Shabnoor

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

ARBITRATION APPLICATION NO.324 OF 2026

Isha Business Pvt. Ltd. … Applicant

V/s.

Culture Machine Media Private. Limited & Ors. … Respondents

SHABNOOR AYUB PATHAN

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Date: 2026.09.17 11:36:35 +0530

Mr. Shrihari Iyer, for the Applicant.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 11, 2026.

PRONOUNCED ON : SEPTEMBER 17, 2026.

<u>JUDGMENT:</u>

1. By the present Application, the Applicant has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator. The Applicant relies upon Clause 10 of the Content Management Agreement dated 20 February 2017 entered into between the Applicant and Aleph, read with Clause 3 of the Novation Agreement dated 4 January 2021 entered into between the Applicant, Aleph and Respondent No. 1.

2. Respondent No. 2 is not a signatory to the Novation Agreement. However, according to the Applicant, Respondent No. 2 had a substantial role in carrying out the Agreement. The Applicant submits that the Respondents are jointly and severally liable to pay the amounts received from YouTube in respect of maintaining the Applicant's channels. According to the Applicant, despite several communications and a notice, the Respondents have failed to make the required payment.

3. The facts which have led to filing of the present Application are as follows. On 20 February 2017, a Content Management Service Agreement was entered into between the Applicant and Aleph. Under the said Agreement, Aleph was required to manage the Applicant's YouTube channels and collect the revenue generated from YouTube. After raising the invoice, Aleph was required to remit the amount to the Applicant. The Agreement provided that any dispute between the parties would be referred to a Sole Arbitrator and that the venue of arbitration would be Mumbai., on 4 January 2021, a Novation Agreement was entered into between the Applicant, Respondent No. 1 and Aleph. Under the said Agreement, Aleph was relieved from its duties under the Principal Agreement and Respondent No. 1 was required to perform those duties. The Novation Agreement provided that any dispute between the parties would be referred to a Sole Arbitrator.

4. According to the Applicant, after the Novation Agreement came into effect, Respondent No. 1 did not remit the payments due to the Applicant. The Applicant submits that Respondent No. 2 had substantial control over Respondent No. 1 and had executed the Agreement. Despite repeated reminders, the Respondents continued to delay payment of the outstanding amount. On 23 October 2023, discussions took place between the parties regarding payment of the outstanding dues and the manner in which the dispute could be resolved. At that time, an amount of approximately Rs. 2.56 Crores was due. After the discussions, the Respondents made part payment. However, according to the Applicant, they did not comply with the entire commitment made by them.

5. On 29 March 2024, the Applicant requested the Respondents to delink all the YouTube channels belonging to the Applicant and to transfer the rights to Shemaroo. Respondent No. 2 confirmed, by an Agreement, the delinking of all the said channels. According to the Applicant, an amount of Rs. 1,40,98,767/- continues to remain payable by the Respondents. On 4 February 2026, the Applicant issued a Notice calling upon the Respondents to pay the outstanding amount. No reply was received from the Respondents., on 21 March 2026, the Applicant issued an Arbitration Commencement Notice to the Respondents. Even to the said notice, there was no response from the Respondents.

6. The Applicant submits that the Arbitration Agreement was entered into between the Applicant and Respondent No. 1. According to the Applicant, although Respondent No. 2 is not a signatory to the Agreement, it had a substantial role in giving effect to the Agreement and was fully involved in the discussions and negotiations with the Applicant. On this basis, the Applicant submits that Respondent Nos. 1 and 2 are jointly and severally liable to make payment of the outstanding amount. It is therefore submitted that the arbitration proceedings are required to be commenced against both Respondent Nos. 1 and 2. The Applicant submits that Respondent No. 3, being a Director of both

Respondent Nos. 1 and 2, is required to be made a party to the arbitration proceedings.

