



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.127 OF 2026

Raajyam Realty LLP

...Applicant

V/s.

Prabhat Properties private Limited and
Anr.

...Respondents

Ms. Aneesa Cheema *i/b. Mr. Advait Tamhankar for the Applicant.*

Mr. Sarosh Bharucha *with Mr. Shrey Fatterpekar, Mr. Ameet Mehta, Mr. Nirav Marjadi, Ms. Shrushti Mehta, Ms. Rebha Dogra, Mr. Kushal Harnesha, Ms. Pooja Zagde & Ms. Uttara More i/b. M/s. Solicis Lex for Respondent No.1.*

Mr. Anuj Desai *i/b. Mr. Jay Vakil for Respondent No.2.*

CORAM: SANDEEP V. MARNE, J.

DATED: 10 APRIL 2026.

P.C.:

1) This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) for appointment of Arbitrator for adjudication of disputes and differences between the parties arising out of Development Agreement dated 24 June 2011.

2) I have heard Ms. Cheema, the learned counsel appearing for the Applicant, Mr. Bharucha, the learned counsel appearing for the

Respondent and Mr. Desai, the learned counsel appearing for Respondent No.2.

3) There is no dispute about existence of arbitration clause in the Development Agreement dated 24 June 2011. However, the said Development Agreement is executed only between the Applicant and Respondent No.1. Admittedly, Respondent No.2 is not a signatory to the Development Agreement. Therefore, there is strenuous opposition on the part of Respondent No.2 for constitution of Arbitral Tribunal for adjudication of disputes and differences between the Applicant and Respondent No.2. It is contended that there is no agreement to arbitrate between the Applicant and Respondent No.2.

4) On the other hand, Ms. Cheema submits that Respondent No.2 is merely a group company of Respondent No.1. She submits that the flats, which were supposed to be retained by Respondent No.1 as a security for discharge of various obligations under the Development Agreement are deliberately transferred by Respondent No.1 to its group company being Respondent No.2. She submits that the Applicant also has certain claims against Respondent No.2. She therefore submits that Respondent No.2 is a veritable party to arbitration agreement applying the Group of Companies doctrine.

5) In *ASF Buildtech Private Limited V/s. Shapoorji Pallonji and Company Private Limited*¹ the Hon'ble Supreme Court held that the objection as to whether a party is a veritable party to arbitration

1 (2025) 9 SCC 76

agreement or not needs to be decided by the Arbitral Tribunal under Section 16 of the Arbitration Act. The judgment in ***ASF Buildtech Private Limited*** has been explained in subsequent judgment in ***Hindustan Petroleum Corporaiton Ltd. V/s. BCL Secure Premises Pvt. Ltd.***², in which it is held in paragraphs 34 and 35 as under:-

34. In fact, ASF Buildtech (Supra) expressly notices the holding in Para 169 of Cox & Kings (Supra) to conclude that the Referral Court was required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory was a veritable party. All that it holds further in reiteration of the earlier line of judgments is that even if the Court holds that prima facie a party is a veritable party that will not foreclose the Arbitral Tribunal from concluding to the contrary after an intensive inquiry.

35. This does not mean that where the Referral Court finds prima facie a party is not a veritable party still the matter is left to the Arbitral Tribunal. To hold so, would relegate the Referral Court to the status of a monotonous automation. Further, to countenance such an extreme proposition would lead to disastrous consequences, where absolute strangers could walk into the Referral Court and contend that the matter has to perforce go to the Arbitral Tribunal for a decision on the veritable nature of the party. We are not prepared to accept such an extreme proposition.

6) Thus, while a referral court can also undertake a *prima facie* enquiry into the issue as to whether a party is veritable party or not, the jurisdiction of Arbitral Tribunal to decide the said issue is not taken away. In fact Arbitral Tribunal can conduct an extensive enquiry into the issue of veritable party. In the present case, therefore, it would be appropriate to leave the issue of existence of arbitration agreement between the Applicant and Respondent No.2 to be decided by the Arbitral Tribunal. There is no dispute about arbitration agreement between the Applicant and Respondent No.1.

2 Civil Appeal No.14647 of 2025 decided on 9 December 2025.

7) Accordingly, I proceed to pass the following order:-

(A) Mr. Rohan Kelkar, an Advocate practising in this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Development Agreement dated 24 June 2011. The contact details of the Arbitrator are as under:-

Office Address:- 13-C, 1st floor, Examiner Press Building, Dalal Street, Fort, Mumbai - 400 001

Email id:- Kelkar.rohan@gmail.com

Mobile No.:- 9820446842

(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.

8) All rights and contentions of the parties, including the issue whether Respondent No.2 is a veritable party to arbitration agreement, are left open to be decided by the Arbitral Tribunal.

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

[SANDEEP V. MARNE, J.]