

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

RESERVED ON: 06.05.2026

DELIVERED ON: 18.05.2026

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM 907 OF 2025

**SMT. JULI BHAGAT
VERSUS
SRI ALOK BHAGAT AND ORS.**

Appearance:

**Mr. Chandrachur Biswas, Adv.
Dr. Rudraprasad Matilal, Adv.
Ms. Rima Mandan, Adv.**

..... for the petitioner

**Ms. Meenal Sinha, Adv.
Ms. Dhimoyee Kundu, Adv.**

..... for the respondents

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The present petition has been preferred by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), seeking appointment of an independent Sole Arbitrator to adjudicate and resolve the disputes and differences that have arisen between the parties, arising out of and in relation to the Partnership Deed dated 29.03.2023 and the Partnership Deed dated 01.12.2023.
- 2.** The facts leading to the present case are as follows:
- 3.** The Petitioner claims to be the legally wedded widow of Late Mr. Arvind Bhagat. The Respondents are the children of Late Mr. Arvind Bhagat born from his first wife. Late Mr. Arvind Bhagat was tragically murdered in the year 2022 by some unknown person(s), and investigations in this regard are reportedly still ongoing before the concerned authorities.

- 4.** Subsequent to the death of Late Mr. Arvind Bhagat, it is the case of the Petitioner that she, along with the Respondents, jointly decided to form a partnership firm for the purpose of better management of the immovable and movable properties left behind by the deceased, which include two hotels, namely, (i) Hotel Meera International and (ii) Meera Marriage Hall cum Copper Hundi Restaurant, both located at Asansol, West Bengal.
- 5.** With the aforesaid objective, the parties entered into two Partnership Deeds dated 29.03.2023 and 01.12.2023, respectively, to govern their mutual business dealings and interests. As per the terms of the said Partnership Deeds, the Petitioner was accorded a 40% share in the two hotels, whereas each of the Respondents was accorded a 20% share, aggregating to 60% collectively for the Respondents. It was further agreed under the said Deeds that the Petitioner, being the working partner, would be entitled to a monthly remuneration of Rs. 60,000/- (Rupees Sixty Thousand only), and the Respondents would each be entitled to a monthly remuneration of Rs. 30,000/- (Rupees Thirty Thousand only).
- 6.** Pertinently, both the aforesaid Partnership Deeds contain an arbitration clause, being Clause 19 thereof, providing for resolution of disputes between the parties through arbitration.
- 7.** It is stated that during the course of the business, disputes and differences arose between the parties with respect to the management and operations of the partnership business. The Petitioner, in invocation of the said arbitration clause, issued a notice dated 03.05.2025 under Section 21 of the Arbitration and Conciliation Act, 1996, calling upon the Respondents to concur in the appointment of an arbitrator. The Respondents responded to the said notice vide Reply dated 13.05.2025, wherein they disputed the

very existence and genuineness of the Partnership Deeds dated 29.03.2023 and 01.12.2023.

8. Since the Respondents were not agreeable to the appointment of an arbitrator, and in view of the failure of the parties to agree upon the constitution of the Arbitral Tribunal, the Petitioner has approached this Court by way of the present petition under Section 11(6) of the Act, seeking appointment of an independent Sole Arbitrator.
9. It is also relevant to note that several civil proceedings are pending between the parties before the competent civil courts, including Title Suit No. 232/2024 filed by the Petitioner seeking declaration, injunction and partition of all properties of Late Mr. Arvind Bhagat; Title Suit No. 619/2025 filed by the Respondents seeking injunction over Hotel Meera International and Copper Hundi properties; and Title Suit No. 1336/2026 filed by the Respondents against the Petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Learned Counsel appearing on behalf of the Petitioner submitted that both Partnership Deeds dated 29.03.2023 and 01.12.2023 contain a valid and subsisting arbitration clause in the form of Clause 19. He further submitted that during the course of the partnership business, disputes and differences arose between the parties, necessitating the invocation of the arbitration clause. Accordingly, a notice under Section 21 of the Act was issued on 03.05.2025. The Respondents duly received and responded to the said notice vide their reply dated 13.05.2025. The Learned Counsel urged that the existence of a valid arbitration agreement, coupled with the issuance of the Section 21 notice and its receipt by the Respondents, satisfies all conditions requisite for the exercise of jurisdiction by this

Court under Section 11(6) of the Act, thereby entitling the Petitioner to seek appointment of an arbitrator.

