

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 108 OF 2025

Bharat Mistry ...Applicant

Versus

Jayesh Jayantilal Mistry ...Respondent

Ms. Rashi Shah *i/b Kartikeya And Associates for the Applicant.*
Mr. Niranjan Mogre *for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 1, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”).

2. Today, when the matter is called out, Learned Counsel for the parties submit that they have arrived at terms on which arbitration may be started, putting an end to the controversy about existence of an arbitration agreement between them, and suggesting that in terms of the consent minutes arrived at, arbitration may be commenced. A copy of the Consent Minutes of Order tendered today is taken on record. In this regard it will be useful to extract the provisions of the draft Consent Minutes of the Order that they were invite in the past and the same is extracted below :-

CONSENT MINUTES OF ORDER

1. By consent of the Applicant and Respondent No. 3 on the one hand, and of Respondents No. 1 & 2 on the other, any and all disputes, differences, claims and counter-claims between them concerning the firms and companies referred to in the Schedule at the foot of these Minutes [which firms and companies are collectively called, "Schedule Entity(ies)"] are consolidated, and

are referred to the arbitration of Mr. Justice [Ω] ("Sole Arbitrator").

2. The appointment under paragraph 1 is without prejudice to all or any rights and contentions of any of the parties, including but not limited to the existence, identity or validity of any partnership deed or other constituting or governing deed, instrument or document of a Schedule Entity, or the extent of parties' respective share or other right, title or interest in such Entity.

3. Applicant shall be claimant before the Sole Arbitrator and Respondents No. 1, 2 and 3 shall be respondents.

4. Notwithstanding paragraph 3, all parties shall be free to make an application to implead my other necessary or proper party to the proceedings before the Sole Arbitrator,

5. The seat and venue of the arbitral proceedings shall be Mumbai.

6. The Sole Arbitrator shall be at liberty to determine his fees and to apportion such fees, and costs of the arbitral proceedings (other than parties' respective Advocates' fees or expenses, any other fee, cost or expense they may incur on prosecuting, or defending, the arbitral proceedings), between the parties. Should other parties be joined to the proceedings, the apportionment of costs shall be suitably altered per orders of the Sole Arbitrator.

7. There shall be an order on these terms, upon which the Commercial Arbitration Application shall stand disposed of.

SCHEDULE

1. Jay Construction Company
2. Mistry Builders
3. Mistry Enterprises
4. Mistry Lalji Narsi Development Corporation
5. Excellence Enterprises
6. Shivom Enterprises
7. Nirman Land Development Private Limited
8. Vaibhav Land Development Private Limited
9. Mistry Lalji Development Private Limited
10. Gatita Real Estate Private Limited
11. Luxer Resort Private Limited

3. In the aforesaid terms taking on record consent of the parties, this Application is ***finally disposed of*** by the consent of the parties on the following terms:-

A] Justice (Retired) Mr. S.J. Kathawalla, 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 consent

Minutes of Order referred to above;

Address: 43, Free Press House, 4th Floor, 215, Free Press

Journal Marg, Nariman Point, Mumbai – 400 021.

Email: skathawalla@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 Advocates 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 Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Respondent;

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.

4. 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.

5. 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.]