

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CIVIL APPELLATE JURISDICTION**

**ARBITRATION PETITION NO.01 OF 2026**

Nandadeep Eye Hospital LLP,  
Registered under the Limited Liability  
Partnership Act, 2008  
Previously Nandadeep Eye Hospital,  
A Partnership Firm registered under the  
Indian Partnership Act, 1832  
Through Its Partnership  
Dr. Sourabh Dileep Patwardhan  
Address :1502/8, Near Circuit House,  
North Shivajinagar, Sangli 416 416 ... Petitioner

**V/s.**

Dr. Snehal Alok Shinde,  
R/o. 104, Mahrudra Plaza, 13<sup>th</sup> Lane,  
Near Swami Water Supply, V.T.C.,  
Rajarampuri, PO-Rajarampuri,  
Tal. Karveer, Dist. Solapur ... Respondent

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Mr. A. M. Kulkarni a/w. Mr. Akshay a. Kulkarni a/w. Avesh A. Ghadge  
a/w. Mr. Aditya A. Ghadge, Advocate for fPetitioner.

Mr. Amit Singh a/w. Ms. Payal Shah, Advocate for Respondent.

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**CORAM : SHAILESH P. BRAHME, J.**

**RESERVED ON : 16 OCTOBER 2026**

**PRONOUNCED ON : 28 OCTOBER 2026**

**P.C.:**

1. Heard learned counsel for both sides.
2. The Petitioner is seeking appointment of arbitrator by invoking

Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act" for the sake of brevity and convenience).

3. The petitioner is a Limited Liability Partnership registered under the Limited Liability Partnership Act of 2008. Dr. Saurabh Patwardhan and Dr. Nidhi Saurabh Patwardhan are the partners. The firm runs ophthalmic hospital in the name and style of Nandadeep Eye Hospital at various places. The respondent was a registered medical practitioner who had been working with the petitioner's hospital since 2018. The parties entered into a contract on 01/01/2023, thereby appointing the respondent as a consultant or a retainer and treating the petitioner as a principal. It is contended that the respondent committed breach of the agreement after resuming the services from 20/07/2023. There was exchange of notices. The petitioner claimed damages of Rs. 4,18,78,370/-. The respondent made counter demand of Rs. 90,74,817/-. She approached the competent forum under the Industrial Disputes Act. In this backdrop, the parties have rival claims for appointment of arbitrator.

4. The learned counsel for the petitioner submits that there is ex facie existence of an arbitration agreement in clause No. 17 of the contract dated 01/01/2023 and the plea raised by the respondent cannot be taken into account. It is submitted that there is no employer-employee relationship between the parties. The appointment of

arbitrator is notwithstanding the remedy sought by the respondent under the Industrial Disputes Act. It is submitted that the invocation of the arbitration clause is on behalf of all the partners. The resolution dated 05/08/2025 gives authorization and ratification to initiate arbitration proceedings. It is submitted that the plea raised by the respondent challenging arbitrability of the clause or challenge to the resolution dated 05/08/2025 would fall within the purview of Section 16 of the Act. Reliance is placed on the rejoinder filed by the petitioner to the affidavit-in-reply.

**5.** Per contra, learned counsel appearing for the respondent would submit that there is no authority for one of the partners, Dr. Saurabh Patwardhan, to file and prosecute the petition. The invocation of the arbitral clause is defective in view of Section 19(2)(a) of the Indian Partnership Act. The resolution pressed into service is concocted. It would not overcome the legal hurdle. The notice issued by the petitioner invoking the arbitration clause is bad in law for want of concurrence by all partners. It is submitted that there is no valid arbitration agreement between the parties. The competent forum under the Industrial Disputes Act is seized of the matter as there is an employer-employee relationship. The notice dated 19/08/2025 does not spell out the intention to invoke the arbitration clause or passing of resolution dated 05/08/2025. The claim of the petitioner is stated to be

frivolous and liable to be rejected.

