Reserved on 28.09.2026
Delivered on 15.10. 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 119 of 2025

M/s Rahat Herbal Industries and another

…..Applicant(s)

Versus

Md. Ajmal and 4 others

…..Opposite Party(s)

Counsel for Applicant(s)	:	Navin Sinha, Senior Advocate, Saurabh Raj Srivastava
Counsel for Opposite Party(s)	:	Manish Goyal, Senior Advocate, Pranay Kumar, Tanishk Goyal

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Navin Sinha, learned Senior Advocate assisted by Mr. Saurabh Raj Srivastava for the applicant and Mr. Manish Goyal, learned Senior Advocate assisted by Mr. Pranay Kumar and Mr. Tanishk Goyal for the opposite party.

2. The instant application has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of a sole Arbitrator.

3. Learned Senior Counsel for the applicant submits that a partnership firm was constituted in the name of ‘Noorani Herbal Industries’ on 23.5.2008 and the same was renamed as M/s Rahat Herbal Industries with the mutual agreement between the parties. He submits

that the business of the said partnership firm is continuously running since 2008, however a dispute arose between the partners/parties, including allegations of siphoning of the firm's funds, surrender of its manufacturing license and diversion of its business to a "clone" firm, with a claim of about Rs. 65 crores therefore, on 30.5.2025, the applicants sent a letter to the respondents/opposite party requesting for appointment of the arbitrator as per Clause 20 of the supplementary partnership deed dated 25.8.2022 but after receiving the said notice, the opposite party neither replied nor agreed to any appointment. Rather, the opposite parties have started preparing false documents in order to withdraw the firm's capital and to sell the product in the fake name and aggrieved to the same, the applicants have filed Arbitration Case No. 22 of 2025 under Section 9 of the Act before the Commercial Court, Prayagraj.

4. He further submits that the opposite party cannot deny knowledge of the notice, since they admitted it, in para 58 of their objections in the Section 9 proceedings before the Commercial Court and in para 8 of their affidavit, where, they themselves annexed the notice. He lastly submits that the purpose of Section 21 stands fulfilled and that the plea of non-service is an afterthought. Hence, the present application.

5. In support of his submissions, he relies on ***Bhagheeratha Engineering Ltd. v. State of Kerala*** **2026 INSC 4** (Civil Appeal No. 39 of 2026), ***M/s Nandani Traders v. Uttar Pradesh Pandit Deen Dayal Upadhyaya Pashu Chikitsa Vigyan Vishwavidyalaya Evam Go-Anusandhan Sansthan (DUVASU) and 4 Others*** (ARCO No. 236 of 2025) and **M/S** ***Kaushal Pati Tripathi v. The Managing Director, Uttar Pradesh Jal Nigan (Rural) and 2 Others*** (ARCO No. 81 of 2026).

6. *Per Contra,* Mr. Manish Goyal, learned Senior Counsel for the opposite party submits that the notice dated 30.05.2025 was never received by any of the opposite party, and the applicants have failed to prove its service, since a single notice was addressed to all four respondents, collectively. He further submits that the applicants did not

produce the original postal receipt despite the order dated 20.04.2026, which warrants an adverse inference under Section 114 of the Indian Evidence Act, 1872. He further submits that as the applicant no. 2 lives at the same address as the respondents, the notice, if dispatched at all, may have been received and suppressed by him to obtain ex-parte relief under Section 9. He further submits that the service of the Section 21 notice is a jurisdictional pre-condition therefore, the present application is not maintainable.

7. He also submits that the deed does not provide for a sole arbitrator and the disputes relating to the trademark "Noorani Tel". The working of the firm fall outside arbitration and also that Clause 20 is confined to matters under Clause 19.

8. In support of his submissions, learned Senior Counsel for the opposite parties have relied upon the judgements of the Apex Court in the cases of ***Malathy Constructions v. Bridge and Roof Co. India Ltd.*** **(2026 SCC OnLine Cal 5115)**, ***Adavya Projects v. Vishal Structurals*** **(2025 9 SCC 686)** and ***Keshar v. Sandeep Lakra*** **(2025 SCC OnLine Del 8884)**.

9. After hearing learned counsel for the parties, the court has perused the record.

10. It is well settled law that after the insertion of Section 11(6-A), the Court's jurisdiction under Section 11(6) is confined to a *prima facie* examination of the existence of an arbitration agreement. The scope of the arbitration clause and the merits of the dispute are left to the Arbitral Tribunal under Section 16 (***In re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, (2024) 6 SCC 1; ***SBI General Insurance Co. Ltd. v. Krish Spinning***, (2024) 12 SCC 1).

11. This limited inquiry does not, however, dispense with the statutory pre-conditions of invoking the Court's jurisdiction. In ***Adavya Projects Pvt. Ltd. (supra)***, the Hon'ble Supreme Court held that a notice under Section 21 is mandatory, as it fixes the date of commencement of

arbitration and gives the other party an opportunity to agree to an appointment. Invocation of arbitration, followed by the other side's failure to appoint or agree to an arbitrator, is therefore, necessary before the Court can be approached under Section 11. Under Section 3(1)(a) of the Act, a written communication is deemed received if delivered at the addressee's place of business, habitual residence or mailing address. A letter properly addressed and sent by registered post is presumed to be served under Section 27 of the General Clauses Act, 1897 and Section 114 of the Evidence Act, 1872 (now Section 119 of the Bharatiya Sakshya Adhiniyam, 2023). This presumption is rebuttable, but a bare denial does not rebut it (***C.C. Alavi Haji v. Palapetty Muhammed*, (2007) 6 SCC 555**).

