

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 444 OF 2025
WITH
COMMERCIAL ARBITRATION PETITION NO. 408 OF 2025

Mayank J Shah

...Petitioner

Versus

Raju V Shah

...Respondent

Mr. Sanjay Jain, a/w Hrushika Narvekar, Parag Kabadi, Drishti Gudhaka & Vidhi Porwal, i/b. DSK Legal, for Petitioner.

Mr. Chetan Kapadia, Senior Advocate a/w Yuvraj Singh & Devansh Gadda, i/b. Mulla & Mulla & Craigie Blunt & Caroe, for Respondent No.1.

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CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: MAY 18, 2026

JUDGEMENT:

Context and Factual Background:

1. The captioned Petitions impugn interlocutory orders passed by Learned Arbitral Tribunal – *first*, injunction calls for contributing capital that

had been made on the Respondents; and *second*, refusing to vacate such injunction at a subsequent point in time.

2. The Petitioners, Mayank J. Shah, Shreyans J. Shah and Shruti M. Shah (collectively “**Mayank**”) and Respondent No.1, Raju V. Shah (“**Raju**”) are partners of Respondent No.2, Vidhi Research and Development LLP (“**Vidhi LLP**”).

3. Interim Application No.2 in the arbitration proceedings led to an order dated September 27, 2023 (“**2023 Order**”) under Section 17 of the Arbitration and Conciliation Act, 1996 (“**the Act**”), by which, prayer clauses (a) and (b) which read thus, were granted:-

“(a) *That pending the hearing and final disposal of the arbitral proceedings between the parties arising out of or in connection with the LLP Agreement and for a period of at least 4 (four) weeks from the date of the passing of the Award, this Hon’ble Court be pleased to order; direct and restrain the Respondents (either individually or collectively) from acting in furtherance of or implementing the Second Demands i.e. the Letters dated 12 September (annexed as Exhibits B and C) and the Minutes of the Meeting of Respondent No.1 held on 6th September 2022 (annexed as Exhibit D);*

(b) *That pending the hearing and final disposal of the arbitral proceedings between the parties arising out of or in connection with the LLP Agreement and for a period of at least 4 (four) weeks from the date of the passing of the Award, this Hon’ble Court be pleased to order; direct and restrain the Respondents (either individually or collectively) from making any monetary demands on the Applicant;”*

4. Interim Application No.12 sought vacation of the 2023 Order, which led to an order dated February 11, 2025 (“**2025 Order**”) refusing to vacate the same. Both orders are impugned.

5. In the 2023 Order, the Learned Arbitral Tribunal squarely allowed the relief sought in prayer clauses (a) and (b) of Interim Application No.2 (as extracted above), thereby staying, as an interim measure, the demand for Rs.54 crores made by Mayank and Vidhi LLP; and a demand for contribution of losses purportedly suffered in a sum of Rs.25.99 crores.

6. The Agreement dated August 14, 2014 (“**LLP Agreement**”) contains Clause 12.2, which essentially provided that the partners other than Raju would need to make contributions of capital as mutually decided in a general meeting in accordance with Clause 9.4 of the LLP Agreement. The contribution by Raju was specifically contracted purely as being in the form of services alone, without having to bring any additional cash or cash equivalent to the LLP. It was also explicitly contracted that the partnership stake of Raju in Vidhi LLP would remain undiluted regardless of the level of cash contribution by Mayank and the other partners. The day-to-day management of Vidhi LLP was meant to vest in Raju as a working partner, with such powers and duties as resolved at a general meeting of Vidhi LLP.

7. The demand for Rs.54 crores laid at Raju's doorstep by Mayank and Vidhi LLP is essentially based on the premise that Mayank had contributed to fund the expenditure by Vidhi LLP in the sum of approximately Rs.~215.28 crores in the past. With Rs.~215.28 crores being attributed to Mayank's contribution at 80% and Raju being ascribed an obligation to contribute 20%, the sum of Rs.54 crores was demanded as a capital call to adjust for the contributions already said to have been made by Mayank.

8. Likewise, the sum of Rs. ~25.99 crores towards "contribution of losses" was attributed by Mayank to losses arising out of interest accrued on loans contracted by Vidhi LLP and the cost of servicing such loans. It is an admitted position that such loans had not been obtained from completely independent third parties, but from related parties of Mayank, who were alluded to by Learned Advocate for Mayank as "sister concerns" of Mayank.

