



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.112 OF 2026

Mukesh Gupta

...Applicant

V/s.

SR Technics

...Respondent

Mr. D. Banerji i/b. Ms. Sapana Rachure for the Applicant.

*Ms. Nafisa Khandeparkar with Ms. Priyanka Shetty & Mr. Rohan Satija
and Mr. Tejas Raghav i/b. M/s. AZB & Partners for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 6 MAY 2026.

Order:

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 that have arisen between the parties out of and under Agreement of Employment dated 1 August 2006.

2) By Agreement of Employment dated 1 August 2006, the Applicant came to be employed as Area Sales Director w.e.f. 1 August 2006. Services of the Applicant have been terminated w.e.f. 17 October 2025 by issuing termination notice dated 17 July 2025. The Applicant replied to the termination notice by email dated 18 July 2025. The Respondent sent email dated 23 July 2025 to the Applicant communicating the reason for terminating his employment stating that services of the Applicant were

not required on account of discontinuation of business activities by the Respondent in India.

3) According to the Applicant, the Respondent has not paid salary from 1 August 2025. He also claims that he is entitled to reimbursement of 132 days of medical leave and gratuity. The Applicant also claims that payments under the termination notice are also not paid to him. The Applicant issued Advocate's notice dated 16 December 2025 to the Respondent raising various claims amounting to Rs.7,28,35,345/-. The Respondent replied by letter dated 23 December 2025 disputing the claims.

4) In the above background, the Applicant invoked arbitration clause in the Employment Agreement by sending notice under Section 21 of the Arbitration Act on 20 January 2026 and suggested name of an arbitrator. The Respondent replied the invocation notice on 18 February 2026 not consenting to the appointment of the suggested Arbitrator. The Respondent also disputed existence of arbitration agreement. In the above background, the Applicant has filed the present Application under Section 11 of the Arbitration Act seeking appointment of a sole Arbitrator for adjudication of disputes and differences arising out of and under the Employment Agreement dated 1 August 2006.

5) Mr. Banerji, the learned counsel appearing for the Applicant submits that the Employment Agreement contains arbitration clause No.18. That the seat of arbitration is at Mumbai and that the arbitration is to be conducted in accordance with provisions of the Arbitration Act. He therefore submits that reference to arbitration by appointment of a sole Arbitrator be made.

6) Mr. Banerje contests the stand taken by the Respondent about this Court lacking jurisdiction to appoint Arbitrator on account of the Respondent being a foreign party. He submits that the disputes arising out of the Employment Agreement do not fit into definition of the term 'international commercial arbitration' under Section 2(1)(f) of the Arbitration Act. He submits that mere status of the Respondent as foreign entity does not automatically convert the arbitration into international commercial arbitration. That *sine qua non* for international commercial arbitration is commercial nature of disputes. That the disputes between the parties are not commercial in nature under any law. He relies on definition of the term 'commercial dispute' under Section 2(1)(c) of the Commercial Courts Act, 2015 and submits that employment related disputes cannot be treated as commercial disputes. In support of his contention, he relies upon judgments of the Delhi High Court in **Ekanek Networks Private Limited V/s. Aditya Mertia**¹ and **ARM Digital Media Pvt. Ltd. V/s. Ritesh Singh**² He also relies upon judgment of Karnataka High Court in **Sanjay Kumar V/s. Elier India Food Services LLP**³. He accordingly prays for appointment of an arbitrator for adjudication of disputes and differences arising out of the Employment Agreement dated 1 August 2006.

7) Ms. Nafisa Khandeparkar, the learned counsel appearing for the Respondent opposes the Application and questions its maintainability before this Court submitting that the Respondent is a Switzerland based entity and that therefore the disputes between the parties can only be resolved through international commercial arbitration and only the

