

Reserved On : 20/03/2026
Pronounced On : 10/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/PETN. UNDER ARBITRATION ACT NO. 23 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE D.N. RAY

Approved for Reporting	Yes	No
	✓	

SURESH ISHAWRLAL DHRUV
 Versus
J N EDUCATION SOCIETY & ANR.

Appearance:

ARJUN R. SHETH, ADVOCATE WITH MS. PRITHA MITRA, ADVOCATE
 (7589) for the Petitioner(s) No. 1
 MS. PRIYAL PARIKH, ADVOCATE FOR MR. MANYA N. ANJARIA(13475)
 for the Respondent(s) No. 2
 MR. ANSHIN DESAI, SR.ADVOCATE FOR MR. VAIBHAV V
 GOSWAMY(9019) for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

INDEX TO THE JUDGMENT	
APPEARANCE ON BEHALF OF THE PARTIES.....	PARA 1
OUTLINE OF THE PETITION.....	PARA 2 TO 2.2
FACTUAL MATRIX.....	PARA 3 TO 3.10
PRAYERS AND RELIEFS SOUGHT.....	PARA 4
ARGUMENTS OF THE PETITIONER.....	PARA 5 TO 5.7
ARGUMENTS OF THE RESPONDENT NO. 1.....	PARA 6 TO 6.6
ARGUMENTS OF THE RESPONDENT NO. 2.....	PARA 7 TO 7.7
REJOINDER.....	PARA 8 TO 8.5
ANALYSIS.....	PARA 9 TO 12
CONCLUSION.....	PARA 13 TO 15

APPEARANCE ON BEHALF OF THE PARTIES:-

1. Heard Mr. Arjun R. Sheth, learned advocate with Ms. Pritha Mitra, learned for the petitioner and Mr. Anshin Desai, learned Senior Advocate for Mr. Vaibhav V. Goswamy appearing for the respondent no. 1 and Ms. Priyal Parikh, learned advocate for Mr. Manya N. Anjaria appearing for the respondent No. 2.

OUTLINE OF THE PETITION:-

2. For the sake of brevity, the broad outline of the petition is as follows:

2.1 The present petition has been instituted under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**the Act, 1996**") seeking appointment of an arbitrator for adjudication of disputes alleged to have arisen between the parties in connection with a Lease Agreement dated 01.08.2017, registered on 09.08.2017 vide Registration No. 5899 of 2017.

2.2 The dispute pertains to the alleged non-payment of rent under the said lease agreement in respect of immovable property bearing Revenue Survey Nos. 287/1 and 287/3, T.P. Scheme No. 1/B, Bodakdev, Final Plot No. 62, admeasuring 522.96 sq. metres with a constructed area of 922.20 sq. metres situated behind AIS School, Bodakdev, Ahmedabad. The petitioner has also raised claims regarding repayment of certain amounts alleged to have been advanced to respondent No. 2 in relation to transactions concerning the said property.

FACTUAL MATRIX:-

3. Material facts of the case, *in nuce*, may be stated as under:-

3.1 The petitioner and the respondent No. 2 are stated to be related to each other. Respondent No. 2 is stated to be the Managing Trustee of respondent No. 1, namely J.N. Education Society, a charitable trust based in Ahmedabad. According to the petitioner, respondent No. 2 approached him for financial assistance in connection with the aforesaid property, which was allegedly under mortgage with Allahabad Bank. It is the petitioner's case that respondent No. 2 requested him to

purchase the property and make substantial payments towards the proposed transaction.

3.2 Pursuant thereto, the petitioner purchased the aforesaid property from respondent No. 2 by a registered Sale Deed dated 08.08.2017 bearing Registration No. 5855 of 2017 for a stated consideration of Rs.10 crores. Thereafter, the petitioner executed a Lease Agreement dated 01.08.2017, which was subsequently registered on 09.08.2017, in favour of respondent No. 1 trust. Under the said agreement, the property was leased to respondent No. 1 for a period of ten years and rent became payable in terms thereof.

3.3 The petitioner asserts that subsequent to the execution of the lease, he advanced further amounts to respondent No. 2 from time to time. It is alleged that sums of Rs.25 lakhs each were advanced on 31.03.2018 and 16.04.2018 respectively to enable respondent No. 2 to meet obligations pertaining to the property, including payment of rent. The petitioner further claims to have advanced Rs.20 lakhs on 28.10.2021 and Rs.1.05 crores on 12.11.2021 to respondent No. 2 for the

purpose of facilitating a proposed buy-back of the property and meeting related expenses. Thereafter, by a registered Sale Deed dated 18.12.2021, the petitioner transferred the property back to respondent No. 2 and her daughter, Parita Atul Parekh.

3.4 It is the case of the petitioner that substantial rent remained unpaid under the Lease Agreement during the period the property stood leased to respondent No. 1. Consequently, the petitioner addressed a communication dated 01.12.2022 to respondent No. 1 claiming unpaid rent amounting to Rs.2,00,08,000/- together with interest up to 30.11.2022, aggregating to Rs.52,13,141/-. Subsequently, a meeting was convened on 03.01.2023 between the petitioner, his son Ketan Dhruv, Mr. Minesh Shah, trustee of respondent No. 1 and Ms. Vidhi Shah, Chartered Accountant. Minutes of the meeting were recorded. As per the petitioner, the parties arrived at a settlement regarding the alleged rental dues. It was agreed that, against the claimed outstanding rent of Rs.2,00,08,000/-, the petitioner would accept a sum of Rs.1,00,04,000/- in full and final settlement and waive the

interest component. The minutes further contemplated a schedule for repayment commencing from January 2023, under which respondent No. 1 was to make payments in instalments, including payment of Rs.25 lakhs in the first month of each quarter and Rs.10 lakhs during the remaining months until the entire amount stood repaid.

3.5 The petitioner contends that, in terms of the aforesaid condition, the respondent No. 1 Trust was obligated to remit the entire agreed consideration in accordance with the following payment schedule:-

<i>Month of payment.</i>	<i>Amount</i>
<i>January 2023</i>	<i>Rs. 25,00,000/-</i>
<i>Feb 2023.</i>	<i>Rs. 10,00,000/-</i>
<i>March 2023.</i>	<i>Rs. 10,00,000/-</i>
<i>April 2023.</i>	<i>Rs. 25,00,000/-</i>
<i>May 2023.</i>	<i>Rs. 10,00,000/-</i>
<i>June 2023.</i>	<i>Rs. 10,00,000/-</i>
<i>July 2023</i>	<i>Rs. 10,04,000/-</i>

3.6 It is the case of the petitioner herein that he has on only received following amount from respondent no. 1 trust:-

<i>Jan 6th, 2023</i>	<i>Rs. 25,00,000/-</i>
<i>Feb 1st, 2023,</i>	<i>Rs. 10,00,000/-</i>
<i>April 13th, 2023</i>	<i>Rs. 25,00,000/-</i>

3.7 The minutes of meeting dated 03.01.2023 also dealt with

repayment of loans allegedly advanced by him to respondent No. 2 in relation to the property transactions. It is the case of the petitioner that a total amount of Rs.1.75 crores was agreed to be repaid by respondent No. 2 on or before 30.06.2023. It is alleged that only a sum of Rs.60 lakhs came to be remitted towards such liability. The petitioner has further relied upon certain electronic communications allegedly exchanged between the parties. In particular, reference is made to a text communication dated 22.03.2023 from Mr. Minesh Shah, wherein the outstanding dues were allegedly acknowledged and an assurance was stated to have been given that all dues would be cleared by 30.06.2023. According to the petitioner, the amounts agreed under the minutes of meeting were not paid within the stipulated period.

3.8 In these circumstances, a legal notice dated 16.08.2023 was issued by the petitioner to respondent No. 1. By the said notice, the petitioner treated the settlement recorded in the minutes of meeting dated 03.01.2023 as terminated and called upon respondent No. 1 to pay the outstanding rent of Rs.2,00,08,000/- together with interest at the rate of 18% per annum in accordance with the Lease Agreement. The notice

further stated that in the event of non-payment within seven days, the same would be treated as invocation of arbitration under Clause 24 of the Lease Agreement. The petitioner also proposed the name of the sole arbitrator and called upon respondent No. 1 to convey its consent within fifteen days. According to the petitioner, no reply was received to the aforesaid notice. The petitioner therefore treated the arbitration clause as having been invoked.

