IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.37 OF 2026

1. Mr. Prashant Vinod Vaghasiya
2. Mrs. Nirmala Vinod Vaghasiya ...Petitioners

Vs.

1. Mr. Vivekanand Dhaneshwar Jha
2. Mr. Akhtar Tassaduk Khan
3. Smt. Vidya Ashok Kakera
4. Smt. Surekha Suresh Narkhede ...Respondent

WITH
INTERIM APPLICATION (ST) NO. 29968 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO.37 OF 2026

M/S. Nitant Properties And
Developers Pvt Ltd Thr Its
Director Mr Raysaheb M Yadav
And Ramlaxman V ...Applicant

Vs.

Mr Vivekanand Dhaneshwar Jha ...Respondent

*****

Mr. Anil D'Souza a/w. Ernest Tuscano	Advocate for the Petitioner.
Ms. Shaila R. Pandey	for the Respondent No.1
Mr. Chetan Rathod i/b. Mr. Niraj K. Tripathi	Advocate for Respondent No.4
Mr. Arvindkumar Tiwari	For the Intervenor-applicant

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	in IA(st) No. 29968/2026
Mr. Jitendra Singh	Advocate for Respondent Nos.2 and 3.

*****

CORAM : S. M. MODAK, J.

RESERVED ON : 23rd OCTOBER 2026

PRONOUNCED ON : 04th NOVEMBER 2026.

JUDGMENT :-

1. By this petition, both the Petitioners are praying for appointment of an Arbitrator as per the provisions of Section 11 (6) of the Arbitration and Conciliation Act (hereinafter referred to as '1996 Act'). Both the Petitioners claim to be the partners of Avighnaa Infra Buildcon LLP. Both these Petitioners and Respondent-Vivekanand were not the partners of said LLP at one and the same time. The petition is opposed on behalf of the Respondent-Vivekanand on various grounds. One is the notice under Section 21 of the said Act was given only by the Petitioner No. 1-Prashant and not given by the Petitioner No. 2 Nirmala. It is also opposed on the ground that recently there is an agreement executed on 07th December 2025 in between the Petitioner No. 1 and the Respondent and they have

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settled all the disputes and difference, as such there is no need to appoint an arbitrator. The prayer is also opposed on the ground that as per the Clause No. 33 of the agreement dated 15th October 2019, the jurisdiction of the Court is Mumbai Court and as such the dispute cannot be sent to arbitration.

2. This Court as per order dated 01.10.2026 has allowed two interim applications i.e. Interim Application No. 7616 of 2026 and Interim Application (ST) No. 28482 of 2026 and joined following persons as Respondent Nos. 2, 3 and 4.

a) Mr. Akhtar Tassaduk Khan

b) Smt. Vidya Ashok Kakera

c) Smt. Surekha Suresh Narkhede

If this Court will decide to appoint an arbitrator, they have agreed to participate in the arbitration and put forth their case. Interim Application (ST) No. 29968 of 2026 is filed by M/s Nishant Properties and Developers Pvt. Ltd. for impleadment. It was on the basis of giving some financial assistance to Vighnaharta Construction a partnership firm.

3. There are various agreements referred by the Petitioners as well

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as by Respondent-Vivekanand. The principle agreement is dated 15.10.2019. There are two partners. They are : One Trusha Vaghasiya, who is not party to this petition and Second is Nirmala, who is Petitioner No. 2. Subsequently, the Petitioner No. 1-Prashant was added as party as per the agreement dated 25.02.2020. Subsequently, there is further agreement dated 10.10.2020. Following are the changes made as per the said agreement :

a) Nirmal and Trusha have retired.

b) Prashant continued as partner

c) Respondent-Vivekanand was added as partner.

4. Thereafter, also there are various agreements executed between parties. They are as follows :-

a) an agreement dated 20.11.2021 in between Prashant-Petitioner No. 1 and Akhtar Khan – Respondent no. 2 (page 85) wherein Respondent No. 2 is admitted as a partner in Limited Liability Partnership.

b) Supplementary agreement dated 11.12.2024 wherein Shankar Jha was admitted as a partner in Avighnaa LLP alongwith original partner Nirmala and Prashant - Petitioners. (page no. 515)

c) Supplementary agreement dated 07.12.2025 signed by the

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Petitioners, Respondent No. 1- Vivekanand and Shankar Jha thereby amicably settling the dispute. (page no. 543)

d) There is partnership firm by name M/s Om Construction wherein Smt. Vidya Kakera-Respondent No. 3 was partner and it was merged with Vighnaharta construction and said Vighnaharta Construction is merged into Avighnaa LLP on 08.11.2021.

