Case Citation: (2026) ibclaw.in 5061 HC

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 25th OF AUGUST, 2026

ARBITRATION CASE No. 108 of 2022

M/S MAHUA HOTELS PVT. LTD. BEARING REGISTRATION NO. U55101MP2010PTC023980 AND OTHERS

Versus

SHRI MUKESH JATIYA

Appearance:

Smt. Nirmala Nayak - Advocate for the applicants.

Shri Ashish Shrivastava - Advocate for the responent.

ORDER

The present application has been filed by the applicants under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for the sake of brevity) for appointment of an Arbitrator to resolve the dispute arose between the parties pursuant to terms of an agreement-Annexure A/1.

2. It is the case of the applicants that the applicants and the non-applicant entered into an agreement dated 30.09.2010 (Annexure A/1) under which the non-applicant agreed to transfer his ownership in the property to the applicants and execute the sale deed upon receipt of the outstanding dues and agreed consideration. Pursuant thereto, the applicants paid the entire agreed consideration to the non-applicant in the form of shares in the company and also appointed him as a Director.

3. It is submitted that despite receiving full consideration, the non-applicant failed to perform his contractual obligations and repeatedly

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avoided execution of the sale deed. The applicants thereafter requested the non-applicant by letter dated 18.03.2020 (Annexure A/2) to consent to registration of the property in favour of the applicants, but received no response. Although non-applicant subsequently expressed willingness to execute the sale deed during a family meeting, but the non-applicant continued to delay and evade performance. The applicants later learnt that the non-applicant had advertised the property for sale to third party through social media and a newspaper, copies whereof are Annexures A-3 and A-4. Despite repeated requests by the applicants to comply the terms of agreement and execute the sale deed in favour of the applicants, the non-applicant failed to do so and, in breach of the agreement, attempted to alienate the property to third party.

4. It is contended by the learned counsel for the applicants that an agreement dated 30.09.2010 (Annexure A/1) has been executed between the parties to transfer the business of M/s Mahua Tiger Resort having its unit and office at Mocha at Kanha Kisli, Mandla.

5. It is submitted that as the dispute arose between the parties because of not following the obligations as contained in the agreement by the non-applicant, therefore, a notice to initiate legal proceeding was issued on 18.03.2020. However, when it was not properly redressed and the non-applicant had tried to dispose of the property by issuing a public notice in the newspaper by Annexure A-3, again a notice was issued vide notice dated 28.08.2022 to resolve the issue and thereafter, the final notice dated 22.11.2022 invoking arbitration was issued, which was not replied and therefore, the present application has been filed.

6. Per contra, learned counsel for the non-applicant has taken a preliminary objection that in absence of statutory notice under Section 21 of the Act of 1996, the Referral Court cannot refer the matter to the Arbitrator to resolve the dispute between the parties. It is further submitted that as the agreement is unregistered, does not bear the requisite stamp duty and attestation, as required under the law, therefore, not executed in accordance with law. The dispute on the basis of the said agreement cannot be referred to the Arbitrator. It is further submitted that as the first notice was issued in the year 2020, therefore, the present application is barred by limitation. Therefore, as the stale claim has been raised by the applicants by way of this application, the matter cannot be referred to the Arbitrator.

7. It is further submitted that by way of agreement the parties have agreed to transfer their business, therefore, a civil suit ought to have been filed for specific performance instead of invoking arbitration.

8. Heard learned counsel for the parties and perused the record.

9. The first objection, which has been raised by the non-applicant, is in regard to notice, which is alleged to have not been sent in accordance with the provision of Section 21 of the Act of 1996. However, the Hon'ble Apex Court in the case of ***M/s.Bhagheeratha Engg. Ltd. v. State of Kerala, (2026) 5 SCC 758*** has held as under:

> "34. In the above background, the questions that arise for consideration are:
> 34.1. (a) Whether the High Court by the impugned order [Bhageeratha Engg. Ltd. v. State of Kerala, 2025 SCC OnLine Ker 161] was justified in holding that the Arbitral Tribunal was appointed at the request of the State to adjudicate Dispute No. 1 only?
> 34.2. (b) Was the non-issuance of a notice under Section 21 of the A&C Act by the appellant fatal for it to pursue its claim before the arbitrator?

