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

ARBITRATION APPLICATION (L) NO.26742 OF 2026

M.D. Nehaluddin ... Applicant

Vs.

Nusarat Shakil Ahmed ... Respondent

ATUL GANESH KULKARNI
Digitally signed by ATUL GANESH KULKARNI
Date: 2026.10.30 11:19:40 +0530

Mr. Vijay Dighe for the Applicant.

Mr. Mohammed Zain Khan with Mr. Ashraf Kapoor i/by One Legal for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 28, 2026.

PRONOUNCED ON : OCTOBER 30, 2026

JUDGMENT:

1. The present Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator to decide the disputes between the Applicant and the Respondent arising out of the Admission-cum-Retirement Deed/Partnership Deed dated 14 March 2014, notarized on 15 April 2014, and the Supplementary Deed of Partnership dated 22 April 2022, relating to the partnership firm M/s Prime Kitchen Care.

2. The relevant facts, as stated by the Applicant are as follows. On 8 November 2013, a Partnership Deed was executed between Mr. Jay Prakash and Mr. Mohammad Zahid Siddiqui for carrying

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on business under the name and style of M/s Prime Kitchen Care at Mumbai. On 14 March 2014, the Admission-cum-Retirement Deed/Partnership Deed was executed, by which the Applicant and the Respondent became partners of M/s Prime Kitchen Care. Under the said deed, their respective shares in the profits of the firm were fixed at 25% and 75%. The deed was notarized on 15 April 2014. Clause 33 of the Partnership Deed provides for resolution of disputes through arbitration. On 21 January 2021, the Applicant incorporated M/s Nejyra Technical Services Private Limited under the Companies Act, 2013. During the year 2021, disputes arose between the Applicant and the Respondent concerning the affairs and management of the partnership business and certain allegations relating to the establishment and functioning of M/s Nejyra Technical Services Private Limited. The Applicant denies the allegations made against him. Thereafter, with the intervention of their father, the parties settled their disputes and executed a Memorandum of Understanding dated 1 August 2021. Under the said Memorandum, they agreed upon arrangements for restructuring their respective business interests. On 1 October 2021, pursuant to the Memorandum of Understanding, the parties' father was appointed as a Director of M/s Nejyra Technical Services Private Limited. The necessary statutory formalities were thereafter completed. On 22 April 2022, the Applicant and the Respondent executed a Supplementary Deed of Partnership, modifying the earlier terms of their partnership. They agreed to continue as working partners with equal participation and remuneration. On 22 January 2025, the parties'

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father resigned from the position of Director of M/s Nejyra Technical Services Private Limited. His resignation was accepted, and the necessary statutory formalities were completed. On 9 February 2025, the Respondent sent an email to the Applicant and the Chartered Accountant proposing dissolution of M/s Prime Kitchen Care on the ground that the firm was not carrying on any business.

3. On 10 February 2025, the parties' father issued a public notice stating that the alleged Will dated 10 October 2021 was forged and fabricated. On 2 August 2025, the Respondent lodged FIR No. 533 of 2025 at B.K.C. Police Station, Mumbai, making allegations arising out of the partnership business and related transactions. The Applicant disputes these allegations. On 22 June 2026, the Applicant issued a notice invoking Clause 33 of the Partnership Deed and called upon the Respondent to agree to the appointment of a Sole Arbitrator. Despite service of the notice, the Respondent neither replied nor agreed to the appointment of an Arbitrator. In these circumstances, in July 2026, the Applicant filed the present Application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator for adjudication of the disputes between the parties.

4. I have heard Mr. Dighe, learned Advocate appearing for the Applicant, and Mr. Mohammed Zain Khan, learned Advocate appearing for the Respondent. The main question before this Court is whether the disputes between the parties are connected with Clause 33 of the Partnership Deed and whether a Sole Arbitrator can be appointed under Section 11 of the Arbitration and

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Conciliation Act, 1996.