e) Respondent No. 2 (Telstar Technologies Pvt. Limited) became partner of Avighnaa LLP on 10.10.2020 as mentioned above. Initially, Respondent No. 2 was partner with Petitioner No. 1 as per Deed of partnership dated 14.06.2019 (page 599). It is in respect of property at Mira Road and property at Navghar Road, Bhayandar. There was Avighnaa LLP formed and later on there is change in constitution of the LLP as mentioned above.

f) Respondent No. 1 – Vivekanand pleads that if matter is sent to Arbitration, there should be inquiry into accounts from 2008 starting from Vighnaharta Construction and Om Construction (para 37 of Affidavit in reply)

g) Respondent No. 1 has also pleaded that dispute should not be confined to accounts of LLP but it should also include his removal and certain illegalities committed by Petitioner No. 1.

h) Respondent No. 1 has also pleaded that disputes are settled in view of execution of Agreement dated 07.12.2025.

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(Petitioners are disputing as both have not signed and there are certain blank spaces and it is inchoate document) and dispute is limited to implementation of said agreement dated 07.12.2025.

i) There is registered development agreement dated 02.11.2020 in between owners of lands situated at village Meere with M/s Avighnaa LLP (page no. 712)

j) Respondent No. 1 – Vivekanand was expected from Avighnaa LLP. There is show cause notice issued on 22.05.2024. It was replied by Respondent No. 1 and there is rejoinder. This is disputed by Respondent No. 1 and it is also challenged before various forums.

5. Admittedly, there is no arbitration clause in any of the agreements. But there is no dispute that they have formed limited liability partnership and as such provisions of Limited Liability Partnership Act, 2008 are applicable.

6. Learned Advocate Mr. D'Souza for the Petitioners relied upon the provisions of the said Act and according to him, if there is no provision for arbitration, as per the provisions of Section 23 (4) Entry No. 14 of the First Schedule to the said Act, the dispute can be refereed to arbitration. It is true apart from Avighnaa Infra, there is a reference

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of other entities namely Vighnaharta construction, Telstar Technologies Pvt. Ltd., Om construction had come. So the issue is "*whether dispute involving signatories to the respective agreements, can be referred to arbitration*" or "*whether the dispute amongst the persons who are not signatories to the agreements, can also be referred to an arbitrator*".

7. Learned Advocate Mr. D'Souza relied upon the following judgments:-

a) Kartik Radia Vs. BDO India LLP and Anr.[1]
b) Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and Others[2]
c) SBI General Insurance Company Limited Vs. Krish Spinning[3]
d) ASF Buildtech Private Limited Vs. Shampoorji Pallonji and Company Private Limited

8. Whereas learned Advocate for the Respondent No. 1 relied upon the following judgments ;-

a) M/s Young achievers Vs. IMS Learning Resources Pvt. Ltd.[4]
b) Bangalore Electricity Supply Company Limited (Bescom) Vs. E.S. Solar Power Private Limited and Others[5]

1 2025 SCC Online Bom 445
2 2017 (7) SCC 678
3 (2024) 7 S.C.R. 840
4 (2013) 2 S.C.R. 252
5 (2021) 6 SCC 718

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9. It will be relevant to consider the provisions of Limited Liability Partnership Act, 2008. Section 2 (1)(o) of the said Act meaning of limited liability partnership agreement is given as :-

Section 2 (1) (o)

> *"limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;"*

10. It consists of either the agreement amongst partners of limited liability partnership or it may consist of an agreement in between LLP and its partners. Meaning of partners and designated partners are also given in Section 2(1)(q) and in Section 2 (1)(j).

Section 2(1)(q)

> *"partner", in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement;*

Section 2 (1)(j)

> *"designated partner" means any partner designated as such*

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pursuant to section 7;"

11. As per Section 3 of the said Act, Limited Liability Partnership is a body corporate and it has got separate existence from its partners. There shall be atleast two partners of Limited Liability Partnership (Section 6).

12. Limited Liability Partnership has to be incorporated with Registrar with incorporation documents (Sections 11 and 12). After registration Limited Liability Partnership gets legal existence. Sections 23, 27 and 28 deals with relationship of partners, extent of liability of Limited Liability Partnership and extent of liability of partner. For deciding present dispute, we are concerned with the provisions of Section 23(4) of the said Act. It is reproduced below :-

Section 23(4)

"In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule"

13. So if there is no provision in the agreement then the issue has to be decided as per the provisions of First Schedule. First schedule contain 14 entries. It deals with the subject of sharing of profits,

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remuneration, the manner of taking decision amongst partners, recording of decision in minutes, modalities if competing business is carried on by any partner and so on. Entry No. 14 is relevant. It is reproduced below ;

Entry No. 14 –

> *"All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996."*

14. If there is a dispute "*arising out of limited liability partnership agreement*" and it cannot be decided "*in terms of the agreement*", then it shall be referred to arbitration as per provisions of Arbitration and Conciliation Act, 1996. These twin conditions have to be satisfied. Admittedly, Petitioner No. 1 and Respondent No. 1 were partners at one time and Petitioner No. 1 and Petitioner No. 2 were also the partners at other time with others. Respondent No. 1 is expelled which is disputed by him.

