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A.R.No.8 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 12TH DAY OF DECEMBER 2025 / 21ST AGRAHAYANA, 1947

AR NO. 8 OF 2025

PETITIONERS:

- 1 SAJID PASHA
AGED 52 YEARS
S/O. MUSTHAF A KAMAL PASHA, RESIDING AT 'PASHA'S
ESTANCIA, VAIDYARANGADI, RAMANATTUKARA,
KOZHIKODE, PIN - 673633.
- 2 DR.ZARINA P.P
AGED 49 YEARS
W/O. SAJID PASHA, RESIDING AT 'PASHA'S ESTANCIA,
VAIDYARANGADI, RAMANATTUKARA, KOZHIKODE, PIN -
673633.

BY ADVS.
SMT.M.A.VAHEEDA BABU
SRI.BABU KARUKAPADATH
SRI.P.K.ABDUL RAHIMAN
SHRI.KARUKAPADATH WAZIM BABU
SMT.P.LAKSHMI
SMT.AYSHA E.M.
SHRI.ABUASIL A.K.
SMT.HANIYA NAFEEZA V.S.
SHRI.HASHIM K.M.



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RESPONDENTS:

- 1 ABDUNNASIR. P
AGED 52 YEARS
S/O. ABOOBAKKAR P, RESIDING AT KAKKANNTTU HOUSE,
VALIYAPARAMBA P.O, MALAPURAM DISTRICT, PIN -
673637.
- 2 REHNA. N
AGED 48 YEARS
W/O. ABDUNNASIR, RESIDING AT KAKKANNTTU HOUSE,
VALIYAPARAMBA P.O, MALAPURAM DISTRICT, PIN -
673637.
- 3 SHEFIN NASIR
AGED 24 YEARS
S/O ABDUNNASIR. P, RESIDING AT KAKKANNTTU HOUSE,
VALIYAPARAMBA P.O, MALAPURAM DISTRICT, PIN -
673637.
- 4 NISWA NASIR
AGED 23 YEARS
D/O ABDUNNASIR. P, RESIDING AT KAKKANNTTU HOUSE,
VALIYAPARAMBA P.O, MALAPURAM DISTRICT, PIN -
673637.
- 5 SHAMSUDEEN P
AGED 53 YEARS
S/O ABOOBACKER P, RESIDING AT KAKKANATTU HOUSE,
ANDIYOORKKUNNU, VALIYAPARAMBA P.O, MALAPPURAM
DISTRICT, PIN - 673637.
- 6 SHAFEEF SHAMSUDEEN P
AGED 26 YEARS
S/O SHAMSUDEEN P, RESIDING AT KAKKANATTU HOUSE,
ANDIYOORKKUNNU, VALIYAPARAMBA P.O, MALAPPURAM
DISTRICT, PIN - 673637.



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- 7 AZEEM M K @ AZEEM MANNIKKUNNAN
 AGED 35 YEARS
 S/O ABOOBACKER M.K, RESIDING AT MANNIKKUNNAN
 HOUSE, CHERIYA PARAMBA, VELLIANCHERY PO,
 MALAPPURAM DISTRICT, PIN - 679326.
- 8 MUHAMMED P.V
 AGED 68 YEARS
 S/O VEERANKUTTY, RESIDING AT RABEEL MANZIL,
 VALIYAPARAMBA P.O, MALAPPURAM DISTRICT, PIN -
 673637.
- 9 FASMIN P.M
 AGED 35 YEARS
 S/O MUHAMMEDKUTTY PEZHUKATTIL MALAYIL, RESIDING
 AT MALAYIL HOUSE, PULIKKAL PO, MALAPPURAM
 DISTRICT,
 PIN - 673637.
- 10 ABDUL MAJEED
 AGED 54 YEARS
 S/O MOOSA P, RESIDING AT NATU KANDATHIL HOUSE,
 PERUVAYAL PO, KOZHIKKODE DISTRICT, PIN - 673008.

BY ADVS.
SRI.VIJAY V. PAUL
SRI.ANIL SEBASTIAN PULICKEL
SHRI.AJAY V.ANAND
SMT.SHILPA SOMAN
SHRI.ROJIT ZACHARIAH
SMT.ANGELA ELSA JOHN
SHRI.SAFAL P. SALIM
SHRI.HAMED ABDULLA JAVAHIR
SHRI. AK MUHAMMED HASHIM
SHRI.THVALHATH V.
SRI.ARUN THOMAS
SMT.VEENA RAVEENDRAN
SMT.KARTHIKA MARIA



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SHRI.SHINTO MATHEW ABRAHAM
SMT.LEAH RACHEL NINAN
SHRI.MATHEW NEVIN THOMAS
SHRI.KARTHIK RAJAGOPAL
SHRI.KURIAN ANTONY MATHEW
SMT.APARNNA S.
SHRI.NOEL NINAN NINAN
SHRI.ADEEN NAZAR
SHRI.ARUN JOSEPH MATHEW

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION
ON 25.11.2025, THE COURT ON 12.12.2025 PASSED THE
FOLLOWING:



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[CR]

S.MANU, J.

