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

COMM. ARBITRATION APPLICATION NO. 294 OF 2026



Anex Realty Services Pvt Ltd (Formerly Trespect India Pvt Ltd) ... Applicant

V/s.

Ornate Infra Holding Pvt Ltd ... Respondents

Mr. Saurabh Bachhawat with Kaushik Puranik, for Applicant.

Mr. Abhijit Singh, for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 20, 2026

PRONOUNCED ON : AUGUST 21, 2026

**JUDGMENT:**

**1.** The present application has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, as amended, seeking appointment of a Sole Arbitrator for deciding the disputes between the Applicant and the Respondent. According to the Applicant, the parties could not mutually agree on the appointment of a Sole Arbitrator within 30 days from the Arbitration Notice dated 28 March 2025. The said notice was issued by the Applicant under Clause 12 of the Marketing Services Agreement dated 25 December 2019.

**2.** The facts giving rise to the present application may be briefly stated as follows. On 25 December 2019, the Applicant and the Respondent entered into a Marketing Services Agreement, hereinafter referred to as “the Agreement”, for providing real estate brokerage services. Thereafter, on 6 December 2024, the Applicant issued a Legal Notice, referred to as the “1st Legal Notice”, calling upon the Respondent to acknowledge and pay the aggregate outstanding dues of INR 69,01,570/-, together with penalty interest. The Respondent replied to the said notice on 15 February 2025 and denied and disputed all the claims made by the Applicant. Thereafter, on 28 March 2025, the Applicant, through its Advocate, issued a Notice invoking arbitration, referred to as the “Arbitration Notice”, and proposed Sh. Shipan Gaonkar, Advocate, as the Sole Arbitrator. On 7 April 2025, the Respondent, through its Advocate, replied to the Arbitration Notice. The Respondent denied the claim made by the Applicant, raised a counterclaim of INR 4,60,600/-, and proposed Mr. I.K. Tripathi, Advocate, as the Sole Arbitrator.

**3.** Mr. Saurabh Bachhawat, learned Advocate appearing for the Applicant, invited my attention to the Marketing Services Agreement dated 25 December 2019 and submitted that the said Agreement contains an arbitration clause and bears the signature of the Opponent. He submitted that, in reply to the notice issued under Section 21 of the Arbitration and Conciliation Act, the Opponent himself relied upon Clause 12 of the Marketing Services Agreement and nominated an Advocate of his choice as Arbitrator. The Opponent had called upon the Applicant to give consent for appointment of the said Arbitrator. According to the learned Advocate, having himself acted upon Clause 12 and nominated an Arbitrator, the Opponent cannot now dispute the existence of an arbitration agreement between the Applicant and the Opponent.

**4.** On the other hand, Mr. Abhijit Singh, learned Advocate appearing for the Opponent, invited my attention to Exhibit C to the application and submitted that all the invoices relied upon by the Applicant have been raised against a different company, namely, Ornate Buildcon Developers. He submitted that the Opponent is Ornate Infra Holding (P) Ltd. According to the learned Advocate, there is no contractual relationship between the company in whose name the invoices have been issued and the Opponent. He, therefore, submitted that the present application under Section 11 deserves to be dismissed.

**REASONS AND ANALYSIS:**

**5.** I have considered the submissions made by the learned Advocates appearing for both sides. I have gone through the Marketing Services Agreement dated 25 December 2019, the Arbitration Notice dated 28 March 2025, the reply given by the Opponent on 7 April 2025 and the other documents placed on record. The dispute which is now required to be considered is in a limited area. The Applicant relies upon the arbitration clause contained in the Marketing Services Agreement and seeks appointment of an Arbitrator. The Opponent, however, says that the invoices relied upon by the Applicant are issued in the name of another company, namely Ornate Buildcon Developers, whereas the Opponent before this Court is Ornate Infra Holding (P) Ltd. According to the Opponent, therefore, there is no privity of contract and, for that reason, the dispute cannot be referred to arbitration.

**6.** Before considering this objection, it is necessary to keep in mind the limited scope of jurisdiction exercised by this Court at the stage of Section 11 of the Arbitration and Conciliation Act, 1996. The extent to which the Court can examine the matter at this stage has been explained by the Supreme Court in *Ajay Madhusudan Patel v. Jyotrindra S. Patel, (2025) 2 SCC 147*. The Supreme Court has considered the development of law on this issue and has summarised the legal position in paragraph 76.