3.9 It is the case of the petitioner that despite certain payments received after issuance of the notice, the entire claim remained unsatisfied. It is alleged that outstanding rent dues remained payable by respondent No. 1. Separately, by another notice dated 16.08.2023, the petitioner demanded repayment of an amount of Rs.2,24,05,865/- from respondent No. 2 towards loans allegedly advanced in connection with the property transactions. Thereafter, respondent No. 2 is stated to have paid Rs.50 lakhs on 14.09.2023. Further, a sum of Rs.22.50 lakhs was allegedly received from respondent No. 1 on 03.10.2023 towards rent dues.

3.10 It is the case of the petitioner that the petitioner issued a further notice dated 11.10.2023 invoking arbitration against respondent No. 2 as well. By the said notice, respondent No. 2 was called upon to pay the alleged outstanding loan amount of Rs.1,74,05,865/- together with interest at the rate of 18% per annum from the date of advancement of the loans until realization. Even on proposing the name of the sole arbitrator, the petitioner asserts that no response was received from either of the respondents to the notices dated 16.08.2023 and 11.10.2023. According to the petitioner, despite expiry of the statutory period after invocation of the arbitration clause, the disputes remained unresolved.

PRAYERS AND RELIEFS SOUGHT:-

4. It is in the aforesaid background that the present petition has been filed seeking appointment of an arbitrator for adjudication of the disputes. The petitioner claims that, after accounting for payments allegedly received, a sum of Rs.1,13,78,222/- remains outstanding towards rent from respondent No. 1 and a sum of Rs.1,74,05,865/- remains outstanding towards loans allegedly advanced to respondent

No. 2, aggregating to a total claim of Rs.2,87,84,087/-, together with interest as claimed in the petition. The prayers and reliefs sought in the petition are as under:-

“(A) To appoint Justice C.L Soni (Retd.) of the Gujarat High Court as the sole arbitrator to adjudicate and decide all the disputes between the parties;

Alternatively

(AA) To appoint any other person as is deemed suitable and appropriate by this Hon'ble Court to adjudicate and decide all the disputes between the parties; and

(B) Pass any such other and further orders as may be deemed just and proper in the facts and circumstances of the present case in the interest of Justice and Equity.”

ARGUMENTS OF THE PETITIONER:-

5. Mr. Arjun R. Sheth, learned advocate appearing for the petitioner, submitted that a Sale Deed dated 01.08.2017 came to be executed between the petitioner and respondent No. 2 for a total consideration of Rs.10,00,00,000/-. It was further contended that, contemporaneously with the execution of the Sale Deed, the petitioner leased the subject property to respondent No. 1 under a Lease Agreement dated 01.08.2017 for a period of ten years. Under the terms of the said Lease Agreement, respondent No. 1 agreed to pay monthly rent of

Rs.8,00,000/- to the petitioner throughout the lease period of ten years. The relevant clauses of the Sale Deed read as:

“That, the buyer herein contacted the vendor herein to buy the said property and after making discussions, the vendor herein had decided to sell and convey the said property to the buyer, in consideration of Rupees 10,00,00,000/- (Rupees Ten Crore Only). Accordingly, the Vendor have absolutely sold and conveyed the said property to the buyer, by receiving the full amount of consideration from the buyer as per the details mentioned herein by these presents. The physical, vacant and peaceful possession of the said property is handed over to the buyer on today.

Details of Payment

Sr. No.	Amount	Mode of Payment	Remarks
1	8,00,00,000/-	Through RTGS on 21-07-2017	
2	2,00,00,000	Through Cheque no. 069627 (Karnataka Bank) dated 02-08-2017	Cheque of Rs. 1,90,00,000/- and tax deducted at source of Rs. 10,00,000/-
	10,00,00,000/-		

Accordingly, the total consideration of Rupees 10,00,00,000/- (Rupees Ten Crore only) is fully paid by the buyer to the vendors and the vendors acknowledge the receipt thereof and release you from liabilities thereof and the vendor has handed over the physical, vacant and peaceful possession of the said property more particularly described in the schedule written hereunder to the Buyer along with available undivided rights of easements and all common facilities available.”

5.1 The Arbitration clause (**Clause No. 24**) of the Lease Agreement dated 01.08.2017, reads as under:-

“24. All dispute(s) between the parties arising out of or under this Lease Agreement shall be resolved by way of arbitration to be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.”

5.2 Mr.Sheth, learned advocate for the petitioner, submitted that the Sale Deed and the Lease Agreement formed part of a single composite commercial transaction and, therefore, all parties connected with such transaction could be subjected to arbitral proceedings, notwithstanding the fact that they were neither served with a notice invoking arbitration nor impleaded in the proceedings under Section 11 of the Act, 1996. According to the learned counsel, in appropriate cases involving composite transactions, a statement of claim may be maintained directly against such parties.

5.3 It was further contended that the petitioner had advanced certain amounts to respondent No. 2 by way of financial assistance in relation to the subject property on which respondent No. 1 was operating a school. The transactions pertaining to such financial assistance, according

to the petitioner, were intrinsically interlinked with and formed an integral part of the Lease Agreement between the petitioner and respondent No. 1. It was therefore submitted that the loan transactions and the lease transaction constituted a composite and interconnected set of agreements giving rise to a common commercial relationship.

5.4 In support of the aforesaid submissions, reliance was placed upon the judgment of the Hon'ble Apex Court in the case of ***Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. & Ors.***, reported in **(2013) 1 SCC 641**, wherein the Hon'ble Apex Court recognized the principle that, in certain circumstances involving composite transactions and a direct nexus between multiple agreements, even non-signatories may be referred to arbitration.

"73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The Court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the Court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the

Court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed."

5.5 Mr. Sheth, learned advocate, further placed reliance upon the decision of the Hon'ble Apex Court in ***Adavya Projects Pvt. Ltd. v. M/s. Vishal Structurals Pvt. Ltd.***, reported in ***2025 SCC OnLine SC 806***. It was submitted that, in the said judgment, the Hon'ble Apex Court comprehensively considered and elucidated the legal position with regard to:-

- (i) whether service of a notice invoking arbitration under Section 21 of the Act, 1996 and impleadment of a person in proceedings under Section 11 seeking appointment of an arbitrator are mandatory preconditions for an arbitral tribunal to assume jurisdiction over such person; and
- (ii) the circumstances in which an arbitral tribunal may implead a person to the arbitral proceedings.

5.6 Relying upon the decision in the case of ***Adavya Projects*** (Supra), Mr. Sheth contended that the absence of a notice under Section 21 of the Act, 1996 or non-joinder of a person in proceedings under Section 11 would not, by itself,

preclude the arbitral tribunal from exercising jurisdiction over such person, provided the facts of the case otherwise justify such exercise of jurisdiction in accordance with law. It was further submitted that the said judgment delineates the principles governing the impleadment of parties in arbitral proceedings and supports the petitioner's contention that persons forming part of a composite transaction may, in appropriate cases, be subjected to the arbitral process. The relevant extracts from the ***Adavya Projects*** (Supra) are reproduced hereinbelow:-

“24. As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 of the ACA. Section 16 embodies the doctrine of kompetenz-kompetenz, i.e., that the arbitral tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement, and the scope of disputes referable to arbitration under the agreement. 23 Considering that the arbitral tribunal’s power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal’s jurisdiction must be determined against the touchstone of the arbitration agreement.

...

26. Therefore, as per the legal principles under the ACA as well as in international commercial arbitration, it is a foundational tenet that the arbitral tribunal’s jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, which must be recorded in an arbitration agreement. The proper judicial inquiry to decide a

jurisdictional issue under Section 16 as to whether a person/entity can be made a party to the arbitral proceedings will therefore entail an examination of the arbitration agreement and whether such person is a party to it. If the answer is in the affirmative, such person can be made party to the arbitral proceedings and the arbitral tribunal can exercise jurisdiction over him as he has consented to the same.

