

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

36-COMMERCIAL ARBITRATION APPLICATION (L) NO. 31237 OF  
2024  
AND  
524- COMMERCIAL ARBITRATION PETITION NO. 363 OF 2024

|                        |                |
|------------------------|----------------|
| Ajay Gupta             | ...Applicant   |
| <i><b>Versus</b></i>   |                |
| Devanshu Bansal & Anr. | ...Respondents |

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**Adv. Beni Chatterjee** , Senior Advocate *a/w. Abhinav Mathur,*  
*Lokesh Pawaskar i/b Chir Amrit Legal LLP, for Applicant.*

**Mr. Mutahar Khan,** *for Respondents.*

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**CORAM : SOMASEKHAR SUNDARESAN, J.**  
**DATE : SEPTEMBER 22, 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 relating to a document which is undated but is signed by the Applicant and Respondent No. 1. (found at Page 59 of the Application) (***“Agreement”***).

2. On the face of the document, Respondent No.1, Respondent No.2 and the Applicant were meant to form a limited liability

partnership. But the allegation is that the partnership has not been formed at all and the agreement has not been uploaded on to the Registry of the Registrar of Companies in order to form such an LLP. Be that as it may, in terms of Section 7 of the Act, so long as a document is executed by the parties containing an arbitration clause, it would constitute an arbitration agreement. There can be no doubt of an existence of an arbitration agreement between the Applicant and Respondent No. 1, Devanshu Bansal. The arbitration agreement is contained in Clause 24(b) (found at Pages 71-72 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. A role of the other Respondents is for the Applicant to demonstrate in order to bring them within the ambit of a veritable party in view of the law declared in ***ASF Buildtech***<sup>1</sup>. The onus is entirely on the Applicant to demonstrate to the arbitral tribunal that these parties are veritable parties. A range of conflicting submissions have been made between the parties on the role of Respondent no. 3 and whether Respondent no. 3 was meant to be converted into an LLP which would then be the LLP among the parties. These are all matters of fact which

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<sup>1</sup> *ASF Buildtech Vs. Shapoorji Pallonji and Co. Pvt. Ltd.* – (2025) INSC 616

would need to be shown to the arbitrator to establish that the non-signatory parties to this application are veritable parties in order to arraign them in arbitration.

4. It is apparent from the record that the arbitration agreement was invoked by the Applicant on September January 25, 2024. The Respondents have not entered appearance. The service affidavit is taken on record.

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*<sup>2</sup> followed by multiple others, including *SBI General*<sup>3</sup> and *Patel*<sup>4</sup> 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

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<sup>2</sup> *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

<sup>3</sup> *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

<sup>4</sup> *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

of things to refer the disputes and differences between the parties in connection with the aforesaid Agreement to arbitration by a panel of three arbitrators.

7. Commercial Arbitration Petition No. 363 of 2024 is a Petition under Section 9 of the Act (“**Section 9 Petition**”) which is hereby converted into an Application under Section 17 of the Act for due consideration by the arbitral tribunal appointed hereby.

8. In these circumstances, Ms. Yogita Deshmukh, a learned advocate of this Court (Email: [yogitadeshmukhoffice@gmail.com](mailto:yogitadeshmukhoffice@gmail.com)) is hereby nominated as the arbitrator on behalf of the Respondents leaving it to the two arbitrators (the one now appointed and the one nominated by the Applicant) to select the third arbitrator who shall act as a presiding arbitrator.

9. In these circumstances, the Section 11 Application as well as the Section 9 Petition are hereby ***finally disposed of*** in the aforesaid terms.

10. A copy of this Order will be communicated to the nominee 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.

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. In view of the disposal of the captioned proceedings, attendant Interim Applications, if any, also stand *disposed of*.

13. 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.]**