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

COMM ARBITRATION APPLICATION (L) NO.17989 OF 2026

Harish Narbheram Thakkar, through
his legal guardian Amit Thakkar

... **Applicant**

Vs.

**SAYALI
DEEPAK
UPASANI**

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2026.09.29
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- 1. Hemant Narbheram Thakkar**,
partner of M/s. Narbheram Narsidas
- 2. Narbheram Narsidas**, a partnership
firm through its partner Hemant
Narbheram Thakkar

... **Respondent**

Mr. Ramiz Shaikh with Mr. Rishi Bindra, and Mr.
Aradhya Sharma i/by Mr. Ramiz Shaikh for the
Applicant.

Mr. Rashesh Gandhi for Respondent No.1.

Mr. Omprakash Tiwari for Respondent No.2

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 23, 2026

PRONOUNCED ON : SEPTEMBER 29, 2026

JUDGMENT:

1. By the present Application, the Applicant, through his Legal Guardian Amit Harish Thakkar, has invoked Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996. The Applicant seeks appointment of a Sole Arbitrator to decide the disputes

between the Applicant and the Respondents under Clause 18 of the Partnership Deed dated 9 October 1992. The disputes relate to the alleged wrongful use of partnership funds, failure to give proper accounts and denial of the Applicant's alleged 50% share in the amount of Rs.25,00,000/- received in connection with Godown No.20, Sewri. According to the Applicant, although a notice invoking arbitration under Section 21 of the Act was issued, Respondent No.1 did not agree to the appointment of an Arbitrator. The Applicant has, therefore, approached this Court seeking constitution of an Arbitral Tribunal to decide the disputes relating to the affairs of the partnership, accounts and his alleged share in the partnership funds.

2. According to the Applicant, the present Application has been filed on the basis of the following facts. Late Narbheram Narsidas Thakkar, who was the father of the Applicant and Respondent No.1, started the warehousing business in and around Sewri, Mumbai in the year 1965 under the name and style of M/s. Narbheram Narsidas. On 9 October 1992, the Applicant, Respondent No.1 and Pratapsinh Narbheram Popat executed a Partnership Deed and constituted Respondent No.2, namely M/s. Narbheram Narsidas, as a partnership firm. Clause 18 of the said Partnership Deed contains an arbitration agreement between the partners.

3. The Applicant suffered a Cerebro-Vascular Accident, resulting in partial paralysis, loss of speech, aphasia and unsoundness of mind in the year 2008. According to the Applicant, because of his condition, he was unable to manage his personal and business

affairs. In the year 2017, Pratapsinh Narbheram Popat retired from the partnership and transferred his share equally to the Applicant and Respondent No.1. As a result, the Applicant and Respondent No.1 remained the only partners of Respondent No.2 firm, with each holding a 50% share.

4. In March 2024, the Applicant's son, Amit Harish Thakkar, came to know about certain legal proceedings relating to Respondent No.2 firm and its assets which were pending before the Small Causes Court, Mumbai. He thereafter filed Writ Petition (OS) No.21218 of 2024 before this Court seeking his appointment as the Legal Guardian of the Applicant. In July 2024, while the guardianship proceedings were pending, Amit Harish Thakkar filed Intervention Applications before the Small Causes Court in RAE Suit No.973 of 2003 and RAE Suit No.1493 of 2009 for protecting the Applicant's interests. This Court appointed Amit Harish Thakkar as the Legal Guardian of the Applicant on 5 September 2024.

5. In December 2024, the Applicant's Legal Guardian came to know that settlement discussions were taking place in relation to the tenancy rights of Godown No.20 at Sewri, Mumbai, which was occupied by Respondent No.2 firm. On 10 December 2024, an amount of Rs.25,00,000/- was received by Cheque/DD bearing No.016927 in connection with the surrender or transfer of the tenancy rights of the said Godown No.20 by Respondent No.2. Thereafter, on 11 December 2024, a Deed of Transfer of Tenancy was executed in respect of the said Godown. Under the said transaction, the partnership firm received Rs.25,00,000/- as full

and final consideration.