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Dated this the 12th day of December, 2025

ORDER

Under the name and style "M/s.Roofs and Shades", applicants and respondents 1 and 2 formed a partnership firm with equal partnership. The partnership deed was executed on 5.2.2005. A copy of the same has been produced as Annexure-A1. The 1st respondent was the Managing Partner. According to the applicants, he along with the 2nd respondent- his wife, was managing the day-to-day affairs of the firm. Accounts were settled and profit was divided till the financial year 2010-11.

2. Later, another partnership deed was executed between the applicants and respondents 1 and 2 on 6.4.2011 with the name of the partnership as "M/s.Roofs and Shades



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Structural Solutions". According to the applicants, the business of "Roofs and Shades" was carried over and continued by "Roofs and Shades Structural Solutions". Management of the firm continued with the respondents 1 and 2.

3. It is alleged that in October 2019, the 1st applicant demanded the respondents 1 and 2 to provide the books of accounts for verification and for settlement of accounts for the year 2011 and also for sharing the profits from 2011 to 2019. However, respondents 1 and 2 did not provide the books of accounts. On 4.5.2020, there was a joint meeting of the partners at the residence of respondents 1 and 2 and consensus was arrived at regarding settling of accounts and management of the firm. Nevertheless, the commitments made in the meetings were not discharged by the respondents 1 and 2. It is also claimed that the respondents 1 and 2 had agreed to induct the 1st applicant as the managing partner.



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4. Thereafter, there arose disputes with regard to sharing of profits. There were several discussions and communications between the parties. Since the issues could not be resolved, applicants, as per e-mail dated 29.9.2023, suggested to nominate a renowned Engineer as the Arbitrator. A printout of the e-mail communication is produced as Annexure-A3. There was no response from the respondents 1 and 2 and the only option left to the applicants was to initiate appropriate proceedings under the Arbitration and Conciliation Act,1996.

5. CMA (Arb.) No.1/2024 was filed under Section 9 of the Arbitration and Conciliation Act,1996 [henceforth mentioned as 'the Act' for conciseness] before the Commercial Court, Kozhikode by the applicants for various interim reliefs. Respondents 1 and 2 filed a counter affidavit. They stated in the counter affidavit that on the basis of mutual understanding between the applicants and themselves, they started some other firms and details of the firms were stated in the affidavit.



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Applicants allege that the partners of those firms are close relatives as well as friends of respondents 1 and 2. Respondents 1 and 2 filed I.A.No.2/2024 questioning the maintainability of CMA and it was dismissed by the Commercial Court by order dated 30.9.2024. Challenging the order passed by the Commercial Court, O.P.(C)No.2338/2024 was filed before this Court and the said case is still pending.

6. According to the applicants, different firms constituted by the respondents 1 and 2 are in fact managed by them and all the firms are constituted for the same purpose of the business of "M/s.Roofs and Shades" which continued as "M/s.Roofs and Shades Structural Solutions". They allege that the respondents 1 and 2 have breached the terms of the partnership by constituting various firms to undertake the same work. As the respondents 1 and 2 did not respond to Annexure-A3 communication this Arbitration Request has been filed arraying the partners of the various firms constituted by respondents 1 and 2 also as respondents.



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7. Respondents entered appearance. Respondents 1 and 2 filed a joint counter affidavit. The remaining respondents entered appearance through another counsel and filed a separate objection. Respondents 1 and 2 contend that "M/s.Roofs and Shades Structural Solutions" was constituted in the year 2011 as a new partnership firm and not in continuation of "M/s.Roofs and Shades" which ceased operating in the year 2011. It is pointed out that the two firms had distinct PAN numbers and VAT registrations. The VAT registration of "M/s.Roofs and Shades" was cancelled on 31.3.2014. "M/s. Roofs and Shades Structural Solutions" also ceased functioning in the year 2018 and it has been filing 'NIL' returns since then. The NIL returns filed from 2018 to 2023 have been produced as Annexure-R1(c). They allege that the applicants were running a competing business through their company 'FORMEX' in violation of the terms of the partnership. Further, they contend that the applicants had not been contributing to the functioning of the firm since 2014. They also state that the applicants were



