

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

ARBITRATION APPLICATION NO.207 OF 2026

‘OURDESK’, an initiative of
Mataji Rampiyaribai Trust

.. Applicant

Vs.

Atlys India Private Limited

.. Respondent

Mr. Aum Kini with Mr. Parth Kini, i/by Ms. Sapna Krishnappa, Advocates for the Applicant.

Ms. Nishtha Gupta, i/by Mr. Kush M. Shah, Advocates for the Respondent.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 27th August, 2026.

P.C. :

1. The present Section 11 Application is filed seeking appointment of a sole arbitrator to adjudicate the disputes which have arisen between the parties under the Coworking Space Membership Agreement dated 19th October, 2023 (“**Agreement**”). For convenience, the dispute resolution clause contained at page 36 of the paper-book is extracted and quoted:

“8. *Arbitration and Class Action Waiver*

a) *Governing Law : The Agreement and the transactions contemplated hereby shall be governed by and construed under the law of the State of Maharashtra, India, and the Republic of India without regard to conflicts of law’s provisions thereof and without regard to the jurisdiction*

(State, region or country) or tax residence of the member company.

- b) Venue : Except that either party may seek equitable or similar relief from any Court in the State of Maharashtra and city of Mumbai for any dispute, controversy or claim arising out of or in relation to this Agreement, or at law or the breach, termination or invalidity of this Agreement.*
- c) Proceedings; Judgment : The proceedings shall be confidential and in English. The Award rendered shall be final and binding on both parties. Judgment or the Award may be entered in any Court of the City of Mumbai within the State of Maharashtra. In any action, suit or proceeding to enforce rights under this Agreement, the prevailing party be entitled to recover, in addition to any other relief awarded, the prevailing parties reasonable attorneys' fees and other fees, costs and expenses of every kind in connection with the action, suit or proceeding, any appeal or petition for review, the collection of any Award or the enforcement of any order, as determined by the Arbitrator(s) or Court, as applicable. This Agreement shall be interpreted and construed in the English language, which is the language of the official test of this Agreement."*

2. Mr. Kini, learned counsel appearing for the Applicant, submits that the Agreement is executed by the Respondent and signed by its representative. Disputes arose between the parties on account of the Respondent's failure to pay charges due under the Agreement. On 23rd June, 2025, the Applicant issued a legal notice calling upon the Respondent to pay the outstanding charges. In its response dated 17th July, 2025, the Respondent admitted the existence of the Agreement, but contended that no amount was due and payable. Therefore the

Applicant, by Advocate's notice dated 24th July, 2025, invoked arbitration and called upon the Respondent to concur with the name of the Arbitrator suggested by the Applicant. In its response dated 1st September, 2025, the Respondent suggested an alternative name for appointment as Arbitrator.

3. Mr. Kini submits that clause 8 of the Agreement read with correspondence, demonstrates that the parties have agreed to resolve their disputes through arbitration. He submits that a valid and binding arbitration agreement exists between the parties and that the present Application under Section 11 deserves to be allowed. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Powertech World Wide Limited Vs. Delvin International General Trading LLC***¹ in support of the above submissions.

4. On the other hand, Ms. Gupta, learned counsel appearing for the Respondent, submits that a plain reading of clause 8 of the Agreement does not disclose the existence of an arbitration agreement. The clause also refers to “*any Court of the City of Mumbai*” and only contemplates the possibility of the parties agreeing to arbitration at a future stage. Mere use of the expression “*Arbitration*” in the heading of the clause cannot, by itself, constitute an arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996.

¹ (2012) 1 SCC 361

5. Ms. Gupta further submits that the Respondent's suggestion of an alternative name for an Arbitrator cannot cure the fundamental defect, since there can be no appointment of an Arbitrator in the absence of a valid arbitration agreement. She relies on the upon judgment of the Hon'ble Supreme Court in ***Alchemist Hospitals Ltd. Vs. ICT Health Technology Services India Pvt. Ltd.***² and submits that the Application ought to be dismissed.

6. I have considered the submissions and perused the record. In my view, the objection raised by the Respondent proceeds on an incorrect reading of clause 8 of the Agreement and does not take into account the correspondence between the parties. At this stage, this Court is only concerned with determining whether an arbitration agreement exists between the parties. The decision of 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 ***SBI General Insurance Company Vs. Krish Spinning, (2025) 3 SCC (Civ) 567*** reinforces the limited nature of the enquiry at the Section 11 stage to the examination of the existence of an arbitration agreement.

