fall within the scope and ambit of the arbitration clause contained in the said Mortgage Deed which is rightly invoked by the Applicant, vide their Notice dated 7 January 2023.

14. Mr. Reshant Shah learned counsel for the Respondent has vehemently opposed the Application and submissions canvassed by Mr. Jain for the Applicant. He would submit that right from the responses by the Respondent to the Notice invoking arbitration sent by the Applicant, the Respondent has denied the reference to arbitration. The Respondent has maintained that she has never received the sanction letter, the said Mortgage Deeds and other documents as she is unaware of the same.

15. Mr. Shah would deny that the Respondent has ever received any amount in her bank account towards the loan installments, pursuant to the said Mortgage Deeds and/or has paid any charges in this regard. According to him, these amounts are in relation to proceeds from another development agreement dated 14 October 2016 executed between the Respondent and Mr. Meghraj Jain, as the Director of one Mangal Buildhome Private Limited. He is also the Director of the Applicant. Mr. Shah would allege collusion and connivance between Mr. Meghraj Jain and the Applicant.

16. Mr. Shah would strenuously urge that Respondent has never

signed the said Mortgage Deeds, sanction letter or such other related documents. According to him, all these documents including the Respondent's signatures thereon are forged/fabricated. He would state that the signatures were also sent to the private handwriting expert, who in his report dated 26 July 2023 has supported the case of the Respondent. He would then place emphasis on the fact that an FIR dated 26 October 2023 was registered. This was lodged under Section 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1861 by the Respondent against Mr. Meghraj Jain in view of such forgery/fraud committed by the Applicant. He would also place reliance on an order dated 20 February 2024 passed by the DRT, Mumbai in IA No. 364 of 2024 in Securitization Application ("SA") No.282 of 2024. He would submit that the DRT, Mumbai by the said order directed the parties to maintain status quo in connection with the subject property of the Respondent. He would therefore urge that the dispute between the parties entails serious criminal consequences including that of forgery/fraud which is a subject-matter of the FIR registered against Mr. Meghraj Jain.

17. Mr. Shah would urge that considering all of the above this is not a fit case to refer the disputes between the parties to arbitration. It would not be fair to the Respondent to relegate them to the ordeal of arbitration proceedings and the costs related thereto, when according to the Respondent such disputes are not arbitrable. Mr. Shah would also state that the Respondent has filed

a Civil Suit (SL/11/455/2024) against the Applicant and the other persons who are a part of such fraud/forgery against the Respondent, with a prayer that the said documents be declared as null and void.

18. Mr. Shah would thus submit that the Application be dismissed by the Court as the same is devoid of merits and is contrary to the scheme and provisions of the ACA.

19. Mr. Jain in rejoinder would urge that none of the allegations made by the Respondents have any merit whatsoever. They are simply bald allegations without any material whatsoever to support and/or substantiate the same. He would reiterate that the bank statement of the Respondent exhibited to the Respondent's own Affidavit-In-Reply (Page-148, 149) clearly indicates that the Respondent has received amounts towards loan installments, inter alia, of Rs.16,00,000/-, as also paid the expenses towards the Notice of Intimation regarding Mortgage by way of Deposit of Title Deed. He would submit that mere denial without any corroboration in support thereof would have no value in the eyes of law.

20. Mr. Jain would submit that as far as the allegation of FIR being lodged against Mr. Meghraj Jain, one of the Director of the Applicant is concerned, it is settled law that mere lodging of criminal proceedings and/or filing of FIR will not have any bearing on referring the disputes to arbitration in terms of the arbitration clause. Merely disputing the said Mortgage Deeds containing the

arbitration clause after receiving the amounts under the said Mortgage Deeds towards the loan installments and paying charges for the same, is an attempt by the Respondent to subvert the arbitration process. The Respondent has not left a stone unturned to delay the arbitration proceedings on one pretext or the other. The fact of lodging a belated FIR in October 2023 and a Civil Suit as in the year 2024 would bear testimony to the fact that the Respondent is using every trick in the book to avoid reference of the disputes to arbitration. According to Mr. Jain, the pendency of proceedings before DRT, Mumbai does not preclude much less bar reference of the given disputes to arbitration.

