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

ARBITRATION APPLICATION (L) NO.26915 OF 2026

Girish Narang

... Applicant

Vs.

ATUL
GANESH
KULKARNI

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by ATUL
GANESH
KULKARNI
Date: 2026.09.29
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1. Virendra Arora

2. Samast Financial Services Pvt. Ltd.

3. Mindsweep Ideas Private Limited

... Respondents

Mr. Amani Khan for the Applicant

Ms. Vidhi Rathi for Respondent No.1.

Ms. Shalu Jain i/by The Legal Co., for Respondent No.2
& 3.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 23, 2026

PRONOUNCED ON : SEPTEMBER 29, 2026

JUDGMENT:

1. By this Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant seeks appointment of an Arbitrator for deciding all disputes and differences between the parties arising out of and under the Deed of Partnership dated 1 April 2025. The Applicant seeks that the Arbitrator should decide all claims, counterclaims and other disputes connected with the said Partnership Deed.

2. According to the Applicant, the facts which have led to filing of the present Application are as follows. In or about 2024, the Applicant started developing a film project which was tentatively titled "JATADHARA". The Applicant was doing this through his proprietorship concern, M/s Ess Kay Gee Entertainment. Before the Partnership was formed on 1 April 2025, the Applicant had independently carried out the development work of the Film Project and had obtained investments from third parties. Thereafter, on 1 April 2025, the Applicant and the Respondents entered into a Deed of Partnership for production, financing, management and commercial exploitation of the Film. The said Deed of Partnership contains an arbitration agreement in Clause 11. From April 2025 onwards, the parties started acting upon the Partnership Deed and commenced production of the Film according to the commercial arrangement agreed between them. During the production of the Film, Respondent Nos.2 and 3 gradually took responsibility for the financial administration of the Partnership. They coordinated the accounting work, supervised the use of the Partnership funds and acted as the main financial interface with Zee Studios. They introduced M/s Uttam Abuwala & Co., Chartered Accountants, for maintaining the financial records. According to the Applicant, he supplied invoices, vouchers, agreements, utilisation statements and other financial documents. These documents were checked and accepted without objection by the Chartered Accountants engaged by Respondent No.2. After the Film was completed and commercially released, it became necessary to finally reconcile the accounts of the Film Project.

According to the Applicant, certain contractual amounts payable by Zee Studios were still outstanding. Statutory compliances, including GST and TDS, were pending. There were contractual liabilities, including the payment due to Nikhil Nanda Motion Pictures LLP, which were required to be settled. According to the Applicant, the financial records were not being fully disclosed and, therefore, the final position of the accounts could not be ascertained. After substantial completion and commercial release of the Film, the Applicant called upon Respondent Nos.2 and 3 to provide the complete books of account, ledgers, bank statements, statutory records and other financial documents. The purpose was to reconcile the Partnership accounts and to settle the contractual as well as statutory liabilities.

3. The Applicant states that, despite several meetings, correspondence and requests, Respondent Nos.2 and 3 did not provide the complete accounts or the complete financial records of the Partnership. The Applicant therefore invoked the arbitration agreement by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. By the said notice, the Respondents were called upon to agree to the appointment of a Sole Arbitrator. Thereafter, according to the Applicant, Respondent No.2 assured him that the complete financial records would be provided and requested that the disputes be resolved amicably. The Applicant states that, despite these assurances and discussions, Respondent Nos.2 and 3 provided only some of the financial records and the records supplied were incomplete. The disputes therefore remained unresolved. According to the Applicant, Respondent

No.2 thereafter took a different stand that it was only an investor in the Film Project, although, according to the Applicant, Respondent No.2 had been involved in the financial administration of the Partnership during the execution of the Film Project. The Applicant, therefore, issued a Final Legal Notice dated 14 March 2026 calling upon the Respondents to provide the complete books of account and to comply with their obligations under the Partnership Deed. According to the Applicant, even after the Final Legal Notice, the Respondents did not comply with the demands made therein. They did not agree to constitute the Arbitral Tribunal in accordance with the mechanism provided under the Partnership Deed. The Applicant has therefore filed the present Application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an independent Sole Arbitrator.

