

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.215 OF 2024**

Lilaben Manibhai Patel & Ors ...Applicants

Versus

Radheshyam Lallubhai Patel & Ors ...Respondents

Mr. Rohan Savant, a/w *Bharat Jain, Anant Ratnaparkhi, Kavish Arora, i/b IC Legal, for the Applicants.*

Mr. Sanjeev Sawant, a/w *Madhusmita Sahoo, i/b Prashant Jadhav, for Respondent No.1.*

Mr. Chirag M. Bhatia, *for Respondent Nos.2 to 8.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 5, 2025

PC :

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 September 15, 1977 (***“Agreement”***). The arbitration agreement is contained in Clause 24 of the Agreement (found at Page No.50 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 seen that disputes and differences have arisen between the parties under the Agreement. There is also a Deed of Modification dated September 10, 1984 which is on record. It is a contention of the Respondents that the Deed of Modification is forged and criminal investigations in connection with the alleged forgery are underway. Another facet of the controversy for purposes of these proceedings, is that although Applicant No.1 is a partner of the firm in question, Applicant Nos.2 and 3 are alleged by the Respondents as not being partners. It is apparent from the record that the arbitration agreement was invoked by Applicant on April 18, 2024.

3. Learned Counsel for the Applicants points to me Clause 21 of the Agreement, which entitles any partner to nominate a person to succeed him upon his demise to share his interests in the partnership firm. It is his contention that by a communication dated January 9, 2013 Mr. Chandrakant Kalidas Patel, the partner who expired had nominated the other two Applicants to succeed to his interest.

4. In these circumstances, all these issues raised in these proceedings are a matter of evidence which only the arbitral tribunal is entitled to go into.

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*¹

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

followed by multiple others, including *SBI General*² and *Patel*³ 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 dated September 15, 1977 as modified, to arbitration by a Sole Arbitrator.

7. In these circumstances, taking into account inputs from officers of the Court, this Application is hereby ***finally disposed of***, in terms of the following order:

a) Mr. Shailesh Shah, an 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 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

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

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 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. 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.]