

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

**ARBITRATION APPLICATION NO. 118 OF 2025
ALONG WITH
ARBITRATION PETITION NO. 46 OF 2025
ALONG WITH
ARBITRATION PETITION (L) NO. 10473 OF 2025**

- 1) Shashikant Chimanlal Makwana
2) Pradeep Narottam Harosa
3) Pattron Hotel and Travels Pvt. Ltd. ...Applicants/Petitioners

Versus

- 1) Pramod Karunakar Shetty
2) PPS Bar and Kitchen LLP ...Respondents

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Mr. Mayur Khandeparkar a/w. Mr. Sanket Mungale a/w Mr. Vikramjit Garewal, for Applicants/Petitioners.

Ms. Sneha Phene a/w Mr. Pratik Divkar i/b Ms. Rajni Divkar, for Respondent No.1.

**CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JULY 10, 2025**

Oral Judgement:

Context and Factual Background:

1. Arbitration Application No. 118 of 2025 (“***Application 118***”) is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) whereas Arbitration Petition No.46 of 2025 (“***Petition 46***”) and Arbitration Petition (L) No. 10473 of 2025 (“***Petition 10473***”) are the

Petitions under Section 9 of the Act.

2. The disputes and differences between the parties relate to a Limited Liability Partnership Agreement dated March 24, 2023 (“**Agreement**”). Petitioners, Shashikant Chimanlal Makwana (“**Makwana**”), Pradeep Narottam Harsora (“**Harsora**”), Pattron Hotels and Travels Pvt. Ltd. (“**Pattron**”) and a Respondent, Mr. Pramod Shetty (“**Pramod**”) are partners of the Limited Liability Partnership called PPS Bar and Kitchen LLP which is the other Respondent (“**LLP**”).

3. The parties constituted the LLP in terms of the Agreement, to run a Resto-Bar business in the name of Hotel Pramod at Tardeo. The premises of the establishment are tenanted premises with Pramod being the legal heir of the original tenant, his father Mr. Y. Karunakar Shetty. The tenanted premises are subject matter of eviction proceedings initiated by the landlords. Under the Agreement, Pramod is obligated to keep making payments to the landlord and not settle the eviction suit in any manner.

4. The liquor license for the establishment is also in the name of the late Mr. Y. Karunakar Shetty. It is stated and apparent from the record that Pramod’s sister Ms. Priya Brijesh Shetty is staking a claim to entitlements under the liquor license.

5. A plain reading of the Agreement would show that Pramod is stated to be entitled to a share of 42.5% in the LLP, and the Petitioners hold

the balance stake. The prime mover of the LLP appears to be Harsora (and Pattron, which in any case appears to be a company owned and controlled by Harsora). Makwana is an employee who was made to conduct the operations of the LLP. The terms and conditions of the devolution of responsibilities among the partners of the LLP are also set out in the Agreement.

6. The Agreement recites in at least two places that the LLP was to take over the business that was being run at Hotel Pramod and that the then existing liabilities owed to the creditors by Pramod were in the sum of Rs.55 Lakhs prior to formation of LLP. Consequently, although payment of Rs.75,000/- per month was contracted to be paid to Pramod, it was also contracted that the amounts owed to Pramod would be set off against the dues of Rs.55 Lakhs owed to various creditors. Pramod would receive such payment only after the liabilities of Rs. 55 Lakhs were fully paid out to the creditors.

Petition 46:

7. In Petition 46, taking note of the physical actions of Pramod, this Court had passed an *ex parte* order on February 10, 2025 (“**February 2025 Order**”) granting reliefs to the Petitioners as a *pro tem* measure, in terms of the following prayers:

(a) *That pending the hearing and final disposal of the Arbitration Petition, this Hon'ble Court be pleased to pass an order of*

temporary injunction restraining the Respondent No.1, his agents, servants, hirelings, goons, relatives or any other person or persons claiming through or under him, from dispossessing the Petitioners from the said premises viz. Shop No.1, Ground Floor, Adam Hotel 1431147, Wadia Street, Near Tardeo Bus Terminal, Tardeo, Mumbai 400034, admeasuring 950 sq. ft. or thereabout without following due process of law.