5. Mr. Dighe submitted that this Court has to see whether the Partnership Deed contains an arbitration clause. According to him, the Applicant and the Respondent are still governed by the said deed and the disputes are relating to the business, accounts and property of M/s Prime Kitchen Care. He submitted that the Respondent is trying to take the dispute towards M/s Nejyra Technical Services Private Limited and M/s Nejyra International Private Limited, so that the matter does not go to arbitration. According to him, the disputes are civil and commercial in nature, but the Respondent has given them the colour of criminal matters.

6. Mr. Khan, learned Advocate for the Respondent, submitted that the arbitration clause is limited to disputes between the partners arising from the Partnership Deed or things done under it. According to him, the real disputes are about the formation and working of M/s Nejyra Technical Services Private Limited, the alleged arrangement regarding its shares, the Memorandum of Understanding, the alleged Will dated 10 October 2021 and the later removal of their father, Mr. Ish Mohammad, as Director and the alleged transfer of his shares. He submitted that these matters do not arise from the Partnership Deed. He pointed out that the company and some other persons whose rights may be affected are not parties to the arbitration agreement.

7. From the submissions of both sides, it appears that the parties are not agreeing on where their disputes should be decided. There is no serious dispute about the existence of an

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arbitration clause. The main question is whether the disputes raised by the Applicant come within that clause and whether the objections of the Respondent are sufficient to refuse the appointment of an Arbitrator.

8. Clause 33 of the Admission-cum-Retirement Deed/ Partnership Deed dated 14 March 2014 provides for arbitration. The said clause reads as follows:

> "All disputes and differences by and between the Partners and their heirs and representatives, in any way relating to or arising out of or connected with any of the provisions hereof or anything done in pursuance hereof including those relating to dissolution and/or retirement shall be referred to the Arbitration of any single Arbitrator appointed by mutual consent ... Such Arbitration shall be governed under the Indian Arbitration and Conciliation Act of 1996... The arbitration proceedings shall be conducted at Mumbai, India …"

9. The words in this clause have to be understood in their proper meaning. It covers disputes about the terms of the Partnership Deed and the things done under it. It is not restricted only to money disputes or dissolution of the firm. But it cannot mean that every dispute between the parties, even if having no connection with the Partnership Deed, must be referred to arbitration. Some connection with the rights and duties under the deed has to be there. Clause 24(d) of the Partnership Deed states that each partner will be "just and faithful to one another". Clause 24(e) states that "No Partner shall make any private profit at the cost of the Partnership Firm." The deed contains provisions regarding the accounts, money and duties of the partners in

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running the business. From these terms, it can be seen that the partners had accepted certain duties towards each other concerning the property, money, accounts and business of the firm.

10. The notice dated 22 June 2026 refers to the allegation that the Applicant used the stock belonging to M/s Prime Kitchen Care for the business of M/s Nejyra Technical Services Private Limited. The value of such stock is stated to be about Rs. 24 lakhs and the transactions are alleged to have been made through 121 invoices. The Applicant has denied these allegations and has stated that they are false and without any basis. The notice refers to the FIR filed by the Respondent and alleges that criminal proceedings were started to put pressure upon the Applicant. These allegations have to be considered together and not separately. The dispute is not only about whether the Applicant committed the offences mentioned in the FIR. It concerns the allegation that stock belonging to the partnership firm was used for the business of another company and that the Applicant obtained benefit from those transactions. At this stage, this Court is not deciding whether these allegations are true or false. But the allegations do show that there may be a dispute regarding the property and accounts of the firm and the duties of the partners.