15. It needs to be seen, if there is any provision in principal agreement dated 15.10.2019 and other agreements for resolution of

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dispute. My attention is brought to Clause No. 33 of the agreement dated 15.10.2019.

Clause No. 33 Jurisdiction

> *"This Agreement shall be governed by and construed under the substantive Indian laws and jurisdiction of Mumbai Court."*

16. This clause is interpreted by the Hon'ble Supreme Court in case of ***Indus Mobile Distribution Private Limited (supra)***. Ms. Pandey disputes applicability of said ratio. Admittedly, the Supreme Court was not deciding a dispute involving the provisions of Limited Liability Partnership Act. But it was plain commercial dispute. There was an arbitration clause and jurisdiction clause also (para 2). The place of seating of arbitration is mutually decided by the parties at Mumbai and it is agreed that all disputes arising out of the agreement shall be subject to exclusive jurisdiction of the Courts in Mumbai. Even when no cause of action has arisen in Mumbai, parties have chosen the seat of the arbitration will be at Mumbai. The reason is simple. Parties have agreed that instead of regular Courts (having jurisdiction as per Civil Procedure Code) disputes have to be referred to an arbitrator who will

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sit in Mumbai. Merely because "*dispute has to be resolved by an arbitrator*" does not mean that further dispute will not occur. There are occasions to seek interim measures, challenge to award. If there are such occasions, the Courts in Mumbai will have jurisdiction. This is the interpretation given by Supreme Court.

17. In this case there is no arbitration clause but there is only jurisdiction clause giving jurisdiction to Mumbai Courts. There is no place of seating of arbitration in the agreements. Jurisdiction Clause is to be interpreted as "*When there is an occasion to take recourse to the remedies as per provision of Arbitration and Conciliation Act, then it is the Mumbai Court who is having jurisdiction*".

18. I have given this interpretation because the '*remedy of arbitration*' has to be read in view of the provisions of Entry 14 of First Schedule to Limited Liability Partnership Act. I am rejecting the objection on the ground of jurisdiction clause.

19. In ***Kartik Radia (supra)*** judgment the issue was "when Limited Liability Partnership is not a signatory to Limited Liability Partnership agreement – Whether dispute in between Limited Liability Partnership and partners can be referred to the arbitration. In that case there was an

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arbitration agreement itself contained in Limited Liability Partnership agreement (para 7). The argument that "*Limited Liability Partnership is third party to the agreement*" was turned down. If it is accepted, it is just like Company is third party to its own Articles of Association (para no. 11). Here that is not the argument advanced on behalf of Respondents. Here we have an agreement dated 15.10.2019 and subsequent agreements signed as partners of Limited Liability Partnership.

20. The High Court of Karnataka in case of ***Maverick Motors LLP represented by its authorized signatory V/s Rohith Murthy***[6] deals with a situation when there is absence of arbitration clause in the Limited Liability Partnership agreement, the dispute was referred to an arbitrator by taking recourse to the provisions of entry 14 to First Schedule of Limited Liability Partnership Act.

21. There is an objection taken on the basis of resolution of dispute in view of execution of an agreement dated 07.12.2025 (page 544). It was in between both the Petitioners, Respondent No. 1 and Shankar Jha. It is not signed by Petitioner No. 2- Nirmala and there are certain blank spaces in the agreement. This was alleged to be executed prior to

6 (2025) SCCOnline Kar 26806

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filing of present petition. But I am not upholding this objection in view of the observations in case of ***SBI General Insurance Company Limited (supra)***.

22. Even if there is accord/satisfaction it will not bar an arbitration. Because in that case dispute was of quantum and such a dispute does not pertain to existence of arbitration agreement. In case before us, Petitioners have taken recourse to statutory arbitration (in case of absence of provision) as per First Schedule of Limited Liability Partnership Act. Even otherwise, Petitioners are challenging the settlement agreement. Hence, I am rejecting the objection.

23. Last issue arises whether parties who are not signatories to Limited Liability Partnership agreement can be referred to arbitration.