...

38. We must answer this question in the affirmative based on the following considerations. With respect to respondent no. 2, it was created under the LLP Agreement and the scope of its activities and the management of its business are set out in the LLP Agreement. It is pursuant to the objectives, purpose, and terms of the LLP Agreement that respondent no. 2 undertook the ITF Project, for which a Supplementary LLP Agreement and an MoU were also signed by the partners. Hence, it can be said that respondent no. 2 is carrying out its business and entering into contracts and dealings with third parties, such as undertaking the ITF Project, based on the terms of the LLP Agreement. Hence, by way of its conduct, respondent no. 2 has undertaken to be bound by the LLP Agreement and it is therefore bound by the arbitration clause contained therein. Similarly, respondent no. 3, who is the CEO of the LLP and is responsible for its administration and looking after its business derives his position and duties from Clause 8 of the LLP Agreement. His obligations as the CEO of the LLP are therefore derived under the LLP Agreement, and he is acting under this contract. Therefore, it can be said that respondent no. 3 is also bound by the arbitration clause contained in the LLP Agreement, not in his individual capacity but as the CEO of the LLP.

39. Therefore, in view of the fact that respondent nos. 2 and 3 have, through their conduct, consented to perform contractual obligations under the LLP Agreement, it is clear that they have also agreed to be bound by the arbitration agreement contained in Clause 40 therein. Since they are parties to the underlying contract and the arbitration agreement, the arbitral tribunal has the power to implead them as parties to the arbitration proceedings while exercising its jurisdiction under Section 16 of the ACA and as

per the kompetenz-kompetenz principle.

40. *Summary of Conclusions: Our legal analysis of the issues that we set out above, as well as our findings in the facts of the given appeal, can be stated as follows:*

*I. A notice invoking arbitration under Section 21 of the ACA is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11. However, **merely because such a notice was not issued to certain persons who are parties to the arbitration agreement does not denude the arbitral tribunal of its jurisdiction to implead them as parties during the arbitral proceedings.***

*II. **The purpose of an application under Section 11 is for the court to appoint an arbitrator, so as to enable dispute resolution through arbitration when the appointment procedure in the agreement fails. The court only undertakes a limited and prima facie examination into the existence of the arbitration agreement and its parties at this stage.***

Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue.

*III. The relevant consideration to determine whether a person can be made a party **before** the arbitral tribunal is if such a person is a party to the arbitration agreement. The arbitral tribunal must determine this jurisdictional issue in an application under Section 16 by examining whether a non-signatory is a party to the arbitration agreement as per Section 7 of the ACA.*

*IV. In the facts of the present appeal, **respondent nos.***

2 and 3 are parties to the arbitration agreement in Clause 40 of the LLP Agreement despite being non-signatories. Their conduct is in accordance with and in pursuance of the terms of the LLP Agreement, and hence, they can be made parties to the arbitral proceedings."

ARGUMENTS OF THE RESPONDENT NO.1:-

6. Mr. Anshin Desai, learned Senior advocate appearing for the respondents, opposed the present petition and submitted that the disputes sought to be raised by the petitioner are not arbitrable and do not warrant reference to arbitration. At the outset, Mr. Desai, learned Senior advocate submitted that the arbitration clause contained in the Registered Lease Agreement dated 01.08.2017 no longer survives in view of the subsequent transactions between the parties. It was contended that the said Lease Agreement stood determined and ultimately culminated in the execution of a Registered Sale Deed dated 18.12.2021. Since the Sale Deed does not contain any arbitration agreement, the arbitration clause contained in the original Lease Agreement cannot be invoked by the petitioner.

6.1 It was further submitted by Mr. Desai, learned Senior advocate that upon execution of the Sale Deed dated

18.12.2021, all rights, title and interest in the subject property, including the existing and future leasehold rights, stood transferred. Consequently, the lessor, having alienated the property through a registered conveyance, ceased to have any enforceable rights under the Lease Agreement dated 01.08.2017 and, therefore, lacks the locus standi to invoke the arbitration clause contained therein.

6.2 Mr. Desai, learned Senior advocate further contended that the Agreement dated 03.01.2023 constitutes a novation of the original Lease Agreement dated 01.08.2017. According to him, the contractual relationship between the parties thereafter became exclusively governed by the Agreement dated 03.01.2023, which admittedly does not contain any arbitration clause. It was submitted that the obligations arising under the said Agreement have already been duly performed by the answering respondent and stand fully discharged. In the absence of an arbitration agreement in the subsequent contract, the present petition is not maintainable and is directly hit by the requirements of Section 7 of the Act, 1996.

6.3 Mr. Desai, learned Senior advocate further submitted that the petition is liable to be dismissed on the ground of misjoinder of parties. It was argued that respondent No. 2 is neither a signatory to the agreement containing the arbitration clause nor a party to the contractual arrangement sought to be enforced through arbitration. According to the Mr. Desai, learned Senior advocate, respondent No. 2 has no legal nexus with the arbitration agreement and cannot, therefore, be compelled to participate in arbitral proceedings. It was further submitted that, after execution of the Sale Deed dated 18.12.2021 and the subsequent Agreement dated 03.01.2023, the Lease Agreement dated 01.08.2017 ceased to operate and did not survive in law. Consequently, any contractual relationship that continued between the petitioner and respondent No. 1 was governed solely by the Agreement dated 03.01.2023.

6.4 Mr. Desai, learned Senior advocate also emphasized that the Agreement dated 03.01.2023 neither contains an arbitration clause nor reflects any intention on the part of the

parties to resolve future disputes through arbitration. It was submitted that the agreement does not provide that, in the event of any dispute or failure of its terms, the parties would revert to or remain governed by the arbitration clause contained in the Lease Agreement dated 01.08.2017. Accordingly, the arbitration agreement contained in the earlier contract cannot be imported into the subsequent arrangement.

6.5 In support of the above-stated arguments, Mr. Desai, learned Senior advocate has referred to and relied upon the following paragraphs of the below-mentioned decisions:-

1. ***BGM & M-RPL-JMCT (JV) v. Eastern Coalfields Limited***, reported in **2025 SCC OnLine SC 1471**:-

“15. The legal principles deducible from the above decision qua the scope of Referral Court’s power under Section 11 of 1996 Act are as follows:

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement.

(b) The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination.

(c) Referral Courts only need to consider one aspect to determine the existence of an

arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements.

(d) The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression “examination” does not connote or imply a laborious or contested inquiry.

(e) The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. Only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.

(f) Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award is bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.

16. What can be deduced from the above decision is that the Referral Court before appointing an arbitral tribunal will have to be *prima facie* satisfied that an arbitration agreement as contemplated in Section 7 of the 1996 Act exists. For this limited purpose it can scrutinize the documents relied upon by the parties in proof of its existence. Though the burden of proving the existence of arbitration agreement lies on the party seeking to rely on such agreement, only *prima facie* proof of its existence must be adduced before the Referral Court because the Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to its existence.

17. However, where professed arbitration agreement is found in an undisputed document, no trial or inquiry is required as to its existence. In such a situation, the Court would have to simply peruse the same to satisfy itself whether it, *prima facie*, fulfills the essential ingredients of an arbitration agreement as contemplated under Section 7 of the 1996 Act. But where the professed arbitration agreement is not contained in any one document and is to be inferred from two or more documents, such as exchange of letters or communications, parties may raise various pleas and place various documents to prove or disprove its existence. In such a scenario, if from the documents placed, existence of an arbitration agreement, as defined in Section 7, is *prima facie* made out, Referral Court, instead of undertaking a deeper probe or inquiry, should refer the matter to the arbitral tribunal. More so, because opinion of the Referral Court as to existence of an arbitration agreement is neither binding on the arbitral tribunal nor the Court dealing with the arbitral award.