6. The Applicant's Legal Guardian called upon the Respondent to pay the Applicant's alleged 50% share, amounting to Rs.12,50,000/-, out of the amount received by Respondent No.2 firm. According to the Applicant, the Respondent neither paid the said amount nor furnished the accounts of Respondent No.2 firm. On 6 January 2026, the Applicant, through his Legal Guardian, invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, relying upon Clause 18 of the Partnership Deed dated 9 October 1992. In reply to the said notice, the Respondent admitted that approximately Rs.25,00,000/- had been received in the account of Respondent No.2 firm. However, the Respondent did not agree to the appointment of an Arbitrator. The Applicant has, therefore, filed the present Application seeking appointment of a Sole Arbitrator.

7. Mr. Shaikh, learned Advocate for the Applicant, submitted that the Applicant, through his Legal Guardian, invoked arbitration by notice dated 6 January 2026 under Section 21 of the Act, relying upon Clause 18 of the Partnership Deed. According to him, the notice showed that serious disputes had arisen between the Applicant and the Respondents concerning the affairs of Respondent No.2 and the Partnership Deed. The disputes included the following:

- a) According to the Applicant, there was wrongful use or diversion of partnership funds. In particular, the Applicant alleged that his 50% share, amounting to Rs.12,50,000/-,

out of the total amount of Rs.25,00,000/- received in the account of the partnership firm under Cheque/DD No.016927 dated 10 December 2024 pursuant to the Deed of Transfer of Tenancy dated 11 December 2024 concerning "Godown 20", was dealt with without the consent, knowledge or lawful authority of the Applicant's Legal Guardian.

b) The Applicant alleged that the Respondent failed to give true and proper accounts of the transactions, income and dealings of the partnership firm, despite repeated demands. According to the Applicant, such accounting was required from the Respondent in view of his obligations as a partner.

c) The Applicant further alleged that the Respondent excluded him from the affairs of the partnership and dealt with the partnership business in a manner which was against the Applicant's interest, particularly during the period of the Applicant's incapacity. According to the Applicant, such conduct amounted to breach of the obligations arising between the partners.

d) The Applicant alleged that the Respondent opposed the pending proceedings relating to the Miscellaneous Application for Intervention before the Small Causes Court at Dhobi Talao, Mumbai. According to the Applicant, the said proceedings had been initiated by his Legal Guardian to protect his rights and interests in the partnership, including

his claim for recognition and impleadment as a partner in those proceedings.

8. Learned Advocate for the Applicant submitted that Respondent No.1 has admitted that the amount in question was received and credited to the account of the partnership firm. At the same time, Respondent No.1 has denied any obligation to furnish accounts or to recognise and pay the Applicant's alleged share. According to the Applicant, Respondent No.1 has sought to justify his conduct by stating that he was managing and controlling the affairs of the firm, including the financial transactions arising from the settlement relating to Godown No.20. It is therefore submitted that disputes have arisen between the parties concerning the accounts of the firm, the Applicant's entitlement and the obligations of one partner towards the other.

9. Learned Advocate for the Applicant further submitted that Respondent No.1 has consistently stated that he was managing and controlling the affairs of the partnership firm, including the litigation concerning Godown No.20, and that the actions taken by him were within his authority. At the same time, Respondent No.1 has questioned the authority of the Legal Guardian to represent the Applicant and has denied the Applicant's entitlement to claim any share in the amount received by the firm. According to the Applicant, these stands taken by Respondent No.1 themselves show that there are live disputes between the parties concerning the partnership, the receipt of funds and the rights of the Applicant.