7. The Applicant submits that after the Novation Agreement came into effect, Respondent No. 2, though a non-signatory to the Agreements in question, played an important role in their performance. According to the Applicant, the management of Respondent No. 2 was actively involved in giving effect to the Arbitration Agreement. The Applicant therefore relies upon the conduct and participation of Respondent No. 2, which, according to it, is shown from the correspondence and other material referred to in the following paragraphs. In reply to an email sent by the Applicant, the Assistant Vice President of Respondent No. 2 replied from his registered email ID on 18 July 2023. In the said email, he admitted that there was a delay in making the payment. He stated that the Respondents were not receiving the necessary funding to make the payment due to the Applicant. The email contained a proposed schedule for payment of the outstanding dues and sought the Applicant's approval to that schedule.

8. The Applicant submits that the above communication is important because Respondent No. 2 took responsibility for the delay in making the payment. The Applicant submits that the Vice President of Respondent No. 2 was directly negotiating with the Applicant regarding the outstanding amount and had proposed a schedule for making the pending payments.

9. Thereafter, the Applicant and Respondent Nos. 1 and 2 held a joint discussion regarding the proposed payment plan.

Respondent No. 3 and the Vice President of Respondent No. 2 participated in the discussion. According to the Applicant, they agreed to the following payment schedule. The said schedule was confirmed by Respondent No. 3 through an email dated 23 October 2023:

Committed Payment Date	Billing Month	Payment Amount	Status	Committed Payment Date
30 October 2023	Apr-23	3,779,188	Actual	30 October 2023
30 October 2023	Aug-23	5,152,122	Actual	30 October 2023
13 November 2023	Sep-23	₹5,000,000	Approx	13 November 2023
17 November 2023	May-23	2,276,125	Actual	17 November 2023
15 December 2023	Jul-23	4,355,435	Actual	15 December 2023
15 December 2023	Oct-23	₹5,000,000	Approx	15 December 2023
Total		25,562,869		Total

10. The Applicant submits that the initial reply received to its email dated 27 June 2024 was vague and did not deal with the outstanding payment., on 8 July 2024, Respondent No. 2 sent another email stating that both Respondent Nos. 1 and 2 had allegedly been acquired by M/s. Galaxy Racer. It was stated that, as part of the sale transaction, Galaxy Racer had expressly agreed to invest in Respondent Nos. 1 and 2 so that the pending payable dues could be cleared. Respondent No. 2 assured the Applicant that efforts would be made to ensure that the outstanding amount was paid.

11. The Applicant has filed an affidavit of service showing service of the present Application upon the Respondents. Despite service, none has appeared on behalf of the Respondents.

REASONS AND FINDINGS:

12. I have considered the Arbitration Application, the documents which are on record and the submissions made by the Applicant. The Respondents were served with the Application. Even after service, they have not appeared before the Court and have not placed any material opposing the Application. The affidavit of service is on record.

13. The Applicant's case is that, on 20 February 2017, a Content Management Service Agreement was entered into between the Applicant and Aleph. Under this Agreement, Aleph was required to manage the Applicant's YouTube channels. Aleph was required to collect the revenue generated from YouTube and remit the amount to the Applicant after raising the invoice. The Applicant relies upon the arbitration provision contained in the said Agreement. According to the Applicant, disputes between the parties were required to be referred to a Sole Arbitrator and the venue of arbitration was Mumbai.

14. Thereafter, on 4 January 2021, the Applicant, Aleph and Respondent No. 1 entered into a Novation Agreement. According to the Applicant, after this Agreement was entered into, Aleph was relieved of its obligations under the Principal Agreement and Respondent No. 1 took over the said obligations. Thus, the arrangement which was earlier between the Applicant and Aleph was continued with Respondent No. 1. For invoking the arbitration provision, the Applicant relies upon Clause 3 of the Novation Agreement read with Clause 10 of the original Agreement.

