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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 409 OF 2025

Mayank J. Shah And Ors.

...Petitioners

Versus

Raju V. Shah And Ors.

...Respondents

Mr. Sanjay Jain a/w Hrushika Narvekar, Parag Kabadi, Drishti Gudhaka, Vidhi Porwal, i/b OSK Legal, for the Petitioner.

Mr. Chetan Kapadia, Senior Advocate, a/w Malcolm Siganporia, Counsel, Yuvraj Singh, Counsel, Rajesh Satpalkar & Devansh Gadda, i/b Mulla & Mulla & Craigie Blunt and Caroe for Respondent No.1.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 10, 2026.

JUDGEMENT :

Context and factual background

1. This is a Petition filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking interference with an order purportedly passed under Section 17 of the

Act, by which an impleadment Application came to be allowed by the Learned Arbitral Tribunal.

2. Ordinarily, an order of impleadment which is part and parcel of procedural directions and indeed even affecting substantive rights of the parties owing to joinder being allowed, would not be appealable under Section 37(2)(b) of the Act. The jurisdiction under Section 37 is one that entails an exhaustive listing of permissible appeals, which are a creature of statute. Impleadment of a party would not constitute an interlocutory protective measure as envisaged under Section 17 of the Act.

3. However, the basis on which this Petition is sought to be pursued is that the Respondents in this Petition led by Raju V. Shah (for convenience, collectively termed (**“Raju”**) filed an Application before the Learned Arbitral Tribunal seeking impleadment of trustees of a certain trust, among others, invoking Section 17 of the Act. The Learned Arbitral Tribunal had also been presented with another Application under Section 17 of the Act, and these came to be collectively disposed of by way of the Impugned Order dated April 29, 2024. Therefore, the Petitioners led by Mayank J. Shah (for convenience, collectively termed **“Mayank”**), would contend that since the measure adopted by the Learned Arbitral Tribunal and indeed the measure sought by Raju, both

invoke Section 17 of the Act, the appellate review under Section 37(2)(b) is indeed available.

4. Disputes between Mayank and Raju relate to control and management of a limited liability partnership, Vidhi Research and Development LLP (“**LLP**”), of which they are partners. Respondent No.1 had entered into a Limited Liability Partnership Agreement dated August 14, 2014 with Pravin Kotak, Jayeshkumar Kotak, Jateen Gupta and Amit Gupta (“**Kotaks & Guptas**”). Thereafter, pursuant to the execution of an Addendum dated August 14, 2015, Mayank was inducted as partner of the LLP and Kotaks & Guptas ceased to be partners of the LLP (for convenience, both agreements are collectively termed “**LLP Agreement**”). The LLP holds property earlier held by Pfizer Ltd. and the parties have serious conflict over a veto right in the hands of Raju about the business decisions of the LLP, as contained in the LLP Agreement.

5. For purposes of this Petition, what is relevant is that on June 17, 2019, Raju is said to have informed the partners of the LLP and recorded in an email that Raju had created a trust by which, the benefits of the 20% shares held by Raju in the LLP would vest in a trust titled Raju V. Shah Trust, with his son as the beneficiary (“**Trust**”). According to Mayank, this constituted a significant change arising out of

the assignment of interests by Raju to the trustees of the Trust, but this stance was taken much later in November 2022, when the parties were in litigation. Raju would contend that while transfer of a share in the LLP would make the transferee a new partner, transfer of just the benefits in the profits of the LLP would not constitute any change in partnership.

6. Faced with this contention, Raju filed an application on August 28, 2023 before the Learned Arbitral Tribunal praying that out of abundant caution, Raju V. Shah and Kalpana D. Shah, in their capacity as the trustees of the Trust, be joined as fellow Claimants with Raju already being the Claimant in his individual capacity. The Impugned Order allows the Application.

Analysis and Findings:

7. I have heard at length, Mr. Sanjay Jain, Learned Advocate on behalf of the Mayank and Mr. Chetan Kapadia, Learned Senior Advocate on behalf of the Raju. With their assistance, I have examined the record.

8. At the threshold, one must deal with Mr. Kapadia's preliminary objection that no appeal is maintainable over an order permitting joinder of parties since that is not subject matter of an

appealable order under Section 37 of the Act. Mr. Jain would submit that it is a well-settled principle of appellate jurisprudence that the right to appeal is determined by what the trial Court “*did or purported to do*” and not what it “*ought to have done*”. Therefore, he would submit that while the decision may be one of joinder, since Raju sought the joinder as a protective measure invoking Section 17 of the Act, and the Learned Arbitral Tribunal too purported to take the decision under Section 17 of the Act, and even repelled Mayank’s contention that a joinder cannot be pursued under Section 17 of the Act, an appeal under Section 37 would indeed be maintainable.

9. Therefore, Mr. Jain would contend that an appeal against an order purportedly passed under Section 17 would be maintainable even if the Learned Arbitral Tribunal was legally incorrect in invoking that provision. He would contend that the power purportedly exercised under a certain provision, which brings within its scheme a statutory right to appeal cannot be left without a check and balance, in the teeth of a statutory right to appeal.

10. Towards this end, Mr. Jain would rely upon a judgement of a Learned Division Bench of this Court in ***Antikeros***¹, which in turn

¹ *Antikeros Shipping Corporation v. Adani Enterprises Ltd.* – 2020 SCC OnLine Bom 277

relies upon a number of judgements², where the Court was presented with a situation where a Learned Single Judge had exercised jurisdiction under Section 11 of the Act to appoint an arbitrator despite the jurisdiction under Section 11 lying in the Supreme Court, one of the parties being a foreign company. The Arbitral Tribunal went on to settle the issues that arose for determination in the dispute. Evidence was recorded and various hearings were held. A few years later, Adani Enterprises, filed a Review Petition in the High Court, seeking review of the original order by which the Arbitrator was appointed under Section 11 of the Act. The delay of 2,690 days in filing the review was condoned and the Review Petition was allowed. This decision was challenged in an appeal before the Learned Division Bench. The reasoning of the Learned Single Judge was that the power of procedural review was inherent and plenary in the Court and the High Court being a Court of record had a duty to correct the record and remedy palpable errors that had been committed.

11. In the Appeal before the Learned Division Bench, a preliminary objection as to maintainability was raised. It was contended that only such appeals as are maintainable against orders

2 *Muthiah Chekktiar v. Govinddas Krishnadas* – (1947) 1 Mad LJ 292; *Somasundaramma v. Seshagi* – AIR 198 Mad 245; *Oor Nayakkan @ Krishnaswami Naidu* – AIR 1962 Ker 17, *Parvathi Pillai v. Kuttan Pillai* – AIR 1962 Ker 17 and, *Hurrish Chunder Chowdhry v. Kali Sundari Debi* – ILR (1882) 9 PC 48

enumerated in Section 37 could be maintained and an order passed by the Learned Single Judge in exercise of inherent jurisdiction of review would not be appealable. This was countered on the premise that since the power of review had been exercised based on inherent powers, an Appeal would lie, under Order XLVII Rule 7 of the Code of Civil Procedure, 1908 (**“CPC”**). The Learned Division Bench held that when a Court acts under an appealable provision of law and passes an order, a party affected by it would not be deprived of the right to appeal, even if, on facts, the order ought not to have been passed under that provision. Therefore, the Learned Division Bench held that the appeal would be maintainable and went on to allow the appeals on merits, and set aside the order recalling the appointment of the arbitral tribunal, with costs. Mayank would rely on this position to indicate that the appeal under Section 37 of the Act is maintainable.

12. A few words on first principles would be in order. The application for joinder is not really an application for joinder of a non-signatory party to the arbitration agreement. The application was necessitated in the context of the peculiar position adopted by Mayank years into the arbitration, based on a declaration of the Trust made by Raju in 2019. Under Section 5 of the Limited Liability Partnership Act, 2008 (**“LLP Act”**), an individual or a body corporate may be a partner

of the LLP. Therefore, natural persons or artificial legal persons alone can be partners. This is quite similar to the position in law for being a member of a company – indeed, the LLP itself is a body corporate and an artificial legal person under Section 3 of the LLP Act.

13. As a partner of the LLP, Raju is admittedly a party to the arbitration agreement. In 2019, Raju had indicated that the benefit of his shareholding in the LLP constitute trust property for the benefit of his son, the beneficiary of the Trust. No issue was raised contemporaneously about this development. It was much later when disputes had begun that Mayank proposed to unilaterally resolve that Raju's partnership in the LLP had come to an end and that the transferee of Raju's interest in the LLP would have to be made a partner. The unilaterally passed resolutions had already been enjoined by the Learned Arbitral Tribunal.

14. Against this backdrop, out of abundant caution, Raju applied for making the trustees a party to the arbitration proceedings as co-Claimants. This has been allowed in the Impugned Order. In view of the legal framework governing the LLP, in particular, Section 5 permitting only individuals and bodies corporate to be partners, the partner in the LLP continues to be Raju. It is a matter of first principles that property ownership has two distinct components – the legal estate and the

beneficial estate. The legal estate is the registered title to ownership while the beneficial estate is the right to enjoy, use and receive benefits from the property. When a registered owner creates a trust, the legal ownership can either be transferred by him to an independent and new third party who would act as a trustee, or the very same legal owner may proceed to don the hat of the trustee, continuing to hold the very same property as a trustee for the benefit of the beneficiaries declared as the beneficiaries of the trust.

15. On the face of it, this is what has been done by Raju. In my view, the issue of maintainability need not be viewed in the manner in which one would view any other routine decision of joinder of parties. Raju, a vested owner of a partnership in the LLP is sought to be ousted from being regarded as a partner for no reason other than having declared that the benefits of his ownership of a share in the LLP would flow to his son, the beneficiary of a trust set up by him. Raju continues to be the owner and in the capacity as a trustee. In that light, already having injuncted the unilateral resolutions purporting to record termination of Raju's partnership, the Learned Arbitral Tribunal has gone a step further to also allow the joinder, still keeping the larger question of partnership open for adjudication.

16. Therefore, in my opinion, this is not even a case of a “joinder” of a third party but a purported joinder of none other than a person who is already a party to the arbitration agreement and is actively involved in the arbitration proceedings. Therefore, even treating the Impugned Order as an interlocutory measure of protection rather than a conventional order on joinder i.e. even treating the challenge as being maintainable, in my opinion the challenge is totally devoid of merit.

17. I am conscious about the stage at which these proceedings have been brought to this Court. All observations in this judgement are in furtherance of considering the merits of the challenge at this stage and are not intended to be final declarations of adjudication, which squarely fall within the domain of the Learned Arbitral Tribunal, which in turn, has indeed reserved adjudication on these issues for a later stage.

18. The dispute between Mayank and Raju are about ownership, control and management of the LLP. Raju appears to have created the Trust in November 2018 and intimated the LLP in June 2019. Mayank claims that Raju had ceased to be a partner in the LLP and it was only due to oversight that the LLP did not give effect to the purported cessation of Raju’s partnership until much later, but that nevertheless

Raju had become disentitled to participate further in the arbitral proceedings.

19. Indeed, the Learned Arbitral Tribunal disposed of two applications, framing a common issue as to whether Raju had ceased to be a partner of the LLP. The Learned Arbitral Tribunal has squarely dealt with Mayank's contention that Raju had assigned his rights in the LLP to the Trust, and therefore ceased to be a partner. The Learned Arbitral Tribunal also examined Raju's contention that there was no transfer of his share in the LLP and only the enjoyment of profits of his share in the LLP would flow to the beneficiary of the Trust, with Raju continuing to be the registered owner of the share in the LLP.

20. Raju sought to lead oral evidence on the issue to make it clear that there was no cessation of Raju's interest in the LLP. The Learned Arbitral Tribunal noted that the parties' respective contentions had remained identical to contentions raised on earlier occasions in respect of earlier Interim Applications raising the same issue, in particular Interim Application No. 3, which had been dealt with by the Learned Arbitral Tribunal by an order dated September 27, 2023.

21. The Learned Arbitral Tribunal took note of Raju's contention that any assignee of rights, whether of profits or of the share itself,

would be bound by the eventual Arbitral Award in terms of Section 35 of the Act. On the other hand, Mayank had contended that the Learned Arbitral Tribunal had no power to permit joinder of additional parties on the premise that there was no jurisdiction to entertain such a request and no power was available to the Learned Arbitral Tribunal. In this context, the judgement of the Constitutional Bench of the Supreme Court in ***Cox and Kings***³ was extensively quoted and analysed in particular in relation to the phrase “claiming through or under” used in Section 8 and Section 11, and interpreted in that judgement. After extensive extraction, the Learned Arbitral Tribunal held that the Tribunal indeed had the power to implead and join third parties to the arbitration and the non-signatories could also be included as parties to the arbitration. The Tribunal held that it would have to consider oral and documentary evidence on facts as well as law to give a definitive conclusion on the point and specifically stated that it was apparent that Raju could either maintain the proceedings in his individual capacity, or participate in his capacity as a trustee of the Trust, considering the provisions of Section 35 of the Act.

22. In other words, the Learned Arbitral Tribunal did not give a definitive answer on whether only the profits had been assigned or a

3 *Cox & Kings Ltd. v. SAP India (P) Ltd. – (2024) 4 SCC 1*

share in the LLP had been assigned, and left that issue open. Towards that end, it stated that for adjudication of the same, the trustees should be allowed to participate, in keeping with the principles of natural justice, fair play and good conscience. This is what is objected to in the Appeal on the ground that such a direction is wholly without jurisdiction and that Arbitral Tribunals have no power whatsoever to grant such relief to a third party to become a claimant – even while it may be possible to make a non-signatory party a respondent.

23. Specifically, in allowing the Interim Application, the Learned Arbitral Tribunal has permitted the following:-

“24. At the stage when the Trust was formed, and assignment was made – the Claimant was the only Trustee. The Applicant No.2 has been added as a Trustee later on. It is settled law, the Trust properties can be held in the name of any one or more of the Trustees. In the circumstances, I deem it appropriate to allow the Interim Application No.9 partly i.e.

(i) to implead the Applicant No.1, on an alternative and without prejudice basis, also in his capacity as a Trustee of Raju V. Shah Trust;

(ii) as also to carry out consequential amendments set out in paragraphs 99A to 99J of the Schedule of Amendment; and

(iii) as also to add prayers clause (j2) set out in the Schedule of Amendment.

25. The aforesaid course of action would also assist the Tribunal in doing final and conclusive determination of the Point No.5 in a comprehensive

manner, including as to the constitution of the Respondent No.1 (LLP) and inter se rights of the parties.”

[Emphasis Supplied]

24. The realisation that advisedly dawned on Mayank in November 2022 for the declaration made by Raju in 2019 has been fairly dealt with by the Learned Arbitral Tribunal. The Trust being the characterization and name of a contractual relationship – the relationship between the trustee and the beneficiary in connection with the trust property – is not a legal entity at all, for it to have capacity to sue and be sued. Raju, in his capacity as a trustee of the Trust is being permitted to be added out of abundant caution to deal with Mayank’s contention about Raju’s partnership having ceased, which too has been protected against already by the Learned Arbitral Tribunal.

25. No real third-party trustee having been introduced, the Learned Arbitral Tribunal’s approach cannot be faulted. In my opinion, **Cox and Kings** may not even have been relevant but this is for the Learned Arbitral Tribunal to decide eventually. Therefore, Mr. Jain’s contention that having noticed that judgement, the Learned Arbitral Tribunal ought to have positively declared that the trustees were veritable parties also does not inspire any confidence on merits. The very same partner of the LLP is now a trustee. This principle on the face

of it, would address Mayank's contention about the need to declare that a newly joined party is a veritable party.

26. The Learned Arbitral Tribunal has already formulated Point No. 5 for determination on July 7, 2023 and has squarely framed the issue of whether Raju could be said to have ceased to be a partner of the LLP and if so, the date from which he would cease to be a partner, and the effect and consequences on the constitution of the LLP and the inter se rights of the parties. In the Impugned Order, the Learned Arbitral Tribunal has extracted from its order dated September 27, 2023, granting protection on this very point.

27. Even with the Impugned Order, one cannot lose sight of Mr. Kapadia's valid point that although the Impugned Order was passed on April 29, 2024, an Interim Application in the captioned proceedings had been served on Raju only on May 6, 2025, and that too without serving the captioned Petition which had already been dismissed for non-removal of objections. Various further actions have already transpired before the Learned Arbitral Tribunal between April 29, 2024 and May 6, 2025. During this period of 13 months, the Petition had not even been served on Raju, and was even dismissed and came to be restored without prejudice to the rights and contentions of the parties. The

jurisdiction invoked being interlocutory in nature (Section 17 of the Act) even this delay is relevant for equitable considerations in adjudicating this Petition. No case for any interference is warranted.

28. As stated earlier, all my observations in this judgement are *prima facie* observations without meaning to preclude the Learned Arbitral Tribunal from arriving at its own findings, considering that he has reserved these issues for ruling on Point No. 5 in the Points for Determination framed by it. I have no doubt the Learned Arbitral Tribunal would do so in accordance with law on merits.

29. Before parting, I must say that there are parallels between this case and ***Antikeros***, which is cited on behalf of Mayank. In the midst of arbitration, the contention about Raju's entitlements to partnership having come to an end is indeed the "torpedo" intended to sink the ship (to borrow the Learned Division Bench's phraseology used in ***Antikeros***). The Learned Arbitral Tribunal could have adjudicated whether this "torpedo" was a "dud" (again to borrow from ***Antikeros***) but the Learned Arbitral Tribunal's entitlement to determine this at a later stage and upon being more satisfied with all facets of the matter. This is purely the Learned Arbitral Tribunal's prerogative. Meanwhile to adjust and best preserve the positions of the two sides, the Learned

Arbitral Tribunal has considered it fit to also allow the without-prejudice and out-of-abundant-caution prayer for enabling the same partner, now as a “trustee” to be a co-Claimant. I see nothing wrong in this approach that leads to any perversity or error of law, necessitating intervention under Section 37 of the Act.

30. For quite similar reasons as articulated in ***Antikeros***, considering the nature of the grievances raised and the unreasonable stance adopted on behalf of Mayank, this too represents a fit case for imposition of costs. However, considering that the Learned Arbitral Tribunal is said to be at the fag end of the proceedings, I leave the adjudication and consideration of costs for this round of proceedings to the Learned Arbitral Tribunal when making its final adjudication.

31. 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.

[SOMASEKHAR SUNDARESAN, J.]