9. The capital call of Rs.54 crores was made by a resolution, which was purportedly passed on April 19, 2022. While Raju's contention is that Clause 12.2 protected him from any dilution in his stake and from having to bring in any cash into Vidhi LLP, Mayank's contention is that Clause 12.2 was superseded by virtue of an *addendum* to the LLP Agreement ("**Addendum**") dated August 31, 2015, necessitating contribution by Raju as well.

10. Mayank relied upon a portion of Clause 5 of the Addendum, which too provides that further contributions, if any, required by Vidhi LLP would need to be brought in by the “parties”, but even that clause indicates that such contributions would be “*as may be mutually decided by the parties at the time of making contribution*”.

11. The Learned Arbitral Tribunal has *prima facie* held that Clause 12.2 of the LLP Agreement has neither been modified nor superseded. In any case, no further contribution was demanded from Raju all the way until April 2022. Even Clause 5 of the Addendum requires a mutual decision by the partners, which would include Raju’s consent. Equally, throughout the period of time in which the other partners contributed Rs.~215.28 crores, no contribution was ever demanded from Raju, indicating how the parties understood the LLP Agreement at all times relevant to the capital contributions. The principle of *ante litam motam* (conduct before litigation started) is a strong pointer to how the parties understood their respective positions and the *prima facie* finding of the Learned Arbitral Tribunal cannot be faulted.

12. It is clear that the capital contribution demand came in after disputes and differences between the parties broke out. As regards to contribution of Rs.25.99 crores towards losses purportedly suffered by Vidhi LLP, the Learned Arbitral Tribunal *prima facie* found that the redevelopment

project on the land owned by Vidhi LLP has not been taken up at all, and all along, the interest liability owed to related parties of Mayank had always been capitalised. These were not run through the profit and loss account to lead to operating losses of Vidhi LLP. Therefore, before the litigation started, no losses accrued in the books of account of Vidhi LLP. However, suddenly after disputes broke out, the approach to accounting policy was changed and the provisional balance sheet was drawn out; interest amounts stopped being capitalised and were debited to the profit and loss account, leading to losses.

13. The Learned Arbitral Tribunal has held, and rightly in my opinion, that there is no question of allowing the capital contribution to be made at the interim stage. The subject matter of the arbitration agreement is the disputes and differences under the LLP Agreement. Therefore, the Learned Arbitral Tribunal took a view, and in my opinion rightly, that there was no strong *prima facie* case to defend the sudden demand for capital contribution and the contribution of losses as demanded by Mayank from Raju after the disputes and differences broke out.

14. It is in this context that the Learned Arbitrator has come to the view that the preservation of the subject matter of the arbitration agreement would necessarily entail injuncting the capital call made on Raju. Not only was the demand for capital contribution contrary to the LLP Agreement by demanding

funds from Raju, but would also necessarily have the effect of diluting Raju against which, the LLP Agreement contains a specific protection for him. This was the 2023 Order.

15. The 2025 Order simply refused to vacate the 2023 Order on the ground that there was no change in circumstances necessitating a revisit of the 2023 Order. The ground for Mayank seeking to revisit the 2023 Order was essentially that Raju had transferred his partnership interests to a trust for the benefit of his son and that such transfer constituted a cessation of partnership by Raju, with the trust becoming a partner.

16. The upshot of this submission is that with the cessation of Raju as a partner and the induction of the trust as a partner, the protection extended under the LLP Agreement was personal to Raju and is no longer applicable because Raju has been replaced by the trust created by him, and therefore, the 2023 Order ought to be revisited.

Analysis and Findings:

17. I have heard Mr. Sanjay Jain, Learned Senior Advocate on behalf of Mayank and Mr. Chetan Kapadia, Learned Senior Advocate for Raju. With their assistance, I have examined the record.

18. Mr. Jain on behalf of Mayank would submit that at the time the matter was argued before the Learned Arbitral Tribunal, the parties were unaware that an explicit change in law had taken place permitting a trust to become a partner of Vidhi LLP. He would submit that the LLP (Significant Beneficial Owners) Rules, 2023 (“***SBO Rules***”), notified on November 9, 2023 had already specifically defined the term “Significant Beneficial Owner” in Rule 3(1)(k), the relevant extracts of which read as follows:-

“3. Definitions.- (1) In these rules, unless the context otherwise requires,-

(k) “significant beneficial owner” in relation to a reporting limited liability partnership, means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting limited liability partnership, namely:-

(i) holds indirectly or together with any direct holdings, not less than ten per cent of the contribution;

(ii) holds indirectly or together with any direct holdings, not less than ten per cent of voting rights in respect of the management or policy decisions in such limited liability partnership;

(iii) has right to receive or participate in not less than ten per cent of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;

(iv) has right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone;

Explanation I.– For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii), (iii) or (iv), he shall not be considered to be a significant beneficial owner.

