

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

COMMERCIAL ARBITRATION APPLICATION NO. 394 OF 2025
WITH
COMMERCIAL ARBITRATION APPLICATION NO. 409 OF 2025

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M/s. Parekh & Brothers

...Applicant

Versus

Mahindra Lifespace Developers Ltd.

...Respondent

WITH
COMMERCIAL ARBITRATION PETITION (L) No. 20760 OF 2025
(U/s. 9 of the A & C Act, 1996)

M/s. Parekh & Brothers

...Petitioner

Versus

Mahindra Lifespace Developers Ltd.

...Respondent

Mr. Cherag Balsara a/w. *Mr. Yash Momaya and Mr. Kunal Rathod, for Applicant/Petitioner.*

Mr. Karl Tamboly a/w. *Mr. Rahul Dwarkadas, Nutash Kotwal, Shireen Mistri i/b RJD and Partners, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 22, 2025

PC :

1. Commercial Arbitration Application No. 394 of 2025 and Commercial Arbitration Application (L.) No. 26534 of 2025 have 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 the Development Agreement dated October 14, 2024 (*“Agreement”*). The arbitration agreement is contained in Clause 23 (found at Page 81 (Exhibit A) of both the Applications, respectively). 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 apparent from the record that in Commercial Arbitration Application No. 394 of 2025, the arbitration agreement was invoked by the Applicant on February 27, 2025, to which the Respondent has filed replies on March 6, 2025 and March 28, 2025. In Commercial Arbitration Application (L.) No. 26534 of 2025, the Applicant has issued invocation notice on July 23, 2025, to which there is a reply dated August 4, 2025.

3. Since there is no quarrel about the existence of the arbitration agreement, the fundamental objection by the Respondent is that the person who has executed the Application was not duly authorised by all the partners. The objection was raised on the premise

that the power of attorney appended to the Application was executed by one of the partners who was the mother of the deponent, and that, this would not constitute appropriate authorisation under Partnership Law for filing of a Section 11 Application.

4. Today, when the matter is called out, Learned Counsel for the Applicant tenders a further affidavit annexing therein emails from each of the other partners confirming that they always authorised him and ratifying the application that has been filed. The affidavit confirming authorisation of all partners is taken on record.

5. In this view of the matter, this objection is not being dealt with any further. Neither is the existence of the arbitration agreement in doubt nor is the intent of all partners to initiate arbitration in doubt. All disputes the differences between the parties as covered by the Application, are here by referred to arbitration.

6. 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 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.

7. 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.

8. Commercial Arbitration Petition (L) No. 20760 of 2025 is a Petition filed under Section 9 of the Act, which is hereby converted into an application under Section 17 of the Act for appropriate consideration by the arbitral tribunal.

9. In these circumstances, both the Applications under Section 11 as well as the Section 9 Petition are hereby ***finally disposed of***, in terms of the following order:

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

A] Chief Justice (Retired) Naresh Patil, former Chief Justice 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 details of the Learned Arbitrator are set out below :-

Office Address:-63, Rajgir Chambers, 7th
Floor, Old Custom House, Fort, Mumbai.

Email – nareshhpatil7@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 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 Arbitral Tribunal in relation to costs.

10. 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.

11. In view of the disposal of the captioned proceedings, attendant interim applications, if any, also stand *disposed of*.
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.]