



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.455 OF 2025

Nagji Keshavji Rita and Ors.

...Applicants

V/s.

Kanji Bachubhai Rita and Ors.

...Respondents

Mr. Dhruv Gandhi with Mr. Shreyas R. Shrivastava for the Applicants.

Mr. Amrut Joshi with Mr. Yash Chedda, Mr. Nivit Srivastava and Ms. Aditi Sinha i/b. M/s. Maniar Srivastava Associates for Respondent No.1

Mr. Smit K. Nagda with Ms. Seema Pandey for Respondent Nos.2 and 3.

CORAM: SANDEEP V. MARNE, J.

DATED: 08 MAY 2026.

P.C.:

1) This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) seeking appointment of an Arbitrator for adjudication of disputes and differences between the parties arising out of Agreement for Sale of Shares dated 13 August 2014.

2) I have heard Mr. Gandhi, the learned counsel appearing for the Applicants and Mr. Joshi, the learned counsel appearing for Respondent No.1. I have considered the submissions canvassed by them.

3) Clause 8.3 of the Agreement provides for resolution of disputes through arbitration, which reads thus:-

8. DISPUTE RESOLUTION

8.1 Submission to Arbitration:

In the event of any dispute, controversy or difference ("Dispute") of whatever nature, arising under, out of, in connection with or relating to the enforcement, performance or the terms and conditions of this Agreement or any provision thereof, such Dispute shall be settled through good faith negotiation amongst the parties to such Dispute. In the event that such Dispute cannot be resolved by negotiation within 7 days of the Dispute having arisen, such Dispute shall be referred to binding arbitration and determined in accordance with the provisions of the Arbitration and Conciliation Act 1996.

8.2 Place and Language

The place of arbitration and the seat of arbitral proceedings shall be Mumbai. Any arbitral proceeding begun pursuant to any reference made under this Agreement shall be conducted in English language. The decision of the arbitral tribunal and any Award given by the arbitral tribunal shall be final and binding upon the Parties.

The provisions of Part A of the Arbitration and Conciliation Act, 1996 shall not apply to proceedings held outside India.

8.3 Appointment of the Arbitral Tribunal

The arbitral tribunal shall comprise five arbitrators. Out of five arbitrators four arbitrators shall be Mr. Ramji Bhai H. Shah, Mr. Praful B. Satra. Mr. Virji D. Gada, Mr. Premji Bhai H. Shah, these four arbitrators shall decide the fifth arbitrator. Mr. Ramji Bhai H Shah shall be the presiding officer.

Thus, under clause 8.3, the Arbitral Tribunal would comprise of five arbitrators, four out of whom are named and those four named arbitrators can decide the fifth arbitrator. Mr. Ramji Bhai H. Shah is one of the named Arbitrators and he is also the presiding arbitrator.

4) After the disputes arose, the Applicants addressed notice under Section 21 of the Arbitration Act seeking appointment of a neutral arbitrator by flagging the possible risk of arbitration being hit by the vice of unilateral appointment. The Notice stated thus:

20. While Clause 8.3 of the Subject Agreement provides for the composition of an arbitral tribunal, subsequent developments in the law may cast a doubt on the validity of the prescribed arbitral tribunal. Hence, to avoid any allegation pertaining to the impartiality or neutrality of the arbitral tribunal, Our Clients propose that a neutral sole arbitrator be appointed to adjudicate the disputes and differences that have arisen between the parties. Our clients propose that Adv. Piyush Mahendra Shah, being an advocate practising before the Hon'ble Bombay High Court, be appointed as a sole arbitrator to adjudicate and try the disputes and differences that have arisen under the Subject Agreement.

