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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010383482026**

\+ ARB.P. 1461/2026 & I.A. 22395/2026

SUGAT JAIN .....Petitioner

Through: Mr. Saurav Agrawal, Mr. Omar Ahmed, Ms. Manisha Singh, Mr. Harshit Malik, Ms. Sulekha Agrawal, Ms. Anusha Sinha, Mr. Rahul Chatwal, Mr. Aarya Bhat, Mr. Tuhin Dey, Mr. Aadarsh Mittal and Mr. Divyanshu Rana, Advs.

versus

AMIT JAIN & ANR. .....Respondents

Through: Mr. Gaurav Gupta, Ms. Shivangi Gupta and Ms. Vallabhi Rastogi, Advs. for R-1 and 2.

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\# **CNR No. DLHC010327212026**

\+ O.M.P.(I) (COMM.) 298/2026, I.A. 19430/2026 & I.A. 22835/2026

SUGAT JAIN .....Petitioner

Through: Mr. Saurav Agrawal, Mr. Omar Ahmed, Ms. Manisha Singh, Mr. Harshit Malik, Ms. Sulekha Agrawal, Ms. Anusha Sinha, Mr. Rahul Chatwal, Mr. Aarya Bhat, Mr. Tuhin Dey, Mr. Aadarsh Mittal and Mr. Divyanshu Rana, Advs.

versus

AMIT JAIN AND ORS .....Respondents

Through: Mr. Gaurav Gupta, Ms. Shivangi Gupta and Ms. Vallabhi Rastogi, Advs. for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 21.08.2026

ARB.P. 1461/2026

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996[1] seeking appointment of an independent Sole Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the Partnership Deed dated 01.09.2016[2].

2. The Petitioner and the Respondents belong to the same family and are partners in M/s Aero Enterprises[3], wherein the Petitioner holds a 50% shares, while Respondent Nos.1 and 2 holds 25% each.

3. The Partnership Firm forms part of a group of family-held businesses. As part of the financial arrangements amongst the family businesses, properties belonging to the Partnership Firm were furnished as collateral security for credit facilities availed by Ratna Sagar Private Limited, another family-held entity. The said security arrangement is stated to have been subsisting since 2013.

4. Disputes subsequently arose between the parties in relation to the affairs and management of the partnership firm. As per the Petitioner, he was denied access to the financial records of the

[1] "the Act", hereinafter
[2] "Partnership Deed" hereinafter

Partnership Firm by the Respondents.

5. A further dispute arose in September 2025 in relation to the aforesaid security arrangement. It is the Petitioner's case that, by email dated 01.09.2025, Respondent No.1 sought discontinuation of the existing cross-mortgaging/security arrangement and release of the securities furnished by the Partnership Firm. The Petitioner objected to the same by email dated 04.09.2025. Thereafter, on 29.09.2025, Respondent No.1 addressed communications to Punjab National Bank[4] seeking alteration of the existing security arrangement and release of the properties belonging to the Partnership Firm.

6. The controversy continued into 2026 when, according to the Petitioner, the Respondents unilaterally approached PNB seeking release of the properties of the Partnership Firm from the existing security arrangement. On 19.05.2026, PNB informed the Petitioner that the credit facilities could not be renewed on account of the communication made by Respondent No.1. The Petitioner thereafter placed his position on record by way of a letter dated 21.05.2026 and an email dated 01.06.2026.

7. In view of the continuing disputes and the perceived threat to the existing security arrangements, the Petitioner approached this Court under Section 9 of the Act by filing O.M.P.(I)(COMM.) No. 298/2026 on 21.07.2026. By order dated 27.07.2026, this Court referred the parties to mediation before the Delhi High Court

[3] "the Partnership Firm", hereinafter
[4] "PNB", hereinafter

Mediation and Conciliation Centre, SAMADHAN, with a view to give opportunity to parties to explore for an amicable resolution of their disputes.