15. At this stage, the first question which arises is regarding the existence of the arbitration arrangement between the Applicant and Respondent No. 1. The Applicant has relied upon both the Agreements and has stated that the Novation Agreement was entered into between the Applicant, Respondent No. 1 and Aleph. Respondent No. 1 has not appeared before this Court. There is no material placed by Respondent No. 1 disputing the execution of the Novation Agreement or the arbitration clause relied upon by the Applicant. The Applicant has stated that after the Novation Agreement came into force, Respondent No. 1 did not make the payments which were due to the Applicant. According to the Applicant, an amount of Rs. 1,40,98,767/- is still outstanding. Whether the entire amount claimed by the Applicant is payable or not is a matter which can be decided in the arbitration proceedings.

16. There is material showing that the dispute regarding payment was existing between the parties. The Applicant states that several communications were exchanged regarding the outstanding payment. On 23 October 2023, discussions were held between the parties regarding payment of the outstanding dues. According to the Applicant, at that time approximately Rs. 2.56 Crores was payable., the Respondents made part payment. However, according to the Applicant, the entire commitment made by the Respondents was not complied with. The payment schedule relied upon by the Applicant is relevant. According to the Applicant, Respondent No. 3 and the Vice President of Respondent No. 2 participated in the discussions regarding the payment plan. The payment schedule was confirmed by Respondent No. 3 through an email dated 23 October 2023. The total amount shown in the said payment schedule was Rs. 25,562,869. The material relied upon by the Applicant shows that Respondent No. 2 was involved in the dealings concerning the outstanding payment. In paragraph 8, the Applicant relies upon an email dated 18 July 2023 sent by the Assistant Vice President of Respondent No. 2 from his registered email ID. According to the Applicant, in that email the delay in payment was admitted. It was stated that the Respondents were not receiving the necessary funds for making payment to the Applicant. A payment schedule was proposed in the said email and the Applicant's approval for the same was sought. The contents of this communication are relevant because they show that the issue regarding payment was being discussed at the level of Respondent No. 2. The Applicant has relied upon specific correspondence and upon the conduct of persons representing Respondent No. 2. At the same time, only because Respondent No. 2 participated in the correspondence and discussions, it cannot be finally held at this stage that Respondent No. 2 is bound by the Arbitration Agreement. A person may participate in carrying out a contract or may discuss payment arising from the contract. Whether such participation is sufficient to make that person a party to the Arbitration Agreement is a separate question. For deciding that question, the Agreements, the correspondence, the conduct of the parties and the other surrounding circumstances may have to be considered.

17. The same position applies to Respondent No. 3. The Applicant has stated that Respondent No. 3 is a Director of Respondent Nos. 1 and 2 and that he participated in the discussions regarding the payment schedule. The Applicant relies upon the fact that the payment schedule was confirmed by Respondent No. 3 through the email dated 23 October 2023. These facts are relevant and cannot be ignored. However, at this stage, they cannot be treated as a final finding that Respondent No. 3 became a party to the Arbitration Agreement.

18. The Applicant has relied upon the subsequent conduct of Respondent No. 2. In paragraph 11, the Applicant states that on 8 July 2024 Respondent No. 2 informed the Applicant that Respondent Nos. 1 and 2 had allegedly been acquired by M/s. Galaxy Racer. It was stated that, as part of the sale transaction, Galaxy Racer would invest in Respondent Nos. 1 and 2 so that the pending payable dues could be cleared. The Applicant was assured that efforts would be made to clear the outstanding amount. This correspondence is relevant because it shows that even after the original arrangement, the issue of the unpaid amount claimed by the Applicant continued to be dealt with by persons connected with Respondent No. 2. It shows that the Respondents were aware of the claim made by the Applicant. However, this later correspondence by does not change the original rights of the parties. If necessary, the effect of this correspondence can be considered in the arbitration proceedings. Thereafter, the Applicant issued a Notice dated 4 February 2026 to the Respondents calling upon them to pay the outstanding amount. No reply was received. The Applicant issued an Arbitration Commencement Notice dated 21 March 2026. Even to this notice, according to the material on record, no response was given by the Respondents.

