

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO. 1 OF 2026

Mr. Hasmukh Surji Shah
(Partner of M/s. Ekdant
Housing)

...Petitioner

Versus

Mr. Ashok Vishanji Pasad
(Partner of M/s. Ekdant
Housing)

...Respondent

Mr. Siddhesh Bane i/by Saurabh B., *for the Petitioner.*

**CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : FEBRUARY 20, 2026**

ORDER :

1. This Petition has 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 an agreement dated June 9, 2009 (***“Agreement”***). The arbitration agreement is contained in Clause 21 (found at Page 23 & 24 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. It is apparent from the record that the arbitration agreement was invoked by the Petitioner on October 19, 2025. There is no reply filed to the said invocation.

3. 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.

4. 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.

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

² *SBI General Insurance Co. Ltd. Vs. Krish Spinning – 2024 SCC OnLine 1974*

³ *Ajay Madhusudan Patel Vs. Jyotindra S. Patel – 2024 SCC OnLine, 2597*

5. In these circumstances, both this Application as well as the Section 9 Petition are hereby ***finally disposed of***, in terms of the following order:

- i) Mr. Rajesh Datar, an 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:- 2, Blaze Business Centre, First
Floor, Birla Mansion, near
Commerce House, 134, N M Road,
Fort, Mumbai 400 023
Email ID: rajeshdatar@yahoo.co.in

- ii) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of upload of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

iii) 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 Advocates for the Petitioner 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 Petition and a copy of the same shall be furnished by the Advocates for the Petitioner to the Respondent.

iv) 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;

v) 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.

6. 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 Learned Arbitral Tribunal appointed hereby.

7. 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.]