(b) That pending the hearing and final disposal of the Arbitration Petition, this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Respondent No.1, his agents, servants, hirelings, goons, relatives or any other person or persons claiming through or under him, from interfering, intermeddling, obstructing, causing nuisance of whatsoever nature at the said premises viz. Shop No.1, Ground Floor, Adam Hotel 1431147, Wadia Street, Near Tardeo Bus Tenninal, Tardeo, Mumbai 400034, admeasuring 950 sq. ft. or thereabout and in the daily and regular working of the said restaurant;

[Emphasis Supplied]

8. It will be seen that the reliefs granted in the February 2025 Order related to physical interference and physical dispossession. These reliefs were granted on the basis of the submissions made at that time indicating *prima facie* material to warrant such *pro tem* protective measures until Pramod could enter appearance and present his side of the story. Advocates for Pramod entered appearance, an affidavit was filed. The contents are discussed later in this judgement. The protection against physical interference continued.

9. It was expected that arbitration would commence. Till date,

there is no sign of arbitration proceedings having commenced – five months later, when the legislatively contemplated time frame for protection under Section 9, before an arbitral tribunal takes over, is 90 days.

Petition 10473:

10. Petition 10473 invokes Section 9 afresh seeking a new relief – this time, a direction to Pramod to renew the liquor license bearing no. FL-III 540 and its renewal for the year 2025-26 by directing him to effect various compliances for that purpose.

11. The Petitioners plead and point out to the same instances of alleged abusive conduct on the part of Pramod as indicated in Petition 46. They would rely on video footage of a CCTV camera in the first level of the premises, said to have been recorded on January 5, 2025, which would demonstrate, according to them, that Pramod had already hatched a plan to disrupt the business of Hotel Pramod, and run it out of business and eventually set up a new one. From the transcript of the video, they would contend that Pramod, *prima facie*, had an intent to disable the liquor licence and let it lapse and he had plans to revive it at a subsequent stage in some other form with some other partner.

12. Mr. Mayur Khandeparkar, Learned Counsel for the Petitioners would contend in his submissions in Petition 10473 that the intended disruption of the business by way of non-renewal of the liquor license is a violation of the February 2025 Order passed in Petition 46. Consequently,

the prayers made in this Petition are essentially to direct Pramod to execute the necessary documentation and follow the requisite procedure to ensure that the liquor license is kept valid and renewed.

13. It is also pointed out that as in the past, the amounts payable towards the renewal had indeed been paid by the Petitioners to Pramod and it is for him to ensure that the liquor licence is kept renewed in terms of the Agreement. In Petition 10473, the Petitioners have brought on record a letter dated March 25, 2025 written by Pramod to the excise authorities stating that he is unable to pay the licence fees for renewal and that the liquor licence may be kept suspended.

14. Therefore, it is contended by the Petitioners that writing of such a letter, and that too after the February 2025 Order was passed in Petition 46 is a direct violation of this Court's orders inasmuch as it would violate the injunction against interference in the conduct of the business of LLP.

15. Since the Agreement requires Pramod to keep the liquor licence renewed, *prima facie*, at first blush it appeared that the prayer must be considered. The February 2025 Order represented protection against physical dispossession and creation of physical interference at the premises of Hotel Pramod. Therefore, while it could not be said that the liquor license non-renewal was covered by the February 2025 Order, it was felt necessary to ask Pramod to explain his conduct and see what factors are

involved in relation to the liquor licence.

16. Ms. Sneha Phene, Learned Counsel on behalf of Pramod would contend that the Petitioners are taking Pramod for a ride financially. Till date, they have not provided any accounts and have not made any payments owed to Pramod under the Agreement, she would contend, without prejudice to Pramod's contentions that he was unaware that he had signed an agreement to form an LLP and had merely agreed with Harsora to collaborate with him in the business.

