



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION (ARBN) NO. 857 OF 2025

(M/S MAVEN INFRACON PVT. LTD., NAGPUR THR. DIRECTOR ASHOK NARAYANDAS
RATHI

VS

M/S. ARMORS DEVELOPERS PVT LTD., NAGPUR THR. MANAGING DIRECTOR ANAND
NARAYANRAO KHOBRAGADE)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. Ritesh Badhe, Advocate for appellant.
Mr. S. P. Bodalkar, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.
DATED : MARCH 16, 2026

1) This is an application seeking appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. It is the case of the applicant that the applicant and respondent had entered into a Memorandum of Understanding (MoU) dated 30/11/2022 in relation to a property dispute. It is contended that out of agreed amount of Rs.1 Crore and 20 Lakhs payable by the respondent to the applicant in terms of MoU, a sum of Rs.1 Crore is not paid. Attention is drawn to clause (g) of the MoU which provides for resolution of dispute by way of arbitration.

2) The respondent has raised a strong objection to appointment of Arbitrator on the ground that the application is filed on behalf of the applicant, which is a private limited company by one Mr.Ashok Narayandas Rathi, who is in no way concerned with the applicant company. It is contended that the resolution dated 15/10/2025, pursuant to which the present application is filed, is passed by one Mr.Kishor N. Rathi as

Director of the applicant company who in fact is not a Director. Attention is drawn to a document dated 15/12/2025 downloaded from the official website of Ministry of Corporate Affairs to contend that Mr.Kishor N. Rathi was a Director of the applicant company only upto 25/02/2011 and as such, as on 15/10/2025 he had no authority to pass resolution of authorisation in favour of Mr.Ashok Narayandas Rathi. It is also contended that the agreement i.e. MoU is also executed by said Mr. Kishor N. Rathi. It is contended that the application is incompetently filed. In support of this contention reliance is placed on Sections 92, 170 and 173 of the Companies Act, 2013. It is also contended that sale deed with respect to the property in question is executed by the land owners in favour of the respondent on 30/11/2022, which is also executed by the applicant as a consenting party and yet there is no reference to any amount payable by the respondent as purchaser to the applicant as a consenting party. It is contended that the agreement titled as MoU dated 01/12/2022 is a fraudulently created document.

- 3) In reply, the learned counsel for the applicant states that issue of alleged fraud with respect to execution of MoU cannot be looked into in a proceeding under Section 11. Mr.Badhe, learned counsel for respondent contends that adjudication on an issue of fraud will involve recording of evidence and as such the said issue should be left to be decided by the arbitral tribunal. In order to meet the objection with respect to competence of Mr.Kishor N. Rathi to execute the agreement, Mr. Badhe, learned counsel places reliance on Section 176 of the Companies Act, 2013 to contend that an act done by a person acting as Director is not rendered invalid merely because it is subsequently noticed that his appointment

was invalid by reason of any defect or disqualification or was terminated by virtue of provisions contained in the Companies Act or in accordance with the articles of association of the said Act.

4) Mr.Badhe, learned counsel, however, draws attention to page 137 which is a document downloaded from official website of Ministry of Corporate Affairs on 13/03/2026 which pertains to the applicant company in which the name of Mr.Kishor N. Rathie is recorded as Director as Sr.No.2, the date of appointment is 01/12/2011 and his current status being continued to be shown as a Director, however, name of Mr.Ashok Rathie also appears as Director in the said document, with date of appointment as 20/03/2013. I am in agreement with Mr.Badhe, learned counsel for the applicant that the issue of alleged fraud with respect to execution of MoU can not be looked into in a proceeding under Section 11.

5) The decision of the Hon'ble Supreme Court in the case of *Raji Begum vs. Bernali Mukharjee 2026 SCC OnLine SC 135*, on which the learned counsel for the respondent has placed reliance pertains to an application under Section 8 of the Arbitration and Conciliation Act, 1996 filed before the Civil Court making a request to refer the dispute to arbitration in which the existence of arbitration agreement was in dispute. It is well settled that application under Section 8 cannot be allowed merely for asking and before making a reference, the learned Civil Court must arrive at a conclusion with respect to existence of valid arbitration agreement. Needless to mention that the Civil Court is competent to record evidence to adjudicate disputed questions of facts, the said judgment will not be

applicable to the present case, which is filed under Section 11 of the Arbitration and Conciliation Act.

6) The contention with respect to status of Mr.Kishor N. Rathi and Mr.Ashok N. Rathi also appears to be disputed question in view of document filed on record along with the rejoinder, showing his status as Director of the company from 01/12/2011 till date.

7) Another contention raised by the learned counsel for the respondent that there is no reason for not mentioning the amount payable by the respondent as purchaser to the applicant as consenting party in the sale deed dated 30/11/2022. This contention which essentially pertains to merits of the claim of the applicant cannot be adjudicated in a proceeding under Section 11. In view of the aforesaid, the objections raised by the learned counsel for the respondent are liable to be rejected.

8) The contention of learned counsel Mr.Bodalkar that Mr.Kishor N. Rathi has passed resolution dated 15/10/2025 is recorded only in order to be rejected. He has certified copy of resolution filed on record to be a certified true copy.

9) With the consent of the learned counsel for the parties, Mr.Bharat Vyas, Retired District Judge, is hereby appointed as an Arbitrator. Office is directed to obtain disclosure statement under Section 12 of the Arbitration and Conciliation Act from the learned Arbitrator.

10) List the matter on **16/04/2026**.

(ROHIT W. JOSHI, J.)