7. In the present case, the Agreement is admittedly executed by the both

² 2025 SCC OnLine SC 2354

parties. The Applicant invoked arbitration by its notice dated 24th July, 2025. In its response of 1st September 2025, the Respondent did not deny the existence of the arbitration clause, nor did it contend that there was no agreement to arbitrate. On the contrary, the Respondent suggested an alternative proposed Arbitrator. The relevant portion reads as under:

- “5. Our client does not accept the unilateral appointment of Mr. Rishi Jain as Arbitrator. It is pertinent to highlight that the Hon’ble Supreme Court of India, in a catena of judgments, has consistently held that arbitration proceedings must adhere to principles of fairness, neutrality and equal opportunity between the parties. Any unilateral or on-sided appointment procedure stands in violation of such principles and cannot be sustained, even if contemplated in the Agreement.
6. Accordingly, our client reiterates its non-acceptance of the proposed appointment of Mr. Rishi Jain. However, in the spirit of resolving the dispute and in terms of Clause 8 of the Agreement, our client proposes the name of Mr. Anurag Garb, Advocate (D-1168-F/2003), as a sole independent Arbitrator to adjudicate the disputes between the parties.”

8. This demonstrates that the Respondent proceeded on the basis that the disputes can be adjudicated by an Arbitrator. The disagreement is only on the name of the arbitrator. This is wholly inconsistent with the stand now sought to be taken that no arbitration agreement exists. The Respondent cannot approbate and reprobate in this manner. Hence the reliance by the Petitioner on the judgment of the Hon’ble Supreme Court in ***Powertech World Wide Limited*** (supra) is well placed, wherein the Hon’ble Supreme Court held as under:

- “27. *Vide their letter dated 30-3-2008, the respondent had raised certain claims upon the petitioner and had also repelled the threat extended by the petitioner to take steps before ECGC. This notice had been responded to by the petitioner vide letter dated 4-4-2008 wherein it had raised its claims demanding payment of money within seven days and also stated that any default thereto would constrain it to take legal action. Finally, vide letter dated 30-5-2008, the petitioner had invoked arbitration clause between the parties and, in fact, had even nominated an arbitrator calling upon the respondent to concur to the said appointment.*
28. *Replying to this letter vide letter dated 27-6-2008, the respondent had neither denied the existence nor the binding nature of the arbitration clause. On the contrary, it had requested the petitioner not to take any legal action for appointment of an arbitrator, as they wanted to suggest some other name as an arbitrator, that too, subject to the consent of the petitioner. This letter conclusively proves that the respondent had admitted the existence of an arbitration agreement between the parties and consented to the idea of appointing a common/sole arbitrator to determine the disputes between the parties. However, thereafter there had been complete silence from its side, necessitating the filing of the present petition under Section 11(6) of the Act by the petitioner.*
29. *Thus, any ambiguity in the arbitration clause contained in the purchase contract stood extinct by the correspondence between the parties and the consensus ad idem in relation to the existence of an arbitration agreement and settlement of disputes through arbitration became crystal clear. The parties obviously had committed to settle their disputes by arbitration, which they could not settle, as claims and counterclaims had been raised in the correspondence exchanged between them. In view of the above, even the precondition for invocation of an arbitration agreement stands satisfied.”*

9. The reliance placed by Ms. Gupta on ***Alchemist Hospitals Ltd.*** (supra) is misplaced. In ***Alchemist Hospitals Ltd.***, the dispute resolution clause did not evince a clear or present intention of the parties to submit their disputes to arbitration. The reference to arbitration was, in substance, only a possibility as the penultimate clause therein prescribed civil remedies if arbitration did not

resolve disputes. The Hon'ble Supreme Court suggested an attempt at amicable resolution and held that the clause did not constitute a valid arbitration agreement. In the present case, the parties have executed an Agreement containing a clause titled "*Arbitration*". Clause 8(c) provides that the "*The Award rendered shall be final and binding on both parties.*" The said clause recognises enforcement of the "*Award*" and recovery of costs as determined by the "*Arbitrator(s)*". These are not provisions merely contemplating a future possibility of arbitration. This coupled with Respondent's consent and suggestion of a name of an arbitrator shows that the Respondent understood and accepted that the disputes were capable of being referred to arbitration.

10. I am satisfied that a valid and binding arbitration agreement exists between the parties and that the Applicant has validly invoked the same by its notice dated 24th July, 2025. The Respondent has failed to concur in the appointment of the Arbitrator within the prescribed period. Hence, this **Application is allowed** in terms of the following order:

[A]. Ms. Niyomi Jariwala, learned Advocate of this Court is appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with Coworking Space Membership Agreement referred to above. The contact details of Ms. Niyomi Jariwala, the sole Arbitrator, are as under:

*Office Address : Chambers of Adv. Aditya N. Mehta,
4th Floor, Techno Heritage Building,
76 Nagindas Master Road, Fort,
Mumbai – 400 001.*

Mobile Number : 8976401402

E-mail ID : jariwalaniyomi@gmail.com

- [B]. A copy of this order will be communicated to the learned 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 Arbitrator shall 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 Respondent;
- [D]. The parties shall appear before the learned Arbitrator on such date either on V.C. mode or at such place as indicated to obtain appropriate directions with regard to conduct of the arbitration including fixing schedule for pleadings, examination of witnesses, schedule of hearings etc.

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