10. Learned Advocate for the Applicant submitted that the disputes between the parties are real disputes arising out of actual transactions and receipt of money by the partnership firm. According to him, the disputes concern, among other things, the furnishing of accounts of the partnership, the Applicant's entitlement to his share in the partnership assets and income, and the legality of the steps taken by Respondent No.1 in relation to the funds received by the firm. It was therefore submitted that these disputes fall within the scope of the arbitration agreement contained in the Partnership Deed and are required to be referred to arbitration.

11. Mr. Rashesh Gandhi, learned Advocate appearing for Respondent No.1, submitted that the claims made by the Applicant do not arise out of a partnership dispute. According to him, the claims appear to arise from a family dispute and therefore do not fall within the arbitration clause. He submitted that the Legal Guardian who has filed the present Section 11 Application had been appointed as the Executor of the Will. According to him, the Legal Guardian has exceeded his authority by filing the present Application under Section 11. He further submitted that the Respondents are senior citizens above the age of 75 years and that the present proceedings have been initiated only with a view to harass them.

12. Mr. Omprakash Tiwari, learned Advocate appearing for Respondent No.2, submitted that the Legal Guardian who has filed the present Application had no authority to do so. According to him, the order appointing the Legal Guardian was obtained by

suppressing material facts. He further submitted that the Applicant's claim is barred by limitation.

REASONS AND FINDINGS:

13. I have considered the submissions made by both sides. At the first stage, what has to be seen is whether there is an arbitration agreement between the parties and whether the disputes raised by the Applicant can prima facie be said to come under the said agreement.

14. The case of the Applicant is that the Partnership Deed dated 9 October 1992 was executed between the Applicant, Respondent No.1 and Pratapsinh Narbheram Popat and that Clause 18 of the said Partnership Deed contains the arbitration agreement. From the submissions of the Respondents, this position is not disputed. The objections raised by the Respondents are regarding the nature of the claims made by the Applicant, the authority of the Legal Guardian and limitation.

15. The Supreme Court has made it clear that while considering an Application under Section 11, the Court is not required to conduct a full trial or decide every disputed question in detail. In *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited*, 2025 INSC 616, the Supreme Court, while explaining the scope of enquiry at this stage, observed in paragraph 111 that "the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement". The Court has stated that a "contested or laborious enquiry" should be left to the Arbitral Tribunal.

16. This principle is required to be kept in mind in the present matter. At this stage, this Court is not required to finally decide whether the Applicant is entitled to Rs.12,50,000/-, whether there was any wrongful appropriation of the partnership funds, whether the accounts given by Respondent No.1 are correct or whether any particular act complained of by the Applicant amounts to breach of the duties between the partners. These matters will require consideration of facts, documents, and evidence. The same can be considered by the Arbitral Tribunal after both sides place their respective cases before it.

17. Respondent No.1 has taken an objection that the dispute is a “family dispute” and not a partnership dispute. This objection cannot be accepted. Merely because the parties are members of the same family, every dispute between them does not become a family dispute. What is required to be seen is what right is claimed and from which relationship that right is claimed. In the present case, the Applicant claims his rights as a partner of Respondent No.2 firm. He relies upon the Partnership Deed. He claims a share in the money received by the partnership firm and seeks accounts of the partnership firm. Therefore, the dispute has a direct connection with the partnership relationship.

18. The Applicant has stated in paragraph 10 that the disputes concern “(i) rendition of accounts of the partnership, (ii) entitlement of the Applicant to his share in partnership assets and income, and (iii) the legality of unilateral actions taken by Respondent No.1 in relation to such funds.” If the dispute is considered in this manner, it cannot, at this stage, be treated only

as a personal dispute between family members. The basis of the claim is the partnership relationship and the rights which, according to the Applicant, arise from the Partnership Deed.

19. This view receives support from the approach adopted by the Supreme Court in *Tarun Dhameja v. Sunil Dhameja & Anr.*, 2024 SCC OnLine SC 3715. In that case, the Court was concerned with an arbitration clause contained in a Partnership Deed. The Supreme Court held that such arbitration clause has to be understood in a practical manner and that where the dispute arises from the partnership relationship, the arbitration agreement can be acted upon. The Court recognised, in the facts of that case, that a legal representative of a partner could invoke the arbitration clause.

