HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Arbitration Application No. 17/2025

1. Ashok Kumar Gupta Son Of Late Shri Kalyan Prasad Gupta, Resident Of M/s. Kota Service Station, In Front Of Bank Of Baroda, Jhalawar Road, Kota-7 Other Address House No. D-37, New Colony, Gumanpura, Kota-7.
2. Shambhu Dayal Maheshwari S/o Late Shri Prabhudayal Maheshwari, Resident Of House No. 1-Cha-12, Dadabari Kota District Kota Pin Code 324009.

----Petitioners

Versus

1. Prakash Chandra Gupta S/o Late Dr. Ramkumar Gupta, Aged About 74 Years, Resident Of 2-Ma-16, In Front Of Bahubali Medical, Government Hospital Choraha, Vigyan Nagar,kota-6.
2. Hindustan Petroleum Corporation Limited, 1st And 2nd Floor, Plot No. 12, Near Gumanpura Police Station, Kota

----Respondents

For Petitioner(s)	:	Mr. Shailesh Prakash Sharma with Mr. Avi Sharma, Mr. Divakar Tehariya & Mr. Manan Sharma
For Respondent(s)	:	Mr. Abhishek Bhardwaj with Mr. Ayush Malik

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HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

Judgment

Date of conclusion of arguments	**:**	**13/04/2026**
Date on which judgment was reserved	**:**	**13/04/2026**
Whether the full judgment or only the operative part is pronounced	**:**	**Full judgment**
Date of pronouncement	**:**	**2nd/05/2026**

REPORTABLE

1. This is an application which has been filed seeking appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act 1996

(hereinafter referred to as the 'Act of 1996') and as per the arbitration clauses enshrined in the partnership deeds.

2. The applicants are two partners of a registered partnership firm operating under the name of M/s. Kota Service Station (hereinafter referred to as 'firm') which is in the business of petrol, diesel and other petroleum products in collaboration with M/s. Hindustan Petroleum Corporation Limited (hereinafter referred to as 'HPCL').The brief facts giving rise to the present dispute is that on account of the various allegations made, disputes have arisen between the partners of the firm and non-applicant 1 which has hindered the collaboration with HPCL and caused loss to the firm.

3. Learned counsel for the applicants submits that for efficient functioning of the collaboration by the firm, the income earned was to be deposited with various banks, for which current account was opened and could be operated by any partner as per the partnership deed. Learned counsel further submits that in 2023, when the collaboration with HPCL was in force, a dispute arose when the son of non-applicant 1 (Shri Anil Gupta, son of Shri Prakash Chandra Gupta) started to interfere with the business operations carried out by the partners of the firm which violated the policy of HPCL.

4. Learned counsel also submits that owing to such refusal, non-applicant's son levelled various false allegations and also initiated multiple proceedings aimed at restricting the applicant's bank operations, etc. Learned counsel further submits that multiple letters were also written to HPCL, causing loss. Learned counsel further submits that no third party was authorised to enter the premises of the petrol pump and that no interference by any third party could have been done which would also violate the collaboration agreement. Learned counsel submitted that owing

to the aforementioned, the applicants filed an application under Section 9 of the Act of 1996 before the learned Commercial Court, Kota, owing to which, serious differences have arisen amongst the partners, affecting the reputation and prestige of the firm.

5. Learned counsel further submitted that as a reply to the applicant's Section 9 application, the non-applicant stated that there was no dispute. However, the non-applicant had previously invoked the jurisdiction of the learned Commercial Court, Kota by impleading the applicants as a party to the Civil Misc. Arbitration Application No. 10/2023 filed on 25.07.2023 under Section 9 of the Act of 1996, wherein it was averred that disputes have arisen amongst the firm's partners and that Shri Anil Gupta was not allowed to carry out supervision work as the representative of Shri Prakash Chandra Gupta. Learned counsel also submits that the application also made a mention of a clause in the partnership deed, which stipulated resolution of disputes by an Arbitrator as per the Act of 1996.

6. Learned counsel for the applicant also submits that from a bare perusal of the aforesaid submissions, all ingredients for appointment of an Arbitrator can be culled out as a valid arbitration clause in the partnership deed exists and existence of a dispute can also be made out owing to the Section 9 applications submitted by both parties separately for grant of interim measure, which is pending adjudication.

7. Per contra, in their reply, learned counsel for the respondent submits that the present application filed by the applicants is not maintainable owing to non-service of a notice under Section 21 of the Act of 1996 prior to filing the current application. Learned counsel further submits that a perusal of Section 11(6) of the Act of 1996 would reveal that without service of the notice under the said act, the party seeking reference of the

disputes to arbitration would not be able to demonstrate the failure by one party to adhere to the stipulated procedure and accede to the request for appointment of an arbitrator. Learned counsel also submits that the trigger for invoking the jurisdiction of this court under Section 11 of the said act is failure by one party to respond.