8. Mediation proceedings were conducted on 30.07.2026, 10.08.2026 and 13.08.2026. However, no settlement could be arrived at. On 13.08.2026, the Petitioner proposed that the parties mutually appoint a Sole Arbitrator in terms of Clause 14 of the Partnership Deed. It is stated that the Respondents did not agree to the proposal and, therefore, no consensus could be reached regarding the appointment of an Arbitrator.

9. Learned Counsel for the Petitioner submits that, on 16.08.2026, the Petitioner, formally invoked the arbitration agreement by issuing a notice under Section 21 of the Act to the Respondents.

10. It is further submitted that, even thereafter, an attempt was made to arrive at a mutually acceptable appointment. The Respondents are stated to have suggested the name of Mr. Nahata, Advocate, as the Sole Arbitrator. The said proposal was not acceptable to the Petitioner, who communicated his decision by email dated 16.08.2026. In view of the aforesaid, it is stated that the parties could not agree upon the appointment of a Sole Arbitrator.

11. Learned Counsel for the Respondent opposes the present petition principally on the ground that it is premature. It is submitted that the notice invoking arbitration was served only on 16.08.2026 and that the Respondents have neither proposed any Arbitrator pursuant to the said notice nor refused to make such an appointment. It is, therefore, contended that the occasion for invoking the jurisdiction of this Court under Section 11(6) of the Act has not yet arisen.

12. At the outset, it is to be noted that the scope of examination by a referral court in proceedings under Section 11 of the Act is narrow and circumscribed. The Supreme Court has consistently held that, at the referral stage, the Court is ordinarily required to confine its examination to the *prima facie* existence of an arbitration agreement, leaving other issues for determination by the Arbitral Tribunal. Recently in ***Maharashtra State Electricity Distribution Company Limited (Msedcl) & Ors. V R Z Malpani***[5], the Supreme Court, while referring to ***SBI General Insurance Co. Ltd. v. Krish Spinning***[6], reiterated the position in the following terms:

> *21. As such, the pronouncement of this Court in SBI General Insurance Co. Ltd. (Supra) lays down a clear and comprehensive explanation about the scope of examination at the stage of Section 11 proceedings:* ***<u>it is limited to finding a prima facie existence of arbitration agreement and nothing beyond it. Questions of 'accord and satisfaction', limitation, dishonesty and frivolity, arbitrability of the subject-matter are to be left to the adjudication by the arbitral tribunal under Section 16 of the 1996 Act which is a reflection of the doctrine of 'Kompetenz- Kompetenz' or 'compétence de la compétence'.</u>*** *It is therefore incumbent upon us to only examine the prima facie existence of an arbitration agreement.*

13. In the present case, Clause 14 of the Partnership Deed contains the arbitration agreement between the parties and provides for reference of disputes and differences between the partners to a Sole

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[5] **2026 INSC 342**
[6] **2024 SCC OnLine SC 1754**

Arbitrator and the same reads as thus:

> *"14. That in case of any dispute or difference arising between the partners during the continuance of this partnership business or afterwards regarding the interpretation of the contents of this instrument or regarding any other matter, the same shall be referred to the Sole Arbitrator to be appointed by the partners, whose award shall be conclusive and binding upon the partners."*

14. A plain reading of Clause 14 shows that the arbitration agreement is couched in wide terms and encompasses any dispute or difference arising between the partners during the subsistence of the partnership or thereafter, including disputes concerning the interpretation of the Partnership Deed or "any other matter". The existence of a valid arbitration agreement between the parties is, in any event, not disputed. The requirement of establishing the *prima facie* existence of an arbitration agreement for the exercise of jurisdiction under Section 11 of the Act is, therefore, satisfied.

15. The limited objection raised by the Respondents is to the maintainability of the present petition on the ground that it is premature. It is contended that the petition was filed immediately after issuance of the notice dated 16.08.2026, without affording the Respondents sufficient time to respond, and therefore, no "failure to act" within the meaning of Section 11(6) of the Act can be said to have occurred.