- 11.** Learned Counsel for the Petitioner further submitted that even though the Respondents have challenged the very existence of the Partnership Deeds, such a challenge goes to the root of the dispute on merits and does not negate the existence of an arbitration agreement at the prima facie level. He urged that this Court, at the stage of a Section 11(6) petition, is only required to examine, on a prima facie basis, whether there exists a valid arbitration agreement, and whether the pre-conditions under Section 21 of the Act have been fulfilled. All other disputes, including the challenge to the existence and validity of the Partnership Deeds, are required to be agitated before and decided by the Arbitral Tribunal under Section 16 of the Act.
- 12.** With these submissions, learned counsel for the Petitioner prayed for the constitution of the Arbitral Tribunal to adjudicate the disputes between the parties.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

- 13.** Learned Counsel appearing on behalf of the Respondents raised a preliminary objection to the maintainability of the present petition by disputing the very existence and authenticity of the Partnership Deeds dated 29.03.2023 and 01.12.2023. According to the Respondents, the Petitioner is not the legally wedded wife of their deceased father, Late Mr. Arvind Bhagat, and accordingly has no locus to maintain the present proceedings. It was further contended that the Partnership Deeds are forged and fabricated documents, and that the Respondents first came to know about the alleged existence of such documents only upon receipt of

the Section 21 notice. It was additionally submitted that Respondent No. 1 suffers from physical and mental ailments and is not in a position to understand complex legal documents or to have consciously signed any such documents. It was thus urged on behalf of the Respondents that the present petition is not maintainable and is liable to be dismissed.

- 14.** In view of the foregoing submissions, the Respondents prayed for the dismissal of the present petition.

LEGAL ANALYSIS

- 15.** This Court has carefully heard the arguments advanced by the Learned Counsel for both parties and has also perused the documents placed on record.

- 16.** At the very outset, while examining the Partnership Deed dated 01.12.2023, this Court is constrained to take notice of a conspicuous and fundamental anomaly apparent on the face of the instrument itself. The recital of the said deed reads as follows: *"This deed of Partnership is executed on this 1st day of December, 2023 but effect from 18th day of February 2032 between the following partners."* Accordingly, whilst the deed records its execution as on 01.12.2023, it simultaneously defers its operative effect to 18.02.2032, a date falling nearly a decade in the future. The Petitioner seeks to explain away this anomaly as a mere typographical error, contending that the year "2032" was intended to read "2023." The Respondents, on the other hand, dispute the said document in its entirety, and have in fact challenged the very existence and genuineness of both Partnership Deeds placed on record.

- 17.** This Court has bestowed its careful consideration upon this aspect. On a strict and literal reading of the deed dated 01.12.2023, the instrument, as

executed, does not take legal effect until 18.02.2032. If the deed is construed in such a manner, no legally enforceable partnership came into existence between the parties as on the date of execution, and consequently, any rights, obligations, or liabilities claimed to have arisen from the said deed during the intervening period between December 2023 and the date of the present petition would be without any valid documentary basis. It would further follow, on such a reading, that the arbitration clause contained in Clause 19 of the said deed would also remain inoperative, as the deed itself has not yet come into effect.

- 18.** However, this Court is of the view that it would not be appropriate, at the present stage of proceedings under Section 11(6) of the Act, to render any definitive finding on the aforesaid question, for the following reasons. The Petitioner's plea of typographical error is not, on its face, implausible. The transposition of the numerals "2" and "3" in the year "2023" so as to yield "2032" appears to be a patent and immediately perceptible error on the face of the instrument, and Courts have consistently recognised that a *falsa demonstratio*, namely a false description arising from a clerical or typographical mistake, does not necessarily vitiate a document where the true intention of the parties can otherwise be gathered from the surrounding circumstances and the conduct of the parties. Whether such true intention can indeed be established in the facts of the present case, by reference to GST registrations, tax filings, bank records, correspondence exchanged between the parties, and the actual conduct of the parties in running the partnership hotels, is necessarily a question of fact that can only be determined upon appreciation of evidence. Such an

exercise cannot be undertaken by this Court within the limited confines of proceedings under Section 11(6) of the Act.