**7.** In paragraph 76.1, the Supreme Court noticed that, under the earlier decisions in *SBP & Co. and Boghara Polyfab*, the scope of inquiry under Section 11 was much wider. The Court could consider, among other things, whether there was an arbitration agreement and whether the person applying under Section 11 was a party to such agreement. However, paragraph 76.2 records the change brought about by insertion of Section 11(6-A) through the Amendment of 2015. The Supreme Court observed that, after this amendment, the examination by the Court has to be confined to the “existence” of an arbitration agreement.

**8.** The position was thereafter explained in clear words in paragraph 76.3 while referring to *Duro Felguera*. The Supreme Court has observed as follows:

> "76.3. Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , in clear terms, clarified the effect of the change brought in by Section 11(6-A) and stated that all that the courts need to see is whether an arbitration agreement exists — nothing more, nothing less."

**9.** Thus, at this stage, the Court is not expected to conduct a trial for deciding every dispute which one party may raise against the other. The Court has to see whether the material before it shows that an arbitration agreement exists. This does not mean that the Court has to ignore the material even when it shows that there is no arbitration agreement at all. But where the objection requires examination of documents, facts, surrounding circumstances or evidence, the Court has to be careful that the proceeding under Section 11 does not become a full trial.

**10.** The same principle becomes more clear from paragraph 76.4 of *Ajay Madhusudan Patel*, where the Supreme Court, while referring to *Vidya Drolia*, has stated:

> "76.4. Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] endorsed the prima facie test in examining the existence and validity of an arbitration agreement both under Sections 8 and 11, respectively. However, it was clarified that in cases of debatable and disputable facts and reasonably good

> arguable case, etc. the Court may refer the parties to arbitration since the Arbitral Tribunal has the authority to decide disputes including the question of jurisdiction.”

**11.** The Supreme Court has observed in the same paragraph that complicated questions about whether particular persons are bound by an arbitration agreement may involve disputed facts, and such questions can be better left for consideration by the Arbitral Tribunal. Therefore, where there is a arguable dispute about the relationship between the parties, or whether a particular party is bound by the arbitration agreement, it may not always be necessary for the referral Court to give a final finding on that issue. This is more so when deciding such question would require examination of evidence.

**12.** The law was explained in paragraph 76.5 by referring to *Interplay, In re*. The Supreme Court held that the examination under Section 11 should be confined to the “existence of the arbitration agreement” under Section 7 of the 1996 Act. The question of validity is confined to formal validity, such as whether the agreement is in writing. The Supreme Court then stated:

> “Therefore, substantive objections pertaining to existence and validity on the basis of evidence must be left to the Arbitral Tribunal since it can ‘rule’ on its own jurisdiction.”

**13.** The importance of not making a inquiry at this stage has been emphasised in paragraph 76.6. The Supreme Court has observed:

> "76.6. Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] cautioned that the courts delving into the domain of the Arbitral Tribunal at the Section 11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected., it was stated that a examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage."

**14.** Finally, paragraph 76.7 of Ajay Madhusudan Patel is relevant. While considering the question of bringing non-signatories into arbitration proceedings, the Supreme Court observed that even though the referral Court may have to prima facie consider whether a person is a party to the arbitration agreement, complicated questions in that respect may properly be decided by the Arbitral Tribunal. The Supreme Court recognised that the question as to who are the parties to an arbitration agreement goes to the jurisdiction of the Arbitral Tribunal and such issue can be decided by it under Section 16 of the Act.

**15.** Keeping these principles in mind, the submission of the Applicant is now required to be considered. The Applicant relies upon the Marketing Services Agreement dated 25 December 2019. According to the Applicant, Clause 12 of the Agreement provides for resolution of disputes through arbitration. The Applicant says that the Agreement bears the signature of the Opponent. At this stage, this is a material circumstance. The case of the Applicant is therefore not based only upon an oral statement that there was some understanding between the parties. The Applicant relies upon a written Agreement which contains an arbitration clause. There is one more circumstance which requires consideration. The Applicant has pointed out that after the Arbitration Notice was issued under Section 21 of the Act, the Opponent gave a reply to that notice. According to the Applicant, in that reply, the Opponent himself invoked Clause 12 of the Marketing Services Agreement and nominated an Advocate of his choice as an Arbitrator. The Opponent called upon the Applicant to give consent for appointment of the said Arbitrator.