20. The facts of the present case are somewhat different because the Applicant is not stated to be a deceased partner. He is stated to be alive but unable to manage his affairs and is represented through a person appointed as his Legal Guardian. However, this difference does not change the basic nature of the dispute. The dispute sought to be referred is still concerning the partnership, the partnership funds and the alleged share of one of the partners. Therefore, merely because the parties are related to each other, it cannot be said that the dispute falls outside the arbitration clause.

21. Respondent No.1 has relied upon the fact that he was managing the affairs of the partnership firm and had taken steps concerning the litigation relating to Godown No.20. This submission does not end the dispute between the parties. In fact, it

shows that there is a difference between the parties regarding how the partnership affairs were to be managed and how the money received by the firm was to be dealt with. The Applicant says that Respondent No.1 had no authority to appropriate his share and that proper accounts were not given. Respondent No.1 disputes the Applicant's claim and disputes the authority of the Legal Guardian. These different stands themselves show that there is a real dispute between the parties.

22. The receipt of Rs.25,00,000/- is an important circumstance. Paragraph 6 records that, in reply to the invocation notice, the Respondent admitted receipt of approximately Rs.25,00,000/- in the account of Respondent No.2 firm. Therefore, there is an admitted monetary transaction concerning the partnership business or partnership property. Whether the whole amount or only some part of it is payable to the Applicant is a different question. But the dispute regarding the said amount is a real dispute and cannot be treated as imaginary or speculative. The learned Advocate for the Applicant has submitted that the Legal Guardian demanded Rs.12,50,000/-, being 50% of Rs.25,00,000/-, but the amount was not paid. The Applicant's case regarding his 50% share is based upon the alleged retirement of Pratapsinh Narbheram Popat in 2017 and the alleged transfer of his share equally to the Applicant and Respondent No.1. At this stage, this Court is not required to finally decide whether the Applicant is actually entitled to exactly 50% share or whether Rs.12,50,000/- is finally payable to him. What is important is that there is a dispute regarding his entitlement. Such dispute can be decided in

arbitration if it comes within the arbitration agreement. On the material before me, it does.

23. Respondent No.1 has objected to the authority of Amit Harish Thakkar to file the present proceedings. It is submitted that he was appointed as the Executor of the Will and that he has gone beyond his authority by filing the present Application under Section 11. Respondent No.2 has submitted that the order by which Amit Harish Thakkar was appointed as Legal Guardian was obtained by suppressing material facts.

24. On the material before the Court, this objection cannot be accepted. Paragraph 4 records that Amit Harish Thakkar filed Writ Petition (OS) No.21218 of 2024 and that this Court appointed him as the Legal Guardian of the Applicant on 5 September 2024. The Respondents have not shown any order by which the said appointment has been stayed, cancelled or set aside. No material from the guardianship proceedings has been shown to establish that the Legal Guardian was prohibited from protecting the Applicant's partnership rights or from taking legal proceedings for protecting those rights. Merely because the same person is described as an Executor of a Will, it does not mean that he has no authority as Legal Guardian. These are two different capacities. The authority in each capacity has to be considered from the relevant order and the applicable law. In the present case, the Respondents have not shown any part of the order dated 5 September 2024 which takes away the authority of the Legal Guardian to protect the Applicant's legal or financial interests.

25. The allegation of suppression of material facts cannot be accepted merely because such allegation has been made. Suppression is a serious allegation. There should be some material to show what fact was suppressed, why that fact was material for the order appointing the Legal Guardian and in what manner such suppression affected the decision of the Court. No such material has been pointed out in the submissions before me. Therefore, the allegation of suppression cannot be made a ground to reject the present Section 11 Application.