18. In the instant case, the appellant is relying on just one clause in the contract which, according to the appellant, constitutes an arbitration agreement whereas according to the respondent, though the clause is not disputed, the same does not constitute an arbitration agreement. In such circumstances, the Court while exercising power under Section 11 would not have to hold a mini-trial or an enquiry into its existence rather a plain reading of the clause would indicate whether it is, or it is not, an arbitration

agreement, prima facie, satisfying the necessary ingredients of it, as required by Section 7 of the 1996 Act. In our view, such a limited exercise would not transgress the limit set out by sub-section (6-A)² of Section 11 of the 1996 Act as introduced by 2015 Amendment because the object of such an exercise (i.e., of examination) is to weed out frivolous claims for appointment of an arbitrator/reference to an arbitral tribunal.

19. In view of the above discussion, the argument of the appellant that Referral Court should straight away refer the matter and leave it to the arbitral tribunal to decide whether the arbitration agreement exists or not cannot be accepted. Issue (i) is decided accordingly.”

2. WAPCOS Limited v. Salma Dam Joint Venture and Another, reported in (2020) 3 SCC 169:-

“18. After cogitating over the erudite arguments of the counsel appearing for the respective parties and perusing the relevant records, including Arbitration Petition and the written submissions filed by the learned counsel, in our opinion, two principal issues need be answered in this judgment. First, whether on the date of presentation of Arbitration Petition, purportedly by SDJV through SSPPL on 15.12.2016, the arbitration agreement posited in Contract Agreement dated 09.03.2006 was in existence or subsisting and in force? Second, whether the Arbitration Petition filed in the name of SDJV through SSPPL, in law can be considered as having been properly and validly presented despite the express revocation of authority of SSPPL vide resolution passed by the Board of Directors of AIL on 21.09.2016 and duly communicated to SSPPL as well as WAPCOSL before 15.12.2016, as was granted to SSPPL in terms of JVA read with PoA including the Contract Agreement?

24. The moot question is: whether the AoA has the effect of undoing and abrogating the arbitration clause

predicated in the Contract Agreement? According to SDJV and SSPPL, the arbitration clause in the Contract Agreement remains intact and undisturbed. The parties continue to be bound by the same.

26. Despite such peremptory agreement and declaration by the parties, SDJV proceeded on an erroneous basis that the arbitration agreement in Contract Agreement still subsists and can be enforced by it. As aforesaid, neither SDJV nor SSPPL have disputed the execution of AoA nor it is even remotely suggested in the Arbitration Petition that the AoA was executed by them under duress or coercion. From the indisputable circumstances, it becomes amply clear that the stated terms and conditions set out in the AoA were agreed upon by all concerned primarily due to revision of cost of the project upto Rs. 872.67 crores which is 3.44 times the original project cost, (i.e. Rs. 253.84 crores) as the same was subject to clauses 1.2 and 1.3 of Section 011. Notably, this AoA was executed at a stage when substantial part of the works (around 97%) had already been completed. In our opinion, the terms and conditions specified in AoA leave no manner of doubt that the arbitration agreement has been done away with – as is manifest from the unambiguous declaration that balance pending claims of Contractor stand buried and that there will be no arbitration for the settlement of claims.

32. The third reason weighed with the High Court is that clause 20.6 of CoPA, providing for resolution of disputes by arbitration has not been modified by AoA. Indeed, clause 4 of the Contract Agreement makes reference to clause 20 of CoPA. However, on a fair reading of clause 4 of the Contract Agreement and in particular 4.1 as reproduced hitherto, it would be crystal clear that the substance of the provision is to provide for process of settlement of disputes and arbitration. Reference to clause 20 of CoPA is only to indicate that the procedure specified therein may have to be followed whilst taking recourse to that process. However, as the substantive provision regarding remedy of arbitration itself has been done away with in terms of clauses 1.2 and 1.3 of Section 01 of AoA, there was no need to modify clause 20 in CoPA dealing with

machinery provision. Thus, the remedy of arbitration cannot be resurrected merely because clause 20 of CoPA has not been expressly modified in the AoA. Hence, even this reason does not commend us.

34. *It is not unknown in commercial world that the parties amend original contract and even give up their claims under the subsisting agreement. The case on hand is one such case where the parties consciously and with full understanding executed AoA whereby the contractor gave up all his claims and consented to the new arrangement specified in AoA including that there will be no arbitration for the settlement of any claims by the contractor in future. Having chosen to adopt that path, it is not open to the contractor to now take recourse to arbitration process or to resurrect the claim which has been resolved in terms of the amended agreement, after availing of steep revision of rates being condition precedent. We may usefully rely on the underlying principle expounded by this Court in **Damodar Valley Corporation vs. K. K. Kar**, wherein the Court observed as follows:*

“7.....As the contract is an outcome of the agreement between the parties it is equally open to the parties thereto to agree, to bring it to an end or to treat it as if it never existed. It may also be open to the parties to terminate the previous contract and substitute in its place a new contract or alter the original contract in such 3 (1974) 2 SCR 240 @ 243244 a way that it cannot subsist. In all these cases, since the entire contract is put an end to, the arbitration clause, which is a part of it, also perishes along with it. Section 62 of the Contract Act incorporates this principle when it provides that if the parties to a contract agree to substitute a new contract or to rescind or alter it, the original contract need not be performed. Where, therefore, the dispute between the parties is that the contract itself does not subsist either as a result of its being substituted by a new contract or by rescission or alteration, that dispute cannot be referred to the arbitration as the arbitration clause itself would perish if the

avermment is found to be valid. As the very jurisdiction of the arbitrator is dependent upon the existence of the arbitration clause under which he is appointed, the parties have no right to invoke a clause which perishes with the contract."

35. In a subsequent decision in **National Insurance Company Limited vs. Boghara Polyfab Private Limited**, in paragraph 52 this Court held as follows:

"52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

(i) * * *

(ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration.

There cannot be any reference of any dispute to arbitration thereafter.

(iii) - (iv)

(v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The 4 (2009) 1 SCC 267 claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the

claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration."

36. Further, in **Nathani Steels Ltd. v. Associated Constructions**, this Court observed as follows:

"3.....Even otherwise we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the Arbitration clause. If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as per the settlement, it was not open to the respondent unilaterally to treat the settlement as non est and proceed to invoke the Arbitration clause. We are, therefore, of the opinion that the High Court was wrong in the view that it took."

3. **NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.**, reported in **(2024) 7 SCC 174:-**

“6. With the passage of time, certain disputes arose between the parties to the present lis & as a result, the respondent issued a notice dated 6th March 2020, in terms of Clause 3.34 of Section III Volume II of the Tender Documents (GCC), thereby invoking arbitration and further seeking consent of the appellant for the appointment of a former Judge of a High Court, as Sole Arbitrator.

11. Shri Gopal Sankaranarayanan, learned Senior Counsel appearing for the appellant submits that the High Court has grossly erred in invoking its power under Section 11(6) of the Arbitration Act. It is submitted that Clause 2.0 of the Letter of Intent dated 4th December 2006 (“L.O.I.” for short) though states that all terms and conditions as contained in the tender issued by the Damodar Valley Corporation (“DVC” for short) to the NBCC shall apply mutatis mutandis, it also makes it clear that where the terms and conditions have been expressly modified by the NBCC, the same would not be applicable. It is submitted that Clause 1.0 of the L.O.I. specifically states that various conditions, i.e., contractual, financial and technical mentioned in the documents contained therein shall be binding on the respondent for execution of works and they shall form part of the agreement. Clause 10.0 also states that the L.O.I. shall also form a part of the agreement.

17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

18. This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

19. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

20. It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.

22. No doubt that this Court in the case of **Inox Wind Limited vs Thermocables Limited** has distinguished the law laid down in the case of **M.R. Engineers and Contractors Private Limited** (supra). In the said case (i.e. **Inox Wind Limited**), this Court has held that though general reference to an earlier contract is not 2 (2017) 9 SCC 729 3 (2018) 4 SCC 281 4 (2018) 2 SCC 519 sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. Though this Court in the case of **Inox Wind Limited** (supra) agrees with the judgment in the case of **M.R. Engineers and Contractors Private Limited** (supra), it holds that general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the

arbitration clause. In the said case (i.e. Inox Wind Limited), this Court found that the purchase order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single-contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable.