19. These facts are required to be considered together. The Applicant has shown that there was a relationship between the parties. There was an arbitration provision. A dispute regarding payment had arisen. Several attempts were made to obtain payment. Part payment was made, and a specific amount was claimed as outstanding. A Notice was issued and an Arbitration Commencement Notice was issued. Therefore, the dispute between the parties is an existing dispute. It cannot be said that the Applicant has approached the Court for arbitration in respect of some dispute which is imaginary or which has not yet arisen.

20. The next question is whether, on the basis of these facts, a Sole Arbitrator is required to be appointed. The Applicant has invoked Section 11 of the Arbitration and Conciliation Act, 1996. The arbitration provision relied upon by the Applicant provides for reference of the disputes to a Sole Arbitrator. The Applicant has approached this Court because, despite the demand for resolving the dispute, the Respondents did not take steps for constitution of the arbitral tribunal. On the material before the Court, there is sufficient basis to hold that an arbitration agreement exists between the Applicant and Respondent No. 1. There is sufficient material to show that disputes have arisen regarding performance of the arrangement. The failure to make payment is the dispute which requires adjudication. Therefore, the Applicant has made out a case for constitution of the arbitral tribunal.

21. The position regarding Respondent No. 2 requires separate consideration. The Applicant accepts that Respondent No. 2 is a non-signatory. Paragraph 6 states that “Respondent No. 2, being a non-signatory to the Agreement, has played a substantial role in giving effect to the Agreement”. Paragraph 7 states that Respondent No. 2 is “a non-signatory to the impugned Agreements”. I have considered the material relied upon by the Applicant in support of this submission. The correspondence dated 18 July 2023, the discussions regarding the payment plan, the participation of the Vice President of Respondent No. 2, the later correspondence and the confirmation regarding delinking of the YouTube channels do show that Respondent No. 2 was involved in the dealings with the Applicant. Therefore, the Applicant's submission regarding involvement of Respondent No. 2 is supported by the material placed on record. At the same time, the question whether this involvement is sufficient to bind Respondent No. 2 to the Arbitration Agreement should not be finally decided in the present proceedings. On the material available, it would not be proper to give a final finding on this issue. Merely because Respondent No. 2 participated in performance of the Agreement or in correspondence regarding payment, it cannot be held that Respondent No. 2 became a party to the Arbitration Agreement. Whether Respondent No. 2 can be treated as bound by the Arbitration Agreement as a non-signatory is therefore kept open.

22. The same approach is required in respect of Respondent No. 3. The Applicant relies upon his position as Director of Respondent Nos. 1 and 2, his participation in the discussions and his confirmation of the payment schedule. These facts may have relevance in the arbitration proceedings. They may be relied upon by the Applicant in support of its case regarding the liability of Respondent No. 3. However, these facts alone do not require this Court to give a final finding in the present proceedings that Respondent No. 3 is bound by the Arbitration Agreement. It is relevant that Respondent Nos. 2 and 3 have not appeared before the Court even after service. Therefore, they have not placed their own version regarding the correspondence, the Agreements, the discussions concerning payment or the subsequent transactions. Their absence cannot be treated as an admission of every allegation made by the Applicant. At the same time, there is no material from their side which would displace the prima facie existence of the dispute or the arbitration arrangement relied upon by the Applicant.

23. In these circumstances, I am satisfied that the Applicant has made out a case for appointment of a Sole Arbitrator. The Application cannot be rejected only because the Applicant has sought to proceed against persons who are not signatories to the Arbitration Agreement. The question whether such persons can be treated as parties to the Arbitration Agreement or can otherwise be bound by it can be considered in accordance with law.

24. In the aforesaid circumstances, the present Application under Section 11 of the Act, is deserved to be disposed of in terms of the following order:

A) Mr Jash Gandhi, is hereby appointed as the Sole Arbitrator to adjudicate the disputes and differences arising between the Applicant and Respondent No. 1 under the Content Management Service Agreement dated 20 February 2017 read with the Novation Agreement dated 4 January 2021;

Office Address:- 3rd Office, Brady House Building, 2nd Floor, Kala Ghoda, Mumbai – 400 001

Email: jaasshgandhi@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.

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

26. 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.)