



2026:KER:34287

A.R.Nos.263, 264 & 265 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 19<sup>TH</sup> DAY OF MAY 2026 / 29TH VAISAKHA, 1948

AR NO. 263 OF 2025

PETITIONER:

MALABAR INTERNATIONAL GOLD DESIGNS PRIVATE LIMITED,  
16/501-M, MONTANA ESTATES, PAINGOTTUPURAM,  
PERINGOLAM P O, KOZHIKODE, PIN - 673571.

BY ADVS. SRI. P. VISWANATHAN (SR.)  
SMT. D. REETHA  
SHRI. AKHIL K. M.  
SMT. ANJALI NAIR  
SRI. P. V. VINOD (BENGALAM)

RESPONDENT:

ANIL KUMAR K V  
AGED 54 YEARS  
KAMBRATH VEETIL  
KANNADI PARAMBIL P O  
CHELERI, KANNUR, KERALA, PIN - 670604.

BY ADVS.  
SHRI. C. K. KARUNAKARAN  
SMT. LEKSHMI P. NAIR  
SMT. SHIFNA MUHAMMED SHUKKUR  
SMT. KRISHNA SURESH  
SMT. MEKHA MANOJ  
SHRI. ANIRUDH INDUKALADHARAN

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON  
10.04.2026, ALONG WITH AR.264/2025 & 265/2025, THE COURT ON  
19.05.2026 DELIVERED THE FOLLOWING:



2026:KER:34287

A.R.Nos.263, 264 & 265 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 19<sup>TH</sup> DAY OF MAY 2026 / 29TH VAISAKHA, 1948

AR NO. 264 OF 2025

PETITIONER:

LUSTER GOLD PALACE (INDIA) PRIVATE LIMITED  
16/501-M, MONTANA ESTATES, PAINGOTTUPURAM,  
PERINGOLAM P O, KOZHIKODE, PIN - 673571.

BY ADVS.SRI.P.VISWANATHAN (SR.)  
SMT.D.REETHA  
SHRI.AKHIL K.M.  
SMT.ANJALI NAIR  
SRI.P.VISWANATHAN (VISWABHAVAN)

RESPONDENT:

KRISHNAN V V  
AGED 62 YEARS  
2/653-A, ANANDHA VIHAR, MORAZHA POST, ACHANPEEDIKA,  
KANNUR, KERALA, PIN - 670331.

BY ADVS.  
SHRI.C.K.KARUNAKARAN  
SMT.LEKSHMI P. NAIR  
SMT.SHIFNA MUHAMMED SHUKKUR  
SMT.KRISHNA SURESH  
SMT.MEKHA MANOJ  
SHRI.ANIRUDH INDUKALADHARAN

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON  
10.04.2026, ALONG WITH AR.263/2025 AND AR.265/2025, THE COURT ON  
19.05.2026 DELIVERED THE FOLLOWING:



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A.R.Nos.263, 264 & 265 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 19<sup>TH</sup> DAY OF MAY 2026 / 29TH VAISAKHA, 1948

AR NO. 265 OF 2025

PETITIONER:

MALABAR GOLD SUPERMARKET (KANNUR) PRIVATE LIMITED  
16/501-M, MONTANA ESTATES, PAINGOTTUPURAM,  
PERINGOLAM P O, KOZHIKODE, PIN - 673571.

BY ADVS.  
SRI.P.VISWANATHAN (SR.)  
SMT.D.REETHA  
SHRI.AKHIL K.M.  
SMT.ANJALI NAIR  
SRI.P.V.VINOD (BENGALAM)

RESPONDENT:

KRISHNAN V V  
2/653-A, ANANDHA VIHAR, MORAZHA POST, ACHANPEEDIKA,  
KANNUR, KERALA,  
PIN - 670331.

BY ADVS.  
SHRI.C.K.KARUNAKARAN  
SMT.LEKSHMI P. NAIR  
SMT.SHIFNA MUHAMMED SHUKKUR  
SMT.KRISHNA SURESH  
SMT.MEKHA MANOJ  
SHRI.ANIRUDH INDUKALADHARAN

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON  
10.04.2026, ALONG WITH AR.263/2025 AND AR.264/2025, THE COURT ON  
19.05.2026 DELIVERED THE FOLLOWING:



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**S.MANU, J.**

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A.R.Nos.263, 264 & 265 of 2025  
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Dated this the 19<sup>th</sup> day of May, 2026

**ORDER**

Since common issues are involved in these arbitration requests, they are being disposed of by this common order.

2. Petitioners are companies incorporated under the provisions of the Companies Act, 1956. Malabar International Gold Designs Private Limited is the petitioner in A.R.No.263/2025. The respondent in A.R.No.263/2025 is one of the shareholders of the petitioner company having 300 equity shares of Rs.1,000/- each and 6450 compulsorily convertible debentures of Rs.1,000/- each.

3. In A.R.No.264/2025 the petitioner is Luster Gold Palace (India) Pvt Ltd. The respondent is one of the shareholders of the petitioner company having 190 equity



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shares of Rs.1,000/- each and 4010 compulsorily convertible debentures of Rs.1,000/- each.

