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

COMMERCIAL ARBITRATION APPLICATION NO. 4 OF 2024

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Rajendra Manormal Mehta
Vs.
Prakash H Jain.

... Applicant

. Respondent(s)

Mr. Ayaz Ahmed Ansari *i/b Ravi Kumar Mishra, for Applicant.*
Ms. Kajal Punjabi *a/w. Kunal Chheda, for Respondent(s).*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : July 3, 2025

Order :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under the Deed of Admission to Partnership dated April 1, 2015 [***“Agreement”***]. The arbitration agreement is contained in Clause 22 (found at Pages 46 to 47 of the Application). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court

2. It is apparent from the record that the arbitration agreement was invoked by the Applicant on November 9, 2022.

3. The core objection raised on behalf of the Respondent on the last occasion was that the invocation had not been effectively made. In response, Learned Counsel for the Applicant sought liberty to bring on record, the invocation letter dated November 9, 2022 apologising for not having filed it along with the application. Liberty was granted to bring the same on record by way of an affidavit which has now being done.

4. Learned Counsel for the Respondent would submit that the said letter annexed to the affidavit now filed would still not constitute a valid invocation. According to her, the phrase ‘invocation’ is not used in the said letter. That apart, she would contend that the letter is unclear about what disputes are sought to be raised by the Applicant against the Respondent. Learned Counsel would also seek to rely on various judgements of the Supreme Court including *Nortel Networks*¹, *Adavya Projects*², *Anacon Process Control*³ and *Alupro Building Systems*⁴ on the importance of invocation and the condition of filing an Section 11 Application being the effective invocation for arbitration.

¹ *BSNL Vs. Nortel Networks (India) Pvt. Ltd.*, (2021) 5 SCC 738

² *Adavya Projects Pvt. Ltd. Vs. M/s. Vishal Structural Pvt. Ltd. & Ors.* [2025] 5 S.C.R. 243

³ *Anacon Process Control Pvt. Ltd. Vs. Gammon India Limited* (2016) SCC OnLine Bom 10076

⁴ *Aluproso Building Pvt. Ltd. Vs. Ozone Overseas Pvt. Ltd.* (2017) SCC OnLine Del 7228

5. Having heard the parties and having examined the record, it is apparent that an arbitration agreement is in existence. The letter purported to be a invocation letter essentially makes the grievance that the Applicant is not even being given details of any transactions or the accounts of the partnership firm. This in itself constitutes a dispute for which the grievance has been raised evidently by the Application. Equally, the affidavit in reply simply enabled bringing on record, the invocation notice that had already been issued in 2022, there is no doubt whatsoever that the Applicant intends to pursue arbitration by way of the said invocation. There is also no doubt about what grievance the Applicant has. Consequently, the very core ingredients of Section 21 of the Act namely to put the Respondents to notice as to the nature of the grievance that would constitute a dispute or a difference for reference to arbitration is writ large in the additional affidavit filed by on behalf of the Applicant. Consequently, in my opinion, no useful purpose would be served keeping this Application any further, any particular on the ground that the Respondents do not have notice of the nature of the disputes sought to be raised by the Applicant. In these circumstances, this Application is ***finally disposed of*** in the following terms :

A] Justice (Retd.) Anuja Prabhudessai, a former judge 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;

Office Address:- 106, Arcadia, NCPA Marg,
Nariman Point, Mumbai – 400 021.

Email – justiceanujprabhudessai@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates 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 parties within a period of two weeks from receipt of a copy of this Order;

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 a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] 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 Arbitral Tribunal in relation to costs.

6. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed hereby.

7. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]