6. I have considered the rival submissions of the parties.

7. The agreement executed between the parties is undisputed. The arbitration clause in it is as follows:

*"17. Arbitration:*

*Every dispute or difference arising between the parties hereto with regard to this agreement or the duties, powers, obligation or liberties of either party hereunder or with regard to the construction of any clause hereof or any act or thing to be done in pursuance thereof or arising out of anything herein contained whether during the continuance of this agreement or upon or after its termination by act of either party hereto or otherwise but excepting summary termination as mentioned in clause No.14 shall be referred to arbitration. The provisions of Arbitration & Conciliation Act, 1996 shall apply. Seat of arbitration shall be Sangli, Maharashtra"*

8. It is disclosed in paragraph No. 3 of the petition that Dr. Saurabh Dilip Patwardhan and Dr. Nidhi Saurabh Patwardhan are the partners of the Limited Liability Partnership. The parties have rival monetary claims, which is evident from the correspondence between them. The petition memo does not spell out that one of the partners, Dr. Saurabh Patwardhan, is authorized to file the petition under Section 11 of the Act on behalf of the partners or the partnership firm. The respondent took specific objection in the reply to the petition. The petitioner then filed a rejoinder on or about 4/4/2026, clarifying the position that petition has been filed for and on behalf of the partnership firm. It is brought on record that on 05/08/2025 a meeting was convened and a resolution was passed by all the partners unanimously authorizing Dr.

Saurabh Patwardhan or Dr. Nidhi Patwardhan to initiate the arbitration proceedings and to take necessary steps. The resolution is in the form of ratification of the act done by one of the partners by the remaining partners.

9. After disputes arose between the parties, a notice was addressed on 19/08/2025 to the respondent calling upon her to pay damages of Rs. 4,18,78,370/-. The arbitration clause was not invoked by the notice. The respondent replied it on 16/09/2025 and raising a counter claim of Rs. 90,74,817/-. By further notice dated 17/10/2025, the respondent was called upon to respond for appointment of arbitrator by invoking Clause No. 17. The claim is denied by the respondent vide reply dated 11/11/2025 and 17/12/2025. In view of the resolution dated 05/08/2025, it can be said that the invocation of the arbitration clause is with the consent of all partners, though it is not specifically mentioned in the notice.

10. I have gone through clause No.17 of agreement dated 01/01/2023, which provides for reference of every dispute or difference between the parties to arbitration. The execution of the agreement dated 01/01/2023 has not been challenged. Similarly, existence of clause No.17 has not been disputed by the respondent. I am of the considered view that there exists a prima facie arbitration agreement between the parties.

11. The agreement dated 01/01/2023 does not give rise to an employer-employee relationship as such. Its clause 5 shows that petitioner is to be treated as a principal and the respondent as consultant or retainer. It is expressly quoted that no employer-employee relationship has been created. The disputes raised by the respondent under the Industrial Disputes Act against the petitioner has nothing to do with the claim raised by the petitioner by invoking arbitration clause. The relief solicited by her before competent forum is not impediment for invoking Section 11 of the Act.

12. The learned counsel for the petitioner has placed reliance on Section 3 of the Limited Liability Partnership Act, 2008 to bolster that limited liability partnership is distinct entity than the partners. In the present case, the intricate issue is raised regarding status of the partnership and application of Section 19 of the Partnership Act. These are the debatable issues which need to be addressed before the Tribunal.

13. The learned counsel for the petitioner has placed reliance on the judgment of *Office of Alternative Architecture Versus Icon Infrastructure and Services Ltd* reported in *2025 SCC OnLine SC 1098*. Its paragraph No.12, the relevant observations read as under:

*"12. As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we are of the*

*view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it."*

The objection of the respondent in respect of non-arbitrability can be dealt with by the tribunal.

**14. Further reliance is placed on SBI General Insurance Company Limited versus Krish Spining** reported in (2024) 12 SCC 1. paragraphs 113 to 117, the relevant observations read as under:

*"113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*

*114. The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.*

*115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.*

*116. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie*

arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow: (SCC p. 104, para 220)

*“220. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and [Ed.: The words between two asterisks have been emphasised in original as well.] not other issues [Ed.: The words between two asterisks have been emphasised in original as well.]”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.”*

*(emphasis supplied)*

*117. In view of the observations made by this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066], it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] that the jurisdiction of the Referral Court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re.*

In view of the above judgment, I find force in the submissions of the counsel for the petitioner.