5) However, during the course of hearing of the Application, an apprehension was raised on behalf of the Applicant that two out of the four named arbitrators are likely to have bias against the Applicants. Accordingly, the Applicants were granted leave to file additional affidavit. Accordingly, affidavit dated 13 April 2026 is filed. It would be apposite to reproduce paragraphs 3 to 9 of the additional affidavit, which reads thus:-

3. I state that, I was a partner along with Mr. Ramji H. Shah in a partnership firm known as M/s. Rushabh Developers. Mr. Ramji H. Shah retired from the said Firm vide retirement deed dated 14th July 2021, leaving behind myself and one Mr. Virendra Singh as the continuing partners in the firm known as M/s. Rushabh Developers. Hereto marked and annexed as "Exhibit - A" is the copy of the retirement deed dated 14th July 2021.

4. further state that, M/s. Rushabh Developer had undertaken a redevelopment project situated at Malad (East), Mumbai. However, after the retirement of Mr. Ramji H. Shah, the landowner began creating obstruction and difficulties in the redevelopment process including but not limited to filing of writ petition before this Hon'ble Court in which a restraining order has been passed by the Hon'ble Court. The Applicant No. 1 apprehends that the said acts of hostility

by the landowner are being instigated and orchestrated by Mr. Ramji H. Shah in order to gain control of the project as the project has become profitable and viable due to changes in policies.

5. I state that, [am also a partner along with the Mr. Mansukh H. Shah (brother of Mr., Ramji H. Shah) in a partnership firm known as M/s. Shah & Rita Builders. I further state that, Mr. Mansukh H. Shah has instituted proceedings against me, before the City Civil Court, at Dindoshi, Mumbai vide Civil Suit No.1416 of 2025.

6. For the reasons stated hereinabove, I have reasonable apprehension of bias, if Mr. Ramji Harakhchand Shah is appointed as an Arbitrator to decide the disputes and differences between the parties.

7. I state that, I was also a partner in a partnership firm viz. "Rickey and Roney" along with Mr. Virji D. Gada and Mr. Premjibhai H. Shah. The said Premjibhai H. Shah is the brother of Mr. Ramji Shah and Mr. Mansukh Shah. I have retired from the aforesaid partnership firm in and around 2022. However, I am presently unable to trace a copy of the Retirement Deed evidencing my retirement. I crave leave to refer and rely upon the Retirement Deed, if and as and when it is traced as I am already trying to trace the same at all the possible places it could be kept and I have also requested the continuing partners of the firm to provide me with the copy of such retirement deed.

8. Further state that, I was also a partner in a partnership firm viz. "M/s. Royal Lifespaces" alongwith Mr. Premjibhai H. Shah, who is the brother of Mr. Ramji H. Shah & Mr. Mansukh H. Shah. I crave leave to refer and rely upon the Retirement Deed, if and as and when it is traced as I am already trying to trace the same at all the possible places it could be kept.

9. Hence, I reasonably believe that there may be biasness against me, if Ramji H. Shah, Mr. Premji H. Shah and Mr. Virji D. Gada are appointed as arbitrators to adjudicate the present disputes and differences between the parties.

6) Thus, it has come on record that the brother of one of the named arbitrators Mr. Ramji Harakhchand Shah, is into litigation with the Applicants. This would obviously create a reasonable apprehension of bias in the mind of the Applicants. Additionally, there also appears to be a biased business relationship between two of the named arbitrators

Mr. Premji H. Shah and Mr. Virji D. Gada and the same would be directly hit by the first entry in the Seventh Schedule r/w Section 12(5) of the Arbitration Act. There is no reply to the additional affidavit denying the above quoted statements.

7) Mr. Joshi however opposes appointment of Arbitrator other than the named arbitrators contending that the parties have consciously chosen to have their disputes resolved only through the named arbitrator. Mr. Gandhi on the other hand submits that the referral court can appoint any other person as arbitrator if there is a reasonable apprehension of the named arbitrator not acting independently. He has placed reliance on judgment of *Indian Oil Corporation Limited and Others V/s. Raja Transport Private Limited*¹ in which it is held in paragraph 45 as under:

45. If the arbitration agreement provides for arbitration by a named Arbitrator, the courts should normally give effect to the provisions of the arbitration agreement. But as clarified by Northern Railway Administration, where there is material to create a reasonable apprehension that the person mentioned in the arbitration agreement as the Arbitrator is not likely to act independently or impartially, or if the named person is not available, then the Chief Justice or his designate may, after recording reasons for not following the agreed procedure of referring the dispute to the named arbitrator, appoint an independent Arbitrator in accordance with section 11(8) of the Act. In other words, referring the disputes to the named arbitrator shall be the rule. The Chief Justice or his designate will have to merely reiterate the arbitration agreement by referring the parties to the named arbitrator or named Arbitral Tribunal. Ignoring the named Arbitrator/Arbitral Tribunal and nominating an independent arbitrator shall be the exception to the rule, to be resorted to for valid reasons.

8) Thus, in a case involving reasonable apprehension of the named arbitrator not likely to act independently or neutrally, the referral court can appoint any other arbitrator.

¹ (2009) 8 SCC 520

9) Mr. Joshi submits that if a particular procedure is agreed for adjudication of disputes through arbitration. Provision of Section 11 requires that procedure must be scrupulously followed. He relies on judgment of the Apex Court in **Datar Switchgears Ltd. V/s. Tata Finance Ltd. and Another²**. However, in the present case, the dispute is not with regard to arbitration procedure, the dispute is with regard to appointment of named arbitrators. Arbitrator other than the named ones is sought by expressing a reasonable apprehension of bias in the mind of the Applicants with regard to three out of the four named arbitrators. Therefore Mr. Joshi's reliance on the judgment in ***Datar Switchgears Ltd.*** is inapposite.

10) Mr. Joshi relies upon provisions of Sections 12 and 13 of the Arbitration Act in support of his contention that if the Applicants believe that Arbitral Tribunal is biased, proper course of action is to raise such an objection before the Arbitral Tribunal and invite Tribunal's ruling on the same. He submits that this Court cannot appoint any person other than the named arbitrator in exercise of jurisdiction under Section 11(6) of the Arbitration Act. I am unable to agree. While party autonomy is respected, the court can bypass named arbitrators if there are justifiable doubts regarding their independence, impartiality. Once this Court is satisfied that the named arbitrator(s) is/are likely to be biased against one of the parties, the Court has all the necessary powers to appoint some other neutral person as the arbitrator. In the present case, there are previous business relations as well as litigations with the relatives of the named arbitrators. In that view of the matter, it will be dangerous to

2 (2000) 8 SCC 151

constitute arbitral Tribunal comprising of named arbitrator for adjudication of disputes between the parties. In such circumstances, it would be just and proper to constitute Arbitral Tribunal of a sole Arbitrator chosen by this Court.

11) So far as Respondent No.2 is concerned, Mr. Gandhi Submits that the Applicants shall not press any claims against Respondent No.2 in the arbitration. So far as Respondent No.3 is concerned, it is not the signatory to the arbitration agreement. Mr. Gandhi however submits that Respondent No.3 is a veritable party to the arbitration agreement. This position is disputed by Respondent No.3. In my view, whether Respondent No.3 is a veritable party to arbitration agreement or not can be decided by the Arbitral Tribunal.

12) I accordingly, proceed to pass the following order:

(A) Mr. Prathamesh Kamat, an Advocate practising in this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Agreement for Sale of Shares dated 13 August 2014. The contact details of the Arbitrator are as under:-

Office Address:- 44, Rajgir Chambers, 6th floor, Opp.
Old Custom Office, Shahid Bhagat
Singh Road, Fort, Mumbai-400 001

contact No.:- 9833190164

Email ID:- prathameshnkamat@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of uploading of this order. The Applicant

shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith 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 2 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 by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

(E) The fees of the sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

13) In case Respondent No.3 is impleaded as party to arbitration, it would be open for Respondent No.3 to oppose its impleadment on the ground that it is not a signatory to the arbitration agreement.

14) All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.

15) With the above directions, the Application is disposed of.

[SANDEEP V. MARNE, J.].