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

COMM. ARBITRATION APPLICATION NO. 167 OF 2024

Ramesh Vasant Nevgi

...Applicant

Versus

Rajendra Vasant Nevgi and Anr.

...Respondents

Mr. P.G. Sabnis *for the Applicant.*

None for the Respondents.

**CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JUNE 23, 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 a Partnership Deed dated June 15, 1999 and subsequent Agreement dated May 25, 2007 (***“Agreement”***). The arbitration agreement is contained in Clause 22 of the Agreement (found at Page No.37 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. None appears for the Respondents today. It is seen from the record that a legal notice dated December 19, 2023 was issued on behalf of the Applicant. By a reply dated December 28, 2023, the Respondents asserted that “Final Award” dated September 26, 2023 had been passed by

a Sole Arbitrator, namely, Mr. Nilesh Makwana in the Arbitration Proceeding No. 1 of 2023, whereby the Applicant had been expelled from the partnership firm, namely, M/s. Abhishek Packaging. Further, it was claimed that a fresh partnership deed was executed on November 1, 2023.

3. Thereafter, the Applicant has been repeatedly trying to get the Respondents to confirm when the aforesaid purported arbitral proceedings were initiated and in what manner the purported appointment of the purported arbitrator came to be effected. Such effort is seen from an e-mail dated January 7, 2024 and letters dated March 26, 2024, April 10, 2024, and May 4, 2024. None of these elicited any response from the Respondents.

4. Thereafter, by a notice dated May 17, 2024, the Applicant invoked arbitration and wrote to the Respondents stating that since they have been unable to confirm how the so-called arbitral award came to be passed expelling him from the partnership firm, he has been constrained to invoke arbitration in terms of the Agreement. Strangely, while none of the aforesaid letters yielded any result, the invocation notice was replied to by the Advocate for the Respondents, once again stating that the disputes between the parties have already been adjudicated and resolved by a Sole Arbitrator, namely, one Mr. Nilesh Makwana by an award dated September 26, 2023, and yet again, without any insight into how the purported arbitral tribunal came to be formed.

5. Learned Counsel for the Applicant submits that the Applicant has neither received any notice of invocation of arbitration nor has he consented to the appointment of any arbitrator. He submits that to the best of the Applicant's knowledge formed by diligent research, there is no order passed by this Court under Section 11 of the Act appointing of an arbitral tribunal.

6. It is evident that these proceedings have been served on the Respondents but they have not chosen to appear. Since the Respondents have disregarded all queries raised throughout 2024 by the Applicant and in response to the invocation notice they have once again reiterated the same position without providing any details, it is only appropriate to refer the parties to arbitration.

7. No useful purpose would be served by keeping this Application pending any further on the docket of this Court. Should the Respondents be able to demonstrate that the elusive arbitral award claimed to be in existence actually exists; that it is not a sham award; and arbitral proceedings had indeed been conducted, it shall be open to the Respondents to demonstrate the same to the Learned Arbitral Tribunal being appointed hereby, by making available to the Arbitral Tribunal all necessary supporting material.

8. 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 Supreme Court's decision rendered by a seven-judge Bench in the *Interplay*

Judgement¹ followed by multiple others, including **SBI General²** and **Patel³** 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.

9. 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.

10. In these circumstances, no useful purpose would be served by keeping this matter pending any further on the docket of this Court. The Application is ***finally disposed of*** in the following terms:-

A] Mr. Karl Tamboly, 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;

Email: karltamboly@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from the date on which this order is

¹ In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 - (2024) 6 SCC 1

² SBI General Insurance Co. Ltd. Vs. Krish Spinning - 2024 SCC OnLine SC 1754

³ Ajay Madhusudan Patel Vs. Jyotindra S. Patel - 2024 SCC OnLine SC 2597

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 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 Application and a copy of the same shall be furnished by the Advocate 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.

11. 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.

12. 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.]