16. At this stage, it has to be noted that the present petition is filed under Section 11(6) of the Act. Unlike Sections 11(4) and 11(5), which contemplate a period of 30 days, Section 11(6) prescribes no fixed statutory period. The relevant requirement is that, under the appointment procedure agreed upon by the parties, a party has "failed to act as required under that procedure".

17. In the present facts, the appointment procedure agreed between the parties is contained in Clause 14 of the Partnership Deed, and the agreed procedure merely requires the parties to "*mutually agree upon the appointment of the Sole Arbitrator*". Therefore, the endeavour of this Court is to find whether, in the facts of the present case, the agreed procedure for appointment can be said to have failed.

18. In examining this question, the events preceding the notice dated 16.08.2026 cannot be ignored. The disputes between the parties had already culminated in proceedings under Section 9 of the Act. By order dated 27.07.2026, the parties were referred to mediation. The mediation proceedings ultimately failed, and on 13.08.2026 the Petitioner proposed the mutual appointment of a Sole Arbitrator in terms of Clause 14. No consensus was reached. Thereafter, the Petitioner issued the notice under Section 21 of the Act on 16.08.2026.

19. It is also the Petitioner's case that, on the evening of 16.08.2026, the parties again discussed the appointment of an Arbitrator and the Respondents proposed a name which was not acceptable to the Petitioner. Although the Respondents dispute the Petitioner's version of these events, there is nothing before the Court to show that the Respondents sought any further time to complete the appointment process or took any positive step towards arriving at a mutually agreed appointment at any stage.

20. At this juncture, it is also relevant to consider the purpose of the notice under Section 21 of the Act. The Hon'ble Supreme Court in ***Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd.***[7], has explained that the principal purpose of a notice under Section 21 is to fix the date of commencement of arbitral proceedings, which has relevance for limitation, and is also a precondition for invoking the jurisdiction of the Court under Section 11. Therefore, it can safely be inferred that other purposes served by such notice, including informing the respondent of the claims and providing an opportunity to respond or object to the proposed Arbitrator, are incidental and secondary.

21. At the same time, the absence of a fixed statutory period under Section 11(6) does not mean that a party may, in every case, approach the Court immediately upon issuing a Section 21 notice. The opposite party must ordinarily be afforded a reasonable opportunity to act under the agreed appointment procedure. The Hon'ble Supreme Court in ***Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd.***[8], has also clarified that, where no time limit is prescribed by the arbitration agreement, failure to act within a "reasonable time" may give rise to a cause of action under Section 11(6), in the following terms-

> *"**48.** In the light of the above discussion, the scope of Section 11 of the Act containing the scheme of appointment of arbitrators may be summarised thus:*
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> *****

[7] **2025 INSC 507**
[8] **(2009) 8 SCC 520**

(iii) Where the arbitration agreement specifies the appointment procedure, then irrespective of whether the arbitration is by a sole arbitrator or by a three-member Tribunal, the Chief Justice or his designate will exercise power under sub-section (6) of Section 11, if a party fails to act as required under the agreed procedure (or the parties or the two appointed arbitrators fail to reach an agreement expected of them under the agreed procedure or any person/institution fails to perform any function entrusted to him/it under that procedure).

(iv) While failure of the other party to act within 30 days will furnish a cause of action to the party seeking arbitration to approach the Chief Justice or his designate in cases falling under sub-sections (4) and (5), ***such a time-bound requirement is not found in sub-section (6) of Section 11. The failure to act as per the agreed procedure within the time-limit prescribed by the arbitration agreement, or in the absence of any prescribed time-limit, within a reasonable time, will enable the aggrieved party to file a petition under Section 11(6) of the Act.*****"**

22. In view of this court, what constitutes a reasonable time must necessarily depend upon the facts and circumstances of each case. It cannot be determined by mechanically counting the number of days elapsed after the formal notice under Section 21 is sent. Where the parties had already been engaged in disputes, court proceedings, mediation and discussion concerning appointment of an Arbitrator, those circumstances must legitimately be taken into account while considering whether the agreed appointment procedure has failed.