1 2024 SCC OnLine Del 8302

2 CS(OS) 896/2024, decided on 1 December 2025.

3 Writ Petition No.2584 of 2023, decided on 2 June 2023.

Hon'ble Supreme Court would have power to appoint the arbitrator. She submits that the disputes between the parties are essentially commercial disputes within the meaning of Section 2(1)(c) of the Commercial Courts Act. That the Agreement dated 1 August 2006 is not a mere employment agreement nor the Applicant was recruited as a mere employee. That perusal of the Agreement would indicate that the Applicant was privy to vital confidential information and was engaged to undertake business development of the Respondent in India. That his duties essentially include promotion and development of the business. That therefore the Agreement partakes character of the one for provision of services within the meaning of Section 2(c)(xviii) of the Commercial Courts Act. She submits that the Agreement did not create employer-employee relationship. She submits that under the Agreement, the Applicant was responsible for creation of inventions, discoveries, works of authorship and innovations, which are beyond the scope of a mere employment contract. That he had power of appointing employees and to take decision concerning operations of Respondent's office in India.

8) Ms. Khandeparkar would therefore submit that the dispute can only be resolved by international commercial arbitration under Section 2(1)(f) of the Arbitration Act. In support of her contention that a director cannot be an employee and that disputes arising out of employment contract can also constitute commercial international arbitration, she relies on judgments of the Apex Court in *Comed Chemicals Limited V/s. C.N. Ramchand*⁴ and *Amway India Enterprises Private Limited V/s. Ravindranath Rao Sindhia and Another*⁵. Ms. Khandeparkar would accordingly pray for dismissal of the Application.

4 (2009) 1 SCC 91

5 (2021) 8 SCC 465

9) Rival contentions urged on behalf of the parties now fall for my consideration.

10) The Applicant has sought reference to arbitration for adjudication of disputes arising out of and under the Employment Agreement dated 1 August 2006. The disputes have arisen between the parties on account of termination of services of the Applicant vide notice dated 17 July 2025. The Employment Agreement undoubtedly contains arbitration agreement in clause 18, which reads thus:

18. Dispute Resolution. Any dispute or controversy arising out of or relating to this Employment Agreement shall be settled by arbitration to be held in Mumbai, India in accordance with the Arbitration and Conciliation Act, 1996 (the "Arbitration Act"), as then existing, in the English language, and shall be heard and determined by an arbitral tribunal composed of a sole arbitrator appointed by agreement between the parties hereto. If the Parties fail to reach an agreement with respect to the appointment of an arbitrator within 30 (thirty) calendar days of any Party's notice to the other Party of the existence of a dispute, the arbitrator shall be selected according to the Arbitration Act. The decision of the arbitrator shall be final, conclusive and binding on the Parties. Notwithstanding the foregoing, nothing contained herein shall be deemed to prevent either Party from seeking and obtaining injunctive and equitable relief from any court of competent jurisdiction without the posting of any bond or other security.

11) Thus, the disputes arising out of or relating to Employment Agreement are agreed to be settled by arbitration to be held in Mumbai in accordance with the Arbitration Act, 1996. The Employment Agreement itself appears to have executed at Mumbai. However, the Respondent -SR Technics is a Zurich based entity, which had engaged the Applicant in capacity as Area Sales Director for its operations in India.

12) Since the Respondent is a Zurich based Company, the Respondent questions jurisdiction of this Court to make a reference to arbitration under Section 11 of the Arbitration Act by contending that only Supreme Court can appoint Arbitrator in relation to international commercial arbitration. In the light of the position taken by the rival parties, the short issue that arises for consideration is whether the resolution of disputes between the parties would be through domestic arbitration or international commercial arbitration.

13) Section 2(1)(f) of the Arbitration Act defines the term ‘international commercial arbitration’ as under:

2(1)(f) “**international commercial arbitration**” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India;

or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;

14) Thus, for an arbitration to qualify as international commercial arbitration, the disputes must be considered as commercial under the law in force in India. This is the first prerequisite under Section 2(1)(f) of the Arbitration Act. Once, the first requirement is met, it becomes essential to meet second requirement of one of the parties being a foreign national, body corporate incorporated in foreign country, etc. In

the present case, the Respondent undoubtedly qualifies the second requirement of body corporate incorporated in a country other than India. The Respondent is incorporated in Switzerland. However, the issue for consideration is whether the primary requirement of arbitration relating to commercial dispute is met with or not.