**16.** This conduct, at least at the prima facie stage, has some importance. If the Opponent himself relied upon Clause 12 of the same Agreement which is now relied upon by the Applicant for seeking appointment of an Arbitrator, it becomes difficult, at this limited stage, to accept the contention that there was no arbitration agreement at all. The reply to the Arbitration Notice, as pointed out by the Applicant, does not appear to be only a denial of the existence of the arbitration clause. On the contrary, the Opponent is stated to have nominated an Arbitrator of his choice, while disputing the monetary claim of the Applicant and raising a counterclaim of INR 4,60,600/-. The fact that the Opponent raised a counterclaim is a relevant circumstance. Merely raising a counterclaim may not establish every question regarding the contractual relationship between the parties. It cannot be said that because a counterclaim is raised, all objections concerning jurisdiction automatically disappear. However, the fact that the Opponent is stated to have raised a counterclaim and nominated an Arbitrator by referring to Clause 12 prima facie shows that the Opponent proceeded on the basis that disputes between the parties could be referred to arbitration.

**17.** The submission of the Applicant that the Opponent is therefore prevented from disputing the arbitration agreement has, however, to be understood in its proper manner. At this stage, it may not be necessary to give a final finding that every possible objection of the Opponent is barred. Such a finding may require examination of the exact contents of the correspondence and other facts. But the conduct of the Opponent is relevant for deciding the limited question before this Court. On the material presently available, such conduct supports the prima facie case of the Applicant regarding existence of an arbitration agreement.

**18.** I now turn to the main objection raised on behalf of the Opponent. Mr. Singh submitted that all the invoices relied upon by the Applicant are raised against Ornate Buildcon Developers, whereas the Opponent before this Court is Ornate Infra Holding (P) Ltd. According to him, these are two different companies. On this basis, it is contended that there is no privity of contract between the Opponent and the company in whose name the invoices are issued. It is therefore submitted that the present application must fail.

**19.** An arbitration agreement binds the persons who are parties to it, subject to recognised legal principles applicable in a particular case. Therefore, if the material and beyond doubt showed that the Opponent had no connection with the Agreement and that the Applicant was trying to enforce the arbitration clause against an entirely different person, such circumstance would require consideration. However, the present objection cannot be decided only by looking at the names mentioned in the invoices. The dispute between the parties is not limited to the question as to whose name appears on the invoices. The Applicant relies upon the Marketing Services Agreement dated 25 December 2019 and the arbitration clause contained in it. The Applicant relies upon the later reply given by the Opponent to the Arbitration Notice. According to the Applicant, the Opponent himself invoked Clause 12 and nominated an Arbitrator. All these circumstances have to be considered together.

**20.** The mere fact that the invoices may have been issued in the name of Ornate Buildcon Developers does not without examination, conclusively show that Ornate Infra Holding (P) Ltd. is unconnected with the Agreement relied upon by the Applicant. There may be some explanation about the manner in which the invoices were raised. There may be a dispute as to for whom the services were rendered, who was liable to make payment and what was the connection between the Agreement and the invoices. These questions may require examination of the Agreement, correspondence, invoices and other evidence.

**21.** Therefore, at the stage of Section 11, it is not possible to decide the objection of the Opponent merely on the basis of the names appearing on the invoices. If such issue is decided now, this Court would have to make a factual inquiry into the whole commercial relationship between the parties. Such inquiry would go much beyond the limited examination contemplated at the stage of referring the dispute to arbitration.

**22.** The present case, therefore, appears to be one where the material raises an arguable question regarding the exact relationship between the parties and their respective obligations under the Agreement. The Supreme Court has observed in paragraph 76.4 of *Ajay Madhusudan Patel* that "in cases of debatable and disputable facts and reasonably good arguable case" the Court may refer the parties to arbitration since the Arbitral Tribunal has authority to decide disputes including the question of jurisdiction.