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aware of starting of different firms by them. The applicants were also engaged in similar businesses through several companies. They hence submit that the applicants have now concocted a malicious story to obtain undue advantage. They have further raised several serious contentions in the counter affidavit regarding the sustainability of the claims as well as the maintainability of the arbitration request. Respondents 3 to 10, in their counter affidavit, stated that the arbitration request is not maintainable as against them. No notice was issued to them under Section 21 of the Arbitration and Conciliation Act. The notice claimed to have been sent to respondents 1 and 2, Annexure-A3, does not contain even minimum basic details. Therefore, there was no proper notice. Respondents 3 to 10 are not signatories to Annexures-A1 and A2 and hence they are not bound by the Arbitration Clauses in those deeds. Applicants were admittedly not even aware about the respondents 3 to 10 and hence there could not have been any mutual intention among the parties for arbitration. No obligations or liabilities are



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cast on the respondents 3 to 10 under Annexures-A1 and A2. The minimum threshold for referring a non-signatory to arbitration does not exist. Respondents 3 to 10 are not veritable parties to Annexures-A1 and A2.

8. Heard Sri.Babu Karukapadath, learned counsel for the applicants, Sri.Vijay.V.Paul, learned counsel for the respondents 1 and 2 as also Sri.Anil Sebastian, learned counsel for respondents 3 to 10.

9. The learned counsel for the applicants reiterated the contentions raised in the memorandum of arbitration request. He asserted that the firm constituted in 2011 was a successor of the firm constituted in 2005. He submitted that at no point of time respondents 1 and 2 shared the profits of the firm with the applicants and they resisted verification of the books of accounts. He made reference to various clauses of Annexures-A1 and A2 which were allegedly violated by the respondents 1 and 2. He made extensive reference to the partnership deeds of the partnerships constituted by the respondents 1 and 2 with



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their close relatives and friends. The learned counsel pointed out that the actual control of all those firms was retained by respondents 1 and 2 and major share of profits of all those firms was also reserved for them. He pointed out that all those firms were constituted with similar names using the words "Roofs and Shades" and are involved in the same business. The same is in breach of specific clauses of Annexures-A1 and A2. The learned counsel advanced elaborate arguments regarding the disputes between the parties and submitted that appointment of an Arbitrator is just and essential in the facts and circumstances of the case. Regarding the contentions of the respondents on the issue of limitation, the learned counsel submitted that the said contention is an aspect to be dealt with by the Arbitral Tribunal and the same need not be analysed by this Court in the Arbitration Request. With regard to respondents 3 to 10, the learned counsel submitted that they are necessary parties in this Arbitration Request and also in the arbitration proceedings contemplated. The learned counsel asserted that Annexure – A3



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is a proper request satisfying the requirements of S.21 of the Act and the respondents acknowledge to have received it. Hence, he argued that there is no merit in the contention regarding want of proper notice. He relied on the following judgments:-

- 1. ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited [(2025) 9 SCC 76].**
- 2. Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited and Another [(2025) 1 SCC 502].**
- 3. Adavya Projects Private Limited v. Vishal Structurals Private Limited and Others [(2025) 9 SCC 686].**
- 4. Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited [(2021) 5 SCC 738].**

10. The learned counsel for respondents 1 and 2 read out various relevant clauses of Annexures-A1 and A2 and submitted that the firms constituted in 2005 and 2011 are distinct and different. He submitted that the first one wound up its business



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in 2011 and its VAT registration was also cancelled in 2014. He pointed out that if the firm constituted in 2011 was a successor firm as contended by the applicants, then it was necessary to follow the procedure for re-constitution of partnership as provided under the Partnership Act. The learned counsel fervently submitted that the instant Arbitration Request is not maintainable as no notice as contemplated under Section 21 of the Arbitration and Conciliation Act was issued. He submitted that Annexure-A3 communication cannot be considered as a notice under Section 21. He further submitted that unless a notice was issued under Section 21, the aggrieved party cannot approach this Court under Section 11(6) of the Act. He also pointed out that the claims of the applicants are *ex-facie* time barred, as even Annexure-A3 was issued only in 2023; whereas both firms ceased to be in operation more than 3 years ago from the date of issuance of Annexure-A3. He added that according to the case of the applicants a joint meeting was held in May 2020 and even if limitation is counted from that point of



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time, the alleged notice was issued beyond three years. He also pointed out that respondents 3 to 10 have been impleaded in personal capacity and the firms allegedly constituted by respondents 1 and 2 have not been impleaded. The learned counsel also contended that the applicants have sought for appointment of a single arbitrator to resolve the disputes. He pointed out that even according to the case of the applicants there are two different partnership deeds containing arbitration clauses and disputes arising from those deeds cannot be clubbed together and dealt with as a single arbitration case by an arbitrator. He therefore submitted that the relief sought is inappropriate and a single arbitrator cannot be appointed as requested. He hence submitted that the Arbitration Request is not maintainable. He relied on the following judgments:-

- 1. Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited [(2021) 5 SCC 738] .**
- 2. Alan Mervyn Arthur Stephenson v. J. Xavier Jayarajan [2025 SCC OnLine SC 2227].**



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3. Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd. [(2017) SCC OnLine Del 7228].

4. Ganapati Technology Services P. Ltd.v. State Fisheries Development Corporation Ltd.[2021 SCC OnLine Cal 4320].

11. Learned counsel for respondents 3 to 10 submitted that a reference under Section 11(6) would not lie without satisfying the pre-condition that a notice under Section 21 was issued. No notice was issued to respondents 3 to 10. Even the notice claimed to have been issued to respondents 1 and 2, Annexure-A3, is not a notice satisfying the basic requirements of Section 21 of the Act. Even according to the applicants, respondents 3 to 10 were not known to them at the time of issuing Annexure-A3. Mutual intention is essential for resolution of disputes through arbitration which lacks in this matter as far as respondents 3 to 10 are concerned. He hence submitted that his parties have been unnecessarily dragged to this Court. He also contended that the Arbitration Request is not maintainable



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for various reasons pointed out in the counter affidavit of Respondents 3 to 10. The learned counsel relied on the following judgments:-

1. SBI General Insurance Co. Ltd. v. Krish Spinning

[2024 SCC OnLine SC 1754].

2.Arif Azim Company Limited v. APTECH Limited

[(2024) 5 SCC 313.

3. Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd. and Others[2025 SCC OnLine SC 806].

4. Ajay Madhusudan Patel and Others v. Jyotrindra S. Pael and Others[(2025) 2 SCC 147].

5. Kotak Mahindra Prime Ltd v. Manav Sethi and Another [2024 SCC OnLine Del 4819]

6. Merlin Projects Limited v. Bhargab Sales Pvt. Ltd. and Ors
[MANU/WB/1595/2022].

7. Varalakshmi Starch Industries (P) Ltd. v. Man Rollo Power Generation India Private Limited and Ors
[MANU/TN/5438/2021].



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8. Laly Joseph v. Chazhikattu Hospitals Private Limited[2025 KHC OnLine 650].

12. Having heard the learned counsel for the applicants and also for the opposite parties, I find that serious objections have been raised by the respondents. Among them, the contention regarding want of a proper notice under Section 21 of the Arbitration and Conciliation Act is a primary issue raised by both counsel appearing for the respondents. Hence, I shall deal with the said contention first.

13. Section 21 of the Arbitration and Conciliation Act reads as under:-

"21. Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

The above provision provides that the arbitral proceedings in respect of a particular dispute commence on the date on which



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a request for that dispute to be referred to arbitration is received by the respondent. No exact form is prescribed for the request. Likewise, no specifics to be mentioned in the request are prescribed. Nonetheless, from the language of the provision, it is clear that the request shall be in respect of a '*particular dispute*'. Also, it shall be for '*that dispute to be referred to arbitration*'. Hence it can be concluded that mentioning of '*the particular dispute*' is a rudimentary requirement in terms of the provision.

14. Section 11(5) of the Arbitration and Conciliation Act reads as under:-

"11. Appointment of arbitrators.

.....

(5) *Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution*



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designated by such Court.”

15. Appointment of the Arbitrator shall be made, upon request of a party, by the Supreme Court or as the case may be the High Court if the parties failed to agree on the arbitrator within 30 days from receipt of a request by one party from the other. Hence, making a request under Section 21 of the Act is an essential pre-requisite under the scheme of the Act for approaching the Supreme Court or High Court as the case may be under Section 11(5) of the Act. Consequently, it is an important step in initiating the arbitral proceedings. In view of Section 21, the arbitral proceedings commence when the request is received by the respondent.

16. It is apposite to undertake a brief survey of precedents on Section 21 of the Arbitration and Conciliation Act to analyse and decide the issue under consideration.

17. In **Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited** [(2021) 5 SCC



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738], the Hon'ble Supreme Court held as follows;

*"51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : 1990 SCC (L&S) 50; Union of India v. Har Dayal, (2010) 1 SCC 394; CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that:"where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." **There must be a clear notice invoking arbitration setting out the "particular dispute" (including claims/amounts)** which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail."*

[Emphasis added]

18. In **ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited** [(2025) 9 SCC 76], the Hon'ble Supreme Court held as follows;

"165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his "claim", the points at issue and the



relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term "claim" as opposed to "particular dispute" employed in Section 21 of the 1996 Act. Although, it could be said that the term "particular dispute" under Section 21 connotes a larger umbrella within which the term "claim" under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such "claim" must be the same or in tandem with the "particular dispute" in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief sought or the framing of issues — its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period. 166. This is further fortified from the fact that nowhere does the 1996 Act lay down any specific



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format or form of notice under Section 21 of the 1996 Act, or any strict requirement of the contents to be stipulated therein. This was noticed by this Court in Milkfood Ltd. v. GMC Ice Cream (P) Ltd. [(2004) 7 SCC 288 : (2004) 121 Comp Cas 581], wherein it was held that Section 21 of the 1996 Act must be construed in tune with its analogous counterpart provisions of Article 21 of the Uncitral Model Law read with Article 3 of the Uncitral Arbitration Rules and Section 14 of the English Arbitration Act, 1996 wherein at least the form of notice and strict adherence thereto has become redundant due to the absence of any specific form or requirement of such notice. The relevant observations read as under: (SCC p. 314, para 69)

"69. The Uncitral Model Rules of Arbitration vis-à-vis provision of Section 14 of the English Arbitration Act, 1996 must be construed having regard to the decisions of the English courts as also this Court which addressed the form of notice to be given in order to commence the arbitration for the purpose of Section 34(3) of the Limitation Act. By reason of Section 14, merely the form of notice and strict adherence thereto has become redundant, as now in terms of Section 14 of the Arbitration Act there is otherwise no specific requirement as to the form of notice subject to any contract operating in the field. (See Paras 5-020, 5-027 and 5-028 of Russell on Arbitration, 22nd Edn.) Section 21 of the 1996 Act



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must be construed accordingly. It defines the moment of the commencement of arbitral proceedings."

167. Similarly, sub-section (2) of Section 23, which enables the respondent to make a counterclaim or plead set-off, does not envisage any requirement that such counterclaim or set-off must be in respect of or correspond to the "particular dispute" in terms of Section 21 of the 1996 Act, thus, suggesting the legislature's intention to give a wide import to the term "claim" and by extension "counter-claim". In order to further obviate any confusion in respect of what claims can be raised, Section 23 sub-section (3) goes one step ahead and stipulates that, unless agreed otherwise by the parties, any party may amend or supplement its "claim" during the course of the arbitral proceedings, and further, that such amendment or supplement may be rejected only if the Arbitral Tribunal considers it inappropriate for one and only one reason, that being, the delay in making or seeking such amendment or supplement. What can be discerned from the above is that there is no restriction whatsoever, in the plain words of Section 23 of the 1996 Act, which would be indicative of an inhibition in raising those claims or counter-claims, etc. that have no bearing with the notice of invocation under Section 21 of the 1996 Act.

.....

171. Remarkably, Milkfood [Milkfood Ltd. v. GMC Ice Cream (P) Ltd., (2004) 7 SCC 288 : (2004) 121 Comp Cas 581] observes that both under Article 21 of the



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Uncitral Model Law and by extension Section 21 of the 1996 Act, what is necessary in a notice or request under the said provision, is the indication that the claimant seeks arbitration of the dispute. This Court consciously did not hold that such indication must be of what all disputes is sought to be referred to arbitration. The relevant observations read as under: (SCC pp. 301-302, para 27)

"27. Article 21 of the Model Law which was modelled on Article 3 of the Uncitral Arbitration Rules had been adopted for the purpose of drafting Section 21 of the 1996 Act. Section 3 of the 1996 Act provides for as to when a request can be said to have been received by the respondent. Thus, whether for the purpose of applying the provisions of Chapter II of the 1940 Act or for the purpose of Section 21 of the 1996 Act, what is necessary is to issue/serve a request/notice to the respondent indicating that the claimant seeks arbitration of the dispute."

(emphasis supplied)

19. In **Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd. and Others** [2025 SCC OnLine SC 806] it was held thus:

"45. The decision in Alupro Building Systems [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd., 2017 SCC OnLine Del 7228] has been relied on by the High Court in its impugned order to hold that the notice under Section 21 is a mandatory requirement before a person can be



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made party to arbitral proceedings.

46. While we agree with the decision in *Alupro Building Systems* [2017 SCC OnLine Del 7228] insofar as holding that the notice under Section 21 is mandatory, unless the contract provides otherwise, we do not agree with the conclusion that non-service of such notice on a party nullifies the Arbitral Tribunal's jurisdiction over him. **The purpose of the Section 21 notice is clear – by fixing the date of commencement of arbitration, it enables the calculation of limitation and it is a necessary precondition for filing an application under Section 11 ACA. The other purposes served by such notice – of informing the respondent about the claims, giving the respondent an opportunity to admit and contest claims and raise counterclaims, and to object to proposed arbitrators – are only incidental and secondary.** We have already held that the contents of the notice do not restrict the claims, and any objections regarding limitation and maintainability can be raised before the Arbitral Tribunal, and the ACA provides mechanisms for challenging the appointment of arbitrators on various grounds. Hence, while a Section 21 notice may perform these functions, it is not the primary or only mechanism envisaged by the ACA.”

[Emphasis added]

20. In **Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.** [(2017) SCC OnLine Del 7228], the Delhi High Court had held as under:



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"30. Considering that the running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law."

21. The Bombay High Court in **M/S D.P Construction v. M/S Vishvaraj Environment Pvt. Ltd.**[(MISC. CIVIL APPLN. (ARBN.) NO. 31 OF 2021)] held as under:-

*"21. In the case of **Veena wd/o Naresh Seth v. Seth Industries Ltd.** (supra), this Court has held that even if the notice invoking arbitration does not state the claims proposed to be made in the reference, it would be necessary in the notice to indicate disputes that had arisen and that the arbitration clause was being invoked. Therefore, even though the learned counsel for the applicant is justified in relying upon judgment of the Hon'ble Supreme Court rendered in the case of **Major (Retired) Inder Singh Rekhi v. Delhi***



Development Authority (*supra*) as to what could be said to be a dispute between the parties and that such a dispute was clearly manifested by the material on record in the present case, it would still be necessary to examine as to whether the applicant had, in fact, invoked arbitration as contemplated under section 21 of the said Act, upon failure of which, it was entitled to approach this Court under section 11(6) of the said Act. It is crucial that this Court can exercise jurisdiction for appointment of Arbitrator under section 11(6) of the said Act, only if the procedure agreed between the parties has failed.

22. It becomes clear from the position of law pertaining to section 21 of the said Act, that invocation of arbitration has to be in clear terms, as specified in the said provision, and that mere reference to claims and disputes sought to be raised by a party and existence of an arbitration clause would not itself mean that arbitration has indeed been invoked by such a party. Therefore, it becomes necessary to examine in detail the legal notice issued by the applicant in the present case and the reply sent by the non-applicant. If it can be said that the legal notice sent by the applicant amounted to invoking the arbitration clause and seeking reference of the dispute to arbitration, failure on the part of the non-applicant to respond to the same, would certainly entitle the applicant to maintain the present application filed under section 11(6) of the said Act before this Court.

.....
26. In absence of the agreed procedure being triggered by either party for reference of the dispute



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to arbitration, the question of failure thereof would not arise and hence, the precondition for invoking section 11(6) of the said Act for approaching this Court was not satisfied. This aspect goes to the very root of the matter and hits at the very jurisdiction of this Court to entertain the application for appointment of Arbitrator, filed by the applicant under section 11(6) of the said Act. The non-applicant is justified in contending that therefore, the present application deserves to be rejected only on the said limited ground. The learned counsel for the applicant is not justified in contending that the legal notice dated 07/10/2020, can be constructively read as a notice invoking arbitration under section 21 of the said Act and that the preliminary objection is hyper-technical in nature. This is for the reason that there are legal consequences to invoking of arbitration as contemplated under section 21 of the said Act, including the aspect of limitation, and other such purposes which have been enumerated in the above quoted judgments of this Court and the Delhi High Court. Therefore, merely because there is an arbitration clause, it cannot be said that this Court ought to exercise jurisdiction under section 11(6) of the said Act."

22. Coming back to the facts of the instant case, according to the applicants, Annexure A3 communication by e-mail is the request under Section 21. The said communication is pasted hereunder:



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"Sajid Pasha <spn@formexx.com>
at 18:03
To: Rehna Nasir <rehnanasir@gmail.com>
Cc: zarina formexx<zarina@formexx.com>, ABDUNNASIR
P<abdunnasirp@hotmail.com>

29 September 2023

Dear Nasir & Rehna,

Waiting for your Arbitrator suggestion. Please don't prolong further..

If you have no suggestions, I hereby suggest **Eng. K.M. Imbichali M.Tech** as he is known to both of us. Please confirm. It can be processed in a legal way, so that all get this issue settled with justice to all partners.

With thanks and regards,

SAJID PASHA
FORMEXX
09895005546"

23. There is no mention in the above communication about any particular dispute. There is no reference to any specific agreement or arbitration clause. No definite demands or specifics of the disputes are mentioned. Question is as to whether the above communication can be treated as a request under Section 21 of the Act.

24. It is to be noted that both counsel for the respondents pointed out that according to the applicants, Annexures A1 and A2 are two partnership deeds to which they,



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along with Respondents 1 and 2, are signatories. Both counsel therefore submitted that in the peculiar facts of this case, the above communication cannot be considered a proper request under Section 21, as it makes no specific reference to the arbitration clause invoked by the applicants. In other words, there was no indication in the communication as to whether they were relying on Annexure A1 or A2. I find considerable force in this contention.

25. In view of the principles laid down in the various precedents referred above, it can be safely concluded that though no particular form or ingredients are prescribed for a request under Section 21 of the Act, it must contain minimum particulars of the '*particular dispute*' as mentioned in Section 21 of the Act. The Hon'ble Supreme Court in **Bharat Sanchar Nigam Ltd.** (*supra*), laid down in paragraph 51 of the judgment that there must be a clear notice invoking arbitration, setting out the "*particular dispute (including claims/amounts)*" which must be received by the other party within a period of 3 years



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from the rejection of a final bill, failing which, the time bar would prevail.

26. The Delhi High Court, in the case of **Alupro Building Systems Pvt. Ltd. (Supra)**, held that Section 21 performs an important function of forging consensus on several aspects, such as the scope of the disputes, the determination of which disputes remain unresolved, which disputes are time-barred, the identification of claims and counterclaims, and, most importantly, the choice of arbitrator. The said judgment was considered by the Hon'ble Supreme Court in **Adavya Projects Pvt. Ltd. (supra)**. The Hon'ble Supreme Court disagreed with the conclusion in **Alupro Building Systems Pvt. Ltd. (supra)**, that non-service of notice on a party nullifies the arbitral tribunals jurisdiction over him. Nonetheless, the observations of the Delhi High Court regarding the purpose of the request under Section 21 were noted and it was held that the purpose of the Section 21 notice is that it enables the calculation of limitation and it is a necessary precondition for filing an application under



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Section 11. The other purposes served by such notice — of informing the respondent about the claims, giving the respondent an opportunity to admit and contest claims and raise counterclaims, and to object to proposed arbitrators were held only incidental and secondary. The observations in **Adavya Projects Pvt. Ltd** were mentioned by the Hon'ble Supreme Court in **ASF Buildtech Private Limited** (*supra*) .

27. The purpose of the request under Section 21 of the Act is clear from the law laid down by the Hon'ble Supreme Court in **Adavya Projects Pvt. Ltd.** and in **ASF Buildtech Private Limited.** The prime purpose was held to be the fixation of the date of commencement of arbitration. It marks a point in the time scale for the determination of various time elements in an arbitration. A request under Section 21 enables the calculation of limitation and it is a necessary pre-condition for filing an application under Section 11 of the Act. Therefore, the law is now well settled that the significance and prime object of a request under Section 21 is to trigger the arbitration and to



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mark the point of time of commencement of arbitral proceedings which is crucial for calculating limitation. Nonetheless, as held in **Bharat Sanchar Nigam Limited and Another**, setting out the *particular dispute* in the request under S.21 would be essential as otherwise it will fail to precisely mark the point of time for calculating time elements for want of clarity regarding the dispute.

28. Contents of Annexure -A3 communication in the case at hand needs to be analysed, bearing in mind the above position of law. It contains a request to the respondents 1 and 2 to give their suggestion about the arbitrator. Further, a person was suggested as an arbitrator, in case the respondents 1 and 2 had no other suggestion. There is no mention, as noted at the outset, about any particular dispute. As pointed out by the learned counsel appearing for the respondents, there are two different partnership deeds executed by the applicants and respondents 1 and 2, Annexures – A1 and A2. Both contain arbitration clauses. Disputes have arisen with respect to both



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deeds. However, the first applicant did not make any mention in Annexure A3 about the arbitration clause invoked. In the facts and circumstances of this case, wherein serious contentions with regard to limitation are raised by the respondents, in my view, Annexure-A3 does not satisfy the prime object of the request/notice under Section 21 for want of clarity regarding the dispute sought to be resolved. With no specific arbitration clause being pointed out and no particular dispute being mentioned in it, the date of receipt of Annexure-A3 cannot be considered as the point of time of commencement of arbitration with respect to any particular dispute between the parties. It failed in marking the point of commencement of arbitral proceedings. In the facts and circumstances of the instant case, lack of vital details in Annexure-A3 is fatal. Hence, I find that Annexure-A3, being too vague, cannot be considered as a proper and valid request under Section 21 of the Act.