12. Further, Section 21 has also been given a pragmatic reading, as serving commencement and limitation and not as a technical bar to a valid claim as held in ***Bhagheeratha Engineering Ltd.*** *(*supra). In contrast, in ***Malathy Constructions*** (supra) the Calcutta High Court declined appointment because there was no proof that the notice had been received and the notice itself was vague and inconsistent with the petition. Once 30 days have passed after invocation without appointment, the defaulting party forfeits the right to appoint (***Datar Switchgear Ltd. v. Tata Finance Ltd.*, (2000) 8 SCC 151**).

13. The notice was sent by registered post to Naini S.O (Prayagraj) present address 34, Chaitham Lines [Annexed as Annex. 2], which is the admitted residence of every respondent/Opposite party, and the tracking report shows that it entered the postal system and was delivered. The opposite party in paragraph 26 of the counter affidavit accepted the delivery of notice, while raising an objection that applicant had failed to ensure, in the first instance, that the notice was duly served upon the respondents, individually. The relevant paragraph of the counter affidavit is quoted hereunder:-

> *"26. That notwithstanding the above, it is submitted that the respondents never received the notice invoking arbitration in the first place It is to be noted here that the tracking receipt attached to*

the said notice [Annexure 2 to the Civil Misc. Arbitration Application No. 119/2025] demonstrates that the notice has been delivered to Naini S.O. (Prayagraj), and the notice has been sent to 34 Chaitham Lines, Allahabad, which is the address that is shared by both the applicants and the respondents. The applicants have no where discharged their burden and proved that the notice, if at all it was delivered, was handed over to the respondents in the first place."

14. In view of the above, the Court is of the opinion that the notice dated 30.05.2025 must be held to have been effectively sent to the opposite party.

15. The opposite party, *prima facie*, have offered nothing beyond a bare denial to rebut the presumption of service. More importantly, the denial is contradicted by the respondents own pleadings. In their objections in Section 9 proceedings, the respondents have submitted that they were now aware of the notice and would reply to it [Annexed as Annex. 1 to S.A.], and in Arbitration Appeal No. 277 of 2025 they again admitted knowledge and themselves annexed the notice. They cannot approbate and reprobate, and the plea of non-receipt cannot be reconciled with these admissions. The respondents have had over a year since acquiring knowledge to reply or propose an arbitrator, yet they have not done anything, and the limitation of 30-day has long expired. They have also not pleaded any prejudice caused to the opposite parties from the mode of service or date of service of notice. The purpose of Section 21 is, thus, fully served. The objection that one notice was sent to four persons is without substance, since the Act requires no separate notices where all addressees reside at one address and each admittedly had knowledge of it. The suggestion that the applicant no. 2 suppressed the notice is speculative and unsupported by any material.

16. Further, the scope of the present proceedings under Section 11 of the Act does not require any elaboration in view of that position in law having been made crystal clear by a recent three judge decision of the Supreme Court in the case of ***M/S Mayavati Trading Pvt. Ltd. Vs.***

Pradyuat Deb Burman, Civil Appeal No. 7023 of 2019, decided on 05.09.2019 in which it has been held as below:

> *"This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra) -- see paras 48 & 59."*

17. While laying down that law, the Supreme Court had itself referred to paragraph nos. 48 & 59 of its earlier decision in the case of ***Duro Felguera, S.A. Vs. Gangavaram Port Ltd.***, (2017) 9 SCC 729.

18. That position in law has been reiterated in a recent decision of the Supreme Court in ***GOQII Technologies Pvt. Ltd. Vs. Sokrati Technologies Pvt. Ltd.***, (2025) 2 SCC 192.

19. In the facts of the present case, on *prima facie* basis, it has to be accepted that there exists an arbitration clause, between the parties. Also, it is clear that the parties have not been able to appoint consented arbitrator and therefore, the appointing authority has to be assumed by this Court upon the present application.

20. At the same time, no final conclusion is being drawn as may affect the merits of the claim. That matter would remain to be considered by the appropriate forum at the appropriate stage, upon claim, objection, challenge or appeal being filed. Thus, amongst others it would remain open to the opposite party to raise all objections as the Act permits.

21. Leaving that course completely open to the respective parties, at present, only a forum is being provided for adjudication of a claim proposed to be raised and resisted, in accordance with the law.

22. In view of above, this Court proposes the name of **Mr. Justice Manoj Kumar Gupta, Former Chief Justice of Uttarakhand High Court, R/o 38-A, Thornhill Road, Prayagraj (Mob. No. 9415239679)** to act as Arbitrator for resolving the disputes between the parties.

23. The Registry is directed to intimate and obtain the consent of the proposed Arbitrator in terms of Section 11(8) of the Arbitration & Conciliation Act, 1996 by normal mode as well as electronic mode within ten days.

24. List this matter on 5.11.2026 for further orders.

(Piyush Agrawal,J.)

October 15, 2026
Rahul Dwivedi/-