4. Learned Advocate for the Applicant submitted that the Deed of Partnership dated 1 April 2025 contains a valid, binding and continuing arbitration agreement in Clause 11. According to the Applicant, under the said clause, the parties have clearly agreed that all disputes and differences arising out of or in connection with the Partnership Deed would be referred to arbitration. This would include disputes relating to the rights and obligations of the partners, management of the Partnership, accounts, liabilities and other affairs of the Partnership. Learned Advocate submitted that serious disputes have arisen between the parties. These disputes include the requirement of rendering accounts, the financial administration of the Partnership, utilisation of Partnership funds, maintenance, and disclosure of books of account, statutory

compliances, reconciliation of accounts, payment of liabilities and the respective contractual obligations of the partners under the Partnership Deed. It was submitted that the Applicant had properly invoked the arbitration agreement by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. By that notice, the Respondents were called upon to agree to the appointment of a Sole Arbitrator. According to the Applicant, despite receiving the notice, the Respondents did not act in accordance with the dispute resolution mechanism agreed between the parties. The Applicant therefore submits that appointment of an Arbitrator by this Court has become necessary.

5. Learned Advocate for Respondent Nos.2 and 3 opposed the Application. It was submitted that the dispute placed before this Court in the present Section 11 Application is wider than the dispute which was mentioned in the notice invoking arbitration. According to the learned Advocate, Clause 11 of the Partnership Deed provides that where a dispute arises between the parties, the parties must first make an attempt to resolve the dispute amicably. Only if such attempt fails can the dispute be referred to arbitration. Learned Advocate therefore submitted that the Applicant was required to first make a genuine attempt to settle the dispute amicably. According to the Respondents, no such attempt was made in the manner contemplated by the arbitration clause. On this ground, it was submitted that the present Application under Section 11 is not maintainable.

6. Learned Advocate for the Respondents submitted that the accounts relied upon by the Applicant have not been verified. It

was submitted that the Applicant has not produced sufficient proof in support of the monetary claims made by him. According to the Respondents, the concerned Respondent was appointed only during the completion stage of the Project. Therefore, the documents and records relating to the period before such appointment, which are sought by the Applicant, cannot be directed to be furnished by that Respondent.

7. In the alternative, the Respondents submitted that, if this Court is inclined to appoint an Arbitral Tribunal, all questions relating to the rights and liabilities of the parties and the reconciliation of accounts should be left open for decision on merits by the Arbitral Tribunal. It was submitted that an independent auditor or Chartered Accountant may be appointed to examine, verify and reconcile the accounts and financial transactions relating to the Film “JATADHARA”.

REASONS AND FINDINGS:

8. The question is whether there is an arbitration agreement between the parties, whether any dispute has arisen under the said agreement, whether the agreed procedure for appointment of an Arbitrator has failed and whether there is any legal reason for not appointing an Arbitrator.

9. The Deed of Partnership is dated 1 April 2025 and has been signed by the parties. Clause 11 is under the heading “DISPUTE RESOLUTION”. Clause 11(i) provides as follows:

“In case of any dispute arising in the future, all parties shall attempt to resolve it amicably. If a resolution is not reached,

the dispute shall be referred to arbitration under The Arbitration and Conciliation Act, 1996.”

10. Clause 11(ii) provides that the Arbitrator shall be appointed mutually by all the parties within the Mumbai jurisdiction and the arbitration shall be conducted in Mumbai under the Arbitration and Conciliation Act, 1996. Clause 11(iii) provides that if the parties fail to mutually appoint an Arbitrator within 30 days from the dispute arising, the Arbitrator shall be appointed according to the provisions of the Arbitration and Conciliation Act, 1996.

11. From the words used in Clause 11, the intention of the parties is clear. The parties have not stated that they “may” refer the dispute to arbitration. They have agreed that after making an attempt to settle the dispute amicably, if the dispute still remains, “the dispute shall be referred to arbitration”. Clause 11 provides what has to be done if the parties are not able to appoint an Arbitrator within 30 days. Therefore, after the dispute has arisen, there is no requirement of taking any fresh consent from the parties for referring the dispute to arbitration.

12. This difference is important. In *Jagdish Chander v. Ramesh Chander*, (2007) 5 SCC 719, the Supreme Court considered a partnership clause where the dispute was to be referred to arbitration “if the parties so determine”. The Supreme Court held that such words required another decision by the parties before arbitration could take place. The clause in the present case is different. Here, the parties have already agreed that if the dispute remains unresolved, “the dispute shall be referred to arbitration”. Clause 11 provides for appointment of an Arbitrator if the parties

fail to appoint one within 30 days. Therefore, the intention appears to be that the arbitration process should go ahead even when the parties themselves are not able to agree about appointment of the Arbitrator.