Analysis and reasoning

35. In our opinion, the High Court totally erred in setting aside the award on the basis that the appointment of the Tribunal was only to adjudicate Dispute No. 1. The High Court also erred in holding that the non-issuance of notice under Section 21 of the A&C Act by the appellant with regard to Dispute Nos. 2 to 4 was fatal for it to pursue its claim before the arbitrator. The High Court erred in holding that the Arbitral Tribunal exceeded its jurisdiction in deciding the entire dispute. We say so for the following reasons.

Object of Section 21 of the A& C Act

39. Secondly, the object of Section 21 of the A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in arbitration if the claim is otherwise valid and the disputes arbitrable.

40. In ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd. [ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd., (2025) 9 SCC 76 : (2025) 4 SCC (Civ) 27] , one of us, J.B. Pardiwala, J., felicitously put the principle thus: (SCC pp. 209-12, paras 163,165 & 169)

> "163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of "commencement of arbitration proceedings". The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would the date on which the arbitral proceedings in respect of a particular dispute commences. The words "particular dispute" assume significance in the interpretation of this provision and its underlying object. It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term "particular dispute", does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the "arbitration agreement" to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of

invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than jurisdictional — it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.

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165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his "claim", the points at issue and the relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term "claim" as opposed to "particular dispute" employed in Section 21 of the 1996 Act. Although, it could be said that the term "particular dispute" under Section 21 connotes a larger umbrella within which the term "claim" under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such "claim" must be the same or in tandem with the "particular dispute" in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief sought or the framing of issues — its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

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169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural function and does not condition or limit the

> Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme would run contrary to both the text and the object of the Act."
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> (emphasis in original and supplied)"

10. In view of the law expounded by the Hon'ble Apex Court in the case of **M/s.Bhagheeratha Engg. Ltd. (supra)**, it is clear that the notice under Section 21 is only a procedural aspect of the arbitration at the referral stage and in absence of happily worded notice, the application filed for referring the matter under Section 11 of the Act of 1996 is maintainable.

11. The second objection, which has been raised, in regard to notice not having the requisite stamp duty and attestation as required under the law, the Hon'ble Apex Court in the case of **Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1** has held as under:-

> 235. The conclusions reached in this judgment are summarised below:
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> 35.1. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;
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> 235.2. Non-stamping or inadequate stamping is a curable defect;
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> 235.3. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;
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> 235.4. Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and
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> 235.5. The decision in *N.N. Global (2)* [*N.N. Global Mercantile (P) Ltd.* v. *Indo Unique Flame Ltd.*, (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] and *SMS Tea Estates* [*SMS Tea Estates (P) Ltd.* v. *Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] are overruled. Paras 22 and 29 of *Garware Wall Ropes* [*Garware Wall Ropes Ltd.* v. *Coastal Marine Constructions & Engg. Ltd.*, (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] are overruled to that extent.

12. Therefore, in view of the above, it is trite that at the referral stag, the intricate enquiry in regard to validity of an agreement for referring the

dispute to the Arbitrator is not required. The non-applicant is always at liberty to raise all the objections before the Arbitrator.

13. The third objection, which has been raised by the non-applicant, is in regard to the stale claim, which has been tried to be agitated by the applicants. This question also goes to the root of the case and in the light of the judgment passed by the Hon'ble Apex Court in the case of **Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd., (2025) 1 SCC 502**, the said question is also to be decided by the Arbitrator. In **Aslam Ismail Khan Deshmukh (supra),** the Hon'ble Apex Court has held as under:

> "50. As evident from the aforesaid discussion and especially in light of the observations made in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.
> 51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.
> 52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration.