8. Learned counsel for the respondent further submits that ex facie, no dispute survives for reference to arbitration as the dealership agreement upon which the partnership deed was executed has ended in July 2024 and that, as per reply to an RTI request filed by the respondent, HPCL mentioned that the outlet was now handed over to M/s Vinayak Petroleum on an ad hoc basis for one year and therefore, the firm cannot operate the said facility now. Learned counsel further submitted that the present application is not maintainable as the agreement dated 13.10.2020 is not registered and therefore is barred under Section 69 of the Indian Partnership Act, 1932. Learned counsel also stated that not impleading a necessary party, i.e., HPCL renders the present application non-maintainable.

9. However, learned counsel for the applicants also relied on the decision of the Apex Court in **Umesh Goel vs Himachal Pradesh Cooperative Group Housing Society Limited**[1], Delhi High Court in **Hari Om Sharma vs Sauman Kumar Chatterjee and Another**[2] and Calcutta High Court in **Md. Wasim and Another vs Bengal Refrigeration and Company and Others**[3] to submit that the bar under Section 69 of the Act of 1932 is inapplicable to arbitral proceedings and therefore the present application is maintainable. The learned counsel for the applicants also submitted that

1 (2016) 11 SCC 313
2 2024 SCC OnLine Del 7494
3 2022 SCC OnLine Cal 3035

HPCL was made a party in the applicant's Section 9 application for the limited purpose of protecting the dealership from interference and to seek directions and they are not a necessary party for appointment of arbitrator and also that existence of a dispute is not affected by the status of the collaboration.

10. I have considered the submissions.

11. At the outset, it would be appropriate to quote sub-sections 6 and 6A of Section 11 and Section 21 of the Act of 1996:

> *"**11. Appointment of arbitrators.-***
> *.....*
> *(6) Where, under an appointment procedure agreed upon by the parties,-*
>
> > *(a) a party fails to act as required under that procedure; or*
> > *(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or*
> >
> > *(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,*
>
> *[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.*
>
> *[(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgement, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.]*
> *.....*
> ***21. Commencement of arbitral proceedings.-*** *Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

Furthermore, it would also be apposite to quote clause 14 of the partnership deed dated 09.09.2013 (as the text of the arbitration clause is stated to be common across the partnership deeds):

> *"14. That in case of any disputes among the partners as regards the dealing of the firm and or interpretation of the Clauses of this indenture, the matter shall be decided according to the provisions of the Arbitration and Conciliation Act, 1996".*

12. Prior to framing the issues for determination, regarding the scope of inquiry to be undertaken at the stage of referral, a three-judge bench of the Hon'ble Supreme Court in **SBI General Insurance Company Limited vs Krish Spinning**[4] held as under:

> *"**(c) Judicial interference under the 1996 Act***
> *.....*
>
> ***113.** The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*
>
> ***114.** The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.*
>
> ***115.** The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.*
>
> ***116.** Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*

4 (2024) 12 SCC 1

[Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow: (SCC p. 104, para 220)

> *"220. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and [Ed.: The words between two asterisks have been emphasised in original as well.] not other issues [Ed.: The words between two asterisks have been emphasised in original as well.] ". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators."*
>
> *(emphasis supplied)*

.....

120. *By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the Referral Court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the Arbitral Tribunal does not in any way mean that the Referral Court is diluting the sanctity of "accord and satisfaction" or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principle of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the Arbitral Tribunal is constituted, it is always open for the defendant to raise the issue of "accord and satisfaction" before it, and only after such an objection is rejected by the Arbitral Tribunal, that the claims raised by the claimant can be adjudicated.*

.....

> ***126.*** *The power available to the Referral Courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the Arbitral Tribunal at the nascent stage of Section 11, the Referral Courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected."*

13. While considering an application under Section 11 of the Act of 1996, this Court would only examine whether there is any arbitration clause existing between the parties and whether there is any dispute which has arisen between the parties. In view of the above, basis the facts which are noticed, we find that both the ingredients, namely, existence of a valid arbitration clause in the partnership deed and the existence of a dispute between the partners are present.

14. The question for examination before this Court now, would only be limited to the objection raised by the respondent of the bar to exercise powers under Section 11 of the Act of 1996, if notice under Section 21 of the Act of 1996 has not been served.