23. The present case is a 'two-contract' case and not a 'single-contract' case.

28. It is thus clear that the intention between the parties is very clear. Clause 7.0 of the L.O.I. which also forms part of the agreement specifically provides that the redressal of the dispute between the NBCC and the respondent shall only be through civil courts having jurisdiction of Delhi alone. It is pertinent to note that Clause 7.0 of the L.O.I. specifically uses the word "only" before the words "be through civil courts having jurisdiction of Delhi alone".

29. As already discussed herein above, when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

30. We are of the considered view that the present case is not a case of 'incorporation' but a case of 'reference'. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."

4. M. R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., reported in (2009) 7 SCC 696:-

“9. The appellant also contended that having regard to section 7(5) of the Arbitration & Conciliation Act, 1996, the arbitration clause contained in the main contract between the PW Department and the respondent, constituted an arbitration agreement between the respondent and appellant on account of the incorporation thereof by reference in the contract between the appellant and respondent.

17. We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of the terms and conditions of a document, every term of such document, (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract.

18. On the other hand, where there is only a reference to a document in a contract in a particular context, the document will not get incorporated in entirety into the contract. For example if a contract provides that the specifications of the supplies will be as provided in an earlier contract or another purchase order, then it will be necessary to look to that document only for the limited purpose of ascertainment of specifications of the goods to be supplied. The referred document cannot be looked into for any other purpose, say price or payment of price. Similarly if a contract between X and Y provides that the terms of payment to Y will be as in the contract between X and Z, then only the terms of payment from the contract between X and Z, will be read as part of the contract between X and Y. The other terms, say relating to quantity or delivery cannot be looked into.

22. A general reference to another contract will not

be sufficient to incorporate the arbitration clause from the referred contract into the contract under consideration. There should be a special reference indicating a mutual intention to incorporate the arbitration clause from another document into the contract. The exception to the requirement of special reference is where the referred document is not another contract, but a Standard form of terms and conditions of a Trade Associations or Regulatory institutions which publish or circulate such standard terms & conditions for the benefit of the members or others who want to adopt the same.

33. An arbitration clause though an integral part of the contract, is an agreement within an agreement. It is a collateral term of a contract, independent of and distinct from its substantive terms. It is not a term relating to 'carrying out' of the contract. In the absence of a clear or specific indication that the main contract in entirety including the arbitration agreement was intended to be made applicable to the sub-contract between the parties, and as the wording of the sub-contract discloses only an intention to incorporate by reference the terms of the main contract relating to execution of the work as contrasted from dispute resolution, we are of the view that the arbitration clause in the main contract did not form part of the sub-contract between the parties."

6.6 Lastly, Mr. Desai, learned Senior advocate submitted that the present proceedings constitute an attempt on the part of the petitioner to assert claims contrary to the terms of the subsequent agreements despite having received and retained the consideration contemplated thereunder. On this basis, it was urged that the petition be rejected.

ARGUMENTS OF THE RESPONDENT NO.2:-

7. Ms. Priyal Parikh, learned advocate appearing for respondent No. 2, submitted at the outset that respondent No. 2 is admittedly neither a signatory to the Lease Deed executed between the petitioner and respondent No. 1 nor has she been a trustee of respondent No. 1 Trust for more than a year. Ms. Parikh, learned advocate submitted that there exists no privity of contract between the petitioner and respondent No. 2, and that respondent No. 2 is a complete stranger to the Lease Deed. It was further contended that the arbitration clause contained in the Lease Deed is of a restrictive nature, as it contemplates reference to arbitration only of disputes "*arising out of or under the Lease Deed*". According to Ms. Parikh, the said clause excludes disputes which are merely incidental, remotely connected, or arise out of any collateral arrangement between the parties.

7.1 It was further submitted that, insofar as respondent No. 2 is concerned, the essential requirements of a valid arbitration agreement as contemplated under Section 7 of the Act, 1996 are not satisfied. It was therefore argued that the

petitioner's request for appointment of an arbitrator in respect of the alleged disputes against respondent No. 2 deserves to be rejected.

7.2 Ms. Parikh, learned advocate further submitted that the loan transactions between the petitioner and respondent No. 2 and the transaction arising from the Lease Deed are distinct, independent and wholly unconnected with each other. It was contended that the alleged adjustment or repayment of an amount of Rs.1.75 crores towards the loans purportedly advanced by the petitioner to respondent No. 2 finds mention for the first time in the minutes of the meeting dated 03.01.2023. According to Ms. Parikh, respondent No. 2 was not even a participant in the said meeting. It was therefore argued that any claim sought to be raised against respondent No. 2 does not emanate from or arise under the Lease Deed, but is founded solely upon the minutes of the meeting dated 03.01.2023, which admittedly do not contain any arbitration agreement or arbitration clause.

7.3 Thereafter, it was submitted that even the conduct of the

petitioner demonstrates that the disputes sought to be raised against respondent No. 2 are not arbitrable. In this regard, it was pointed out that the first legal notice dated 16.08.2023 makes no reference whatsoever to arbitration. On the contrary, paragraph No. '10' thereof records that failure to repay the outstanding loan amount would entail civil as well as criminal consequences. It was submitted that only thereafter, by a subsequent notice dated 11.10.2023, the petitioner sought to invoke arbitration against respondent No. 2 on the premise that the loan transactions and the Lease Deed were interconnected. According to Mr. Parikh, the very fact that the petitioner subsequently attempted to invoke arbitration on the basis of alleged interconnectedness clearly indicates that the petitioner was conscious of the absence of any arbitration agreement governing the disputes with respondent No. 2. It was therefore contended that the plea of interconnectedness between the Lease Deed and the loan transactions was a mere afterthought, lacking any factual foundation, and was advanced solely with a view to improperly bring respondent No. 2 within the ambit of the arbitration proceedings.

7.4 Ms. Parikh, learned advocate, further submitted that before a non-signatory can be compelled to participate in arbitral proceedings arising out of an agreement executed between signatories, it is necessary to examine factors such as the conduct of the non-signatory, the mutual intention of the parties, the relationship between the signatory and non-signatory parties, the commonality of subject matter, and the interconnection of transactions as well as performance of the contract. In support of the said proposition, reliance was placed upon the decision of the Hon'ble Apex Court in ***Ajay Madhusudan Patel and Others v. Jyotindra S. Patel and Others***, reported in **(2025) 2 SCC 147**. It was submitted that, in the facts of the present case, there is no material on record to suggest that respondent No. 2 had any involvement whatsoever in the negotiation, execution or performance of the Lease Deed. Nor is there any evidence demonstrating any commonality of transactions between the petitioner and respondent No. 1 on the one hand, and the petitioner and respondent No. 2 on the other. It was therefore contended that the petitioner has failed to establish even a prima facie case indicating the existence of an arbitration agreement binding respondent No. 2, which is a sine qua non for the

exercise of jurisdiction under Section 11 of the Act, 1996.

7.5 Ms. Parikh, learned advocate, also placed reliance upon the decision of the Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises Pvt. Ltd.***, reported in ***2025 SCC OnLine SC 2746***. Referring to the said judgment, it was submitted that while exercising powers under Section 11 of the Act, 1996, the referral court is required to be prima facie satisfied not only about the existence of an arbitration agreement but also that a non-signatory sought to be impleaded is a "veritable party" to such agreement, on the basis of the factual matrix and material available on record. It was contended that the principles laid down in the said decision squarely apply to the facts of the present case and support the contention that respondent No. 2 cannot be compelled to arbitrate in the absence of any material demonstrating her status as a party to, or her connection with, the arbitration agreement. The relevant paragraphs of the decision in ***Hindustan Petroleum*** (supra), relied upon by the learned advocate, are reproduced hereinafter:

“23. The scope of jurisdiction of the referral court hearing a Section 11-Petition when faced with an issue of joinder of a non-signatory to the arbitration agreement has been lucidly set out by the five-judge Bench of this Court in Cox and Kings Limited vs. Sap India Private Limited and Another. Though said in the context of considering the Group of Companies doctrine, the said judgment has a great bearing for the present case. This Court, speaking through Chief Justice D.Y. Chandrachud, held as under:-

“84. It is presumed that the formal signatories to an arbitration agreement are parties who will be bound by it. However, in exceptional cases persons or entities who have not signed or formally assented to a written arbitration agreement or the underlying contract containing the arbitration agreement may be held to be bound by such agreement. As mentioned in the preceding paragraphs, the doctrine of privity limits the imposition of rights and liabilities on third parties to a contract. Generally, only the parties to an arbitration agreement can be subject to the full effects of the agreement in terms of the reliefs and remedies because they consented to be bound by the arbitration agreement. Therefore, the decisive question before the Courts or (2024) 4 SCC 1 tribunals is whether a non-signatory consented to be bound by the arbitration agreement. To determine whether a non-signatory is bound by an arbitration agreement, the Courts and tribunals apply typical principles of contract law and corporate law. The legal doctrines provide a framework for evaluating the specific contractual language and the factual settings to determine the intentions of the parties to be bound by the arbitration agreement. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1531.]