Explanation II.– For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting limited liability partnership, if he satisfies any of the following criteria, namely:-

(i) the contribution in the reporting limited liability partnership representing such right or entitlement are held in the name of the individual;

(ii) the individual holds or acquires a beneficial interest in the contribution of the reporting limited liability partnership under sub-rule (2) of rule 22B of the Limited Liability Partnership Rules, 2009 and has made a declaration in this regard to the reporting limited liability partnership.

Explanation III.– For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting limited liability partnership, if he satisfies any of the following criteria, in respect of a partner of the reporting limited liability partnership, namely: –

(i) where the partner of the reporting limited liability partnership is a body corporate (whether incorporated or registered in India or abroad) other than a limited liability partnership, and the individual,-

(a) holds majority stake in that partner; or

(b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partner;

(ii) where the partner of the reporting limited liability partnership is a Hindu undivided family (through karta), and the individual is the karta of the Hindu undivided family;

(iii) where the partner of the reporting limited liability partnership is a

partnership entity (through itself or a partner), and the individual,-

(a) is a partner; or

(b) holds majority stake in the body corporate which is a partner of the partnership entity; or

(c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

(iv) where the partner of the reporting limited liability partnership is a trust (through trustee), and the individual,-

(a) is a trustee in case of a discretionary trust or a charitable trust;

(b) is a beneficiary in case of a specific trust;

(c) is the author or settlor in case of a revocable trust.

(v) where the partner of the reporting limited liability partnership is,-

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle, based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions, and the individual in relation to the pooled investment vehicle,-

(A) is a general partner; or

(B) is an investment manager; or

(C) is a chief executive officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

Explanation IV – Where the partner of a reporting limited liability partnership is,

(i) a pooled investment vehicle; or

(ii) an entity controlled by the pooled investment vehicle, based in a jurisdiction

which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Explanation V.– *For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting limited liability partnership, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be “acting together”.*

[Emphasis Supplied]

19. Based on sub-clause (ii) of Explanation II, Mr. Jain would submit that the SBO Rules now provide for disclosure of any individual who holds or acquires a beneficial interest in the contribution of the reporting LLP under Rule 22B(2) of the LLP Rules 2009 (“***LLP Rules***”) and has made a declaration in this regard to the LLP. Rule 22B of the LLP Rules, 2009 reads thus:-

“22B. Declaration in respect of beneficial interest in any contribution.-

(2) Every person who holds or acquires a beneficial interest in contribution of a Limited Liability Partnership but his name is not registered in the register of partners (hereinafter referred to as “the beneficial partner”) shall file with Limited Liability Partnership, a declaration disclosing such interest in Form 4C within a period of thirty days after acquiring such beneficial interest in the contribution of the Limited Liability Partnership specifying the nature of his interest, particulars of the partner in whose name the contribution stand registered in the books of the limited liability partnership:

Provided that where any change occurs in the beneficial interest in such contribution, the beneficial partner shall, within a period of thirty days from the date of such change, make a declaration of such change to the limited liability partnership in Form 4C.

Provided further that if the beneficial interest of registered partner is limited to the contribution stated against his name in the register of partners but he does not hold beneficial interest in contribution against any other registered partner, then, he shall not be required to file such declaration.”

[Emphasis Supplied]

20. I have examined and considered these provisions. To my mind, a plain reading of the foregoing provisions would indicate that where the beneficial interest is not fully or partly held by a partner whose name is entered in the Register of Partners, such partner must file a declaration to that effect in the stipulated form. This declaration would only indicate who holds the beneficial interest in respect of such partnership. Every time there is a change in such holder of beneficial interest, it is the registered partner who has to keep intimating the LLP.

21. To my mind, nothing turns on these provisions in the manner canvassed on behalf of Mayank. The SBO Rules provide for disclosures of a “significant beneficial owner”. The threshold of significance is 10% ownership. All this requires is a disclosure. The entire framework extracted above is only

a means of stipulating how to identify who is to be regarded as the significant beneficial owner and in what circumstances a disclosure would have to be made. Nothing in this framework supplants the actual registered partner and that too when the partner in question is the trustee of the trust in which the beneficial interest is vested.