15) It is also sought to be contended that the Applicant was not just an employee of the Respondent and was assigned the duties and responsibilities of a Director for Respondent's business development in India and that he acted more than an employee while handling Respondent's operations in India. It is contended on behalf of the Respondent that the disputes arising out of the Employment Agreement are commercial disputes. To examine the contention, it would be necessary to consider the terms and conditions of the Employment Agreement.

16) The Agreement dated 1 August 2006 is branded as 'Employment Agreement'. It describes the Applicant as the 'employee'. Services of the Applicant were put on probation for a period of three months. Under clause 1 of the Agreement, it is agreed as under:

1. Employment. The Company shall employ the Employee as its Area Sales Director, and the Employee hereby agrees to serve the Company in such position, for the period commencing on August 1, 2006 (the "Effective Date"), and will continue, subject to earlier termination as provided in Section 8 hereof, for an unlimited period of time (the "Employment Term"). The Employee shall be on a period of probation for 3 (three) months (the "Probation Period") starting from August 1, 2006.

Thus, the agreement executed between the parties was for 'employing' the Applicant as an 'employee' and not in any other capacity. Only an employee can be put on probation.

17) The Agreement enumerated the duties of the Applicant -employee. His place of work was indicated in clause 3 as under:

3. Place of Work. The Employee will be based at Mumbai (the "Principal Place of Employment"), but may be relocated to other locations, based on mutual agreement. Employee's duties will include travel in Europe, Asia Pacific and India and other countries, often at short notice. Employee confirms that he has a valid passport numbered F9135732 issued by the Republic of India in Mumbai.

18) The employee was expected to dedicate 40 hours a week for fulfillment of his duties. Agreement provided for compensation to the Applicant as provided in Annexure-A to the Agreement. The Employment Agreement also dealt with aspects of vacation, termination, probation period, etc.

19) The above covenants of Employment Agreement would undoubtedly create an impression that the Agreement creates mere employer-employee relationship. There is nothing in the Agreement to indicate that the Applicant was to function in any other capacity than an employee. The Applicant did not secure any rights to manage the affairs of the Respondent in capacity as its shareholder or Director. Apart from receiving salary and remuneration and other service related benefits, the Applicant was not made entitled to share the profits of the Company.

20) Ms. Khandeparkar has relied on clause 9(c)(i) in the Agreement in support of her contention that the Applicant was supposed to innovate, discover, create work of authorship, etc. and such innovations becoming

exclusive property of the Company. Clause 9(c)(i) of the Agreement reads thus:

9. Protective Covenants.

(c) The Employee further agrees:

(i) To promptly disclose in writing to the Company all inventions, discoveries, developments, improvements, works of authorship, and innovations (collectively and individually referred to herein as "Inventions"), which are conceived or made by the Employee, either alone or jointly with others, during the Employment Term which: (A) relate in any manner to the existing or contemplated business or research activities of the Company, or (B) are suggested by or result from the Employee's work at the Company; or (C) result from the use of the Company's time, materials, technology or facilities; and that all such Inventions shall be the exclusive property of the Company.

21) In my view, the above clause is a standard contractual stipulation in contract of employment, which ensures that any work of intellectual property generated out of efforts of the employee becomes property of the employer. The above stipulation, by no stretch of imagination, be construed to mean as if the Applicant performed role more than that of an employee. On the other hand, the clause denuded the Applicant of authorship of any intellectual property even though invented or created by him and proprietorship in that properties vested in Respondent - employer.

22) Coming back to definition of the term 'international commercial arbitration' used in Section 2(1)(f) of the Arbitration Act, it is necessary for the Respondent to demonstrate that the dispute arising out of legal relationship between the Applicant and the Respondent is considered as a 'commercial dispute' under some law in force in India. Section 2(1) (c) of the Commercial Courts Act defines the term 'commercial dispute' as under:

2(1)(c) “commercial dispute” means a dispute arising out of--

- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
- (ii) export or import of merchandise or services;
- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.--A commercial dispute shall not cease to be a commercial dispute merely because--