11. If it is found that stock belonging to M/s Prime Kitchen Care was transferred or used against the terms of the Partnership Deed, a question may arise whether the Applicant failed to perform his duties as a partner. On the other hand, if the allegations are found to be false, that may have an effect on the accounts and rights of the parties. These matters can be examined by the Arbitral

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Tribunal, depending upon the claims placed before it. Merely because another company is alleged to be involved in the transactions, it does not mean that the entire dispute about the property and accounts of the partnership firm is outside Clause 33. The Respondent is right in saying that M/s Nejyra Technical Services Private Limited is a separate legal entity. A company has its own legal identity, which is different from the identity of its shareholders and directors. Merely because a partner has some business connection with a company, the company does not become a party to the Partnership Deed. The same position applies to M/s Nejyra International Private Limited. At this stage, no material has been shown to establish that either company signed Clause 33 or otherwise agreed to be bound by it. Therefore, by appointing an Arbitrator under the Partnership Deed, this Court cannot make either of these companies a party to the arbitration agreement. The Arbitrator cannot grant relief against these companies as if they had agreed to arbitration, unless there is a proper legal basis for doing so. But this position is different from the disputes between the Applicant and the Respondent about their own rights and duties as partners. Whether a particular claim comes within the arbitration clause has to be seen by looking at the claim itself and not only because another company is mentioned in the dispute.

12. The Memorandum of Understanding dated 1 August 2021 requires to be considered. This document is between Mr. Ish Mohammad and Mr. Mohd. Nehaluddin. Under the heading "C. Prime Kitchen Care", it states that the gross turnover and business

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activities of the earlier firm would continue. It mentions Nehal Mohammad and Nusrat with 50% participation each. Under the heading "D. Share holdings and Directorship", it refers to M/s Nejyra Technical Services Private Limited and records the proposed shareholding of 50% each for Mr. Ish Mohammad and Mr. Mohd. Nehaluddin. Thus, the Memorandum of Understanding refers both to the earlier partnership business and to the new company. This gives some support to the Applicant's submission that the business arrangements were connected with each other. However, the document placed before this Court was executed between Mr. Ish Mohammad and Mr. Mohd. Nehaluddin. The Respondent is not shown as a person who signed it. There is no arbitration clause in this document. Therefore, this document cannot be treated as a separate arbitration agreement between the Applicant and the Respondent. It cannot be said that the company agreed to arbitration through this document.

13. The Respondent has raised disputes about the alleged Will, her claim of beneficial ownership in the shares of M/s Nejyra Technical Services Private Limited, the alleged misuse of Mr. Ish Mohammad's digital signature and the correction of the company's register of members. These matters are different from the ordinary disputes about the accounts and duties of partners. Whether the Will was executed and is genuine, whether the alleged transfer of shares was lawful and whether the company's records need correction cannot be finally decided in this Application under Section 11. At this stage, there is no basis for this Court to declare that any of these documents is genuine, forged or fabricated. The

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Respondent has submitted that any order regarding the company's shares or register of members would affect the company and its present directors and shareholders, including the Applicant's wife, Mrs. Nilofer Jahan. This objection has force to the extent that the Respondent seeks relief against persons or companies who are not parties to the arbitration agreement and have not agreed to arbitration. Appointment of an Arbitrator cannot be treated as permission to decide the rights of such persons merely because they are connected with the transactions in dispute. However, it would not be proper to say that every dispute relating to the partnership must remain outside arbitration merely because another company is involved in the same transactions. The disputes about the company's shares and the disputes about use of the partnership firm's stock, money or accounts may be connected with the same facts, but their legal nature may be different. A claim about the company's shares may affect the company and persons who are not parties to Clause 33. On the other hand, a claim about the firm's stock and accounts may concern the duties of the Applicant and the Respondent towards each other under the Partnership Deed. Both types of claims have to be examined separately according to their nature.

14. This approach finds support from the decision of the Supreme Court in *Shubham Equipment Private Limited and Another v. Rothwell Water Company Limited and Others,* 2026 INSC 1098, decided on 8 October 2026. The Supreme Court held that at the stage of Section 11(6-A), the Court has to make a prima facie examination about the existence of an arbitration agreement.