13. The same position can be seen from the decision in *Powertech World Wide Ltd. v. Delvin International General Trading LLC*, (2012) 1 SCC 361. In that case, the Supreme Court considered a clause under which disputes were to be settled amicably or through an Arbitrator. The Court considered the agreement as well as the conduct and correspondence between the parties and held that the parties had agreed for arbitration and that the requirement of attempting settlement was satisfied. In the present case, Clause 11 clearly provides that when amicable settlement is not reached, “the dispute shall be referred to arbitration”.

14. Learned Advocate for Respondent Nos.2 and 3 submits that before arbitration could be invoked, the parties were required to first make an attempt for amicable settlement and that no such attempt was made. This submission requires consideration because Clause 11(i) specifically says that “all parties shall attempt to resolve it amicably”. Therefore, this is a part of the procedure agreed between the parties. Even if this requirement is taken as a condition before starting arbitration, I am unable to accept that the said requirement was not followed in the present case. In paragraph 17 of the Application, the Applicant has stated that there were “repeated meetings, telephonic discussions, email correspondence and personal requests” for furnishing the financial

records and for completing the reconciliation. It is stated that even after these efforts, the Respondents did not furnish complete records or render complete accounts. There is material after the arbitration notice dated 15 December 2025. Paragraph 20 of the Application records that after receipt of the Section 21 notice, Mr. Nikhil Agarwal, stated to be acting on behalf of Respondent No.2, assured the Applicant that the complete books of account, financial statements, statutory records and other documents would be furnished. He requested that “the disputes be amicably resolved”. The Applicant states that because of this assurance and with a view to avoid unnecessary arbitration, time was given to Respondent Nos.2 and 3.

15. Thereafter, as stated in paragraph 21, only some incomplete and fragmented financial records were furnished. According to the Application, the records did not contain complete bank statements, ledgers, utilisation statements, GST and TDS records, reconciliation statements, employee payment records and vendor payment details. It is stated that the disputes continued to remain unresolved. Paragraph 22 states that even thereafter assurances were given that the remaining records would be supplied shortly, but there was no meaningful compliance. Finally, a Final Notice dated 14 March 2026 was issued again calling upon the Respondents to furnish the complete records and comply with the Partnership Deed. Even after this notice, paragraph 24 states that there was no effective reconciliation or resolution of the disputes. In view of these facts, the objection that there was no attempt for amicable settlement cannot be accepted. It may be that according

to the Respondents, the efforts made by the Applicant were not sufficient. However, the material shows that the parties remained in communication for some time. Meetings were held and correspondence was exchanged. Even after receiving the arbitration notice, the Respondents sought time and requested that the disputes be resolved amicably. The Applicant gave time. Some records were supplied. Still, the dispute remained unresolved.

16. Clause 11 does not provide any particular manner in which the parties are required to make amicable settlement. It does not say that mediation before any particular mediator has to take place. It does not provide for conciliation before any particular authority. It does not prescribe any fixed number of meetings. It only says that the parties shall “attempt to resolve it amicably”. From the material before the Court, such an attempt was made. The dispute continued and thereafter the Applicant issued the Final Notice. This shows that the attempt did not succeed. Therefore, this objection of Respondent Nos.2 and 3 cannot prevent the arbitration from proceeding.

17. The next objection is that the disputes mentioned in the present Section 11 Application are wider than the disputes mentioned in the notice invoking arbitration. This objection cannot be accepted as a reason for rejecting the Application. Paragraph 19 of the Application states that the Applicant issued a notice dated 15 December 2025 under Section 21, invoking Clause 11 and calling upon the Respondents to agree to appointment of a Sole Arbitrator “for adjudication of the disputes which had arisen between the parties”. In the Section 11 Application, the Applicant

has given details regarding the disputes relating to accounts, financial records, reconciliation, liabilities and obligations under the Partnership Deed.

18. The Supreme Court has considered the purpose of a Section 21 notice in *Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd. & Ors.*, 2025 INSC 507. The Court has held that a Section 21 notice is relevant for commencement of arbitral proceedings and for limitation. However, the claims and disputes stated in that notice do not prevent claims from being raised before the Arbitral Tribunal, provided such claims fall within the arbitration agreement. The Court has held that while considering a Section 11 Application, the Court is concerned with constitution of the Arbitral Tribunal and only a limited prima facie examination is required. Therefore, merely because the Applicant has given more details about the disputes in the Section 11 Application, it cannot be said that the Application is beyond the arbitration agreement. The important question is whether the disputes now raised arise from or are connected with the Partnership Deed and fall within Clause 11. The disputes regarding books of account, financial administration, use of Partnership funds, reconciliation, outstanding liabilities, statutory compliances and contractual obligations arise from the working and implementation of the Partnership. Therefore, they come within the scope of Clause 11. However, this finding does not mean that every amount or every document mentioned by the Applicant is proved. This Court is not deciding those questions at this stage. The Arbitral Tribunal will have to consider which claim can be made, which document

supports the claim, whether any claim is barred by limitation, what amount is payable, if any, and against which party. The finding at this stage is only that the disputes stated by the Applicant are matters which can be referred to arbitration under the Partnership Deed.

