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IN THE HIGH COURT OF BOMBAY AT GOA.

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.4 OF 2026.
WITH
MISCELLANEOUS CIVIL APPLICATION NO. 1722 OF 2026 (F)
IN
APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.4 OF 2026

M/S K. C. CONSTRUCTION CO, THR ITS PARTNER JEREMIAS DSOUZA AND 2 ORS. **…APPLICANTS.**

~ VERSUS ~

JITESH PRAKASH KAPOOR **…RESPONDENT**

APPEARANCES:

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for the Applicant ***Mr. Sudin Usgaonkar, Senior Advocate with Ms. Snehlata Sahani and Ms. Divya Parab, Advocates.***

for the Respondent ***Mr. H. S. Kohli, Ms Tabita Liza Souto and Mr Raghav Kaushik, Advocates.***

CORAM : AMIT S. JAMSANDEKAR, J.

Reserved on : 5th November 2026.

Pronounced on : 25th November 2026.

ORDER

1. By this application under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicants seek the appointment of a sole arbitrator to adjudicate the dispute and differences that have arisen between the Applicants and the Respondent under and in connection with the Memorandum of Understanding (MoU) dated 13th February 2024.

2. By the said MoU executed between the Applicants and the Respondent, the parties *inter alia* intended to purchase the plot bearing survey number 74/20 at Siolim, Bardez – Goa. Admittedly, disputes and differences exist between the parties in respect of the transaction under the MoU. A police complaint was filed on 19th March 2025 alleging misrepresentation, fraud and breach of trust against the Applicants. The complaint is by the Respondent and two others. Consequently, on 27th May 2025, the Economic Offences Cell of the Police Station of Panaji registered FIR No. 03/2025 against the Applicants.

3. Thereafter, on 19th June 2025, the Applicants issued a legal notice to the Respondent terminating the said MoU. However, on 1st August 2025, in reply to the said notice, the Respondent has not accepted the termination. Therefore, admittedly, the MoU is still subsisting.

4. The arbitration clause 14 contained in the said MoU reads as under:-

> *"14. In case of any dispute arises about the interpretation of any clauses, terms and conditions of this Memorandum of Understanding or relating to any clauses, terms, and conditions of this Memorandum of Understanding the same shall be settled by the Arbitration laws in force*."

5. Pursuant thereto, on 26th December 2025, the Applicants issued an invocation notice under Section 21 of the Arbitration Act and invoked arbitration proceedings and nominated the names of arbitrators. The Respondent did not respond to the invocation notice sent by the Applicants. Therefore, the present application.

6. The Respondent has opposed the appointment of the Arbitrator on the ground that the subject matter of the dispute is not arbitrable because a criminal complaint has been made against the Applicants in respect of the MoU, alleging fraud, misrepresentation, criminal breach of trust and fabrication of documents, etc. Therefore,

according to the Respondent, the subject matter cannot be referred for arbitration; and reasons and justification for such a plea are stated by the Respondent in the reply filed by the Respondent in the present proceedings. It is stated that the dispute between the parties cannot be reduced to a simple contractual disagreement but is one involving serious questions of title, authority and competing rights, rendering the agreement incapable of enforcement and the dispute beyond the scope of arbitration. It is further submitted that the entire transaction, including consent to the MoU which contains an arbitration clause, was obtained, conceived and executed with fraudulent intent since the inception and therefore, breach of trust, forgery and conspiracy are established and therefore, it is a serious fraud committed by the Applicants. In view thereof, it is submitted that, the present matter is not arbitrable. In support of his submissions, Mr. Kohli, relied upon following judgments:- ***Managing Director, Bihar State Food and Civil Supply Corporation Limited and another v. Sanjay Kumar****, [(2026) 4 SCC 649]****, A. Ayyasamy v. A. Paramasivam,*** *[(2016) 10 SCC 386]****, Rashid Raza v. Sadaf Akhtar,*** *[(2019) 8 SCC 710],* ***Booz Allen v. SBI Home Finance,*** *[(2011) 5 SCC 532]****, Avitel Post Studioz v. HSBC PI Holdings,*** *[(2021) 4 SCC 713],* ***Abdul Kadir***

Shamsuddin Bubere v. Madhav Prabhakar Oak, *[(1962) 3 SCR 702].*

7. However, Mr. Kohli expressly submitted that the execution and existence of the MoU are not in dispute. Admittedly, the MoU contains an arbitration clause.

8. I have heard the rival submissions and perused the record, and I have limited the scope of inquiry in this matter to the extent permissible under Section 11 of the Act, and I have also considered all the judgments cited by Mr. Kohli, in support of his submissions.

9. When the existence and execution of the MoU containing an arbitration clause are not in dispute, no further inquiry should be made while deciding the application under Section 11 of the Act. The contention raised by the Respondent that the subject matter, in the facts and circumstances of the case, is not arbitrable is also not a consideration for deciding an application under Section 11 of the Act.