19. More critically, the question of whether the anomaly in the date contained in the deed dated 01.12.2023 renders the arbitration clause contained therein *non-est* or inoperative is itself a jurisdictional question that goes to the root of the Arbitral Tribunal's competence and is, therefore, expressly within the domain of the Arbitral Tribunal under Section 16 of the Act. The Respondents' challenge to the deed constitutes a dispute arising out of or in connection with the said deed, which is precisely the category of disputes that the arbitration clause was designed to resolve. It would be a manifest incongruity to hold that namely because a party disputes the validity of the deed containing the arbitration clause, the Court must therefore refuse to refer the dispute to arbitration. Such an approach would effectively enable a party to defeat the arbitration agreement merely by raising a challenge to the underlying document, which is precisely what the doctrine of Kompetenz-Kompetenz, as enshrined in Section 16 of the Act, seeks to prevent.

20. The primary question that falls for consideration before this Court at the present stage is therefore whether, on a *prima facie* examination of the materials placed on record, there exists a valid arbitration agreement between the parties, and whether the conditions precedent for exercise of jurisdiction under Section 11(6) of the Act have been duly satisfied. Before examining the facts in this light, it is necessary to appreciate the settled legal position governing the scope and extent of the jurisdiction exercisable under Section 11(6) of the Act, as authoritatively laid down by the Hon'ble Supreme Court, culminating in its most recent pronouncement in **Office**

for Alternative Architecture v. IRCON Infrastructure and Services Ltd., reported as **2025 SCC Online 1098**.

21. The legislative history behind Section 11(6) of the Act is of considerable significance. Prior to the Amendment Act of 2015, a view had emerged in certain judicial pronouncements that the referral court could go into various preliminary questions, including the validity of the arbitration agreement. The said expansive interpretation was decisively departed from by Parliament through the insertion of Section 11(6A) by the Amendment Act of 2015, which expressly confined the examination by the referral Court to the singular and limited question of whether an arbitration agreement exists between the parties. The legislative intent was unambiguous, namely, to minimise judicial interference at the referral stage and to ensure that the arbitral process is not frustrated or delayed by satellite litigation before the referral court.
22. This legislative intent has been consistently recognised and reinforced by the Hon'ble Supreme Court. In **Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729**, the Court held with clarity that what is required to be examined under Section 11(6) is whether an arbitration agreement exists, "nothing more, nothing less." In **Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman, (2019) 8 SCC 714**, the Hon'ble Supreme Court held that all other questions including the validity of the agreement, arbitrability of disputes, and all preliminary issues must be decided exclusively by the Arbitral Tribunal under Section 16 of the Act. In **SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC Online SC 1754**, a three-judge bench reaffirmed that courts exercising jurisdiction under Section 11(6) cannot engage in a detailed examination of disputed

questions of fact, and that the arbitrator is equally, if not more, competent to adjudicate questions of such nature. Most significantly, in ***Office for Alternative Architecture v. IRCON Infrastructure and Services Ltd.*** (*supra*), the Hon'ble Supreme Court further crystallised the legal position by holding that Section 11(6A) mandates a limited judicial role confined solely to examining the existence of an arbitration agreement, and that courts must refrain from acting as "gatekeepers" of claims at the stage of arbitrator appointment. The Court expressly held that any observations made by the referral court at the Section 11(6) stage on questions beyond the existence of the arbitration agreement are not only impermissible but would also be liable to prejudice the merits-based determination to be undertaken by the Arbitral Tribunal.