23. Adverting again to the facts of the present case, the Respondents were already participating in the Section 9 proceedings and in the mediation proceedings. Upon failure of mediation on 13.08.2026, the Petitioner expressly proposed the mutual appointment of a Sole Arbitrator in terms of Clause 14. The Respondents did not agree to the proposal and no consensus was reached. Thus, even before issuance of the formal notice dated 16.08.2026, the parties had already attempted to arrive at a mutual appointment, but the attempt had not resulted in the appointment of an Arbitrator.

24. The Respondents’ contention that they neither expressly accepted nor refused the proposed appointment does not alter the position. Clause 14 requires a mutually agreed appointment. The relevant enquiry is not whether an express refusal was committed, but whether the agreed procedure resulted in the constitution of the Arbitral Tribunal. Admittedly, it did not, as Respondents never agreed with the Petitioner on any name.

25. The objection that the present petition is premature merely because the Respondents did not expressly communicate a refusal to appoint an Arbitrator cannot be accepted. Acceptance of such a contention would permit a party, by its own inaction, to defer the constitution of the Arbitral Tribunal and thereby defeat the purpose of Section 11(6) of the Act. In my view, the conduct of the Respondents must be considered in the back drop of the events preceding the invocation notice.

26. In these circumstances, permitting the Respondents to resist the petition solely on the ground that no express refusal had been communicated would elevate form over substance. Having regard to the prior proceedings, including the failed mediation, the attempts to mutually appoint an Arbitrator and the absence of any subsequent positive step towards an agreed appointment, this Court is satisfied that the Respondents had been afforded a reasonable opportunity to act in terms of Clause 14.

27. Considering the conduct of the parties and the sequence of events as a whole, this Court is of the view that a reasonable time had elapsed for the Respondents to act in accordance with the agreed appointment procedure and that there has been a "failure to act" within the meaning of Section 11(6) of the Act. The objection that the present petition is premature is, therefore, rejected.

28. Accordingly, Hon'ble Mr. Justice (Retd.) Ravindra Bhatt, Supreme Court (Mob. No. +91-9818000160) is appointed as the learned Sole Arbitrator to adjudicate the disputes that have arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within a period of two weeks from today.

29. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

30. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre ("DIAC"). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

31. The Registry is directed to communicate a copy of this order to the learned Sole Arbitrator, through all permissible modes including email.

32. Accordingly, the present petition is disposed of in the aforesaid terms. Pending application(s), if any, also stand disposed of.

O.M.P.(I) (COMM.) 298/2026

33. The present petition has been filed under Section 9 of the Act seeking the following reliefs-

> *"a. restrain the Respondents from altering the status of Collateral Security as defined in paragraph 3 of the present Petition and further restrain them from obstructing the process of their renewal;*
> *b. restrain the Respondents from unilaterally instructing the bank without Petitioner's consent (either orally or in writing) in connection 50 with the Collateral Security as defined in paragraph 3 of the present Petition;*
> *c. grant ad-interim ex parte orders in terms of the above prayers"*

34. Since, by the order passed today in the connected petition under Section 11(6) of the Act, this Court has constituted the Arbitral Tribunal by appointing a learned Sole Arbitrator to adjudicate the disputes between the parties, it would be appropriate that the prayers for interim measures raised in the present petition to be considered by the learned Sole Arbitrator under section 17 of the Act.

35. Accordingly, the present petition under Section 9 of the Act shall be treated as an application under Section 17 of the Act and placed before the learned Sole Arbitrator.

36. Upon entering the reference, the learned Sole Arbitrator, shall consider the said application for interim measures and decide the same in accordance with law. It shall be open to the parties to raise all their respective contentions in relation thereto before the learned Sole Arbitrator.

37. The parties shall approach the learned Arbitrator within two weeks from today.

38. The petition is, accordingly, disposed of in the aforesaid terms.

39. Pending application(s), if any, also stand disposed of.

OM PRAKASH SHUKLA, J

AUGUST 21, 2026/*gunn*