19. Respondent Nos.2 and 3 have submitted that the accounts produced by the Applicant are not verified and that the Applicant has not produced proof in support of his claims. This cannot be a ground for refusing appointment of an Arbitrator. The dispute concerns the accounts and financial transactions between the parties. If the Applicant is required to prove his accounts and claims, it is because the Respondents are disputing them. Therefore, the need for evidence is a matter for adjudication by the Arbitral Tribunal. It cannot be used for stopping the arbitration.

20. The material in the Application shows the nature of the dispute. Paragraph 15 states that the Film has been completed and commercially released, but final financial reconciliation is still pending. It is stated that contractual amounts receivable from Zee Studios are still outstanding. It is stated that liabilities towards artists, technicians, vendors, employees and service providers remain unpaid. The Applicant states that approximately Rs.90,00,000/- payable to Nikhil Nanda Motion Pictures LLP remains outstanding. According to the Applicant, proper determination and reconciliation of these matters requires complete disclosure of the books of account, ledgers, bank statements and other financial records. These facts are sufficient to show that there is an actual dispute between the parties. Whether

the amount of approximately Rs.90,00,000/- is payable, whether the amount was incurred, whether it is recognised under the Partnership Deed, whether any amount is receivable from Zee Studios, whether GST and TDS compliances are pending and which party is ultimately responsible for any liability are all questions requiring evidence. Such questions cannot be finally decided in the present Section 11 proceedings. At the stage of considering a Section 11 Application, the Court has to be careful and should not decide disputed matters in detail. In *Adavya Projects*, the Supreme Court has explained that the main purpose of Section 11 is to secure constitution of the Arbitral Tribunal. The examination by the Court is limited and prima facie. The Court should not conduct a “mini-trial” or make a detailed enquiry into disputed facts at this stage. The Constitution Bench position has been reiterated in *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji and Company Pvt. Ltd.*, 2025 INSC 616. The Supreme Court has observed that the referral Court should not make a detailed enquiry into evidence which can properly be considered by the Arbitral Tribunal. Therefore, the submission that the Applicant has not proved his financial claims at this stage does not assist the Respondents. This Court is not required to decide whether those claims will ultimately succeed. The fact that Respondent Nos.2 and 3 are disputing the accounts shows that there is a dispute between the parties which can be referred to arbitration.

21. Learned Advocate for Respondent Nos.2 and 3 has next submitted that the Respondents were appointed only during the completion stage of the Project. Therefore, according to the

Respondents, they cannot be directed to produce documents relating to the period before their appointment. This submission again concerns the actual rights and liabilities of the parties and therefore relates to the merits of the dispute. The Deed of Partnership contains a relevant provision in this regard. Clause 15(iii), as seen from the executed Deed, provides that “All liabilities of the Partnership shall be shared among the Parties from the Effective Date of this Deed of Partnership”. It provides that the Third and Fourth Parties shall not be liable for liabilities incurred by the Partnership before the Effective Date. This provision may have to be considered by the Arbitral Tribunal while deciding for which period a particular party can be made liable. But this provision does not take the dispute outside the arbitration clause. Whether a particular Respondent is liable for a transaction before or after the Effective Date will have to be decided by considering the Deed, the documents, the conduct of the parties and the evidence. This issue cannot be made a reason for saying that the Arbitral Tribunal has no jurisdiction. Respondent Nos.2 and 3 will have full opportunity before the Arbitral Tribunal to raise this defence and contend that particular claims or liabilities cannot be imposed upon them.

22. The Applicant has relied upon the conduct of Respondent Nos.2 and 3 and has stated that they exercised financial administration, coordinated the accounting work, supervised use of Partnership funds, dealt with Zee Studios and retained the financial records. These assertions are made in paragraphs 22 and 29(E) of the Application. Respondent Nos.2 and 3 dispute the

effect of such conduct. They say that one of them was only an investor and that documents relating to the earlier period cannot be demanded from them. At this stage, I do not consider it proper to give a final finding as to whether Respondent Nos.2 and 3 had control over the financial affairs to the extent stated by the Applicant. I do not decide whether their conduct creates any additional contractual liability. These are disputed matters which require evidence. However, the different stands taken by the parties themselves show that there is a live dispute concerning the Partnership. That dispute is connected with the Partnership Deed and therefore comes within Clause 11.