24. It is true there are various agreements referred by the parties and which are mentioned above. Newly added Respondent No. 2, 3 and 4 have already submitted that they are ready to participate before Arbitral Tribunal. I am deciding the issue in between the Petitioners on one hand and Respondent No. 1 on the other hand. Following are the agreements which are concerning the Petitioners and Respondent No. 1:-

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a) The agreement dated 15.10.1990 executed in between Petitioner No. 2 – Nirmala and Trusha Vaghasiya.

b) Supplementary agreement dated 25.02.2019, thereby adding Petitioner No. 1-Prashant alongwith original partners Nirmala and Trusha.

c) Supplementary agreement dated 10.10.2020 in between Petitioner No. 2-Nirmala, Trusha (as retiring partners), Petitioner No. 1-continuing designated partner and Respondent No. 1-Vivekanand-continuing designated partner.

d) Memorandum of understanding dated 10.11.2021.

e) Supplementary agreement dated 01.07.2024 in between Petitioner no. 1-Prashant and Petitioner No. 2-Nirmala, page no. 346.

f) Supplementary cum principal agreement dated 07.12.2025 in between both Petitioners, Shankar Jha and Respondent No. 1-Vivekanand.

25. If we consider all these agreements, we can gather that at some point of time they were partners of Avighnaa Infra. In view of that the dispute in between both the Petitioners and Respondent No. 1 can certainly be referred to an arbitration.

26. The Petitioner No. 1-Prashant has already invoked arbitration clause by issuing a notice dated 17.06.2025 issued to the Respondent

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No. 1 (page no. 292). There is reference of provisions of LLP Act in the said notice. It is true this notice was not issued on behalf of the Petitioner No. 2-Nirmala. The purpose of notice is to calculate a limitation period, otherwise notice is not mandatory. I overruled the objection that notice is not issued by Petitioner No. 2-Nirmala.

27. It is true that Respondent No. 1-Vivekanand in his reply has contended that the dispute before arbitrator should not be restricted to settlement of accounts but it should also contain his grievance about expulsion and other matters. He is right if disputes are referred all the disputes needs to be resolved and parties are at liberty to put forth their submission.

28. The place of seating will be at Mumbai only. I say so because as per the jurisdiction clause the Mumbai Court will be having jurisdiction.

29. Now the issue is whether Respondent No. 3, 4 and 5 and Nishant Properties and Developers private limited will be allowed to participate before the Arbitrator. Nishant property claims that they have financed Vighnaharta construction. At this stage, it will be material to consider the observations in case of ***ASF Buildtech Private***

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Limited (supra). It is true Supreme Court has interpreted the provisions of Section 2 (h), 7, 8 and Section 11 of 1996 Act. It is observed the scope of inquiry while dealing with a petition under Section 8 and scope of inquiry while dealing with a petition under Section 11 of 1996 Act are different. It is true Supreme Court has dealt with status of party who are not signatory to the arbitration agreement viz.a viz scope of inquiry under Section 11 of 1996 Act. The Supreme Court also deliberated on impleadment of non-signatory to the arbitration agreement when there are proceedings before Arbitral Tribunal. In the present petition, we are considering what is effect of non signatories to the arbitration agreement on proceedings under Section 11 of 1996 Act. Observation in para no. 88 are relevant.

> *"Thus, even in the absence of the non-signatory being made a party to the proceedings before the referral court, and where the question of its impleadment has neither been raised nor addressed or left open to the arbitral tribunal by the referral court, the arbitral tribunal would be full empowered to examine this issue in the first instance and determine whether any non-signatory is bound by the arbitration agreement based on the factual circumstances of the case, and if necessary, implead such non-signatory to the*

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arbitration proceedings."

30. In view of the above, liberty can be granted to Respondent Nos. 2, 3, 4 and Nishant property to apply before the learned Arbitrator for their impleadment and learned arbitrator is at liberty to take appropriate decision. Even the Petitioners can also apply for their impleadment before the learned Arbitrator.

31. Considering the nature of the dispute involved, I feel that retired judge of this Court can be appointed as sole Arbitrator. Hence, the order :-

ORDER

A) Mr. R. D. Dhanuka, retired Judge of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out and in connection with the matter referred above;

Office address :- c/o Shri Chirag Shah, Advocate,
11B Nirmal Building,
11th Floor, Vidhan Bhawan Marg,
Nariman Point, Mumbai – 400 021.
Email id :- rdhanuka5@yahoo.com
Contact no. :- 022-69040000

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioners within a period of three weeks from the date of uploading of this

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order. The petitioner 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 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, 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 Petitioners and Respondent No. 1 equally and subject to final outcome of the award.

F) Place of sitting will be at Mumbai.

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G) The Parties are at liberty to submit before the learned Arbitrator which are areas of the dispute and right and contentions of the parties are kept open.

32. Petition is disposed of in above terms.

33. Pending Interim Application, if any, also stands disposed of.

[S. M. MODAK, J.]

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