**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 8TH DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR. JUSTICE C.M. POONACHA**

**COMMERCIAL APPEAL NO. 277 OF 2024**

**BETWEEN:**

1. SARFARAZ MUNAF
   PARTNER M/S SEA LINE TRADING (R)
   AGED ABOUT 45 YEARS
   S/O ABDUL MUNAF
   RESIDING AT D NO.6-2
   BEACH ROAD, NEAR MALPE BEACH
   MALPE, UDUPI - 576 108

…APPELLANT

(BY SRI SYED KHALEEL PASHA, ADVOCATE)

**AND:**

1. MR. SIRAJ UMMER
   AGED ABOUT 51 YEARS
   S/O UMMER
   RESIDING AT D NO.3-3-5F
   "SRI RAKSHA"
   NEAR ST JUDE AUTOMOBILE WORKSHOP
   BEEDU MARG, AMBALAPADY
   UDUPI - 573 103

2. M/S SEA LINE TRADING
   A REGISTERED PARTNERSHIP FIRM
   REPRESENTED BY ITS MANAGING PARTNER
   HAVING ITS OFFICE AT D NO. 30-34-4
   NEAR CORPORATION BANK
   PO MALPE - 576 108
   UDUPI TALUK AND DISTRICT

3. HANEEF MOHAMMED
MANAGING PARTNER
M/S SEA LINE TRADING (R)
AGED ABOUT 56 YEARS
S/O BMA KHADER
RESIDING AT FLAT No. 704
MANDAVI COURT, COURT ROAD
UDUPI - 576 101

4. RONALD MANOHAR KARKADA
PARTNER M/S SEA LINE TRADING(R)
AGED ABOUT 60 YEARS
S/O ROBERT KARKADA
RESIDING AT H NO.6-29
SHANTHINAGAR
UDYAVARA, UDUPI - 574 118

5. SHAHID MASOUD
PARTNER M/S SEA LINE TRADING (R)
AGED ABOUT 53 YEARS
S/O AZIMUR RAHAMAN
FLAT NO.804 MANDAVI COURT APARTMENT
OPP. UDUPI DISTRICT COURT
COURT ROAD, UDUPI - 576 101

6. MOHAMMED IQBAL SHAIK
PARTNER M/S SEA LINE TRADING (R)
AGED ABOUT 57 YEARS
S/O MOHAMMED IQBAL SHAIK
RESIDING AT No. 6-2-28A, 4MM
MAHALASA BLOCK
SHANTHANAND RESIDENCY
MISSION HOSPITAL ROAD
UDUPI - 576 101

7. SALAHUDDIN SAHEB
PARTNER M/S SEA LINE TRADING (R)
AGED ABOUT 78 YEARS
S/O KODAVOOR GAFOOR SAHEB

HOUSE D NO. 32
HIS GRACE APRTEMENT
MARTIN PAIS ROAD
ASHOK NAGAR
HATHILL MANGALORE - 575 006

8. SRIKANTH BHAT
PARTNER M/S SEA LINE TRADING (R)
AGED ABOUT 43 YEARS
S/O GOPALAKRISHNA BHAT
RESIDING AT NO.4-22A, MATHRU VIJAYA
ESHWAR NAGARA
NEAR MAHALINGESHWARA TEMPLE
KODAVOOR
TENKANIDIYOOR - 576 106

…RESPONDENTS

(BY SRI. SACHIN B.S., ADVOCATE FOR R-1,
R-4, R-5 & R-8 ARE SERVED AND
R-2, R-3, R-6 & R-7 ARE DELETED
VIDE COURT ORDER DATED 28.10.2025)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT 2015 READ WITH ORDER 41 RULE 1 OF THE CPC, PRAYING TO SET ASIDE THE ORDER IN I.A. No.3 IN COM.OS No.121/2023 DATED 25/04/2024 PASSED BY THE HON'BLE II ADDITIONAL DISTRICT JUDGE COMMERCIAL COURT, UDUPI AND ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

## C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning an order dated 25.04.2024 passed by the learned II Additional District Commercial Court, Udupi District [**Commercial Court**] rejecting I.A.No.3 in Com.OS.No.121/2023. The appellant had filed the said application under Section 8 of the A&C Act, praying that the parties be referred to arbitration.