17. Therefore, Pramod was asked to file a reply. Likewise, the Petitioners were asked to provide evidence of payments made to Pramod, along with financial statements and documents to back up evidence of payments claimed to have been made.

Analysis and Findings:

18. Pramod has contended in his replies in both Petitions that to the best of his knowledge, the Agreement has not been executed by him. Pramod contends that Harsora had asked him to sign on some papers and he believed that he was getting into an Agreement with Harsora but he had no clue about formation of the LLP and that he has been misguided in the process. That apart, having conducted a search on the website of the Ministry of Corporate Affairs, he would contend, public records of the LLP contain no evidence of the Agreement or of any consent given by him or by

any party other than Harsora and his wife who are the designated partners of the LLP. Harsora's wife is a nominee of Pattron as is seen from the records brought by the parties. Consequently, Pramod's claim is that he was never a party to the Agreement and the arbitration agreement contained therein cannot bind him and therefore no directions ought to have been passed even in Petition 46, which he seeks to vacate by taking such a stand.

19. While this stance does not inspire confidence, particularly since Pramod had purported to terminate the Agreement, which was one of the factors considered when the February 2025 Order was passed, even going by Pramod's stance, the Agreement appears to be what he had signed with Harsora. However, on the Agreement, Ms. Phene would draw attention to another facet of the matter. She would assert that till date, assuming the Agreement was validly executed, there is no sign of the Petitioners having complied with their obligations either in relation to making payments due to Pramod or in relation to the sheer requirement to maintain accounts. Therefore, the Petitioners who are not being equitable cannot expect equities to lie in their favour.

20. On an earlier occasion, the Petitioners had been asked to file an affidavit bringing on record the various financial statements and evidence of payments made to Pramod in accordance with the Agreement. Since the jurisdiction of this Court under Section 9 is an equitable jurisdiction, it was

felt that this requirement was necessary to examine equity in the conduct by each side, and to see if the Petitioners, who were seeking enforcement of the Agreement were themselves in compliance with their obligations. It was felt necessary to ascertain the conduct of each side so that when taking measures to preserve the subject matter of the arbitration agreement, an appropriate formulation may be made.

21. Based on the additional affidavit filed on behalf of the Petitioners in response to this direction, it is indeed apparent that there is no documentary evidence of payments having been made to Pramod. It is in Pramod's affidavit that one payment of Rs.5 Lakhs made to an account of Pramod's wife can be seen. Since it had been stated that Pramod was to be paid only Rs.50,000/-, his wife had forthwith refunded Rs.4.5 Lakhs from such remittance. This facet is missing in the Petitioners' affidavit.

22. That apart, what stands out from the record is that there is no evidence whatsoever of the Petitioners having produced any audited financial statements, despite it being required by this Court on earlier occasions. It is noteworthy that the Agreement, at Clause 16, requires an audit to be conducted every year and audited financial statements to be made available to all the parties (which would necessarily include Pramod). Compliance with this fundamental requirement under the Agreement is not evident from the face of the record.

23. While it is evident from the Agreement that the first Rs. 55 Lakhs payable to Pramod would go towards discharging the debts due to Pramod's earlier creditors, one would expect some accounting to evidence what component of such amount has been set off and what remains, or when the monies started becoming due to Pramod. There is simply nothing to show this except for statements from the Petitioners that Pramod has run up debt from others too and has been asking that those debts be directly paid out by the Petitioners. There is also nothing to reconcile payments made in this regard with what is payable to Pramod. In the two years since the LLP was formed, even at the rate of Rs. 75,000 per month, the amount of set off against the Rs. 55 Lakhs would be over Rs. 18 Lakhs. Profits from the business would also need to be shown and Pramod's equity interest at 42.5% is not a small quantum and the amounts due to him for such profit distribution too are not accounted for.

24. Pramod's affidavit contains a statement indicating what the projected income of the LLP ought to be – going by the per-day loss owing to the non-renewal of the liquor license as pleaded in Petition 10473. The working would indicate that the LLP ought to have a significant income and Pramod's share of 42.5% could potentially have exceeded over two years, the Rs. 55 Lakhs said to be payable to the creditors on debts due prior to formation of the LLP.