22. The farthest that sub-clause (ii) of Explanation II would take Mayank is to identify Raju's son as a beneficiary of the trust, where the trustee is none other than Raju. That would entail identifying a disclosure of significant *beneficial* ownership, which is still not legal ownership which vests only in Raju. Sub-clause (ii) of Explanation II of Rule 3(1)(k) only creates a deeming fiction of a direct ownership, which in turn is solely for purposes of Clause 3(1)(k). The very opening phrase of Explanation II is "*for the purpose of this clause*" – therefore, apart from subserving the purpose of the clause i.e. to identify who is a significant beneficial owner, Explanation II does nothing else.

23. The reference to Rule 22B(2) of the LLP Rules too does not take the case any further. All it does is create another concept called "beneficial partner" for the sole purpose of identifying the disclosure requirement. The farthest that the reference to Rule 22B(2) of the LLP Rules in Rule 3(1)(k) of the SBO Rules would take Mayank is to identify Raju's son as the beneficial

holder; with Raju's stake being 20%, this merely triggers the disclosure obligations. That, by no stretch would have any consequences for the interlocutory relief under the 2023 Order or the 2025 Order – which essentially identified the provisions of the LLP Agreement that protect Raju from contributing capital and from dilution of his partnership interest.

24. I have already dealt with how Indian law entails two estates to every property – the legal estate and the beneficial estate – in a judgement dated April 10, 2026, disposing of another appeal under Section 37 of the Act filed by Mayank, challenging permission to impugn the trustees of the trust as parties. I had occasion to articulate the following:

“A few words on first principles would be in order. The application for joinder is not really an application for joinder of a non-signatory party to the arbitration agreement. The application was necessitated in the context of the peculiar position adopted by Mayank years into the arbitration, based on a declaration of the Trust made by Raju in 2019. Under Section 5 of the Limited Liability Partnership Act, 2008 (“LLP Act”), an individual or a body corporate may be a partner of the LLP. Therefore, natural persons or artificial legal persons alone can be partners. This is quite similar to the position in law for being a member of a company – indeed, the LLP itself is a body corporate and an artificial legal person under Section 3 of the LLP Act.

“As a partner of the LLP, Raju is admittedly a party to the arbitration agreement. In 2019, Raju had indicated that the benefit of his shareholding in the LLP constitute trust property for the benefit of his son, the beneficiary of the Trust. No issue was raised contemporaneously about this development. It was much later when dis-

putes had begun that Mayank proposed to unilaterally resolve that Raju's partnership in the LLP had come to an end and that the transferee of Raju's interest in the LLP would have to be made a partner. The unilaterally passed resolutions had already been enjoined by the Learned Arbitral Tribunal.

“Against this backdrop, out of abundant caution, Raju applied for making the trustees a party to the arbitration proceedings as co-Claimants. This has been allowed in the Impugned Order. In view of the legal framework governing the LLP, in particular, Section 5 permitting only individuals and bodies corporate to be partners, the partner in the LLP continues to be Raju. It is a matter of first principles that property ownership has two distinct components – the legal estate and the beneficial estate. The legal estate is the registered title to ownership while the beneficial estate is the right to enjoy, use and receive benefits from the property. When a registered owner creates a trust, the legal ownership can either be transferred by him to an independent and new third party who would act as a trustee, or the very same legal owner may proceed to don the hat of the trustee, continuing to hold the very same property as a trustee for the benefit of the beneficiaries declared as the beneficiaries of the trust.”

[Emphasis Supplied]

25. It is because a trust is not a legal entity with a distinct legal personality, and is in fact a fiduciary relationship, that Section 5 of the Limited Liability Partnership Act, 2008 (“**LLP Act**”) recognises only individuals and bodies corporate to be partners in an LLP. It is in the course of ascertaining beneficial ownership that the LLP Act, the LLP Rules and the SBO Rules create a framework for disclosure of beneficial interest and ownership of a significant size (threshold drawn is 10%). This has nothing to do with legal ownership.

Therefore, the provisions of the aforesaid subordinate legislation which only create a framework for ascertaining beneficial interest (as if such interest were direct) cannot by any stretch change the position in law and create a new legal owner and partner, and thereby necessitate revisiting the 2023 Order, which had originally remained unchallenged.

26. Mr. Jain would also analyse the ingredients of Section 17 of the Act to contend that the plain language of the provision does not bring within the ambit of the Section 17 jurisdiction the power to prevent capital calls being made on a partner. This contention does not appeal to me at all, inasmuch as the Learned Arbitrator has indeed returned an outcome that would point to the subject matter of the arbitration agreement being worthy of protection for purposes of balancing the competing interests of the parties pending the conduct and completion of the arbitration.