2. Respondent No.1 [**the plaintiff**] had filed the aforementioned suit (Com.OS.No.121/2023) seeking recovery of an amount of ₹4,00,10,000/-, along with interest at the rate of 18% per annum from the date of the suit till payment, as well as the costs.

3. It was the plaintiff's case that he intended to enter into a partnership with the appellant [**defendant no.3**] and respondent Nos.3 to 5 [**defendant Nos. 2, 4 and 5**]. The plaintiff stated that the defendants Nos.2 to 5 were partners in the firm M/s Sea Line Trading [**defendant No.1 firm**], which was arrayed as defendant No.1 in the suit, and was engaged in the business of trading in seafood. The plaintiff claimed that defendant Nos.2 to 5 had demanded a sum of ₹2,85,00,000/- (Rupees Two Crores Eighty

Five Lakhs Only) from the plaintiff as investment and had represented that on the plaintiff investing the said amount, he would be joined as a partner in the defendant No.1 firm. He also claimed that persons arrayed as defendant Nos.6 to 8 had also promised to join as partners in defendant No.1 firm. The plaintiff claimed that he was under a bona fide belief that all defendant Nos.2 to 8 were partners in defendant No.1 firm. And, on the said basis, he transferred a sum of ₹2,85,00,000/- directly in the account of the defendant No.1's firm. However, inconsistent with the said pleading, the plaintiff also claimed that out of the said sum, he had paid a sum of ₹2,72,57,315/- in the said bank accounts of the firm and ₹12,42,685/- in cash.

4. The plaintiff claimed that despite making huge investments, the defendants were hesitating to enter into any documents to evidence the plaintiff's entering as a partner of the firm. However, after repeated reminders, they agreed to reduce the terms into writing. The plaintiff also averred that "*the transaction of the plaintiff entering into the Partnership is evidenced by an agreement and deed of retirement of partners from the partnership firm M/s. Sea Line Trading on 01.03.2019* ".

5. He claimed that in the said agreement, defendant Nos.2, 5, 6, 7 and 8 were shown as partners and the plaintiff was shown as an incoming partner, who had invested ₹2,85,00,000/- (Rupees Two Crores Eighty Five Lakhs Only).

6. The plaintiff claimed that the actual registered partnership deed was amongst defendant Nos.2 to 5 as partners and defendant Nos.6 to 8 were not partners. However, by misrepresentation, had joined the agreement and the deed of retirement dated 01.03.2019 to “dupe the plaintiff".

7. The plaintiff claimed that after realising the fraudulent intention of the defendants, he pressurised them for a refund of his investment. The defendants issued cheques dated 20.05.2019 and 06.06.2019 for a sum of ₹95,00,000/- (Rupees Ninety Five Lakhs Only) each, but both the cheques were dishonoured. The plaintiff filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, which is pending.

8. The plaintiff claimed that after receiving court summons, the defendants had come forward and entered into a compromise on 28.10.2022 and settled the disputes for a sum of ₹4,00,00,000/- (Rupees Four Crores Only), inclusive of interest, in full discharge of

the said amount. It is stated that the defendants had issued cheques aggregating to ₹4,00,00,000/- to discharge the liability. However, the said cheques were dishonoured on presentation. The concerned bank returned the cheques with the remarks “account blocked”.

9. Defendant No.3 (the appellant in the present case) filed an application under Section 8 of the A&C Act seeking that the parties be referred to arbitration.

10. The appellant has produced three (03) documents, each containing an arbitration clause. The first is a registered partnership deed dated 23.06.2015, executed by defendant Nos.2 to 5. As per the terms of the said partnership deed, the partners agreed to carry on the business in the name of M/s Sea Line Trading. The second document is an admission-cum-retirement/reconstitution deed dated 26.04.2018. There are eight signatories to the said deed. The same reflects that the partnership firm M/s Sea Line Trading was reconstituted with the plaintiff and the defendant Nos.6 to 8 joining as partners with defendant Nos.2 and 5, and defendant Nos.3 and 4, retiring from the said firm. The said deed also includes an arbitration clause. The third document is a deed of retirement of partners from partnership deed of M/s. Sea Line

Trading dated 01.03.2019, which reflects that the plaintiff had retired from the firm, which was constituted in terms of the admission-cum-retirement/re-constitution deed dated 26.04.2018. The said deed also includes an arbitration clause. In the aforesaid context, defendant No.3 (appellant) had filed the application for referring the parties to arbitration.