10. After the amendment to the Arbitration Act, 1996, introducing Section 11(6A), all objections to the arbitration agreement must be adjudicated under Section 16 of the Act before the Arbitral Tribunal. The contention that the subject matter is not arbitrable cannot be the subject matter of an application under Section 11 of

the Act. While deciding the Section 11 application, the Court ought not to conduct any fact-finding inquiry into the arbitrability of the subject matter. That inquiry lies within the Arbitral Tribunal's jurisdiction. Under Section 11, the inquiry ought to be confined strictly to the existence of the arbitral agreement. The authorities cited by the Respondent are not relevant after detailed interpretation of the provisions of Section 11 by the Hon'ble Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 in Re****, [(2024) 6 SCC 1]* and thereafter, in ***SBI General Insurance Company Limited v. Krish Spinning****, [(2024) 12 SCC 1]*. Further, all the judgments prior to the 2015 amendment and subsequent thereto on the issue are considered by the Hon'ble Supreme Court in ***Managing Director, Bihar State Food and Civil Supply Corporation Limited and another v. Sanjay Kumar****, [(2026) 4 SCC 649]* and it has held that:

> *"28. The curtains have fallen. Courts exercising jurisdiction under Section 11(6) and Section 8 must follow the mandate of sub-section (6-A), as interpreted and mandated by the decisions of this Court and their scrutiny must be "confine(d) to the examination of the existence of the arbitration agreement."*

11. In view thereof, I reject all the submissions made by learned Counsel for the Respondent.

12. Therefore, I pass the following order:-

(a) ***Mr. Yogesh Nadkarni,*** Advocate, is appointed as a Sole Arbitrator to adjudicate the disputes between the parties arising out of the MoU dated 13th February 2024. The contact details of the Learned Sole Arbitrator are as follows:

Name: **Yogesh Nadkarni**
Address: TF-04/05, Rani Pramila Arcade,
18th June Road, Panaji, Goa, 403001.
Near Sher e Punjab Restaurant.
E-mail: ynadkarni@yahoo.com
Phone No. 0832 2423151

(b) A copy of this order shall be communicated forthwith to the Learned Sole Arbitrator by the Advocates for the Applicants by e-mail at ynadkarni@yahoo.com.

(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, in the form prescribed by the Sixth Schedule, to the parties within a period of one week from receipt of a copy of this Order. The disclosure shall be given to the

Advocate for the Applicants, and the Advocate for the Applicants shall file it in the Registry of this Court after giving a copy to the Advocate for the Respondent. The Registry shall retain the said Statement on the file of this Application.

(d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated by him to obtain appropriate directions with regard to the conduct and procedure of the arbitration, including the fixing of a schedule for pleadings, the examination of witnesses, if any, and the schedule of hearings. At such meeting, the parties shall provide a valid and functional email address, along with the mobile and landline numbers, of the respective Advocates of the parties to the Arbitral Tribunal. It is agreed between the parties that communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration.

(e) In terms of Section 6 of the Act, the Learned Sole Arbitrator may appoint a Tribunal Secretary to assist the Arbitral Tribunal in conducting the reference. The nomination of the Tribunal Secretary shall be communicated by the Learned Arbitrator to the parties at or before the first meeting under clause (d) above, together with the nominee's statement of independence and

impartiality in the form of the Sixth Schedule to the Act applied with the necessary changes; any objection to the nomination shall be raised within seven days and decided by the Learned Sole Arbitrator, failing which the parties shall be taken to have consented to the appointment. The Tribunal Secretary so appointed by the Learned Sole Arbitrator shall act only upon the instruction of the Learned Sole Arbitrator, and shall take no part in the adjudication of the disputes, and shall be bound by the same duty of confidentiality as the Arbitral Tribunal. The remuneration of the Tribunal Secretary shall be fixed by the Learned Sole Arbitrator at the first meeting after hearing the parties and recorded in the first procedural order, shall form part of the costs of the arbitration within the meaning of Section 31A of the Act and shall be borne and paid by the parties on the same terms as the fees of the Learned Sole Arbitrator under clauses (f) and (g) below.

(f) The fees of the Learned Sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018, and the arbitral costs and the fees of the Learned Sole Arbitrator shall be borne by the parties in equal shares. The Learned Sole Arbitrator shall be at liberty to call for deposits

towards the costs of the arbitration under Section 38 of the Act, to be held and accounted for under his directions.

(g) The fees paid by the parties shall be subject to the final Award that may be passed by the Arbitral Tribunal.

13. All rights and contentions of the parties on the merits, including on the issue of arbitrability of the subject matter, are expressly kept open to be agitated before the learned Arbitrator.

14. The Application is disposed of in the above terms. No order as to costs. Pending Application, if any, also stands disposed of.

15. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

Signed by: VINITA VIKAS NAIK
Designation: Private Secretary
Date: 26/11/2026 17:18:54