**15.** The counsel for the respondent has pressed into service Section

19(2)(a) of the Partnership Act to buttress that there is no implied authority to invoke the arbitration clause. In the wake of the resolution passed on 05/08/2025, it cannot be said that one of the partners has unilaterally invoked the arbitration agreement. The correspondence made by the petitioner and thereafter filing of the petition under Section 11 has to be construed as a consent of all the partners.

**16.** Learned counsel for the respondent has relied upon judgment of **Maharashtra State Electricity Distribution Company Limited (MSEDCL & Ors versus R Z Malpani** reported in **2026 SCC OnLine SC 553**. While expounding the scope of Section 11 of the Act, paragraph 42, the relevant observations read as under:

*"42. It goes without saying that the scope of inquiry at the stage of Section 11 is extremely limited and only pertains to an examination about prima facie existence of an arbitration agreement. Judicial non-interference in the arbitration process is the sacrosanct principle which guides alternative dispute resolution and Courts must be highly circumspect in interfering at the referral stage, especially since there is no appeal available in the 1996 Act against an order under Section 11. The Arbitral Tribunal, in exercise of its jurisdiction under Section 16 must be left to decide on its jurisdiction. The Courts should follow the principle of 'When in doubt, do refer' and lean towards referring matters to arbitration when the arbitration agreement is prima facie existent. However, it is only in the rarest of rare cases where even on a prima facie view, without going into disputed facts between the parties, there appears to be no existence of arbitration agreement between the parties, the Court can reject the application for appointment of an arbitrator and reference of the parties to arbitration. The instant case appears to be a fit case where, as discussed, even without going into the disputed facts and merely on a prima facie view of the matter, there is no existence of arbitration agreement and therefore, the decision of the High Court to appoint an arbitrator requires interference."*

**17.** It is sought to be submitted that the present is the rarest of the

rare cases when arbitration agreement cannot be invoked. The facts are distinguishable. In that case, there are two sets of contracts between the parties. One is the special conditions of contract in the tender document, which contains an arbitration clause at Clause 32, and the other consists of Letter Of Intent. It was argued by the party invoking Section 11 that Clause 23 of special conditions of contract has been incorporated in a concluded contract of LOI. In that context, it was observed that Letter Of Intent does not in itself create a legal relationship or contractual obligation unless there is a clear, unambiguous final acceptance by the parties. It was a two-contract case, whereas the case in hand is a single-contract case. Therefore, this judgment will not help the respondent.

**18.** Reliance is also placed on judgment of learned Single Judge of Kerala High Court in PK. Chandrasekharan Nair & Co. represented by its Managing Partner **K.C. Anilkuamar v. Hindustan Petroleum Corporation Ltd. represented by its Chief Regional Manager** reported in **2025 SCC OnLine Ker 12970** . My attention is drawn to paragraphs 14 to 18 and 21 to 27. The application under Section 11 was contested on the plea based upon Section 19(2)(a) of the Partnership Act. It is argued that not every application filed under Section 11(6) of the Act shall not be mechanically entertained. If there is a statutory bar, the same would fall within the ambit of primary scrutiny. The express conferment of the

authority would be necessary. The facts are distinguishable. In the case at hand, there is a resolution dated 05/08/2025 which has cured the defect. The purport of the resolution or the ratification can be gone into before the tribunal. I have already observed that the resolution is in the form of ratification by the remaining partners. I am not being persuaded by the judgment cited by the respondent.

**19.** The upshot of the discussion is that the petition succeeds. Hence, I pass the following order:

A] Mr. I. M. Khairdi, a learned advocate of this Court (Email : [imkhairdi72@yahoo.co.in](mailto:imkhairdi72@yahoo.co.in), Mobile No.9820101478) 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;

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 the date on which this order is uploaded on the website of this Court. 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 parties within a period of two weeks from receipt of a copy of this Order;

D] 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;

E] 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 Arbitral Tribunal in relation to costs.

**20.** Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated

before the Arbitral Tribunal appointed hereby.

**21.** In view of the disposal of the proceedings, attendant Interim Applications, if any, also stand disposed of.

**(SHAILESH P BRAHME, J.)**