21. Mr. Jain would thus urge that the Application be allowed in toto.

22. I have carefully heard the submissions of the learned counsel for the parties and with their assistance perused the record.

Analysis:-

23. At the very outset, it would be necessary in the given facts to refer to the said Mortgage Deeds which explicitly contain a clear and unambiguous arbitration clause, which is reproduced supra. At this juncture, it is pertinent to note that the case of the Respondent is based on forgery/fraud allegedly committed by the Applicant *inter alia* by forging a signature on the said Mortgage Deeds and related documents. In this regard, the reliance by the Respondent on the opinion of an handwriting expert in support of such

contention is noted. In my *prima facie* view, this is not the jurisdiction, nor the appropriate stage to delve into such disputed facts which require appreciation of evidence to prove and/or disprove such facts, as the law would mandate.

24. Mr. Shah has placed much reliance on the FIR dated 26 October 2023 filed against Mr. Meghraj Jain, one of the Director of the Applicant, by the Respondent under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code. It is an admitted position that since the filing of the FIR in October 2023, there has been no criminal proceedings initiated on such basis. The parties agree that charge-sheet is not filed pursuant to such FIR and also charges are not framed, which is a subject matter of criminal trial, which is nowhere in sight for the present. For such reason, it would be a matter of surmises and conjectures to accept the contentions of the Respondent in the given facts and circumstances merely because an FIR is registered on a complaint made not even against the Applicant but against one Mr. Meghraj Jain who happens to be one of the Directors of Applicant. Thus, *prima facie*, such contentions of the Respondent to dispute the underlying said Mortgage Deeds which contain the arbitration clause on the ground of criminality, fraud and/or forgery is not persuasive, much less convincing at this stage of the proceedings.

25. I have carefully perused the record, more particularly the bank account statements annexed to the Affidavit-In-Reply of the Respondent (Pg-148,149). It *prima facie* appears that there are

entries to corroborate the receipt of the loan installments for instance of Rs. 16,00,000/- in the said account of the Respondent. So also there are debit entries of Rs.62,600 which appear to be for charges paid by the Respondent in relation to the said Mortgage. The Respondent however has disputed receipt of any amount towards the loan installments as well as payments made as reflected in her bank statements. In my view, such dispute would itself form a subject matter of the arbitration clause which is clearly reflected in the said Mortgage Deeds executed between the Applicant and the Respondent. As noted earlier, jurisdiction under Section 11 of the ACA is very limited. It is not for the Court at this stage to delve into the merits of the proceedings and adjudicate whether such amounts were received and/or payment made are arising out of said Mortgage Deeds or some other agreements/transaction with another entity as sought to be contended by the Respondent.

26. The factual matrix in the given case would indicate that the proceedings are initiated under the SARFAESI Act by the Applicant against the Respondent before the DRT, Mumbai. The Court has perused one of the orders dated 21 October 2023 in Case No. 623/SA/2023, passed under Section 14 of the SARFEASI Act by CMM. It is noteworthy that the said Court has unequivocally taken cognizance of the fact that certain documents, in original, were tendered by the authorized officer on affidavit filed by him before the said Court. These included the sanction letters, the said

Mortgage Deeds, notice under Section 13(2) of SARFEASI Act issued to the Respondent, postal receipt, replies, counter-replies etc. A reference to this is only to buttress the fact that a competent court under the competent jurisdiction has taken due cognizance of such documents including the said Mortgage Deeds executed with the Respondent which have the arbitration clause. Further the record reveals that by the said order dated 21 October 2023, the CMM has also handed over the possession of the subject property under the said Mortgage Deeds to the authorized officer. Another order dated 21 October 2023 filed in the same case number before the CMM in an application by the Respondent under Section 314(1) of Cr. P. C. is also brought to my attention. Such application was filed for allegation of forgery by the Respondent against the Applicant who was allegedly trying to obtain a favourable order by *inter alia* filing false, forged and/or fabricated documents. Such application is also rejected and such rejection is not challenged by the Respondent. The relevance of these proceedings and reference to the orders passed therein, at this juncture, is only to infer that the submission of the Respondent who disputes the said Mortgage Deeds and the existence of the arbitration clause embedded therein does not inspire confidence of this Court.