> V. Conclusion
> 53. The existence of the arbitration agreement as contained in Clause 13.10 of the shareholders' agreement is not disputed by either of the parties. The submissions as regards the claim of the petitioner being ex facie time-barred may be adjudicated upon by the Arbitral Tribunal as a preliminary issue.
> 54. In view of the aforesaid, the present petitions are allowed. Taking into consideration the fact that an Arbitral Tribunal comprising of a sole arbitrator, Mr Mayur Khandeparkar (Advocate, High Court of Judicature at Bombay) has already been constituted for the adjudication of disputes between the same parties in relation to the service agreement dated 18-10-2011, it would be desirable to constitute an Arbitral Tribunal comprising of the same sole arbitrator for adjudication of the present disputes pertaining to the shareholders' agreement dated 25-7-2011. The fees of the arbitrator including other modalities shall be fixed in consultation with the parties."

14. The fourth ground, which has been raised by the non-applicant, is in regard to the transfer of the business by the agreement in question cannot be adjudicated by the Arbitrator in terms of the specific provision provided under the Specific Relief Act. The said question is also no more res integra. The Hon'ble Apex Court in the case of **Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651** has held as under:

> "36. Further, as pointed out in the Calcutta case [Apo 498 of 1997 & Apo 449 of (401) dated 27-1-1998 (Cal)] merely because there is need for exercise of discretion in case of specific performance, it cannot be said that only the civil court can exercise such a discretion. In the above case, Ms Ruma Pal, J. observed:
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> > "… merely because the sections of the Specific Relief Act confer discretion on courts to grant specific performance of a contract does not mean that parties cannot agree that the discretion will be exercised by a forum of their choice. If the converse were true, then whenever a relief is dependent upon the exercise of discretion of a court by statute e.g. the grant of interest or costs, parties could be precluded from referring the dispute to arbitration."
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> We agree with this reasoning. We hold on Point 3 that disputes relating to specific performance of a contract can be referred to arbitration and Section 34(2)(b)(i) is not attracted. We overrule the view of the Delhi High Court. Point 3 is decided in favour of the respondents."

15. The Hon'ble Apex Court has held that Specific Relief Act does not bar the arbitration proceeding under the Act of 1996. As, the action arising

between the parties is in personam based on an agreement and can be referred to the Arbitrator.

16. In view of the above analysis of facts and law, this Court is not inclined to make any intricate enquiry in regard to the dispute and all the legal questions raised by the non-applicant, in the light of the judgment passed by the Hon'ble Apex Court in the case of **Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899 (supra),** are to be raised before the Arbitrator.

17. Therefore, the present application is allowed. Let all the questions be decided by the Arbitrator, if raised for by the non-applicant, in accordance with law. The question of limitation shall also be addressed by the Arbitrator, in case it is raised by the non-applicant, in the light of the judgment passed by the Hon'ble Apex Court in the case of **Aslam Ismail Khan Deshmukh(supra)** and if it is found that the stale claim has been raised by the applicants then proportionate cost and consequences be awarded to the either party.

18. Considering the list of empanelled Arbitrators issued by the M.P. Arbitration Centre, Jabalpur the following order is passed :

(i) ***Shri Pankaj Gaur, Retd District Judge, Address- A4 FF1 & 2, Ideal Hills, Gwarighat Road, Jabalpur-482008, 94254-45773, Email - pankajgaur59@gmail.com*** *who has consented in terms of Section 11(8) of the Act of 1996, is appointed as sole Arbitrator to resolve the dispute between the parties in the case.*

(ii) Arbitrator shall issue the notices and fix the date and suitable venue for arbitration. Said arbitration will take place at Jabalpur.

(iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rule, 2019.

(iv) Director of Madhya Pradesh Arbitration Centre, Domestic and International, Jabalpur (M.P.D.I.A.C.) shall communicate the decision of this Court to the Sole Arbitrator.

(v) Other provisions of Section 15(3)(4) of the Arbitration and Conciliation Act, 1996 will apply to substitute Arbitrator.

19. With the aforesaid directions, the Arbitration Case is disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA