

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 19.08.2026
DELIVERED ON: 09.09.2026**

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 362 OF 2026

UMA DEVI KEJRIWAL

VS

RAKESH CHOWDHURY AND ANR.

Appearance: -

**Mr. Sourajit Dasgupta, Adv.
Mr. Rahul Chakraborty, Adv.
Ms. Samma Parvin, Adv.**

..... for the petitioner.

**Mr. Sounak Bhattacharya, Adv.
Mr. Manik Lal Poddar, Adv.**

..... for the respondents

JUDGMENT

Gaurang Kanth, J. :-

- 1.** The present Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes and differences arising out of and in connection with a Deed of Partnership dated 01.07.2024 relating to the partnership firm, *M/s. CRISPR Biopharma Inc.*
- 2.** The facts leading to the present petition are as follows:
- 3.** The partnership firm was originally constituted under a Deed of Partnership dated 03.03.2022. One of the partners, Mrs. Mitali Ghosh Mazumdar, expired on 01.07.2024, following which the respondent no.1, being the continuing partner, admitted the deceased partner's legal heir, respondent no.2, as a partner with effect from 01.07.2024. On the same date, the petitioner was inducted as an Incoming Partner, and one Sita

Kejriwal, an erstwhile partner, retired from the firm. These changes were recorded in a fresh Deed of Partnership dated 01.07.2024, executed between the petitioner and the respondents, reconstituting the firm with the petitioner, respondent no.1 and respondent no.2 each holding a 1/3rd share in the profits and losses of the firm.

4. Clause 25 of the said Deed contains an arbitration clause providing that any dispute or difference arising between the partners shall be referred to arbitration under the Arbitration and Conciliation Act, 1996, with each partner appointing an arbitrator and the arbitrators so appointed appointing an umpire, whose award would be final and binding on the partners.
5. The petitioner executed a Power of Attorney dated 19.07.2024 in favour of her son, Vivekanand Kejriwal, constituting him as her attorney to act on her behalf in the affairs of the partnership. Correspondence thereafter ensued between the constituted attorney and the respondents concerning access to the books of accounts, ledgers, and the original 2022 deed, as well as furnishing of accounts for the purpose of filing Income Tax Returns. The petitioner alleges that the ledgers furnished by respondent no.1 were unsupported by underlying documents, that the constituted attorney was denied access to the registered office and to business meetings of the firm, that an Income Tax Return for the year 2025-2026 was filed without her knowledge or consent, that the registered office of the firm was changed without intimation to her, and that a loan was availed of by the firm from ICICI Bank without her knowledge. These acts are alleged by the petitioner to be in breach of Clauses 10, 12, 13, 14 and 15 of the Deed of Partnership dated 01.07.2024.

- 6.** By a notice dated 20.03.2026 issued through her Advocate, the petitioner invoked the arbitration clause contained in Clause 25 of the Deed of Partnership, nominating Mrs. Karabi Roy, Advocate, High Court at Calcutta, as her Arbitrator, and calling upon the respondents to nominate their respective Arbitrators. The said notice, which also constituted a notice under Section 21 of the Arbitration and Conciliation Act, 1996, was sent by Speed Post on 21.03.2026 and was delivered to respondent no.1 on 24.03.2026 and to respondent no.2 on 23.03.2026.
- 7.** By a reply dated 30.03.2026, the respondents denied and disputed the allegations made in the petitioner's notice and contended that the Deed of Partnership dated 01.07.2024 was a fabricated document. The respondents asserted that the signatures of the petitioner and the retiring partner thereon did not match their signatures on record with government authorities, and alleged that the constituted attorney, in collusion with the petitioner and the retiring partner, had fabricated the said deed for wrongful gain, thereby rendering it void and unenforceable. Subsequent thereto, respondent no.1 instituted Title Suit No. 807 of 2026 before the Learned City Civil Court at Calcutta, seeking reliefs touching upon the partnership business and the Deed of Partnership dated July 1, 2024, the averments in which are disputed by the petitioner.
- 8.** Although the respondents replied to the notice issued under Section 21 of the Arbitration and Conciliation Act, 1996, they did not nominate their respective Arbitrators in terms of the arbitration agreement. Consequently, the parties failed to agree upon a procedure for appointment of an Arbitrator, giving rise to the present petition under Section 11 of the Arbitration and Conciliation Act, 1996.

Submission on behalf of the Petitioner

- 9.** Mr. Sourajit Dasgupta, learned counsel for the petitioner submitted that the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is maintainable and deserves to be allowed, inasmuch as Clause 25 of the Deed of Partnership dated 01.07.2024 constitutes a valid and subsisting arbitration agreement between the parties, providing that any dispute or difference arising between the partners shall be referred to arbitration, with each partner appointing an arbitrator and the arbitrators so appointed appointing an umpire. It is submitted that the petitioner, having invoked the said clause by notice dated 20.03.2026, which also served as a notice under Section 21 of the Act, duly nominated her Arbitrator and called upon the respondents to nominate their respective Arbitrators. Although the respondents replied to the said notice by their letter dated 30.03.2026, they neither nominated their respective Arbitrators nor proposed any alternative procedure for constitution of the Arbitral Tribunal. It is submitted that the mandatory precondition of Section 21, namely service of notice invoking arbitration, stands duly satisfied and is not in dispute, and that the failure of the respondents to nominate an Arbitrator despite service of notice has resulted in the failure of the agreed procedure, thereby entitling the petitioner to approach this Hon'ble Court under Section 11(6) for appointment of an Arbitrator.
- 10.** Mr. Sourajit Dasgupta, learned counsel for the Petitioner further submitted that the objection sought to be raised by the respondents on the ground of pendency of Title Suit No. 807 of 2026 and the possibility of an application under Section 8 of the Act being filed therein is wholly

untenable and does not constitute a bar to the maintainability of the present petition. It is submitted that Section 8(3) of the Act expressly provides that notwithstanding the pendency of an application under Section 8(1) before the judicial authority, an arbitration may nevertheless be commenced or continued, and an arbitral award made. Reliance is placed on the judgment of this Court in ***The Agri Horticultural Society of India v. Enkon Private Limited, AP-COM/117/2026***, decided on 1st April, 2026, wherein, following the decision of the Hon'ble Supreme Court in ***Vijay Kumar Sharma @ Manju v. Raghunandan Sharma @ Baburam & Ors.***, reported as ***(2010) 2 SCC 486***, it was held that the pendency of an application under Section 8 does not bar consideration of an application under Section 11 for appointment of an Arbitrator. It is submitted that, applying the said ratio, the objection raised by the respondents on the ground of pendency of the civil suit and the possibility of an application under Section 8 being taken out therein deserves to be rejected, and cannot operate as an impediment to this Court exercising its jurisdiction under Section 11(6) of the Act.

- 11.** Learned Counsel further submitted that the objection raised by the respondents regarding the genuineness of the Deed of Partnership dated 01.07.2024 and the alleged discrepancy in signatures raises a disputed question of fact that cannot, and ought not, be adjudicated by this Court at the referral stage under Section 11. It is submitted that this Court, at this stage, is not required to undertake a detailed examination or a mini-trial into such contested questions of fact, but is required only to examine the *prima facie* existence of the arbitration agreement. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***SBI General Insurance***

Co. Ltd. v. Krish Spinning, reported as **(2024) 10 SCC 168**, wherein it was authoritatively held that such issues, save in cases of manifest and *ex facie* non-arbitrability, are to be left for determination by the Arbitral Tribunal in exercise of its jurisdiction under Section 16 of the Act, and that any residual doubt concerning the existence, validity or scope of the arbitration agreement, or the arbitrability of the disputes, is to be resolved in favour of reference. It is submitted that the respondents, while questioning the genuineness of the Deed, have not disputed the existence of the arbitration clause as such, and the plea of fabrication raised by them is, at best, a matter to be agitated before and adjudicated by the Arbitral Tribunal. It is accordingly submitted that the disputes being commercial in nature within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015, and the parties having failed to agree upon the appointment of a common Arbitrator, it is just, proper and necessary that this Court be pleased to allow the present application and appoint an independent and impartial Arbitrator to adjudicate the disputes and differences arising out of or in relation to the Deed of Partnership dated 01.07.2024.

Submissions on behalf of the Respondents

- 12.** Mr. Sounak Bhattacharya, learned counsel for the Respondents submitted that the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is premature, misconceived and liable to be dismissed, inasmuch as the very existence of the arbitration agreement contained in Clause 25 of the alleged Deed of Partnership dated 01.07.2024 is itself seriously and specifically disputed by the respondents. It is submitted that the respondents, in their respective Affidavits in

Opposition, have categorically averred that the signatures of the petitioner and the retiring partner, Smt. Sita Kejriwal, appearing on the said Deed are not genuine, that the said Deed was procured through the fraudulent conduct of Sri Vivekanand Kejriwal alias Vivek Kejriwal, the petitioner's own constituted attorney and son, who obtained the document from the respondents on the assurance that he would collect the signatures of the petitioner and Smt. Sita Kejriwal and place it before the Notary, but is alleged to have instead fabricated the said signatures and procured notarisation without genuine execution, thereby rendering the said deed unsustainable in law. It is submitted that on account of this very dispute, the respondent no.1 has already instituted Title Suit No. 802 of 2026 before the Learned 5th Bench, City Civil Court at Calcutta, against the petitioner, Smt. Sita Kejriwal and Sri Vivekanand Kejriwal alias Vivek Kejriwal, seeking declarations that the signatures on the Deed are not genuine, that the Deed is invalid, void and improperly stamped, and that the earlier Deed of Partnership dated 3rd March, 2022 alone subsists, together with consequential reliefs of permanent injunction, in which an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure is also pending, notices having been issued and the petitioner and Sri Vivekanand Kejriwal alias Vivek Kejriwal having entered appearance.

- 13.** Mr. Bhattacharya, learned Counsel for the respondent further submits that the very issue at the heart of the present Section 11 application, namely, whether the Deed of Partnership dated 01.07.2024 and the arbitration clause contained therein were validly executed, is directly and substantially in issue before the Learned City Civil Court in the said

pending suit, which was filed prior in point of time. It is submitted that if this Court were to proceed to appoint an Arbitrator at this stage, without awaiting adjudication of the question of genuineness of the Deed by the Civil Court, there is a real and imminent risk of conflicting judgments and findings between the two fora on the identical question of the validity and execution of the same document, which would be detrimental to the interest of justice and would render any arbitral award vulnerable to challenge on the very ground of want of a valid arbitration agreement. It is submitted that in these circumstances, the just, proper and prudent course is for this Court to await the outcome of Title Suit No. 802 of 2026, rather than proceed to appoint an Arbitrator at this stage and thereby risk two parallel and potentially inconsistent adjudications on the same foundational question.

14. It is further submitted, in any event, that the law on arbitrability of disputes where fraud is alleged qua the arbitration agreement itself is authoritatively settled by the Hon'ble Supreme Court in ***Rajia Begum v. Barnali Mukherjee*** reported as ***AIR 2026 SC 802***, wherein it has been held that where the allegation of fraud is directed not merely at the underlying contract but at the arbitration agreement itself, such that the party against whom the arbitration is sought to be invoked is alleged never to have entered into it at all, the dispute falls within the realm of non-arbitrability, and the Court, at the referral stage, must examine the same as a jurisdictional issue rather than relegate the question to the Arbitral Tribunal under Section 16. Applying the two-fold test in ***Rashid Raza v. Sadaf Akhtar*** reported as ***2019 (8) SCC 710***, as reiterated in ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*** reported as ***2021 (4)***

SCC 713 and **Managing Director, Bihar State Food and Civil Supply Corporation Ltd. v. Sanjay Kumar** reported as **2025 SCC Online SC 1604**, the Hon'ble Supreme Court declined to appoint an Arbitrator under Section 11 and set aside a reference made under Section 8 on the very same facts, holding that a *prima facie* finding as to the doubtful existence of the arbitration agreement, once it attains finality, cannot be ignored in subsequent proceedings under Sections 8 or 11. It is submitted that the facts of the present case are squarely covered by this ratio: the respondents do not merely dispute the obligations under the Deed, but specifically and consistently deny, across both Affidavits-in-Opposition, having ever validly executed it at all, asserting that the signatures relied upon are forged and were never put by the petitioner or Smt. Sita Kejriwal with the knowledge and consent of the respondents. This is precisely the category of case where fraud permeates and vitiates the arbitration clause itself, rendering the dispute non-arbitrable at the threshold. It is accordingly submitted that the present petition be dismissed, or in the alternative, kept pending until the genuineness and valid execution of the Deed of Partnership dated 01.07.2024 is authoritatively determined by the Learned City Civil Court at Calcutta in Title Suit No. 802 of 2026.

Legal Analysis

- 15.** This Court has heard the elaborate arguments advanced by the learned Counsel appearing for the parties and has carefully examined the pleadings, the documents annexed thereto and also the judgments cited at the Bar.
- 16.** The core issue that falls for consideration before this Court is whether, in the facts and circumstances of the present case, this Court ought to

appoint an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes between the parties arising out of the Deed of Partnership dated 01.07.2024, or whether the objections raised by the respondents, namely, the pendency of Title Suit No. 802 of 2026 raising a challenge to the very genuineness of the said Deed, and the allegation that the arbitration agreement contained in Clause 25 thereof is vitiated by fraud, operate as a bar to the exercise of jurisdiction under Section 11 at this stage.

17. The respondents have raised a two-fold objection to the maintainability of the present application. The first objection is founded on the pendency of Title Suit No. 802 of 2026 before the Learned City Civil Court at Calcutta, instituted by Crispr Biopharma Inc and respondent no.1 against the petitioner, Smt. Sita Kejriwal and Sri Vivekanand Kejriwal alias Vivek Kejriwal, seeking, *inter alia*, a declaration that the Deed of Partnership dated 01.07.2024 is not genuine and is void and unenforceable. It is submitted that, unlike the ordinary case of a suit filed in breach of an arbitration clause, no application under Section 8 of the Act has in fact been filed by any party in the said suit. The respondents' objection, therefore, is that since the very genuineness and valid execution of the Deed containing the arbitration clause is under challenge in a suit filed prior in point of time, this Court ought to await the outcome of that suit before appointing an Arbitrator, so as to avoid the possibility of conflicting findings on the same foundational document.

18. This objection cannot be sustained. In the first place, it proceeds on a weaker footing than the objection that was raised and rejected in ***The Agri Horticultural Society of India*** (*supra*). In that case, an application under

Section 8 of the Act was pending before the civil court, and it was in the teeth of that pending application that this Court, following Section 8(3) of the Act and the law laid down in **Vijay Kumar Sharma** (*supra*), where even the pendency of an appeal against the dismissal of a suit on the ground that the disputes were arbitrable was held not to preclude appointment of an Arbitrator under Section 11, proceeded to appoint an Arbitrator. In the present case, by contrast, no Section 8 application has even been filed in Title Suit No. 802 of 2026; what is pending is only an application for interim injunction. If the pendency of an actual, live application under Section 8 application does not bar the exercise of jurisdiction under Section 11, it follows a fortiori that the mere pendency of a civil suit, in which no application under Section 8 application has been taken out at all, cannot operate as a greater bar. Secondly, the scheme of the Act does not contemplate that a civil suit touching upon the same subject matter as an arbitration agreement must first be concluded before Section 11 jurisdiction can be exercised; Section 8(3) itself proceeds on the premise that arbitral and civil proceedings may run in parallel, and it is open to a party aggrieved by such parallel proceedings to seek appropriate relief, including under Section 8, in the civil suit itself, or to raise the pendency of the suit before the learned Arbitrator. The apprehension of inconsistent outcomes, without more, is not a ground recognised under the Act for declining to constitute an Arbitral Tribunal once a *prima facie* arbitration agreement is shown to exist. This objection of the respondents is, accordingly, rejected.

- 19.** The next objection raised by the respondents is founded on the allegation of fraud, and reliance in this regard has been placed on the decision of the

Hon'ble Supreme Court in **Rajia Begum** (*supra*), where it was held that when the very existence of the arbitration agreement is seriously disputed on the ground that the party sought to be bound never entered into it at all, such a dispute falls within the realm of non-arbitrability and is required to be examined by the Court at the referral stage itself.

- 20.** On a careful reading of the affidavits in opposition filed by the respondents, however, this Court finds that the facts of the present case are materially distinguishable from those in **Rajia Begum** (*supra*). In the present case, the respondents do not dispute that they themselves signed and executed the Deed of Partnership dated 01.07.2024; their specific case, as averred in paragraphs (e) and (f) of the said affidavits, is that they put their own signatures on the said Deed and thereafter handed it over to the constituted attorney of the petitioner for the purpose of obtaining the signatures of the petitioner and Smt. Sita Kejriwal. What is disputed by the respondents is only the genuineness of the signatures of the petitioner and Smt. Sita Kejriwal, persons who are not before this Court disputing their own signatures. On the contrary, the petitioner herself affirms and relies upon the said Deed, including her own signature thereon, as the very basis of the present petition. Thus, the party alleged to have forged the signature does not dispute it, and the parties who admittedly executed the document do not deny having done so either. In such circumstances, unlike **Rajia Begum** (*Supra*), where the party against whom the arbitration was sought to be enforced had consistently and from inception denied ever having executed or entered into the Admission Deed, there is, *prima facie*, no case made out of the arbitration agreement being non-existent qua the parties who are before this Court. The plea of fraud sought to be raised by the

respondents, in these facts, does not permeate the arbitration clause itself so as to render it non-existent, but is, at best, a disputed question of fact touching upon the genuineness of certain signatures, requiring evidence for its determination.

21. In view of the aforesaid, and having regard to the law laid down by the Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning** reported as **(2024) 10 SCC 168**, that this Court, at the stage of Section 11, is not required to undertake a detailed examination or a mini-trial into disputed questions of fact, and that such issues, save in cases of manifest and *ex facie* non-arbitrability, are to be left for determination by the Arbitral Tribunal under Section 16 of the Act, with any residual doubt as to the existence or validity of the arbitration agreement being resolved in favour of reference, this Court is of the considered view that the present case does not fall within the narrow category of manifest non-arbitrability carved out in **Rajia Begum** (*supra*).
22. In the present case, the petitioner relies upon the Deed of Partnership dated 01.07.2024 containing Clause 25, which provides for arbitration. Hence, the *prima facie* existence of the arbitration agreement contained in Clause 25 of the Deed of Partnership dated 01.07.2024 stands satisfied, and the question of genuineness of the disputed signatures is left open for determination by the learned Arbitrator, without prejudice to the rights and contentions of either party, and without expressing any final opinion on the merits thereof.
23. In view of the aforesaid, this Court is satisfied that the requirements for exercise of jurisdiction under Section 11(6) of the Act stand fulfilled. Accordingly, the petition is allowed and Mr. Sourav Sengupta, Adv. (Mob.

No. 9051341923) is appointed as the nominee arbitrator on behalf of the Respondents. Mrs. Karabi Roy, learned Advocate, being the nominee arbitrator of the Petitioner, and Mr. Sourav Sengupta, Adv., being the nominee arbitrator appointed on behalf of the Respondents by this Court, shall jointly appoint a Presiding Arbitrator, in accordance with law, for constitution of the Arbitral Tribunal to adjudicate upon the disputes and differences arising out of or in connection with the Deed of Partnership dated 1st July, 2024.

- 24.** The learned Arbitrators shall enter upon the reference after making the disclosure in terms of Section 12(1) of the Act and subject to the provisions of Section 12(5) thereof.
- 25.** The learned Arbitrators shall fix their remunerations in terms of the Fourth Schedule of the Act or as may be agreed between the parties.
- 26.** It is clarified that this Court has not expressed any opinion on the merits of the disputes or on the respondents' objections concerning the genuineness, execution or validity of the Deed of Partnership. All questions relating to arbitrability, maintainability, limitation, validity of claims, counter-claims, etc. are left open for determination by the Arbitral tribunal in accordance with law.
- 27.** With the aforesaid directions, the application stands allowed.

(GAURANG KANTH, J.)