26. There is another circumstance which requires consideration. The Applicant's Legal Guardian came to know in December 2024 about the settlement concerning Godown No.20 and thereafter demanded the alleged share of the Applicant. The partnership firm received Rs.25,00,000/- on 10 December 2024 and the Deed of Transfer of Tenancy was executed on 11 December 2024. The Applicant thereafter invoked the arbitration clause by notice dated 6 January 2026. Therefore, so far as the main dispute concerning the said Rs.25,00,000/- is concerned, it cannot be said that arbitration was invoked after an unexplained period of many years.

27. Respondent No.2 has submitted that the Applicant's claim is barred by limitation. This objection cannot, on the facts of the present case, result in rejection of the Application at this stage. The Supreme Court in *ASF Buildtech*, particularly in paragraph 133, has explained that while considering limitation in a Section 11 proceeding, the Court has to consider whether the Section 11 Application is within the period of limitation. The Court is not

expected to conduct a detailed and complicated enquiry regarding limitation of each individual claim. Such questions can ordinarily be considered by the Arbitral Tribunal. On the facts available, the monetary dispute relied upon by the Applicant arose in December 2024. The notice invoking arbitration was issued on 6 January 2026 and the present Section 11 proceedings were thereafter filed in 2026. Therefore, there is no apparent or clear delay which would make the present Application obviously beyond limitation. Whether any particular claim relating to an earlier period, including the claim for rendition of accounts, is barred by limitation may depend upon the nature of that claim, the relevant dates and the documents. Such detailed examination cannot be undertaken by this Court as if the Court is deciding the whole arbitration dispute.

28. On considering the entire material placed before me, I am satisfied that there is an arbitration agreement contained in Clause 18 of the Partnership Deed dated 9 October 1992. I am satisfied, at this stage, that genuine disputes have arisen between the parties concerning the affairs of Respondent No.2, the receipt and accounting of Rs.25,00,000/- in relation to Godown No.20, the alleged share of the Applicant in that amount and the rendition of partnership accounts. Respondent No.1 has not agreed to the appointment of an Arbitrator despite invocation of arbitration by notice dated 6 January 2026. Therefore, the present Application cannot be rejected on the objections raised by the Respondents. The disputes raised by the Applicant are required to be considered in accordance with the arbitration agreement. Appointment of an

Arbitrator at this stage will give both sides an opportunity to place their respective claims and defences before the Arbitral Tribunal. The Tribunal will remain free to decide all questions which may arise before it, including the Applicant's entitlement to the amount claimed, rendition of accounts, the authority of the parties in relation to the partnership affairs, limitation of any particular claim and all other questions of fact and law which arise in the arbitration.

29. In the aforesaid circumstances, the present Application under Section 11 of the Act, is deserved to be disposed of in terms of the following order:

A) Mr. Abhishek Kothari Advocate of this court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with Clause 18 of the Partnership Deed dated 9 October 1992;

Office Address:- C/o Sr. Adv. Ashish Kamat, 501, Oval House, British Hotel Lane, Kala Ghoda, Mumbai – 400001.

Email: abhishekkothary@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with 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 Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) 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 two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as may be indicated by the Learned Sole Arbitrator, for obtaining appropriate directions with regard to the conduct of the arbitral proceedings, including fixing the schedule for filing of pleadings, examination of witnesses, if any, and dates of hearing. At such meeting, the parties shall furnish to the Arbitral Tribunal valid and functional email addresses, together with the mobile and landline telephone numbers of their respective Advocates. Communications sent to the said email addresses shall constitute valid service of correspondence in connection with the arbitral proceedings.

F) All arbitral costs and fees of the arbitration and of the Arbitral Tribunal shall be borne by the parties equally in the

first instance. The same shall, however, remain subject to any final Award that may be passed by the Arbitral Tribunal in relation to costs.

30. The Learned Sole Arbitrator shall be at liberty to adjudicate upon the claims and counterclaims, if any, and to determine all questions relating to merits, in accordance with law.

31. 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.

(AMIT BORKAR, J.)