**THE IMPUGNED ORDER**

11. The learned Commercial Court rejected the application on the ground that the claim made by the plaintiff pertained to lending money without entering into any agreement containing an arbitration clause. Thus, the subsequent deeds entered into by the plaintiff would not bind him to refer the disputes to arbitration. Paragraphs 13 and 15 of the impugned order are relevant and are set out below.

> "13. Along with the written statement the defendant has produced the xerox copy of admission cum retirement/reconstitution deed, office copy of reply sent by 4th defendant to the notice of the plaintiff, GST registration certificate etc. Copy of the partnership deed dated 23.06.2015, deed of retirement of partners from partnership deed dated 01.03.2019. Admission come retirement/reconstitution deed dated 26.04.2018 are also produced. The partnership deed dated 23.06.2015 wherein the plaintiff is not a party to the partnership firm. Though it contains Arbitration clause in No.15 and any disputes are difference arises in respect of business of the partnership. The same shall be referred to Arbitrator in Arbitration and Conciliation Act, 1996.

> The deed of retirement of partner from partnership deed to which the plaintiff is shown as one of the party which was came into force on 01.03.2019 which contains Arbitration clause admission cum retirement/reconstitution deed dated 26.04.2018 reveal that the plaintiff is not a party to the said deed despite containing Arbitration clause. What ever the suit claim mentioned in the plaint are pertaining to earlier lending of money and plaint averment reveal that the plaintiff lent money to the defendants on his personal capacity without entering into any agreement containing arbitration clause. Therefore, subsequent deed in which the plaintiff is a party does not binding upon him to refer dispute to the arbitrator.
>
> 14. *** *** *** ***
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> 15. Whatever the suit claim of the plaintiff is not covered with an arbitration agreement containing arbitration clause the plaintiff is not claiming recovery of money based on mutual agreement containing arbitration clause. Hence, question of referring the dispute to the arbitration does not arise. Therefore, I answered **point No.1 in the Negative."**

## SUBMISSIONS

12. The learned counsel appearing for the respondents attempted to support the decision on three grounds. First, he stated that the deed dated 26.04.2018 – which reflects that the partnership firm, M/s Sea Line Trading, was reconstituted by the plaintiff and defendant Nos.6 to 8 joining as partners, and defendant Nos.3 and 4 retiring from the firm – is not registered under the Partnership Act, 1932. He stated that an application under Section 8 of the A&C Act relying on the arbitration clause

under the said deed was not maintainable by virtue of Section 69(3) of the Partnership Act.

13. He also referred to the decision of the Supreme Court in the case of **Jagdish Chander Gupta v. Kajaria Traders(India) Ltd.**[1] in support of the said contention. Second, he submitted that by virtue of the Commercial Courts Act, 2015, [**CC Act**] only the Commercial Courts had the jurisdiction to hear suits involving commercial disputes. He contended that Section 21 of the CC Act has an overriding effect over other laws and thus the said Act superseded any agreement between the parties to refer the disputes to arbitration. He relied on the decision of the Supreme Court in **Jaycee Housing Private Limited and others v. Registrar (General), Orissa High Court, Cuttack and others**[2] in support of the said contention. Third, he submitted that the plaintiff has also alleged fraud and therefore the disputes were not arbitrable.

## REASONS AND CONCLUSION

14. At the outset, it is relevant to note that the impugned order, rejecting the application under Section 8 of the A&C Act, rests

[1] 1964 SCR (8) 50
[2] 2023 1 SCC 549

solely on the ground that the disputes are not arbitrable. It is not premised on any of the contentions as advanced by the respondent and as noted above.

15. The learned Commercial Court had reasoned that the suit filed by the plaintiff was for recovery of amounts that were paid prior to the execution of the partnership deed dated 26.04.2018. The learned Commercial Court also noted that the plaintiff's case was that he had lent money to the defendants in his personal capacity, without entering into an arbitration agreement. However, the said conclusion overlooks certain averments made in the plaint. As noted above, it is the plaintiff's case that he has paid an amount of ₹2,85,00,000/- directly to the account of the defendant No.1 firm and this investment was made on the assurance of defendant Nos.2 and 3 that the plaintiff would be joined as a partner in the said firm. The plaintiff further stated that despite substantial investments, the defendants were hesitant to enter into any document evidencing the plaintiff's entry as a partner in the firm. The plaintiff also stated that the plaintiff entered into a partnership as evidenced by an agreement and deed of retirement of the partners from the partnership firm M/s Sea Line Trading(R) on 01.03.2019.

16. The plaint also refers to the partnership deed dated 20.04.2018. But no such deed has been placed on record before this court. However, the respondents have placed a copy of the deed dated 26.04.2018 on record, which contains an arbitration clause.

17. In view of the aforesaid, it cannot be stated that the disputes are not connected with the agreement to constitute a partnership firm.

18. The plaintiff allegedly joined the reconstituted firm M/s Sea Line Trading as a partner and later retired from the same.

19. We may note at this stage that the learned counsel for the respondents did not dispute that the subject disputes are covered under the said arbitration agreement (arbitration clause) under the Partnership Deed dated 26.04.2018. His contentions were confined to three grounds as noted hereinbefore.

20. At this stage we may also refer to the language of Sub-section (1) of Section 8 of the A&C Act. The same is set out below.

> "8. **Power to refer parties to arbitration where there is an arbitration agreement**.—(1)A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming

> through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

21. A plain reading of Section 8(1) of the A&C Act indicates that the Court is bound to refer the parties to arbitration unless it *prima facie* finds that no valid arbitration agreement exists.

22. In the present case, the plaintiff does not dispute that he signed the reconstitution deed dated 26.04.2018 and the deed of retirement dated 01.03.2019, both of which contain an arbitration clause. However, he claims that he did not understand the same as he does not know the language. Although he claims the defendants committed fraud, the details are sketchy. His case is that he made investments on the representation that defendant Nos.2 to 5 who were partners of the firm. However, subsequently, documentation was prepared to show that defendant Nos.2, 5, 6, 7 and 8 as partners.

23. It is a trite law that an arbitration agreement is a separate and independent agreement. The arbitration agreement, even though embodied as a clause in the principal agreement, is a

separate agreement, and the validity or invalidity of the principal agreement may not affect the arbitration agreement.

24. In ***Interplay between Arbitration Agreement under Arbitration and Conciliation Act 1996 and Stamp Act 1899 In Re:***[3] the Supreme Court had referred to the concept of separability of the arbitration agreement in various jurisdictions as well as in this country and had summarised the law as under:

> "120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the Arbitral Tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability

[3] (2024) 6 SCC 1

> presumption gives effect to the doctrine of competence-competence."

25. It would also be apposite to observe that at the stage of referral under Section 8 of the A&C Act, the approach is not to determine whether the Court can retain jurisdiction, but to determine whether its jurisdiction is ousted.

26. In **K.Mangayarkarasi and another v. N.J.Sundaresan and another**[4], the Supreme Court has observed as under:

> "21. Once an application in due compliance with Section 8 of the 1996 Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches."

27. In view of the above, the impugned order, rejecting the application to refer the parties to arbitration on the ground that the disputes are not arbitrable is erroneous and liable to be set aside.

28. The next question to be examined is whether defendant No.3's application under Section 8 of the A&C Act is not maintainable by virtue of Section 69 of the Partnership Act, 1932. Section 69 of the said Act is set out below:

> 69. **Effect of non-registration**.—(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf

[4] (2025) 8 SCC 299

of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (2 of 1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realise the property of an insolvent partner.

(4) This section shall not apply—

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Schedule II to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

29. A plain reading of Section 69(1) of the Partnership Act indicates that it proscribes a suit by a person suing as a partner or on his behalf to enforce a right arising from a contract or as conferred by the Partnership Act. Section 69(2) of the Partnership Act, 1932 posits that no suit to enforce a right arising from a contract, shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners.