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It observed that where disputes under different agreements relate to different matters, questions about the scope of the disputes and the involvement of persons who have not signed the arbitration agreement may require examination by the Arbitral Tribunal. The fact that claims have some common connection does not mean that appointment of an Arbitrator must be refused. But this does not mean that every person who has not signed the agreement becomes bound by it. The position of each person and the terms of the agreement have to be considered separately.

15. The limited role of the Court under Section 11 has been held in *Ajay Madhusudan Patel and Others v. Jyotrindra S. Patel and Others,* 2024 INSC 710. The Supreme Court held that while appointing an Arbitrator, the Court is not required to hold a detailed trial into disputed facts. It has to see whether an arbitration agreement exists and whether there is a prima facie reason to refer the dispute to arbitration. Questions of fact which can be decided by the Arbitral Tribunal under Section 16 should ordinarily not be finally decided at this stage. The same approach is found in *Vidya Drolia and Others v. Durga Trading Corporation,* (2021) 2 SCC 1, particularly paragraph 153. The Supreme Court held that where the facts and legal position can be argued from both sides, the parties should ordinarily be referred to arbitration, leaving the Tribunal to decide the questions which come within its jurisdiction. In the present case, Clause 33 is contained in the Partnership Deed executed between the Applicant and the Respondent. The main objection of the Respondent is about the meaning and scope of that clause and the actual nature of the

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disputes. These objections do not show that the arbitration agreement does not exist or that all the disputes raised by the Applicant are clearly outside its scope.

16. Mr. Khan has submitted that the notice dated 22 June 2026 does not state any claim made by the Applicant, any amount payable to him or any specific relief sought against the Respondent. Therefore, according to him, the notice is not a valid request under Section 21 of the Arbitration and Conciliation Act, 1996. This objection has to be considered because Section 21 deals with the commencement of arbitral proceedings. Unless the parties have agreed otherwise, the proceedings are treated as having commenced on the date when the Respondent receives the request to refer the dispute to arbitration.

17. The notice in the present case does not contain a detailed statement of claim or mention any particular amount payable to the Applicant. It could have been written in a clearer manner. However, it identifies the Partnership Deed, refers to the disputed use of the firm's stock and the transactions with M/s Nejyra Technical Services Private Limited, denies the allegations made against the Applicant and specifically invokes Clause 33. It calls upon the Respondent to agree to the appointment of a Sole Arbitrator to decide the existing disputes. The notice has to be read as a whole and along with the disputes which had already arisen between the parties. The fact that the notice does not mention a specific money claim does not mean that there is no dispute which can be referred to arbitration. The Applicant will have to state the exact claims and reliefs sought in the pleadings before the Arbitral

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Tribunal. The notice need not contain every detail which would be included in the final statement of claim. What is important is whether the request to refer the dispute to arbitration can be understood from the notice. In the present case, it can be understood that the Applicant disputes the allegations regarding the partnership business and seeks a decision on the disputes between the partners under the Partnership Deed.

18. The Supreme Court considered the purpose of a notice under Section 21 in *Adavya Projects Private Limited v. M/s Vishal Structurals Private Limited and Others,* 2025 INSC 507. The Court held that the notice is necessary for starting arbitration and for determining limitation. However, the contents of the notice do not restrict the claims which may later be made before the Arbitral Tribunal. Questions about whether a particular claim can be maintained or is within limitation can be decided by the Tribunal on the basis of the pleadings and evidence. This does not mean that a request for arbitration is not required. It only means that the notice need not contain the complete statement of claim. Applying this principle, the notice dated 22 June 2026 cannot be rejected only because it does not mention a particular amount or give every relief in detail.