*

*

*

101. A formalistic construction of an arbitration agreement would suggest that the decision of a party to not sign an arbitration agreement should be construed to mean that the mutual intention of the parties was to exclude that party from the ambit of the arbitration agreement. Indeed, corporate entities have the commercial and contractual freedom to structure their businesses in a manner to limit their liability. However, there have been situations where a corporate entity

deliberately made an effort to be not bound by the underlying contract containing the arbitration agreement, but was actively involved in the negotiation and performance of the contract. The level of the non-signatory party's involvement was to the extent of making the other party believe that it was a veritable party to the contract, and the arbitration agreement contained under it. Therefore, the Group of Companies doctrine is applied to ascertain the intentions of the parties by analysing the factual circumstances surrounding the contractual arrangements. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1568.]

*

*

*

126. Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.

*

*

*

*169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. **In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and***

application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.”

(Emphasis supplied)

24. A careful reading of the above passage reveals that the referral court should be *prima facie* satisfied that there exists an arbitration agreement and as to whether the non-signatory is a veritable party. It further holds that even if the referral court *prima facie* arrives at the satisfaction that the non-signatory is a veritable party, the Arbitral Tribunal is not denuded of its jurisdiction to decide whether the non-signatory is indeed a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine. The Court further reinforces this proposition by holding that as to whether the non-signatory is bound would be for the Arbitral Tribunal to decide.

25. But what is primordial is that it should be demonstrated *prima facie* before the referral court that the non-signatory is a veritable party. According to the “*Illustrated Oxford Dictionary* (Revised Edition 2003)” the word:

“veritable” means “real; rightly so called (a veritable feast)”,

In substance, it means truly, genuinely or for all intended purposes. The referral court under Section 11 is not deprived of its jurisdiction from examining whether the non-signatory is in the real sense a party to the arbitration agreement. The answer thereof will depend on the facts and circumstances of each case after examining the documents pertaining thereto.

26. As was held in *In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 18992*, since the scope of referral court has to be within the parameter of Section 11 (6-A), the exercise carried thereon is “examination of the existence of an arbitration agreement”. While “examination” does not contemplate a laborious or a contested inquiry there is an obligation in the referral court to “inspect and scrutinize” the dealings, if any, between the parties. Para 167 of *Interplay* (supra) reads as under:-

“167. Section 11(6-A) uses the expression “examination of (2024) 6 SCC 1, the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in ***Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.***, (2005) 7 SCC 234]” (Emphasis supplied)

27. This principle was reiterated lucidly in *SBI General Insurance Company Limited vs. Krish Spinning*, wherein this Court (speaking through one of us, J.B. Pardiwala J.) observed 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.”

(Emphasis supplied)

28. Elaborating further as to the broad features to determine whether a party is a veritable party or not, this Court in **Ajay Madhusudan Patel and others vs. Jyotrindra S. Patel and others** (wherein one of us, J.B. Pardiwala J.) held as under:-

“81. The fact that a non-signatory did not put pen to paper may be an indicator of its intention to not assume any rights, responsibilities or obligations under the arbitration agreement. However, the courts and tribunals should not adopt a conservative approach to exclude all persons or entities who intended to be bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties. The mutual intent of the parties, relationship of a non-signatory with a signatory, commonality of the subject- matter, composite nature of the transactions and performance of the contract are all factors that signify the intention of the non-signatory to be bound by the arbitration agreement.”

29. *Applying the above law to the present set of facts, we find that even prima facie the respondent has not been able to establish that it was a veritable party to the contract between HPCL and AGC. HPCL has no privity at all with the respondent BCL. Admittedly, to the documentation between AGC and BCL, HPCL was not a party. After obtaining the contract from HPCL, AGC appears to have engaged BCL to supply, install, integrate, test, commission and grant warranty and post- warranty support services to AGC. In fact, Clause 4 of the contractual arrangement of 15.01.2014 expressly proscribes the Project Manager of the respondent-BCL to not make any communication/coordination with HPCL without obtaining prior written approval from AGC.*

30. *Further, the Settlement Agreement of 31.10.2023 also is between AGC and BCL and between them there is an arrangement that any receivable accruing to AGC from HPCL shall stand transferred/assigned to the respondent BCL. This does not mean that there is an arbitration agreement existing between HPCL and BCL or that BCL was a veritable party to the agreement between HPCL and AGC.*

31. *On the facts of this case, it is clear that the appellant and the respondent have been operating on separate orbits. It has not been established even prima facie that there was any intention to bind BCL to the contract between HPCL and AGC."*

7.6 Further, reliance was placed upon the decision of the Hon'ble Apex Court in ***Eastern Coalfields Limited*** (Supra). Referring to the said judgment, it was submitted that the Hon'ble Apex Court has categorically held that a referral court exercising jurisdiction under Section 11 of the Act, 1996 cannot mechanically refer disputes to arbitration on the premise that the arbitral tribunal may subsequently determine

the existence of an arbitration agreement. It was contended that before making a reference, the court is required to arrive at a prima facie satisfaction regarding the existence of a valid arbitration agreement within the meaning of Section 7 of the Act, 1996. According to Ms. Parikh, the said principle is directly applicable to the facts of the present case, where the petitioner has failed to establish the existence of any arbitration agreement binding respondent No. 2. The relevant paragraphs of the decision in ***Eastern Coalfields Limited*** (supra), relied upon, are reproduced hereinafter:-

“ISSUES

13. *Having regard to the facts and the submissions made before us, we are of the view that following three issues arise for our consideration:*

- (i) Whether the question of existence of an arbitration agreement should be left for the arbitral tribunal to decide?*
- (ii) Whether clause 13 (supra) would constitute an arbitration agreement between the parties as contemplated under Section 7 of the 1996 Act?*
- (iii) Whether clause 32 of Instructions to Bidders negates the existence of an arbitration agreement?*

ISSUE (I)

14. *Insofar as issue (i) is concerned, a seven-Judge Constitution Bench of this Court in *Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899*, In re, after surveying several decisions as also the impact of the 2015 Amendment on the 1996 Act, has settled the law in the following terms:*

*“164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of **Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]** where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.*

*165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In **Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764]**, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section*

16. We accordingly clarify the position of law laid down in **Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549]** in the context of Section 8 and Section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in **Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.** [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]

xxx

xxx

xxx

169. When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still

allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie nonexistent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement."

15. *The legal principles deducible from the above decision qua the scope of Referral Court's power under Section 11 of 1996 Act are as follows:*

- (a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement.*
- (b) The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination.*
- (c) Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements.*
- (d) The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression "examination" does not connote or imply a laborious or contested inquiry.*
- (e) The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. Only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.*

(f) Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a *prima facie* opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award is bound by such a *prima facie* view. If a *prima facie* view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.

16. What can be deduced from the above decision is that the Referral Court before appointing an arbitral tribunal will have to be *prima facie* satisfied that an arbitration agreement as contemplated in Section 7 of the 1996 Act exists. For this limited purpose it can scrutinize the documents relied upon by the parties in proof of its existence. Though the burden of proving the existence of arbitration agreement lies on the party seeking to rely on such agreement, only *prima facie* proof of its existence must be adduced before the Referral Court because the Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to its existence.