30. Sub-section (3) of Section 69 clarifies that provisions of subsection (1) and (2) shall also apply to claims of set off or other proceedings to enforce a right arising from a contract. According to the learned counsel for the plaintiff, an application under Section 8 of the A&C Act would qualify as another proceeding and thus would not be maintainable. However, defendant No.3 does not seek to maintain the application under Section 8 of the A&C Act as a partner of an unregistered firm. He seeks to defend the suit, *inter alia*, on the ground that, having retired from the firm, he would not be liable for the plaintiff's claim in respect of any investment in the firm. In this view, we are unable to accept that defendant No.3's application under Section 8 of the A&C Act could be discarded and

rejected as not maintainable by virtue of Section 69 of the Partnership Act.

31. Next question to be examined is, whether the application filed for reference of parties to arbitration as required, to be rejected on the ground that the CC Act overrides other acts. In our view, the said contention is bereft of any merit.

32. Arbitration is an alternative dispute resolution mechanism outside the Court's adjudicatory processes. However, the courts have a limited role in arbitration matters. Section 5 of the A&C Act also provides the extent of judicial intervention in matters governed by Part I of the A&C Act.

33. Section 2(1)(e) of the A&C Act defines the terms "Court" as under:

> 2(1)(e) "Court" means—
>
> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
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> (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide

> the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;"

34. In case of arbitration relating to commercial disputes of the Specified Value (as defined under Section 2(1)(i) of the CC Act), the Courts exercising jurisdiction have been specified under the CC Act. Subsection (2) of Section 12 of the CC Act provides for the determination of the specified value in an arbitration of a commercial dispute for determining "whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be".

35. The CC Act does not oust arbitration, but provides for recourse to the Commercial Division, the Commercial Appellate Division, or the Commercial Court, to the limited extent as contemplated under the A&C Act.

36. This is expressly clear from Section 10 of the CC Act which reads as under.

> "10. **Jurisdiction in respect of arbitration matters**.—Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—
>
> (1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration

> and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.
>
> (2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.
>
> (3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted."

37. The contention that Section 10 excludes arbitration in commercial disputes is insubstantial.

38. The last question to be examined is, whether the request to refer the parties to arbitration is required to be declined on the ground that the plaintiff has alleged fraud. The position that all disputes involving allegations of fraud are not arbitrable, is erroneous.

39. In **Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak**[5], the Supreme Court had observed as under:

> "17. There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference."

40. Following the aforesaid decision, the Supreme Court in **N.Radhakrishnan v. Maestro Engineers**[6], held that the disputes involving alleged fraud are not arbitrable.

41. However, in **Swiss Timing Ltd. v. Commonwealth Games 2010 Organizing Committee**[7] a Single Judge in the Supreme Court doubted the said decision in **N.Radhakrishnan** (supra). The Court held that the said decision was per incuriam as it had not noted the earlier decision in the case of **P.Anand Gajapathi Raju v. P.V.G. Raju (Dead)**[8] and **Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums**[9].

42. In **A. Ayyasamy v. A.Paramasivam**[10], the Supreme Court observed that an allegation of fraud simpliciter would not nullify the

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[5] AIR 1962 SC 406
[6] (2010) 1 SCC 72
[7] (2014) 6 SCC 677
[8] (2000) 4 SCC 539
[9] (2003) 6 SCC 503
[10] (2016) 10 SCC 386

effect of an arbitration agreement between the parties. The Court explained that it is only in those cases where the Court finds that there are very serious allegations of fraud, which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential for the same to be decided in a Civil Court, that a reference of the parties to arbitration under Section 8 of the A & C Act may be denied.

43. We may also note the following observations of Dr.D.Y.Chandrachud, J., in his concurring opinion:

> "43. Hence, the allegations of criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement.
>
> xxxx xxxx xxxx
>
> 45. The position that emerges both before and after the decision in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] is that successive decisions of this Court have given effect to the binding precept incorporated in Section 8. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration. The judgment in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC

(Civ) 12] has, however, been utilised by parties seeking a convenient ruse to avoid arbitration to raise a defence of fraud:

45.1. First and foremost, it is necessary to emphasise that the judgment in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] does not subscribe to the broad proposition that a mere allegation of fraud is ground enough not to compel parties to abide by their agreement to refer disputes to arbitration. More often than not, a bogey of fraud is set forth if only to plead that the dispute cannot be arbitrated upon.