15. With regard to the aforesaid, we find that both the parties have resorted to filing applications under Section 9 of the Act of 1996, seeking interim relief with the intention to initiate arbitration proceedings for solving the dispute finally. Thus, knowledge of existence of a dispute was there amongst the parties. Also, a perusal of the text of Section 21 would show the absence of any explicit mention of the word 'notice' but rather only refers to the time when a "*request*" for arbitration is received, indicating that issuance of a notice is not a statutory requirement under the said provision. Therefore, non issuance of the same cannot be utilised as a ground in this case to challenge the maintainability of the present

application as the parties already have knowledge of the existence of an arbitrable dispute. In this regard, the Apex Court in **Adavya Projects Private Limited vs Vishal Structurals Private Limited and Others**[5] had held as under:

> *"17. A plain reading of the provision shows that in the absence of an agreement between the parties, arbitral proceedings are deemed to have commenced when the respondent receives a request to refer disputes to arbitration. It is clear that Section 21 does not expressly mandate the claimant to send a notice invoking arbitration to the respondents. However, the provision necessarily mandates such notice as its receipt by the respondent is required to commence arbitral proceedings, unless the parties have mutually agreed on another date/event for determining when the arbitral proceedings have commenced."*

Furthermore, this court in **Shekharchand Sacheti and Another vs S.M.F.G. India Home Finance Company Limited and Another**[6] while adjudicating an application made for appointment of an arbitrator under Section 11 of the Act of 1996, had held as under:

> *"The essence of the matter is that merely stating that a dispute has arisen between the parties and referring to a claim does not satisfy the requirements of Section 21 of the Act of 1996 and a valid notice must be served to the other party to initiate the arbitration proceedings and in absence of notice under Section 21, the arbitration application cannot be entertained.*
>
> *31. But in the instant case, the respondents were not taken by surprise regarding invocation of the arbitration clause by the applicants for the first time before this Court inasmuch as the applicants submitted a suit for partition of property against the respondents before the Court of ADJ, where an application was submitted by none other than the respondents themselves under Sections 8 and 5 of the Act of 1996 that Civil Suit is not maintainable and an Arbitration Application under Section 11 of the Act is maintainable, hence accepting their prayer, the learned ADJ returned the plaint to the applicants under Order 7 Rule 10 CPC for its presentation before the competent court of law, and only thereafter, the applicants have submitted the instant*

5 (2025) 9 SCC 686
6 S.B. Arbitration Application No.81/2024, dated 30.05.2025

application. Thus, it can safely be said that the respondents were not taken by surprise by the filing of this arbitration application, for the appointment of an arbitrator before this Court, especially given that no prior written notice was issued by the applicants. It is inconceivable to suggest that the respondents were unaware of the dispute concerning the partition of the property in question. The applicants approached the Civil Court for partition by way of filing a Civil suit, but the same was returned by the Civil Court under Order 7 Rule 10 CPC, at the request/prayer of the respondents and even the interim order under Section 9 of the Act of 1996 was passed against the respondents under the provisions of Act of 1996 by the concerned competent Court of law. Hence, the respondents were well versed with the entire dispute raised against them. Therefore, under these peculiar circumstances, this application under Section 11 of the Act of 1996 is maintainable even without issuing a proper notice to the respondent under Section 21 of the Act of 1996 by the applicants."

16. Therefore, in view of the above, this application for appointment of Arbitrator deserves to be allowed. This court, therefore, appoints Hon'ble Mr. Justice Banwari Lal Sharma (former Judge, Rajasthan High Court) residing at 49-50, 4D, Campus, Theme Colony, Near Murlipura Police Station, Jaipur, as the sole arbitrator to adjudicate the dispute between the parties in compliance with the provisions of the Act of 1996. The appointment of the sole arbitrator is subject to the declarations made under Section 12 of the Act of 1996 regarding independence, impartiality and the ability to devote sufficient time to ensure completion of the arbitration within the prescribed period.

17. The fee payable to the sole arbitrator will be in accordance with the provisions enshrined in the Manual of Procedure of Alternative Dispute Resolution, 2009 (as amended by the Manual of Procedure for Alternative Dispute Resolution (Amendment), 2017 vide notification dated 23.03.2017) read with the 4th Schedule appended to the Act of 1996 or as determined by the arbitrator with the consensus of the parties.

18. The Registry is directed to intimate the Arbitrator for their approval and declaration as per Section 11(18) read with Section 12(1) of the Act of 1996.

19. All issues raised by the parties shall be decided by the Arbitrator in accordance with law.

20. Since Section 29A of the Act of 1996 stipulates completion of the proceedings within its stipulated time period, the parties are expected to appear before the Arbitrator on the date so informed by the Arbitrator subject to agreement by the parties. Furthermore, the parties shall provide their respective e-mail/ contact number/ mobile number and/or also of their authorized representatives/ lawyers appearing on their behalf before the Arbitrator, in order to facilitate the Arbitrator to send information/communication to the parties, whenever required. The information sent by the Arbitrator, on such address/ e-mail/ cellphone of the parties or to their authorized representatives/ lawyers, shall be treated as sufficient communication unless same is not changed.

21. The Arbitration Application stands disposed off accordingly.

(SANJEEV PRAKASH SHARMA), ACTING CJ

GOVIND SHARMA/RAHUL/--