17. However, where professed arbitration agreement is found in an undisputed document, no trial or inquiry is required as to its existence. In such a situation, the Court would have to simply peruse the same to satisfy itself whether it, *prima facie*, fulfills the essential ingredients of an arbitration agreement as contemplated under Section 7 of the 1996 Act. But where the professed arbitration agreement is not contained in any one document and is to be inferred from two or more documents, such as exchange of letters or communications, parties may raise various pleas and place various documents to prove or disprove its existence. In such a scenario, if from the documents placed, existence of an arbitration agreement, as defined in Section 7, is *prima facie* made out, Referral Court, instead of undertaking a deeper probe or inquiry, should refer the matter to the arbitral tribunal. More so, because opinion of the Referral Court as to existence of an arbitration agreement is neither binding on the arbitral tribunal nor the Court dealing with the arbitral award.

18. In the instant case, the appellant is relying on just one clause in the contract which, according to the appellant, constitutes an arbitration agreement whereas according to the respondent, though the clause is not disputed, the same does

not constitute an arbitration agreement. In such circumstances, the Court while exercising power under Section 11 would not have to hold a mini-trial or an enquiry into its existence rather a plain reading of the clause would indicate whether it is, or it is not, an arbitration agreement, prima facie, satisfying the necessary ingredients of it, as required by Section 7 of the 1996 Act. In our view, such a limited exercise would not transgress the limit set out by sub-section (6-A) of Section 11 of the 1996 Act as introduced by 2015 Amendment because the object of such an exercise (i.e., of examination) is to weed out frivolous claims for appointment of an arbitrator/reference to an arbitral tribunal.

19. *In view of the above discussion, the argument of the appellant that Referral Court should straight away refer the matter and leave it to the arbitral tribunal to decide whether the arbitration agreement exists or not cannot be accepted. Issue (i) is decided accordingly."*

7.7 In conclusion, Ms. Parikh, learned advocate, submitted that the Lease Deed executed between the petitioner and respondent No. 1 and the alleged loan transactions between the petitioner and respondent No. 2 operated in entirely distinct and independent spheres. It was then averred that, the petitioner has failed to establish even a *prima facie* case demonstrating that respondent No. 2 was a party to, or was intended to be bound by, the arbitration agreement contained in the Lease Deed executed between the petitioner and respondent No. 1. It was contended that no material has been placed on record to satisfy the legal requirements governing the impleadment of a non-signatory to arbitral proceedings. In such circumstances, it was submitted that the conditions

precedent for referring respondent No. 2 to arbitration are conspicuously absent and, therefore, the petition seeking appointment of an arbitrator deserves to be rejected insofar as respondent No. 2 is concerned.

REJOINDER:-

8. In rejoinder, it was submitted on behalf of the petitioner that respondent No. 2 has placed reliance upon the judgment of the Hon'ble Apex Court in ***Eastern Coalfields Limited (Supra)*** to contend that respondent No. 2 is a complete stranger to the transaction in question and, therefore, cannot be made a party to the arbitral proceedings. Mr. Sheth, learned advocate, however, contended that respondent No. 2 seeks to rely upon isolated observations from the said decision and has failed to appreciate the judgment in its proper perspective and entirety.

8.1 According to Mr. Sheth, learned advocate, a holistic reading of the aforesaid judgment would demonstrate that the Hon'ble Apex Court has not laid down an absolute proposition that a person claiming to be a non-signatory or a stranger to the arbitration agreement can never be subjected to arbitral

proceedings. Rather, the Court has examined the principles governing the determination of the existence of an arbitration agreement and the extent to which such issues may be considered either by the referral court or by the arbitral tribunal.

8.2 It was therefore submitted that the observations made in the ***Eastern Coalfields Limited*** (Supra), particularly on the question as to whether the issue regarding the existence of an arbitration agreement should be left for determination by the arbitral tribunal, support the petitioner's contention that such jurisdictional questions may, in appropriate cases, be examined by the arbitral tribunal itself.

8.3 Proceeding further, Mr. Sheth submitted that the factual matrix before the Hon'ble Apex Court in ***Eastern Coalfields Limited*** (supra) was materially distinguishable from the present case. According to Mr. Sheth, the arbitration clause under consideration in the said case employed permissive expressions such as "*may*" or "*can*" refer disputes to arbitration. It was in the context of such language that the Hon'ble Apex Court was called upon to examine whether

there existed a consensus ad idem between the parties to submit their disputes to arbitration. In those circumstances, the referral court was required to determine whether a valid and binding arbitration agreement existed, and consequently, the Hon'ble Apex Court declined to appoint an arbitrator.

8.4 Mr. Sheth submitted that the present case stands on an entirely different footing. The documents and correspondence placed on record, according to him, unequivocally demonstrate that the transactions entered into between the petitioner and the respondents formed part of a composite and intrinsically connected commercial arrangement. It was further contended that the arbitration clause governing the parties employs the expression "*shall*", thereby making reference of disputes to arbitration mandatory and leaving no discretion to the parties to choose an alternative mode of dispute resolution. Thus, unlike the arbitration clause considered in ***Eastern Coalfields Limited*** (supra), the arbitration agreement in the present case manifests a clear and binding intention of the parties to resolve disputes through arbitration.

8.5 Mr. Sheth, learned advocate, further submitted that respondent No. 2, being the Managing Trustee of respondent No. 1 and having actively participated in the financial transactions relating to the subject property, including the loans advanced in connection therewith, has demonstrated sufficient involvement in and connection with the underlying transaction. According to Mr. Sheth, such conduct evidences respondent No. 2's consent and participation in the composite transaction and justifies its inclusion in the arbitral proceedings. On the basis of the aforesaid submissions, Mr. Sheth contended that the Sale Deed, Lease Agreement and the related financial transactions constitute a single composite transaction involving the petitioner, respondent No. 1 and respondent No. 2. It was therefore prayed that an arbitrator be appointed to adjudicate the disputes arising out of the said interconnected transactions and determine the rights and liabilities of the parties thereto.

ANALYSIS:-

9. There can be no dispute that a Sale Deed is a *fait*

accompli. However, it *prima facie* appears to me that Mr. Sheth is correct in his submissions that transaction(s) from which the instant dispute has arisen is not a simple case of a concluded sale of a property. Assuming that Mr. Sheth is right in his submission, it would require evidence to support or conclusively deny such a claim. Either way, it becomes a triable issue. It may well be that the eventual conclusion will be to the effect that both Mr. Desai and Ms. Parikh were right in submitting that it was a simple case of a sale of property and therefore, the disputes sought to be raised by Mr. Sheth were non-arbitrable. However, such findings cannot be recorded at this stage without a deeper probe into the rival contentions of the parties.

10. In my understanding, once this Court is of the opinion that a deeper probe into the rival contentions of the parties is necessary, then such a probe can be launched only by the Tribunal. This is, in my understanding, the precise mandate of a catena of judgments of the Hon'ble Apex Court.

11. In such view of the matter, I am inclined to hold that even to record a finding that the Mr. Sheth having alienated

the property through a registered conveyance, has seized to have any enforceable rights under the Lease Agreement dated 01.08.2017, and consequently lacks the *locus standi* to invoke the arbitration clause contained therein or that the agreement dated 03.01.2023 constitutes a novation of the original Lease Agreement dated 01.08.2017, is an issue which has to be determined by the Tribunal and not by me.

12. The Hon'ble Apex Court in the case of **Ajay Madhusudan Patel and Others v. Jyotindra S. Patel and Others** reported in **(2025) 2 SCC 147**, has held as under:-

*"66. Once again, a three-judge bench of this Court in **Vidya Drolia and Ors. v. Durga Trading Corporation** reported in **(2021) 2 SCC 1** held that Sections 8 and 11 respectively must be read as laying down a similar standard on the scope of the referral court's powers. It was stated that the questions as regards the existence and validity being intertwined, an arbitration agreement does not exist if it is illegal or does not satisfy mandatory legal requirements. The decision endorsed the application of a prima facie test in examining the existence and validity of an arbitration agreement both under Sections 8 and 11. This prima facie examination was not a full review but a primary first review to weed out manifest and ex-facie non-existent and invalid arbitration agreements and non-arbitrable disputes. However, it was clarified that the Court should not get lost in thickets and decide debatable questions of fact.*

67. The relevant extract is reproduced hereinbelow:

"153. Accordingly, we hold that the expression "existence of an arbitration agreement" in Section 11 of

the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the court at the referral stage would apply the prima facie test on the basis of principles set out in this judgment. In cases of debatable and disputable facts, and good reasonable arguable case, etc., the court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.”