27. In my *prima facie* opinion, given such disputed facts, it is not an open and shut case as far as the existence of dispute arising between the parties under the said Mortgage Deeds is concerned. The allegation of the Respondent that she is not a signatory to the

said Mortgage Deeds and/or is unaware of the same would fall within the realm of arbitrability under the scheme and framework of the ACA. There is no fetter in law which would dissuade the arbitrator from deciding/adjudicating such disputes including those touching upon the very arbitrability of the said disputes. Such issues can be very well raised by the Respondent even as preliminary issues to be decided by the Arbitrator who is armed with jurisdiction explicitly conferred under Section 16 of the ACA.

28. Mr. Shah in the course of his submissions has emphatically relied on an order dated 20 February 2024 passed by the DRT, Mumbai passed in SA No. 282 of 2024 to reiterate that there is no jural relationship between the Applicant and the Respondent. The parties vide the said order were directed to maintain status quo in respect of the subject properties. According to Mr. Jain the said status quo order is assailed by the Applicant in appeal before the DRAT, Mumbai which is pending/*subjudice*. However, the issue that SARFAESI proceedings are in the nature of enforcement proceedings, whereas an arbitration is in the context of adjudicatory proceedings as held by the Supreme Court in ***MD Frozen Foods Exports Pvt. Ltd. & Ors. Vs. Hero Fincorp Ltd.***¹ is no longer *res integra*. The Supreme Court in the said decision has held that proceedings under SARFAESI Act and the arbitration proceedings can go hand in hand meaning thereby, they can proceed parallelly. I have duly considered such legal position.

¹ (2017) SCC Online SC 1211.

Accordingly, proceedings pending before the DRT, Mumbai in the said SA, would not deter, much less, *ipso facto*, bar the reference of the dispute to arbitration under Section 11(6) of the ACA. As contended by Mr. Shah, there is a Civil Suit filed on 3 April 2024 by the Respondent before this Court (SL/11455/2024). It appears that the said Suit is listed under the caption 'For Directions'. It has been contended by the Respondent that the prayers in the said Suit *inter alia* are to declare the said Mortgage Deeds, sanction letters and other related documents as null and void. Therefore, the reference to arbitration as Mr. Shah would submit is not warranted. However, the record indicates that the Civil Suit is filed much belatedly and after the Notice invoking arbitration dated 7 January 2023 which is duly received by the Respondent. The Respondent has made replies to such notices. It appears that there have been no orders passed in the said Civil Suit until date. Mr. Jain would submit that this is only a delay tactic to derail reference to arbitration. The Application filed under Section 11 and is pending since 6 September 2023. There is substance in the submission of Mr. Jain. In my *prima facie* opinion, the objection raised by Mr. Shah on behalf of the Respondent does not persuade, much less convince the Court, so as to refrain from referring the disputes to arbitration, at this stage, in the given factual complexion.

29. It is apposite to advert to the decisions of the Supreme Court in *A. Ayyasamy V. A. Paramasivam and Ors*² and that in *In Re*

² (2016) 10 SCC 386

Interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899³

30. The said decision in jurisprudence of arbitration in ***Ayyasamy*** (supra) *inter alia* distinguishes between serious fraud and fraud simplicitor. The former requires exclusion of disputes from arbitrability. This would involve such allegations where allegations of fraud are so complicated and complex which can only be decided by Civil Court by appreciation of voluminous evidence, where the Court can sidetrack the agreement by dismissing an application under Section 8 of the ACA and proceed with the Suit on merits. In the given case, yet there is no such Application under Section 8 of the ACA, filed in the Civil Suit. Further, in the case of ***Ayyasamy*** (supra), the Supreme Court while laying down instances of serious fraud, observed that this would entail disputes not just having criminal law implications but which entail public ramifications, impact integrity in governance and accountability in public service. *Prima facie*, these instances are not applicable in the given factual complexion.

