

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Arb P No. 9/2021**

**M/s Brite Enterprises**

**Through its partner Sh. Rohit Mahajan**

**S/O T.C. Mahajan.**

**R/O Dashmesh Nagar, Digiana, Jammu.**

**.....Appellant(s)/Petitioner(s)**

**Through: Mr. Amit Khajuria, Advocate.**

**Vs**

**01. Brite Neon Signs Pvt. Through**

**..... Respondent(s)**

**its Managing Director Shailendera Luthra**

**C/O 14 C/C, Gandhi Nagar, Near PNB Bank,  
Jammu.**

**02. Sankalp Aggarwal S/O Anil Kumar Aggarwal**

**R/O Achal H. No. 15 Justice Narain Path,  
Nageshwarr Colony, Boring Road, Patna  
800001.**

**Through: Mr. R.K. Gupta, Sr. Advocate with  
Mr. Udhay Bhaskar, Advocate for R-1.  
Mr. Sachin Gupta, Advocate for R-2.**

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

**ORDER**

**24.04.2026**

- 01.** This petition has been filed by one, Sh. Rohit Mahajan, for and on behalf of M/s Brite Enterprises, a partnership firm, under Section 11(6) of Arbitration and Conciliation Act, 1966 (hereinafter, referred to as “the Act”), seeking appointment of an independent Arbitrator.
- 02.** Upon notice, the respondents have caused their appearance through their respective learned counsels.
- 03.** Mr. Sachin Gupta, Advocate appearing for respondent No. 2, raises a preliminary objection to the maintainability of this petition on the ground

that Sh. Rohit Mahajan is not entitled to seek appointment of Arbitrator without the consent of other partner i.e., respondent No. 2 whom he represents.

04. Mr. Sachin Gupta Advocate, has submitted that there is no dispute that M/s Brite Enterprises is a firm constituted in terms of Deed of Partnership dated 27.10.2016 between the petitioner-Rohit Mahajan and respondent No. 2. It is not disputed that there is a business agreement/memorandum of understanding between the firm-Brite Enterprises and respondent No. 1 i.e., Brite Neon Signs Pvt. Ltd.
05. Mr. Gupta, appearing counsel for respondent No. 2, however, argues that in absence of respondent No. 2, other partner of the firm Brite Enterprises, Mr. Rohit Mahajan, alone is not entitled to seek submission of dispute for resolution by invoking the arbitration clause contained in the Memorandum of Understanding dated 02.12.2016. He places reliance upon Section 19 of the Partnership Act, 1932 and the judgment on the point rendered by the High Court of Kerala in the case of ***“M/s P.K. Chandrasekharan Nair &Co. Vs. M/S Hindustan Petroleum Corporation Ltd.”*** AR No. 96 of 2025 decided on 26.11.2025.
06. *Per contra*, learned counsel for the petitioner submits that though the reading of Section 19 (2) (a) of the Partnership Act indicates that submission of dispute relating to the business of the firm to arbitration by a partner, without the express or implied consent of the other partner/partners, may not be permissible in law but under Section 21 of the partnership Act, the partner has been allowed to act in an emergency

to do all such acts as may be required for the purpose of protecting the firm from loss. He further argues that authority to do all such acts for the purpose of protecting the firm from loss would include taking the matter to the Arbitrator for resolution of the dispute in the best interest of the firm.

- 07.** Heard learned counsel for the parties and perused the material on record.
- 08.** The facts are not in dispute that Brite Enterprises is a firm constituted by petitioner-Mr. Rohit Mahajan and respondent No. 2-Sankalp Aggarwal in terms of a Deed of Partnership made and executed on 27.10.2016. It is also not in dispute that the application in terms of Section 11 (6) of the Act has been moved by Rohit Mahajan for and on behalf of the firm without there being any express or implied consent/authority of the other partner i.e., respondent No. 2.
- 09.** There may be a dispute between the partnership firm, Brite Enterprises and respondent No. 1 and such dispute may be arbitrable in view of the specific arbitrary clause contained in the Memorandum of Understanding entered into between the Brite Enterprises and respondent No. 1 on 02.12.2016. However, the question for determination is whether one of the partners of Brite Enterprises i.e., Sh. Rohit Mahajan is entitled to seek the submission of dispute relating to the business of firm to arbitration by invoking Section 11 (6) of the Act. The answer to this question has to be no and emphatic no in view of specific provision of Section 19 of the Partnership Act, is set out below.

*“19. Implied authority of partner as agent of the firm.—  
(1) Subject to the provisions of section 22, the act of a*

*partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”. (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to— (a) submit a dispute relating to the business of the firm to arbitration, (b) open a banking account on behalf of the firm in his own name, (c) compromise or relinquish any claim or portion of a claim by the firm, (d) withdraw a suit or proceeding filed on behalf of the firm, (e) admit any liability in a suit or proceeding against the firm, (f) acquire immovable property on behalf of the firm, (h) transfer immovable property belonging to the firm, or (g) enter into partnership on behalf of the firm.”*

- 10.** From reading of Section 19, it clearly transpires that an act of the partner which is done to carry out, in the usual way, business of the kind carried on by the firm, would binds the firm. Such authority vested in the partner to act for carrying out the business of the firm in usual way is termed as ‘implied authority’ of the partner. This is, however, subject to the provisions of sub section 2 which excludes implied authority of the partner for doing certain things which *inter alia*, include submission of a dispute relating to the business of firm to arbitration. This, is, further, subject to any usage or custom of trade to the contrary. In the instant case, learned counsel for the petitioner, could not point out any usage or custom of trade which permits such implied authority in favour of a partner by the firm.
- 11.** Indisputably, filing of an application under Section 11(6) for appointment of Arbitrator is an act towards submission of the dispute relating to the business of the firm to arbitration, and therefore, clearly beyond the authority of a partner.

12. The argument of learned counsel for the petitioner that Section 21 permits a partner to act in an emergency to do all such acts for the purpose of protecting the firm from loss is also without substance and deserves to be rejected. The appointment of the Arbitrator and thereafter, if the arbitrator is appointed, submission of disputes relating to the business of firm to Arbitrator is long drawn process and cannot be construed as a measure of emergency for saving/protecting the firm from loss.

13. In view of the facts and circumstances of the case, the position of law explained hereinabove and similar view taken by High Court of Kerala in case of “*M/s P.K. Chandrasekharan Nair & Co. Vs. M/S Hindustan Petroleum Corporation Ltd.*”, this petition is held to be not maintainable and the same is, accordingly, dismissed. However, dismissal of this petition shall not come in the way of the petitioner to explore appropriate remedy available to him under law.

(Sanjeev Kumar)  
Judge

Jammu  
24.04.2026  
Renu

Whether the order is speaking?  
Whether the order is reportable?

Yes  
Yes