

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.234 OF 2025
WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.2509 OF 2025

Bhoruka Charitable Trust

...Applicant/
Petitioner

Versus

Nomads Properties Pvt Ltd

...Respondent

Mr. Aditya Thakkar a/w *Mr. Vaibhav Warekar & Harsh Thadani i/b M Mulla Associates for the Applicant /Petitioner.*

Mr. Rahul Yadavfor *Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 8, 2025

PC :

1. Comm. Arbitration Petition No. 234 of 2025 is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking interlocutory protective reliefs in connection with disputes and differences relating to an Agreement dated August 25, 2021. The arbitration agreement is contained in Clause XII (found at Page 87 of the Petition). 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. The Comm. Arbitration Application (L.) No. 2509 of 2025 is an Application under Section 11 of the Act seeking appointment of an arbitrator in connection with the very same disputes relating to the same Agreement.

3. It is apparent from the record that the arbitration agreement was invoked by the Applicant on August 17, 2024. There is no reply to the said invocation.

4. 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 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.

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

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*

5. 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.

6. After the matter was argued for sometime, Learned Counsel for the parties agree to have the disputes and differences between them be referred to arbitration by a sole arbitrator in accordance with the arbitration agreement. The submission is that since both the parties are from Bangalore, the arbitrator must be requested to enable video conferencing facility for the purposes of conduct of the arbitral proceedings.

7. Since relief sought in the Section 9 Petition was the removal of the multiple vehicles/bikes parked in the subject property covered by the arbitration agreement, Learned Counsel for the Respondent has instructions to undertake that all bikes would be cleared over the next three months. To demonstrate seriousness in addressing the concerns of the Applicant, within the first thirty days at least 35 bikes will be permanently removed and within the next thirty days another 35 bikes shall be permanently removed. In this pattern, he submits that over the

next ninety days all the bikes would be permanently removed from the subject property of arbitration. Recording such statement on behalf of the Respondent as an undertaking given to the Court, the Section 9 Petition is converted into Section 17 Application for consideration by the arbitral tribunal appointed hereby. All disputes and differences shall stand refer to arbitration.

8. Consequently, both the Section 11 Application and Section 9 Petition are *finally disposed of* in the following terms:

- a) Ms. Shruti Tulpule, 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;

Office Address:-

Chamber No.14, 15 Gundecha Chambers,

Ground Floor, Ash Lane,

Fort, Mumbai – 400 023

Email ID: satulpule@outlook.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 Tribunal in relation to costs.

9. The parties shall approach the arbitral tribunal within a period of one week from the date on which this order is uploaded on the website of this Court, to take instructions for a speedy disposal of the Section 17 Application. The parties are at liberty to request the arbitral tribunal for an expedited hearing of the Section 17 Application, leaving the larger issues to be decided in the course of conduct of the final hearing in the arbitration proceedings.

10. 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.]

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