

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 237 OF 2024
(U/s. 11 of A & C Act, 1996)**

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Anadi Krishna Kumar Tripathi

...Petitioner/Applicant

Versus

Narendra Podar

...Respondent(s)

Dr. Pawan K. Pandey *a/w. Anita Dwivedi, Suman Gupta i/b Clayderman and Co., for Petitioner.*

Mr. Akash Rebello *i/b Mr. Vijay Kumar Aggarwal and Ms. Shamim Shaikh, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : March 25, 2025

P. C.

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("***the Act***"), seeking appointment of an arbitral tribunal.

2. The proceedings relate to disputes and differences that are said to have arisen between the parties under an agreement dated July 17, 2013. The arbitration agreement is contained in Clause 49 (found at Page 34 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.

3. Existence of arbitration agreement is not in dispute. Learned Counsel for the Respondents submits that one of the reliefs evidently listed in the invocation notice is dissolution of the LLP which is a matter that lies exclusively in the jurisdiction of the National Company Law Tribunal, and is therefore, not arbitrable.

4. On perusal of the record, *prima facie*, it is apparent that the reference to dissolution could well be regarded as incidental to the disputes and differences between the parties and it is for the parties to put one another to notice as to the nature of their disputes, which is the purpose served by the invocation notice. It would not follow that one singular element of the invocation notice should be allowed to trump the entire invocation notice and thereby prevent to the reference to arbitration. It is also possible that after arbitration, dissolution is an inexorable outcome. Even if it were, it could perhaps be argued that depending on the outcome, the parties may then have to move to the NCLT for executing the dissolution. These are all imponderables at this stage and out of the scope of the jurisdiction of this Court.

5. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions of

a seven-judge bench in the *Interplay Judgement* followed by multiple others, including *SBI General*¹ and *Patel*² that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

6. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid agreement to arbitration by a Sole Arbitrator.

7. Since the existence of the arbitration agreement, is writ large when the face of the record, the parties are hereby referred to arbitration, in the following terms :

A] Mr. Anoshak Davar, 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;

B] A copy of this Order will be communicated to the Learned Sole

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

³ *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

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 Advocates for the Petitioner 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 Petitioner and a copy of the same shall be furnished by the Advocates 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 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 Tribunal in relation to costs.

8. 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.

9. Since it is also suggested by the Respondent that the disputes are eminently capable of being settled, this order is given deferred effect to take effect from four weeks after this order is uploaded on the website of this Court. In the interregnum, the parties shall engage in mediation by proceeding to present their merits to Mr. Vishal Kanade, Learned Advocate of this Court, who shall act as a Mediator. Should the mediation fail, the arbitral tribunal appointed hereby, may commence arbitration. Should the mediation succeed, needless to say, the order would abate. ***Finally disposed of.***

10. 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.]