23. Applying these settled legal principles to the facts of the present case, this Court finds that both Partnership Deeds dated 29.03.2023 and 01.12.2023, as placed on record, bear the signatures of the Petitioner as well as the Respondents, and both contain Clause 19, which constitutes a clear and unambiguous arbitration clause providing for the resolution of disputes between the parties through arbitration. The existence of Clause 19 in the Partnership Deeds, prima facie, establishes the existence of an arbitration agreement within the meaning of Section 7 of the Act. As regards the date anomaly noted above, the same does not, at the prima facie stage, render the arbitration clause manifestly and ex facie non-existent or a nullity. The anomaly is patent, the plea of typographical error is not inherently implausible, and the question of the true operative date of the deed is a disputed question of fact which must necessarily be determined by the Arbitral Tribunal upon appreciation of evidence. This

Court is, accordingly, not persuaded that the said anomaly, in and of itself, constitutes a ground to refuse reference at this stage.

24. The Respondents have further vehemently challenged the very existence and authenticity of the Partnership Deeds, contending that the same are forged and fabricated documents, that the Petitioner is not the legally wedded wife of their deceased father, and that Respondent No. 1, allegedly suffering from physical and mental ailments, lacked the capacity to execute the said Deeds. All such challenges including the challenge founded upon the anomalous date in the deed dated 01.12.2023 are essentially disputed questions of fact and law which can only be determined upon a detailed examination of evidence, including if necessary oral evidence, documentary evidence, and expert evidence in the nature of handwriting and forensic analysis. This Court, in exercise of its limited and well defined jurisdiction under Section 11(6) of the Act, cannot and ought not to embark upon such an inquiry. The Arbitral Tribunal, in terms of Section 16 of the Act, is fully and exclusively competent to decide upon its own jurisdiction, including all challenges to the existence, validity, or operative effect of the arbitration agreement and the underlying deeds. The Respondents shall be at complete liberty to raise all such objections as preliminary issues before the Tribunal in accordance with law.

25. In the light of the aforesaid discussion, this Court is satisfied that all conditions precedent for exercise of jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 stand duly satisfied in the present case, namely. There exists, prima facie, a valid arbitration agreement between the parties in the form of Clause 19 of the Partnership Deeds dated 29.03.2023 and 01.12.2023. A notice under Section 21 of the Act

was duly issued by the Petitioner on 03.05.2025, calling upon the Respondents to concur in the appointment of an arbitrator. The said notice was duly received by the Respondents, who responded thereto vide their Reply dated 13.05.2025; and The parties have failed to arrive at a consensus regarding the appointment of an arbitrator, thereby necessitating the intervention of this Court. Accordingly, this Court is of the considered view that the present petition deserves to be allowed and an independent Sole Arbitrator ought to be appointed to adjudicate the disputes between the parties.

- 26.** In view of the aforesaid findings, this Court hereby appoints Mr. Chayan Gupta (Adv.), (Mob. No. 9051511986), as the Sole Arbitrator to adjudicate all disputes and differences between the parties arising out of and in relation to the Partnership Deeds dated 29.03.2023 and 01.12.2023. The appointment of the Sole Arbitrator shall be subject to compliance with the disclosure requirements under Section 12 of the Arbitration and Conciliation Act, 1996. The learned Sole Arbitrator shall be entitled to fix his/her remuneration in accordance with the rates specified under the Fourth Schedule to the Arbitration and Conciliation Act, 1996.
- 27.** The learned Sole Arbitrator shall be at liberty to consider and decide all objections raised by any party including but not limited to the question of maintainability, jurisdiction, the existence and validity of the Partnership Deeds, the marital status of the Petitioner, the capacity of the Respondents to execute the said Deeds, and all other jurisdictional challenges as preliminary issues in accordance with Section 16 of the Act, after affording full and complete opportunity of hearing to all parties.

- 28.** All questions on the merits of the disputes are expressly left open to be decided by the learned Sole Arbitrator in accordance with law. It is clarified that no observations made by this Court in the present judgment shall be construed as an expression of opinion on the merits of the disputes between the parties or on any of the jurisdictional objections that may be raised before the Arbitral Tribunal. The arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the rules framed thereunder.
- 29.** With the aforesaid directions, the present petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

(GAURANG KANTH, J.)

SAKIL AMED P.A.