29. Therefore, I hold that the contention of the respondents that this arbitration request is premature for want



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of a proper request under Section 21 of the Act is correct. It is therefore unnecessary to consider the other contentions of the parties.

In the result, arbitration request is rejected.

Sd/-

**S.MANU
JUDGE**

skj



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APPENDIX OF AR NO. 8 OF 2025

PETITIONER'S ANNEXURES

- | | |
|--------------------|---|
| Annexure A1 | A TRUE COPY OF THE PARTNERSHIP DEED DATED 05/02/2005 EXECUTED BETWEEN THE APPLICANTS AND THE RESPONDENTS 1 AND 2 CONSTITUTING THE FIRM 'M/S ROOFS AND SHADES' |
| Annexure A2 | A TRUE COPY OF THE PARTNERSHIP DEED DATED 06/04/2011 EXECUTED BETWEEN THE APPLICANTS AND THE RESPONDENTS 1 AND 2 CONTINUING THE PARTNERSHIP FIRM CONSTITUTED AS PER PARTNERSHIP DEED DATED 05/02/2005 WITH NAME 'M/S ROOFS AND SHADES STRUCTURAL SOLUTIONS' |
| Annexure A3 | A TRUE COPY OF THE E-MAIL DATED 29/09/2023, SEND BY THE APPLICANTS TO THE RESPONDENTS 1 AND 2 SUGGESTING ENGINEER MR. K.M IMBICHALI AS THE ARBITRATOR |
| Annexure A4 | A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS 1 AND 2 IN THE FILE OF CMA (ARB) NO.1/2024 BEFORE HON'BLE COMMERCIAL COURT, KOZHIKODE |
| Annexure A5 | A TRUE COPY OF THE SO CALLED PARTNERSHIP DEED DATED 01/10/2013 SAID TO HAVE BEEN EXECUTED BETWEEN THE RESPONDENTS 1, 2, 7 AND 10 WITH RESPECT TO 'ROOFS AND SHADES SPACE STRUCTURES' |
| Annexure A6 | A TRUE COPY SO CALLED PARTNERSHIP DEED DATED 06/11/2015 SAID TO HAVE BEEN EXECUTED BETWEEN THE RESPONDENTS 1 TO 4 AND 6 WITH RESPECT TO 'ROOFS AND SHADES STRUCTURALS' |
| Annexure A7 | A TRUE COPY OF THE SO CALLED PARTNERSHIP DEED DATED 06/01/2014 SAID |



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- TO HAVE BEEN EXECUTED BETWEEN THE RESPONDENTS 1,2,3,4,5,7 AND 8 WITH RESPECT TO 'ROOFS AND SHADES STRUCTURAL OPTIMIZERS'
- Annexure A8 A TRUE COPY OF THE SO CALLED PARTNERSHIP DEED DATED 26/03/2019 SAID TO HAVE BEEN EXECUTED BETWEEN THE RESPONDENTS 1,2 AND 3 WITH RESPECT TO 'ROOFS AND SHADES BUILDERS'
- Annexure A9 A TRUE COPY OF THE SO CALLED PARTNERSHIP DEED DATED 07/10/2022 IS SAID TO HAVE BEEN EXECUTED BETWEEN THE RESPONDENTS 1,2,3,6 AND 9 WITH RESPECT TO 'ROOFS AND SHADES INFRATECH'
- Annexure A10 A TRUE COPY OF THE SO CALLED PARTNERSHIP DEED DATED 07/10/2022 SAID TO HAVE BEEN EXECUTED BETWEEN THE RESPONDENT 1 TO 3, 6 AND 9 WITH RESPECT TO 'ROOFS AND SHADES PEB'

RESPONDENT'S ANNEXURES

- Annexure R1 (C) Copies of the NIL returns filed by M/s. Roofs and Shades Structural Solutions from 2018 to 2023
- Annexure R1 (A) copy of the screenshot obtained from the Kerala Commercial Taxes Department evidencing the TIN number and the cancellation date for the VAT registration of the Partnership firm M/s. Roofs and Shade
- Annexure R1 (B) copy of the screenshot obtained from the Kerala Commercial Taxes Department evidencing the TIN number for the VAT registration of the firm Roofs and Shades Structural Solutions
- Annexure R1 (D) true copy of the Order dated 18.10.2024 in O.P.(C) No. 2338 of 2024 passed by this Hon'ble Court



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Annexure R1 (E)

true copy of the Judgment dated
19.03.2024 in O.P.(C) No. 314 of 2024
passed by this Hon'ble Court