**23.** The objection raised by the Opponent regarding absence of privity is therefore a material objection and cannot simply be ignored. At the same time, such objection cannot be accepted at this stage because deciding it would require consideration of disputed facts and evidence. The Court cannot hold merely because the invoices bear the name of Ornate Buildcon Developers that the arbitration agreement relied upon by the Applicant has no existence between the Applicant and the

Opponent. Such a conclusion would require the Court to overlook the Agreement relied upon by the Applicant and the subsequent conduct attributed to the Opponent in the reply to the Arbitration Notice. In fact, the objection raised by the Opponent and the material relied upon by the Applicant show why adjudication may be required. On one side, the Opponent says that the invoices are issued to another company and there is no privity of contract. On the other side, the Applicant relies upon a written Agreement containing an arbitration clause, which according to the Applicant is signed by the Opponent. The Applicant relies upon the reply in which the Opponent is stated to have nominated an Arbitrator by invoking Clause 12. Final decision on these rival factual positions would require evidence and consideration. Such exercise cannot properly be undertaken in an application of the present nature.

**24.** The principle stated in paragraph 76.5 is applicable. The Supreme Court has held that "substantive objections pertaining to existence and validity on the basis of evidence must be left to the Arbitral Tribunal since it can 'rule' on its own jurisdiction." The objection regarding the identity of the party liable under the Agreement and the effect of invoices issued in the name of another entity is essentially an objection which may require consideration of evidence. Therefore, such objection is appropriately required to be left open for determination by the Arbitral Tribunal. This conclusion is in line with paragraph 76.7 of *Ajay Madhusudan Patel*. The Supreme Court has recognised that questions regarding whether particular persons are parties to an arbitration agreement may involve complicated factual issues. Though the context in that case was regarding impleadment of non-signatories, the principle remains that where deciding whether a person is bound by an arbitration agreement requires examination of facts, the Arbitral Tribunal would be the appropriate forum to decide such question under Section 16 of the Act.

**25.** It is necessary to make clear that referring the dispute to arbitration does not mean that the case of the Applicant is accepted on merits. It does not mean that the invoices raised by the Applicant are necessarily payable by the Opponent. Similarly, the counterclaim raised by the Opponent has not been examined on merits. All questions regarding the services rendered, the identity of the person liable to make payment, the effect of the invoices, the amount claimed by the Applicant, the counterclaim raised by the Opponent and the jurisdiction of the Arbitral Tribunal over the Opponent remain open.

**26.** The main question which requires consideration at this stage is whether the application deserves to be rejected because of the objection raised by the Opponent. On overall consideration of the material placed before this Court, I am unable to accept that submission. The Applicant has produced and relied upon a written Marketing Services Agreement containing an arbitration clause. The Applicant has relied upon the conduct of the Opponent in replying to the Arbitration

Notice and, according to the Applicant, invoking Clause 12 and nominating an Arbitrator. These circumstances are sufficient, at least prima facie, to show existence of an arbitration agreement requiring the disputes to be referred to arbitration. The dispute regarding the fact that the invoices are issued in the name of Ornate Buildcon Developers and not Ornate Infra Holding (P) Ltd. is relevant. However, that fact is not sufficient for this Court to hold that no arbitration agreement exists between the parties. The issue involves disputed facts and may require consideration of evidence. Applying the principles stated by the Supreme Court, particularly in paragraphs 76.4, 76.5 and 76.7 of *Ajay Madhusudan Patel,* this issue is required to be left open for determination by the Arbitral Tribunal in accordance with Section 16 of the Act. The Court must keep in mind the caution contained in paragraph 76.6 that a examination at the stage of Section 11 may be "counterproductive to the objective of expeditious disposal of Section 11 application". If this Court now undertakes a inquiry into the entire transaction, examines why every invoice was raised, determines the exact relationship between Ornate Buildcon Developers and Ornate Infra Holding (P) Ltd., and decides the liability of the Opponent, the present proceedings would almost become a trial even before the arbitration starts. Such exercise is not warranted at this stage. Therefore, after considering the rival submissions and the material presently available, I find that the Applicant has made out a sufficient case for referring the disputes to arbitration. The objection of the Opponent regarding absence of privity of contract raises factual as well as jurisdictional issues, which are expressly kept open. The Arbitral Tribunal shall be free to consider and decide the said objection, including the question whether the Opponent is a party to, or is bound by, the Marketing Services Agreement and the arbitration clause contained therein. The Tribunal shall decide all other objections, claims and counterclaims on their own merits and in accordance with law.

**27.** In view of the above, the present Application under Section 11 of the Act is disposed of in terms of the following order:

A) Ms. Shubhra Swami Paranjape, an Advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:-1101, 11th Floor, 1Infinity (Formerly known as Ramnimi Fort), Cawasji Patel Street, Mumbai 400001

Email ID: swami.shubhra@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.

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

**29.** 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.)**