25. The Petitioners may have a point in terms of Pramod being

unable to manage his finances and being a liability to the LLP. However, it is equally true that he is a 42.5% shareholder in the LLP and his premises and liquor license are being put to commercial exploitation without any sign of audited financial statements being brought on record despite being sought by the Court. Various payments are purported to have been made by the Petitioners to Pramod, but when asked to set that out in an affidavit with supporting evidence, all that is filed is a table annexed to their affidavit, setting out various payments purported to have been made, without anything to demonstrate the payment of its veracity.

26. Although one must be cognizant that in the running of such a business cash payments may be involved, it should be noted that the Agreement even regulates how much cash can remain in the till of Hotel Pramod, with a mandate that monies collected in revenues in excess of such threshold, must necessarily be deposited in the bank every single day, by Makwana. No cash in excess of such threshold is permitted to be kept in the till. Therefore, the Petitioners ought to have brought to bear documentary evidence of the payments that the Court called upon the Petitioners to produce, which they have failed to do.

27. Meanwhile, as it transpires, on June 9, 2025 the excise authorities, purporting to have acted upon a complaint made by Pramod's sister Ms. Priya Brijesh Shetty, seeking a stake in the business carried out pursuant to the liquor licence, have already passed an order suspending the

liquor licence. In these circumstances, the factual matrix now involves examining whether Pramod's sister could be said to be in collusion with Pramod or if she has a *bona fide* grievance against Pramod, based on which a *bona fide* action has been taken by the excise authorities to actually suspend the licence.

28. All these facets of the matter, I am afraid, would involve further examination of evidence and it would not be appropriate to conclude such issues within the scope of Section 9 of the Act. It does not appear as if the Petitioners are performing their component of obligations under the Agreement to the hilt and are legitimately aggrieved by Pramod's violations of the Agreement. Likewise, only after examining evidence would it be possible to infer if the development of suspension of liquor license by the excise authorities is genuinely owing to a larger conspiracy to frustrate the business of LLP. The Arbitral Tribunal would be able to have witness summons issued to Pramod's sister or even the excise authorities and arrive at an informed view. In short, the most appropriate forum to take the matter forward and call for evidence, record statements and take a view, would be the Arbitral Tribunal. With no sign of arbitration for months, making further interventions under Section 9 is not appropriate.

29. In these circumstances, when one examines the equities between the parties, what is writ large is that there appears to be mutual inequities in the conduct of the parties – Pramod disrupting the business of LLP, and

the Petitioners giving no accounts of the business of LLP to Pramod. The parties seem to be mutually in conflict, disrupting each other's interests in an abusive relationship under the Agreement.

30. The parties appear to be intertwined in a mutually abusive commercial relationship. Since the excise authorities have already suspended the liquor licence, in exercise of jurisdiction under Section 9 of the Act over a private contract between two private parties, no intervention against the excise authorities would be possible. Pramod may be directed to pay the amount of the renewal fees to the excise authorities, but the merits of his sibling's claim would have to be independently ascertained and adjudicated by the excise authorities uninfluenced by these proceedings.

31. The Petitioners already stand protected from physical interference. The liquor license is already suspended by the excise authorities on account of Pramod's sibling's complaint. While the amount of renewal fees payable is a minuscule sum, if the license is already suspended, it would not be possible to direct the excise authorities to lift the suspension in exercise of jurisdiction under Section 9 of the Act, without assessing the grounds on which it was suspended.

32. What appeals to me in this situation is that the Application 118 of the Petitioners ought to be allowed. An Arbitral Tribunal ought to be constituted to examine the facts in greater detail before deciding what

appropriate measures are warranted to preserve the subject matter of the arbitration agreement. Both the Section 9 Petitions deserve to be converted into applications under Section 17 of the Act for consideration by the Learned Arbitral Tribunal. Ms. Phene would indicate that she has instructions to resist reference of the disputes to arbitration on the premise that Pramod will be unable to afford the fees of an arbitrator, and that he has been fooled into signing the Agreement without his knowing that this would lead to constitution of an LLP. This is a matter that ought to be submitted to the Learned Arbitral Tribunal.