23. Respondent Nos.2 and 3 have prayed, in the alternative, that an independent auditor or Chartered Accountant be appointed for examining and reconciling the accounts. This alternative prayer does not give any reason to reject the Section 11 Application. It may be that examination of the accounts by a qualified person can help in deciding the disputes. But whether such assistance is required, at what stage it should be done, which records should be examined and what questions should be given to such person can be considered by the Arbitral Tribunal after hearing both sides.

24. I therefore find that the objections regarding unverified accounts, absence of proof of the Applicant's claims, the date from which Respondent Nos.2 and 3 can be made liable and the requirement of an independent auditor are all matters relating to the merits of the dispute. None of these objections shows that there is no arbitration agreement. They do not show that the disputes raised by the Applicant are outside the scope of Clause

11. There is another important aspect. Clause 11(iii) provides what is to happen if the parties do not mutually appoint an Arbitrator within 30 days from the dispute arising. In such a situation, the Arbitrator is to be appointed according to the Arbitration and Conciliation Act, 1996. The Applicant invoked the arbitration agreement by notice dated 15 December 2025 and called upon the Respondents to agree for appointment of a Sole Arbitrator. The Application states that even after subsequent opportunities and the Final Notice dated 14 March 2026, the Respondents did not agree to constitution of the Arbitral Tribunal. Therefore, the agreed procedure for appointment of the Arbitrator has failed. Section 11(6) applies where a party fails to act as required under the agreed procedure for appointment of an Arbitrator. In *Adavya Projects*, the Supreme Court has explained that where the procedure agreed between the parties for appointment of an Arbitrator fails, the Court can take the necessary steps for constitution of the Arbitral Tribunal. The present case therefore comes within the situation contemplated under Section 11(6) of the Act.

25. The Arbitration and Conciliation Act requires the Court to be careful at this stage and not decide the actual disputes which are to be decided by the Arbitral Tribunal. Section 16 recognises the power of the Arbitral Tribunal to decide its own jurisdiction. The Supreme Court has explained that this principle prevents the Court from deciding disputed matters in advance when those matters can properly be considered by the Arbitral Tribunal on the basis of evidence. The decision in *Adavya Projects* makes it clear that an

order appointing an Arbitrator does not finally decide the terms of reference or the complete scope of jurisdiction of the Arbitral Tribunal.

26. I have therefore considered the rival submissions only to the extent required for deciding whether an Arbitrator is required to be appointed. I have not finally decided the accounts between the parties. I have not decided whether the figures given by the Applicant are correct. I have not decided the liability of Respondent Nos.2 and 3 for transactions relating to any particular period. I have not decided whether any amount is payable by Zee Studios, whether the amount of Rs.90,00,000/- is finally payable to Nikhil Nanda Motion Pictures LLP, or which party is responsible for GST, TDS or any other liability. All these questions shall remain open before the Arbitral Tribunal. They will have to be decided after giving proper opportunity to all the parties and after considering the evidence. The Deed provides in Clause 12(ii) that legal proceedings arising from the Deed shall be under the exclusive jurisdiction of the courts in Mumbai. The Deed was executed at Mumbai and Clause 11 provides for arbitration to be conducted in Mumbai. Therefore, the Applicant has approached the appropriate Court for the relief sought.

27. On considering the entire material, I find that there is a written and signed Partnership Deed dated 1 April 2025. Clause 11 contains an agreement between the parties to refer unresolved disputes to arbitration. The existence of the Partnership Deed and the arbitration clause has not been seriously disputed by Respondent Nos.2 and 3. The material shows that the parties had

discussions, meetings, and correspondence for resolving the disputes and for obtaining the financial records. Even after the Section 21 notice, time was given for amicable settlement. Some records were furnished, though according to the Applicant they were incomplete. The dispute still remained. The agreed procedure for mutual appointment of the Arbitrator did not result in appointment of an Arbitrator.

28. In view of the aforesaid, the present Application filed under Section 11 of the Act is disposed of by passing the following order:

A) Mr. Harsh Moorjani, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences arising out of and in terms of Clause 11 of the Deed of Partnership dated 1 April 2025;

Office Address:- C/o Sr. Ashish Kamat, 501, 5th Floor, Oval House, Old British Lane, Kala Ghoda, Fort, Mumbai – 400001.

Email ID: harshmoorjani.legal@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 indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

29. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

30. 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.)