31. The Supreme Court in the case of ***In Re: Interplay*** (supra) has duly considered the judgment in ***Ayyasamy*** (supra). It has held that the legislature has confined the scope of reference under Section 11(6) to the examination of the existence of an arbitration agreement. The use of the term ‘examination’ in itself connotes that the scope of the power is limited to a *prima facie* determination.

³ 2024 6 SCC Vol 1

Since the ACA is a self contained code, the requirement of existence of an arbitration agreement, draws effect from Section 7 of the ACA. The burden of proving the existence of the arbitration agreement generally lies on the party seeking to rely on such agreement. In a jurisdiction such as in India, which accepts the doctrine of competence-competence, only *prima facie* proof of existence of an arbitration agreement must be adduced before the referral Court. The referral Court is not the appropriate forum to conduct a mini trial by allowing the parties to adduce evidence in regard to the existence and validity of an arbitration agreement. The determination thereof on the basis of the evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from a plain reading of the statute.

32. In my considered view, there is no reason, much less justification to depart from the law as laid down by the Supreme Court referred to above. In the given case, *prima facie*, existence of the arbitration agreement in terms of Section 7 of the ACA cannot be denied, much less overlooked at this referral stage of the proceedings as noted earlier. The parties are at liberty to adduce evidence before the arbitrator to delve into the disputed facts, so as to determine the existence and validity of such agreement. This would encompass the issues of arbitrability which the arbitrator can very well adjudicate upon.

33. The Supreme Court also had the occasion to consider the issues of criminality and fraud in the context of a challenge to an

arbitration agreement recently in *Managing Director Bihar State Food and Civil Supply Corporation Limited & Anr. Vs. Sanjay Kumar*⁴. The Supreme Court analyzed and reiterated the principles governing arbitrability in cases involving allegations of serious fraud in the said decision. The Supreme Court after examining the matter in detail in the context of Section 11 of the ACA, held that *‘There is an arbitration agreement. The matter must end there’*. Accordingly, even in the present factual conspectus, once there is an arbitration clause/agreement, at this juncture, one need not go further, as a referral court, exercising jurisdiction under Section 11 of the ACA.

34. My attention is drawn to an order passed by this Court in *Mangal Credit And Fincorp Limited Vs. GBL Chemical Limited & Ors*⁵ where an application was filed under Section 11 of the ACA. Incidentally, the Applicant in that case is the same as the present Applicant. In that case, the very validity of the contract which contained the arbitration clause was also disputed on account of serious fraud, rendering the dispute non arbitrable. It was argued that as the Applicant may be a party to the fraud which arose from a loan under a loan agreement, the dispute would not be arbitrable at all. The Court in that case, upon going through the submissions and the various decisions of the Supreme Court on the issue,

⁴ (2025) SCC Online SC 1604

⁵ Order dated 18 June 2025 passed in Commercial Arbitration Application No. 119 of 2024

concluded that the Arbitral Tribunal should treat such issue as a preliminary issue and to rule on it forthwith. This decision was carried to the Supreme Court by way of SLP, which was dismissed by order dated 4 August 2025 leaving it open for the parties to raise all contentions before the arbitrator, including that of fraud. Mr. Shah would submit that the decision would not apply to the given factual matrix. However, this Court is of the view that the observations made in the said order, read with the decisions of the Supreme Court being referred to (*supra*), having a bearing on the given factual matrix, cannot be overlooked.

35. Thus, for all the above reasons, in my *prima facie* opinion, it is not prudent to label the given case as completely non arbitrable so as to deny any reference to arbitration. Merely because the Respondent has chosen to attack the Mortgage Deeds which contain the arbitration clause *inter alia* on the ground of criminality, forgery, fraud and pending FIR since 2023, the contractual obligations flowing from the said Mortgage Deeds cannot be disowned by the Respondent and discarded at this juncture.