33. The Arbitral Tribunal is being constituted pursuant to this order since evidently there is an arbitration agreement in existence. Pramod's contention that the Agreement is not existence because he is unaware of what he signed, appears to be devoid of merit. It was Pramod who sought to terminate the very same Agreement by his letter dated January 7, 2025. If Pramod goes on to say that there was no Agreement in existence there would have been no question of him purporting to terminate the non-existing Agreement. This step is, of course, sought to be explained away as a step taken upon realising that the Agreement is said to have come into existence without Pramod understanding that he was entering into an LLP. The interlocutory reliefs granted in Petition 46 shall continue until the Learned Arbitral Tribunal decides to modify, substitute, vacate or enhance the protection after hearing the parties.

34. Therefore, this Court hereby appoints an Arbitral Tribunal, with a request to the Learned Arbitral Tribunal to conduct a hearing upfront on the applications under Section 17 of the Act, and to arrive at a view as to whether the suspension of the liquor licence that has already been transpired is a *bona fide* outcome or a contrivance or a device for non-renewal of the licence.

35. The Arbitral Tribunal shall also examine evidence of the trade credits of Rs.55 Lakhs that are said to have been owed to creditors with whom Pramod had run debts before the LLP took over – whether these debts have actually been paid for the withholding from Pramod to be justified; to what extent they have been paid; and what Pramod's share from the profits of Hotel Pramod ought to have been.

36. Since Pramod would be entitled to nothing until the Rs. 55 Lakhs is recouped under the Agreement, naturally it would follow that there ought to be a clear account of how much of Rs.55 Lakhs so far been absorbed from the monthly amounts due to Pramod and the profit shares also due to his account.

37. The absence of audited financial statements year on year and sharing of it with partners of the LLP is inexplicable and must be examined by the Learned Arbitral Tribunal. An LLP is a body corporate that is required to file annual returns with the Ministry of Corporate Affairs.

Therefore, audited financial statements must be presented to the Arbitral Tribunal, with full clarity on when they were prepared, audited and filed, so that the Arbitral Tribunal can get a precise picture of the nature of inter-se violations between the parties and pass appropriate orders.

38. With the aforesaid directions and observations the Arbitral Tribunal is hereby constituted in the following terms:

A] Mr. Aditya Bapat, 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. The contact particulars of the Arbitrator is as under :

Office Address : 2nd floor, New Wadia
Building, Dalal Street, Mumbai 400001.
Email : adityasbapat@gmail.com

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

Summary of Conclusions:

39. To summarise:

- A) The Learned Arbitral Tribunal is constituted as above to deal with the two Section 9 Petitions as if they were applications under Section 17;
- B) Pramod too shall be entitled to file applications in accordance with law including applications under Section 16 and Section 17 of the Act;
- C) The interim relief obtaining in Petition 46 shall

continue until the Learned Arbitral Tribunal has occasion to consider whether to substitute, modify, vacate or enhance the same;

D) The Petitioners shall file all the detailed audited financial statements from inception till date and such other information as the Learned Arbitral Tribunal may seek to form a view on the conduct of the parties and the breaches of the Agreement by either side; and

E) The Learned Arbitral Tribunal may make such arrangements as felt necessary in respect of the liquor licence after hearing the parties and getting a fuller picture. The Learned Arbitral Tribunal shall follow Section 27 of the Act should any witness necessary to determine facts not be made available by either party.

40. All these proceedings are ***finally disposed of*** in the aforesaid terms. Needless to say, that all rights and contentions of the parties including the basic contention that the Agreement is not a product of the parties being *ad idem* over the bargain recorded therein are kept open for consideration by the Learned Arbitral Tribunal.

41. Nothing contained in this judgement 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.

42. 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.]