

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO. 480 OF 2025

Nishant Lalitkumar Seth

.....APPLICANT

: **VERSUS** :

Nachiappan Kannan

.....RESPONDENT

Mr. Chetan Kapadia, Senior Advocate with Mr. Rohan Sathaye, Mr. Vaibhav Shukla, Mr. Zain AK Najam ES Sani and Ms. Shreem Pathak i/b. VALS Legal, *for the Applicant.*

Mr. Siddhesh Bhole with Mr. Apporva Kulkarni i/b. SSB Legal & Advisory, *for Respondent No.1.*

Ms. Shubhra Swami i/b. Mr. Shubro Dey, *for Respondent Nos.2 and 3.*

Mr. Sangram Parab i/b. Mr. Rakesh Sawant, *for Respondent No.4.*

CORAM : SANDEEP V. MARNE, J.

DATED : 17 JANUARY 2026.

P.C :

1) This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) for resolution of disputes and differences between the parties arising out of Memorandum of Understanding dated 29 March 2022 (**MOU**).

2) I have heard Mr. Kapadia, the learned Senior Advocate appearing for the Applicant and Mr. Bhole, the learned counsel appearing for Respondent No.1.

3) Perusal of the MOU indicates that Clause-(x) thereof provides for dispute resolution through the mechanism of arbitration. Clause-(X) of the MOU reads thus :

X DISPUTE RESOLUTION:

The Partners hereby agree that, in the event of any dispute between the Partners relating to this Agreement, the Partners shall first seek to resolve the dispute through informal discussions. In the event any dispute cannot be resolved informally, the Partners agree that the dispute will be negotiated between the Partners through mediation, if Partners can agree on a mediator. The costs of mediation shall be shared equally by the Partners. The mediator should be resident of India.

In case parties fails to arrive at a conclusion thru mediation, then dispute shall be referred to arbitration in pursuance of the Indian Arbitration and Conciliation Act, 1996. Such Arbitration proceeding shall be conducted by sole arbitrator mutually appointed by the Parties. If mutual consensus cannot be formed in respect of appointment of sole arbitrator, the arbitrator shall be appointed in accordance with provisions of Arbitration and Conciliation Act, 1996. The place of arbitration shall be Mumbai. The language of the arbitration shall be English. The cost of arbitration shall initially be borne equally, however upon the award being given; the prevailing Party shall be paid all the cost of arbitration by the other Party.

4) Mr.Bhole raises three objections for appointment of Arbitrator in the present application. Firstly, he submits that Respondent No.1 has initiated proceedings before National Company Law Tribunal (NCLT) under Sections 241 and 242 of the Indian Companies Act, 2013 for oppression and mismanagement in respect of Respondent No.3. He submits that the Applicant has moved application under Section 18 of the Arbitration Act in proceedings filed before the NCLT. He therefore submits that in the light of filing and pendency of Section 8 application before NCLT, the Applicant cannot exercise parallel remedy of present application under Section 11 of the Arbitration Act.

5) Mr.Kapadia, responds by submitting that both, invocation of arbitration, as well as filing of the present application were well before filing of proceedings by Respondent No.1 before NCLT and that therefore the Applicant is entitled to maintain the present application for appointment of arbitrator since parties have contractually agreed for dispute resolution mechanism through arbitration. It is seen that the present Application has remained pending before this Court and in the meantime, Respondent No.1 has instituted proceedings before NCLT. When the Applicant believes that there is arbitration agreement, he has no choice left but to file application under Section 8 of the Act before NCLT. In such circumstances, the present Application filed under Section 11 of the Act would not be rendered non-maintainable only because the Applicant was required to file Section 8 application before NCLT.

6) In my view, the issue whether the proceedings filed by Respondent No.1 under Sections 241 and 242 of the Companies Act would remain maintainable in the light of reference made to the Arbitral Tribunal is something which NCLT would decide on its own merits. Therefore, pendency of proceedings before NCLT would not come in the way of this Court constituting Arbitral Tribunal in the light of express agreement between the parties to resolve disputes through the mechanism of arbitration.

7) The second objection raised by Mr.Bhole is that the Applicant has impleaded Respondent Nos.2 and 3, who are not parties to the MOU and that therefore there is no agreement to resolve disputes relating to Respondent Nos.2 and 3 by mechanism of arbitration. On the other hand, Mr. Kapadia contends that the Petitioner and Respondent Nos.1 and 4 have agreed under the MOU to do business in various entities which includes Respondent No.3-Company and that therefore Respondent No.3 is sought to be added as a party Respondent in the present application. He further submits that Respondent No.2 is the wife of Respondent No.4 and

holds 5% share in Respondent No.3-Company. In my view, as of now, this Court is merely constituting the Arbitral Tribunal in view of existence of arbitration agreement. As and when the Applicant files Statement of Claim and impleads any party, who is not a signatory to the MOU, the issue of impleadment of such party and maintainability of arbitral proceedings qua such party would be decided by the Arbitral Tribunal on its own merits. Therefore, resolution of even this controversy need not delay the constitution of the arbitral tribunal.

8) The third objection raised by Mr. Bhole is that the Applicant is seeking adjudication of disputes outside the MOU dated 29 March 2022. In my view, the objection is speculative in nature. As and when the Applicant files Statement of Claim before the Arbitral Tribunal, it would be for the Tribunal to decide whether the claims raised by the Applicant emanate out of the MOU or whether they are outside the scope of MOU. This issue is accordingly left open to be decided by the Arbitral Tribunal.

9) In my view therefore in the light of existence of arbitration agreement between the parties, it would be just and appropriate to appoint a sole Arbitrator for adjudication of disputes and differences between the parties arising out of Memorandum of Understanding.

10) Accordingly, I proceed to pass the following order :

A) Mr. Rohan Savant, an Advocate of this Court is appointed as Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Memorandum of Understanding referred to above. The contact details of the Arbitrator are as under:

Office Address :- 62, Ali Chamber, 5th Floor, Tamarind Lane,

Kala Ghoda, Fort, Mumbai - 01

Email ID :- rohanranjitsavant@gmail.com

Mobile No.: 9833126212

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocate 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.

11) All rights and contentions of the parties are expressly kept open to be raised before the Arbitral Tribunal.

12) With the above directions, the Commercial Arbitration Application is **disposed of**.

[SANDEEP V. MARNE, J.]