36. Mr. Shah has contended that the parties be allowed to explore the possibility of mediation as the Respondent has expressed a desire to resolve the disputes/issues arising between the parties. However, Mr. Jain would label this nothing short of a delay tactic. Be that as it may. In the given factual complexion, the arbitrator can always be requested to explore the possibility of a settlement if at all both parties are genuinely interested in arriving at one. There is

no fetter, legal and/or otherwise, on the arbitrator to facilitate resolution of such disputes. In fact, this Court is confident that the arbitrator being the creature of the statute i.e. the ACA would be more than willing to bring a closure to the pending *lis* between the parties.

37. Also, in any event, in the given factual complexion, the issues/objections raised by the Respondent on the arbitrability of the dispute can be treated as a preliminary issue, if at all so raised before the arbitrator and can be decided at the earliest. This would duly address the apprehension of Mr. Shah in regards to the time and cost of the arbitration process. Needless to mention that the arbitrator would duly consider such issues once the disputes in the present case are referred to the arbitrator.

38. In my considered view, the jurisdiction under Section 11 of the ACA is limited and circumscribed by the statute. This Court being a referral Court is conscious of the *locus classicus* being minimizing intervention of Courts in recognition of the competence-competence principle enshrined under Section 16 of the ACA. Any attempt to procrastinate the reference of a dispute to arbitration which is not otherwise warranted in the facts and circumstances of the given case, cannot be countenanced.

39. As this Court refers the disputes/differences arising under the said Mortgage Deeds to Arbitration with reference to the arbitration clause/agreement therein, it is to be noted that the above

observations are *prima facie* and have no reflection/bearing on the merits of the matter. All rival contentions of the parties including that on maintainability, arbitrability, preliminary issues/objections are expressly kept open to be appropriately decided in the arbitration proceedings. This Court *suo motu* takes cognizance of the fact that the arbitration clause gives the Applicant the sole right to name and appoint the Arbitrator. Such unilateral appointment is held to be bad in law and legally unenforceable by the Supreme Court in the decision of ***Perkins Eastman Architects D.P.C. vs H.S.C.C. (India) Ltd.***⁶ and the decisions that followed thereafter. In view of such settled law, the Court would proceed to appoint an Arbitrator in these proceedings under Section 11 of the ACA.

40. For all of the above reasons the Application is allowed by passing the following order:-

O R D E R

- (a) The Application is allowed.
- (b) Shri Justice Naresh H. Patil (Former Chief Justice of this Court) is hereby appointed as the learned Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the said Mortgage Deeds and in terms of the arbitration clause/agreement contained therein.
- (c) A copy of this order will be communicated to the

⁶ 2019 SCC Online SC 1517

learned Sole Arbitrator by the Advocates for the Applicant within 7 (seven) days from the date this order is uploaded.

- (d) The Advocates for the Applicant will forward a copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s : Shri Justice Naresh H. Patil (Retd.)
(Former Chief Justice of this Court)

Address: Office No.19, 2nd Floor, Rajgir Chambers, Opp. Old Custom House, Fort, Mumbai – 400001

Contact Number : 9422210444

Email: nareshhpatil7@gmail.com

- (e) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy, soft copy, the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to Advocates for the parties as soon as possible. The Advocates for the applicant will arrange to file the original statement in the Registry, within three (03) days of it being made available by the learned sole arbitrator.
- (f) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at

such place as the learned Sole Arbitrator decides to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (g) **Interim Application/s:** Interim Application, if any, filed under Section 17 of the Arbitration and Conciliation Act, 1996 shall be decided by the arbitrator in accordance with law, if and so when referred. This would include Application, if any, filed by the Respondent on preliminary issues as indicated above including the possibility, if any, of settlement.
- (h) **Fees and costs:** 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.
- (i) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration shall be in Mumbai.

41. The Application (L) No. 29984 of 2023, is Allowed and disposed of in the above terms. No order as to costs.

(ADVAIT M. SETHNA, J.)

After Pronouncement:-

42. At this stage, Mr. Shah, learned counsel for the Respondent

requests for a stay of this order. Mr. Jain opposes such request. In my view, considering that this is an Application under Section 11 of the ACA which is pending since the year 2023, for the reasons set out above, such submission of Mr. Shah cannot be accepted and is accordingly rejected.

(ADVAIT M. SETHNA, J.)