To allow such a plea would be a plain misreading of the judgment in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12]. As I have noted earlier, that was a case where the appellant who had filed an application under Section 8 faced with a suit on a dispute in partnership had raised serious issues of criminal wrongdoing, misappropriation of funds and malpractice on the part of the respondent. It was in this background that this Court accepted the submission of the respondent that the arbitrator would not be competent to deal with matters "which involved an elaborate production of evidence to establish the claims relating to fraud and criminal misappropriation". Hence, it is necessary to emphasise that as a matter of first principle, this Court has not held that a mere allegation of fraud will exclude arbitrability. The burden must lie heavily on a party which avoids compliance with the obligation assumed by it to submit disputes to arbitration to establish the dispute is not arbitrable under the law for the time being in force. In each such case where an objection on the ground of fraud and criminal wrongdoing is raised, it is for the judicial authority to carefully sift through the materials for the purpose of determining whether the defence is merely a pretext to avoid arbitration. It is only where there is a serious issue of fraud involving criminal wrongdoing that the exception to arbitrability carved out in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] may come into existence.

> 45.2. Allegations of fraud are not alien to ordinary civil courts. Generations of judges have dealt with such allegations in the context of civil and commercial disputes. If an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration. The parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. The parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed."
>
> [Emphasis Supplied]

44. In a subsequent decision in **Rashid Raza v. Sadaf Akhtar**[11], the Supreme Court held as under:

> "4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in para 25 are : (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."

45. In **Vidya Drolia and others v. Durga Trading Corporation**[12], the Supreme Court expressly overruled **N.Radhakrishnan v. Maestro Engineers** (supra).

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[11] (2019) 8 SCC 710

46. In a later decision in **Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd**.,[13] the Supreme Court further explained the arbitrability of disputes involving an allegation of fraud, as under:

> "35. After these judgments, it is clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain."

47. Additionally, the Supreme Court also observed as under:

> "43. In the light of the aforesaid judgments, para 27(vi) of Afcons [Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24 : (2010) 3 SCC (Civ) 235] and para 36(i) of Booz Allen [Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 : (2011) 2 SCC (Civ) 781], must now be read subject to the rider that the same set of facts may lead to civil and criminal proceedings and if it is clear that a civil dispute involves questions of fraud, misrepresentation, etc. which can be the subject matter of such proceeding under Section 17 of the Contract Act, and/or the tort of deceit, the mere fact that criminal proceedings can or have been instituted

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[12] (2021) 2 SCC 1
[13] (2021) 4 SCC 713

> in respect of the same subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so."

48. In **K.Mangayarkarasi and another v. N.J.Sundaresan and another**[14], the Madras High Court referred to the various decisions and observed as under:

> 24. The allegation of fraud must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. At this juncture, it is worthwhile to refer the decision of the Hon'ble Apex Court in Sushma Shivkumar Daga case (cited supra). Further, relying on a earlier Judgment of the Apex Court in Rashid Raza's case (cited supra) the Supreme Court holds that two parties in an Agreement. The first is that the plea permeates the entire contract option of the arbitration agreement rendering it void or secondly whether the allegation of fraud touches upon the internal affairs of the parties inter se having no implication in the public domain. The allegation must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. Further, the Apex Court in the Judgment in Deccan Paper Mills's case (cited supra) held that where the suit is inter parties with no public domain, fraud as laid down in the case of Avitel Post Studioz Ltd., (cited supra)) is not applicable. Where rectification of instrument under Section 31 of the Specific Relief Act is strictly action inter parties or by person who obtained derivative title from parties, such action is in personam and the dispute is arbitrable.

[14] 2025 SCC Online MAD 2630

49. In **K.Mangayarkarasi and another v. N.J.Sundaresan and another** (*supra*), the Supreme Court upheld the said view of the Madras High Court and observed as under:

> "20. The law is well settled that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement."

50. In the present case, the allegations of fraud are a facet of disputes *inter se* the parties. Thus, we are unable to accept that the disputes involving allegations of fraud are not arbitrable.

51. In view of the above, the present appeal is allowed. The impugned order is set aside, and the parties are referred to arbitration.

**Sd/-**
**(VIBHU BAKHRU)**
**CHIEF JUSTICE**

**Sd/-**
**(C.M. POONACHA)**
**JUDGE**

SD/KMV