27. Likewise, Mr. Jain would allege that the three-pronged test of *prima facie* case; grave, irreparable injury and balance of convenience has not been spelt out in the 2023 Order, rendering the said order perverse. This contention too does not appeal to me, inasmuch as what is writ large on the face of the record and indeed the 2023 Order is that the Learned Arbitral Tribunal has clearly perceived a threat to the very subject matter of the arbitration

agreement. Therefore, the protection granted by the Learned Arbitral Tribunal is unworthy of interference.

28. Mr. Kapadia had indicated that final hearing in the arbitration has been completed and the award is due, suggesting that this challenge is nearly infructuous. Mr. Jain would counter that to submit that such a factual position is no basis for not hearing the statutory appeal provided for under Section 37 of the Act against a Section 17 Order. It is clear to my mind that the statutory jurisdiction under Section 37 would indeed need to run its course. While I completely agree with Mr. Jain in this regard, I have applied my mind as an Appellate Court over the Section 17 jurisdiction.

29. In doing so, considering the jurisdiction of this Court is co-extensive with the Section 17 jurisdiction, I have examined the matter and discerned a strong *prima facie* case made out from the provisions of the LLP Agreement. The grave and irreparable injury that would have been occasioned to Raju if he were forced to contribute capital in the teeth of a specific protection against contribution and dilution, explicitly contracted in the LLP Agreement, is also writ large. The balance of convenience indeed lies in favour of Raju, inasmuch as should the arbitration outcome go against Raju, he can always be directed to make the capital contribution. Indeed, the declaration of trust in respect of Raju's share in Vidhi LLP is not of any consequence for

review of the 2023 Order and there is nothing wrong in the 2025 Order warranting interference.

30. On the other hand, the onus was on Mayank to demonstrate the irreparable injury that would be occasioned to him and Vidhi LLP if the capital contributions were not made. In fact, throughout the contribution of Rs.~215.28 crores, never was a capital call made since Mayank clearly understood how Clause 12.2 of the LLP Agreement would operate. Implicit in the analysis by the Learned Arbitral Tribunal, the trinity test was entirely met.

31. Therefore, neither of the Impugned Orders is perverse, nor has the trinity test been missed. That apart, the new argument which was not canvassed before the Learned Arbitral Tribunal in relation to Rule 3(1)(k) of the SBO Rules read with Rule 22B(2) of the LLP Rules does not render the 2023 Order worthy of any interference.

32. It is also evident that the Section 37 challenge to the 2023 Order had been filed in time but was not pursued, and in fact, came to be dismissed a year later on August 26, 2024. Even thereafter, Mayank did not forthwith rush to Court to have the same restored and instead the restoration took effect only on May 8, 2025. Therefore, even from the perspective of the principles applicable to interlocutory relief, the change in circumstances cited by Mayank does not result in the 2023 Order having to be revisited. The Interim

Application No.12 made no reference to the change in law, although the 2025 Order was passed well after the introduction of the SBO Rules.

33. Between the time the 2023 Order was passed (September 27, 2023) and the restoration on May 8, 2025, it is common ground that the Learned Arbitral Tribunal heard the matter from time to time and the judgement is indeed reserved. While the eventual arbitral award may be imminent and that would not matter for discharge of the statutory appellate jurisdiction under Section 37(2)(b) of the Act, it cannot be ignored that the Learned Arbitral Tribunal had before him multiple Interim Applications taken out in the arbitration proceedings. Many of these are interrelated and just because a barrage of applications is presented to the Learned Arbitral Tribunal from time to time, it is not for the Arbitral Tribunal to reiterate and record each and every facet all over again, thereby unnecessarily discharging an excessively burdensome requirement in the course of dealing with these Interim Applications.

34. Suffice it to say, no change in circumstances is evident in the factual matrix for the 2025 Order to be faulted for not interfering with the 2023 Order. In these circumstances, both the captioned Petitions are dismissed for the reasons set out above, as in my opinion, no fault can be found with the

approach of the Learned Arbitral Tribunal to warrant any interference with either of the Impugned Orders.

35. The captioned Petitions are therefore ***dismissed***. The costs for this round of litigation shall be factored in by the Learned Arbitral Tribunal in the course of its final adjudication of costs in the matter. The statement of costs filed by the parties in these proceedings shall be deposited with the Learned Arbitral Tribunal within a period of two weeks from the upload of this order on the Court's website.

36. 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.]