(Emphasis Supplied)

68. **Vidya Drolia** (supra) while speaking in the context of Section 8 also pointed out that jurisdictional issues like whether certain parties are bound by the arbitration agreement must be left to the arbitral tribunal since they involve complicated factual questions and observed as thus:

“239. Jurisdictional issues concerning whether certain parties are bound by a particular arbitration, under group- company doctrine or good faith, etc., in a multi-party arbitration raises complicated factual questions, which are best left for the tribunal to handle.”

(Emphasis supplied)

69. A Constitution Bench of this Court in **In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899** reported in (2024) 6 SCC 1, stated that an arbitration agreement contained in an unstamped or insufficiently stamped contract would not be non-existent in law as stated in **Garware Wall Ropes** (supra). It also clarified the position taken in **Vidya Drolia** (supra) and stated that the parameters for judicial review under Sections 8 and 11 respectively were different. The scope of examination under Section 11(6) should be confined to the “existence of the arbitration agreement” under Section 7 of the Act, 1996. Similarly, the “validity of an arbitration agreement” must be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. Substantive objections pertaining to existence and validity on the basis of evidence must therefore be left to the arbitral tribunal. Moreover, it was stated that the expression “examination” under Section 11 does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the arbitral tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. It was also stated that any prima facie

opinion rendered by the Court under Section 11 need not bind the arbitral tribunal.

70. *The relevant observations are extracted hereinbelow:*

“164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.

165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation

also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia in the context of Section 8 and Section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.

xxx

xxx

xxx

169. When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.”

(Emphasis in original and supplied)

71. This very Bench in **SBI General Insurance Co. Ltd. v. Krish Spinning** reported in **(2024) SCC OnLine SC 1754** dealt with the scope and standard of judicial scrutiny in an application made under Section 11(6) of the Act, 1996 specifically when a plea of “accord and satisfaction” is taken by the defendant. It was observed that in a scenario where the Courts delve into the domain of the arbitral tribunal at the Section 11 stage and reject the application, there is a risk of leaving the claimant forum-less for the adjudication of its claims. It was stated that a detailed examination at this stage would also be counterproductive to the objective of expediency in deciding a Section 11 application and simplification of pleadings. It was also stated that even if ex-facie frivolity is made out by the referral court, the arbitral tribunal has the benefit of extensive pleadings and evidentiary material and therefore, it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at a similar conclusion.

72. The relevant observations are reproduced hereinbelow:

“126. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not

have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

127. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the arbitral tribunal is constituted by the referral court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the referral courts go into the details of issues pertaining to “accord and satisfaction” and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.

128. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

(Emphasis supplied)

73. The recent Constitution Bench decision of this Court in **Cox and Kings Limited v. SAP India Private Limited and Another** reported in **(2024) 4 SCC 1**, specifically dealt with the question of impleading a non-signatory as a party in the arbitration proceedings and the corresponding scope of enquiry at the referral stage. It was held therein that Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the arbitral tribunal and the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the arbitral tribunal.

74. The relevant observations are reproduced hereinbelow:

“163. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

xxx

xxx

xxx

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by

leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

xxx

xxx

xxx

170. In view of the discussion above, we arrive at the following conclusions:

xxx

xxx

xxX

(170.12) At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non- signatory is bound by the arbitration agreement"
(Emphasis supplied)

75. Therefore, on the pivotal issue whether the non-signatories can be referred to arbitration, this Court took the view that the referral court is required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement. However, recognising the complexity of such a determination, the arbitral tribunal was considered the proper forum since it can decide whether the non-signatory is a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine. In this process, the non- signatory must also be given an opportunity to raise objections regarding the jurisdiction of the arbitral tribunal in accordance with the principles of natural justice.

76. The position of law that emerges from the aforesaid discussion can be summarized as follows:

76.1 **SBP & Co.** (supra) expanded the scope of the Court's power under Section 11 while empowering the referral courts to decide several preliminary issues. *Boghara Polyfab* (supra) went to the extent of identifying three categories of preliminary issues that may arise for consideration in an application under Section 11. Of these, in the first category which had to be mandatorily decided by the referral Court,

the question whether there was an arbitration agreement and whether the party who has applied under Section 11 of the Act, 1996 is a party to such an agreement, was also included.

76.2 The insertion of Section 11(6A) through the 2015 Amendment to the Act, 1996 stipulated that the Courts under Section 11 shall confine their examination to the 'existence' of an arbitration agreement. It legislatively overruled the decisions in **SBP & Co.** (supra) and **Boghara Polyfab** (supra) by virtue of its non-obstante clause.

76.3 **Duro Felguera** (supra), in clear terms, clarified the effect of the change brought in by Section 11(6A) and stated that all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less.

76.4 **Vidya Drolia** (supra) endorsed the prima facie test in examining the existence and validity of an arbitration agreement both under Sections 8 and 11 respectively. However, it was clarified that in cases of debatable and disputable facts and reasonably good arguable case, etc. the Court may refer the parties to arbitration since the arbitral tribunal has the authority to decide disputes including the question of jurisdiction. It was further stated that jurisdictional issues concerning whether certain parties are bound by a particular arbitration under the group-company doctrine etc. in a multi-party arbitration raise complicated questions of fact which are best left to the tribunal to decide.

76.5 In **In Re: Interplay** (supra) the position taken in **Vidya Drolia** (supra) was clarified to state that the scope of examination under Section 11(6) should be confined to the "existence of the arbitration agreement" under Section 7 of the Act, 1996 and the "validity of an arbitration agreement" must be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. Therefore, substantive objections pertaining to existence and validity on the basis of evidence must be left to the arbitral tribunal since it can "rule" on its own jurisdiction.

76.6 **Krish Spinning** (supra) cautioned that the Courts delving into the domain of the arbitral tribunal at the Section

11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected. Further, it was stated that a detailed examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage.

*76.7 **Cox and Kings** (supra) specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the arbitral tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the arbitral tribunal and can be decided under its jurisdiction under Section 16."*

CONCLUSIONS:-

13. Following the aforesaid decisions, I am of the considered opinion that the test to be applied is not whether the disputes can be certified to be arbitrable; rather the test is whether the Court can record a clear finding whether the disputes are not arbitrable.

14. In view of the aforestated position in law and applying the aforesaid test to the facts of the present case, since the existence of the Arbitration clause is not disputed within the

meaning of Section 7 of the Act, 1996, the petitioner has been able to make out a case for appointment of an Arbitrator to decide the disputes enumerated in the present petition. Needless to clarify that it will be open for the respondents to contend, by filing a suitable application under Section 16 of the Act, 1996, to impress upon the learned Arbitrator that the Tribunal does not possess the competence to deal with the disputes raised before it. If and upon such an application is made before it, the same would be adjudicated without recourse to any of the observations in this judgment. Further, it is clarified that the facts and the contentions of the parties have been discussed solely for the purposes of the present application and the same may not be taken as undisputed.

15. In such view of the matter, the present petition is hereby allowed.

(i) Hon'ble Mr. Justice P.B.Majmudar Former Justice, High Court of Gujarat, having address at Bungalow No. 19, Neetibaug Judges Society, Opp. Gujarat High Court, Ghatlodiya, Ahmedabad - 380061 and having contact numbers 079-29701362 and 9978408797 Email ID:

justicepbmajmudarret@gmail.com is hereby appointed as the sole Arbitrator to resolve the disputes between the parties in accordance with the Arbitration Centre (Domestic and International), High Court of Gujarat Rules, 2021. Both Parties would also be governed by said Rules.

(ii) Registry to communicate this order to the sole Arbitrator forthwith by Speed Post.

(iii) Pending application/s, if any, stands consigned to records.

BINA SHAH

(D.N.RAY,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: BINA A SHAH(HC00353), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 12/06/2026 17:05:28