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

23) None of the entries in Section 2(1) (c) of the Commercial Courts Act include dispute arising out of contract of employment. The issue that the contract of employment is not commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act is well settled. Reliance by Mr. Banerji on judgment of the Delhi High Court in ***Ekanek Networks Private Limited*** (supra) in this regard is apposite. Delhi High Court has followed the ratio of the judgment of Karnataka High Court in ***Sanjay Kumar*** (supra) and has held that service disputes between the parties relating to terms and conditions of employment cannot be held to be commercial dispute within the domain of Commercial Courts Act. The judgment in ***Ekanek Networks Private Limited*** is followed in subsequent judgment of Delhi High Court in ***ARM Digital Media Pvt. Ltd.*** (supra), in which it is concluded that a dispute relating to Employment Agreement cannot be treated as commercial disputes within the purview of Section 2(1)(c) of the Commercial Courts Act.

24) In my view, the disputes arising between the Applicant and the Respondent cannot be treated as commercial disputes and therefore the dispute between the parties is not an 'international commercial dispute' within the meaning of Section 2(1)(f) of the Arbitration Act.

25) Reliance by Ms. Khandeparkar on the judgment of the Apex Court in ***Comed Chemicals Limited*** (supra) is inapposite. In case before the Apex Court, the Respondent therein was appointed as Director (Technical) by the Applicant-Company. He was supposed to attend board meetings of the Company. He was allotted 40% equity shares in the subsidiary Company. In the facts of that case the Apex Court held that the Respondent therein worked in dual or double capacity as an

employee and also as a director. The Apex Court followed the ratio in its previous judgments holding that a director is not a mere employee or servant of the company. Thus, the facts of the case in ***Comed Chemicals Limited*** are clearly distinguishable. There is nothing on record to indicate that the Applicant was engaged in dual capacity as (i) employee (ii) a director of Respondent-Company. His mere designation as 'Area Sales Director' did not mean that he was appointed as a Director of the Respondent or of any of its subsidiary company. The Applicant's status cannot be determined merely on the status of designation in absence of any material to indicate that he was appointed as a Director of the Respondent-Company. In fact, Ms. Khandeparkar has fairly admitted the position that the Applicant was not appointed as Director of the Company. Therefore, the judgment in ***Comed Chemicals Limited*** is clearly distinguishable.

26) Reliance by Ms. Khandeparkar on judgment of the Apex Court in ***Amway India Enterprises Private Limited*** (supra) is again inapposite. In case before the Delhi High Court, the Respondents therein were appointed as Distributor of the Appellant -Company. In disputes arising between them, the Delhi High Court had appointed Arbitrator and order of the Delhi High Court was challenged before the Apex Court on the ground of Respondents (husband and wife) were both nationals and habitual residents in United States of America. The case did not involve disputes arising out of contract of employment, but they arose out of Agreement for Distributorship. The Apex Court set aside order of the Delhi High Court since the Respondents therein were found to be nationals of and habitual residents in the United States of America. The judgment therefore offers little assistance for deciding the issue at hand.

27) It may also be noted that since the dispute is not commercial in nature, the Applicant has not filed the present Application on the commercial division of this Court.

28) Considering the overall conspectus of the case, I am of the view that disputes between the parties do not fit into the definition of the term 'international commercial arbitration'. Therefore, this Court would have jurisdiction to entertain the present Application and to make a reference under Section 11(6) of the Arbitration Act. Objection of jurisdiction sought to be raised on behalf of the Respondent is accordingly repelled.

29) Since there is no dispute about existence of arbitration agreement between the parties and since pre-arbitration formalities are followed, Arbitral Tribunal comprising of a sole Arbitrator needs to be constituted.

30) I accordingly proceed to pass the following order:-

(A) Dr. Pallavi Divekar, an Advocate practicing in this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Employment Agreement dated 1 August 2006. The contact details of the Arbitrator are as under:-

Mobile No.:-9820547636

Email id :-divekars@divekarandco.com

Office Address:-1st floor, Rajabahadoor Mansion, 14
Ambalal Doshi Marg, Fort, Mumbai 400 023

(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 her, 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.

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

32) With the above directions, the Application is **disposed of**.

[SANDEEP V. MARNE, J.]