19. The Applicant has submitted that the present Application is within three years under Section 43 read with Section 21 of the Act. This submission requires some clarification. Section 43 applies the law of limitation to arbitration, while Section 21 deals with the commencement of arbitral proceedings. These provisions do not mean that every claim relating to the partnership business

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becomes within limitation merely because the notice invoking arbitration was issued in June 2026. The limitation for each claim will depend upon the nature of that claim and the date when the cause of action arose. The limitation applicable to the Section 11 Application is different from the limitation applicable to the claims which may be placed before the Arbitrator. Therefore, it is not necessary to give a final finding on limitation of every claim at this stage. This issue is left open for the Arbitral Tribunal to decide according to law.

20. The objection based on the criminal proceedings does not justify rejection of the entire Application. The Respondent relies upon allegations of forgery, misuse of Mr. Ish Mohammad's digital signature, wrongful transfer of shares and wrongful gain to the Applicant. These are serious allegations. But registration of an FIR does not mean that every civil dispute connected with the same transactions cannot be decided through arbitration. Similarly, merely because the Applicant has denied the allegations, it cannot be held that the criminal proceedings are false or were started only to put pressure upon him. This does not mean that the Arbitrator can decide whether the Applicant or the Respondent has committed any criminal offence. The Arbitrator cannot conduct a criminal trial or decide criminal liability in place of the competent criminal court. The Arbitrator cannot direct that the FIR should be treated as false merely because the parties are referred to arbitration. The investigation and criminal proceedings must continue according to law. If the parties rely upon the same transactions before the Arbitrator, those transactions can be

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examined only for deciding the civil rights and duties which come within the arbitration agreement.

21. Mr. Dighe has alleged that the Respondent and her husband are using the criminal proceedings to extort money from the Applicant. He has submitted that the Respondent is opposing arbitration with an improper intention. These are allegations made by the Applicant. The material before this Court does not justify a finding that the Respondent is trying to extort money or that the FIR is false. At the same time, registration of the FIR cannot be treated as proof that the Applicant committed the acts alleged against him. Both sides must be given the opportunity to prove their respective cases before the forums which have jurisdiction to decide them. I am therefore unable to accept the submission that appointment of an Arbitrator would make the criminal proceedings infructuous. Arbitration and criminal proceedings have different purposes. Arbitration may decide the civil and commercial rights of the parties under the Partnership Deed. Criminal proceedings decide whether an offence has been committed and whether criminal liability arises. One proceeding does not replace or end the other.

22. The Respondent's objection that the notice is defective because it does not mention a particular amount payable to the Applicant has to be considered along with the entire notice. The notice identifies the Partnership Deed, the allegations about the firm's stock and transactions with the separate company, and the Applicant's denial of those allegations. It invokes Clause 33 and asks for appointment of a Sole Arbitrator to decide the existing

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disputes. Though the notice could have been written more clearly, it identifies the disputes which the Applicant wants to refer to arbitration. The Applicant can state the detailed claims and exact reliefs before the Arbitral Tribunal. The absence of a fixed money claim in the notice does not make the request for arbitration invalid.

23. It must be made clear that this order does not decide whether the Applicant is entitled to any particular amount, whether the Respondent has a valid counterclaim or whether the transactions complained of amount to a breach of the Partnership Deed. These questions require examination on their merits. The role of this Court under Section 11 is limited. The Court has to see whether an arbitration agreement exists and whether the dispute can prima facie come within that agreement. It is not required to conduct a trial into the disputed transactions or decide the final rights of the parties before an Arbitrator is appointed.

24. 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. Ashish Venugopal, Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes between the Applicant and the Respondent arising out of or in connection with their rights and obligations under the Admission-cum-Retirement Deed/Partnership Deed dated 14 March 2014 and, to the extent applicable, the Supplementary Deed of Partnership dated 22 April 2022,

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including the claims and counterclaims arising therefrom;

Office Address:- Chambers of Nikhil Sakhardande, Sr. Adv., 1101, 1 Infinity, Cawasji Patel Street, Fort, Mumbai – 400001.

Email:ashish.venugopal001@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;

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 two 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, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings,

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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;

E) 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.

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

26. 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.)

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