4. In A.R.No.265/2025, Malabar Gold Super Market (Kannur) Pvt. Ltd. is the petitioner and the respondent is same as in A.R.No.264/2025. The respondent is holding 380 shares of Rs.1,000/- each and 4420 compulsorily convertible debentures of Rs.1,000/- each in the petitioner company in A.R.No.265/2025.

5. The crux of the disputes between the parties is the involvement of the respondents in two other entities engaged in the manufacture of gold and diamond ornaments, as also the import, export, trading, distribution, wholesale and retail business in all kinds of gold, diamond, jewellery, ornaments, etc. According to the petitioners, the same is in violation of the specific terms and conditions of the Articles of Association of the petitioner companies.



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6. For a detailed discussion, I shall refer to the facts and documents in A.R.No.263/2025. Contentions are identical in the other two cases and no separate reference to the details is therefore required.

7. The petitioner specifically refers to Article 79 of the Articles of Association of the company, which reads as under:-

“NON-SOLICITATION AND NON-COMPETITION UNDERTAKING  
(79) (1) The Shareholders acknowledge that they will have access to and will be exposed to Confidential Information of Malabar Group that will confer upon the Shareholders a unique competitive advantage, and further acknowledge that the Shareholders' working with or setting up an establishment carrying out similar activities as that of the Company will inevitably result in the use/disclosure of Confidential Information prejudicial to the interests of the Company/Malabar Group, therefore, in consideration of the benefits and rights available to the Shareholders, for as long as the Shareholder is connected or associated with the Company as a Shareholder, Director, officer, or employee of the Company, and for a period of 3 (three) years from the date he ceases to be a Shareholder, Director, officer, or employee of the Company, unless otherwise agreed to by the Board, the



Shareholders and their Immediate Relatives shall not, whether directly or indirectly, or through their respective Affiliates or nominees:-

- (a) carry on, own, manage, operate, join, assist, enable, have an interest in, invest in, control or otherwise engage or participate in a business similar to the Business or be connected or associated (as a shareholder, Director, officer, employee, partner, representative, lender, guarantor, distributor or advisor of, or consultant to or otherwise) in any business/business entity which directly or indirectly is engaged in the Business or competes with the Company or Franchisor Company, other than through the Company or entities under Malabar Group; or
- (b) be involved or become involved or engage in any other activities that may conflict with the Shareholder's obligations to the Company; or
- (c) on the Shareholder's own account or as an agent of any person, including a Competitor, canvass or solicit for any business competing with the Company or the Franchisor Company.

(2) Until the Shareholder is connected or associated with the Company as a Shareholder, Director, officer, or employee of the Company, and for a period of 3 (three) years from the date he ceases to be a Shareholder, Director, officer, or employee of the Company, unless



otherwise agreed to by the Board, the Shareholders and their Immediate Relatives shall not, whether directly or indirectly, or through their respective Affiliates or nominees:

(a) solicit, endeavour to solicit, influence or attempt to influence any client, vendor, supplier, customer, consultant or advisor of the Company or any other person to cease doing business or any transactions with the Company, or with a view to direct their purchase of the Company's products and/or services/business to himself/herself or any person, firm, corporation, institution or other entity in competition with the Business, including a Competitor; or

(b) solicit or attempt to influence any person employed or engaged by the Company to terminate or otherwise cease such employment or engagement with the Company; or

(c) hire any person who was employed or engaged by the Company at any time during the preceding 6 (six) months period.

(3) The restrictions under this Article 79 are considered reasonable by the Shareholders' for the legitimate protection of the business and goodwill of the Company. Notwithstanding any limitation under Applicable Law, the Shareholders shall observe at all times and be bound by



the spirit of Article 79, and expressly waive any right to assert inadequacy of consideration as a defence to enforcement of the covenants set forth in this Article 79. If the restrictions under Article 79 are found by any court of competent Jurisdiction, or an arbitrator, to be unenforceable for any reason, then it will be interpreted to the maximum extent as permissible under Applicable Law.”

8. According to the petitioner, terms of Article 79 extracted above are binding on every shareholder of the company. Nevertheless, the respondent breached the conditions by acting as a designated partner of “Win Gold LLP” and also as the Managing Director of “Mawsim Gold Pvt. Ltd.”. The respondent in AR Nos.264 & 265 of 2025 is also allegedly involved in the said two entities. The respondents have not denied their participation in the business of the two entities.

9. According to the petitioner, it issued a letter to the respondent calling upon him to adhere to the terms of the Articles of Association on 14.01.2023. However, that was not acceded to by the respondent and a notice through lawyer was



issued on 16.10.2023.

10. The petitioner alleges that on account of the alleged material breach the respondent became a defaulting party within the meaning of Article 80(1) of the Articles of Association. It is further alleged that in case of default the respondent is obliged to comply with Article 80(3)(c) which reads as under:-

“EVENTS OF DEFAULT/CESSATION OF ASSOCIATION  
(80) .....

(3) Upon the occurrence of an Event of Default, which is not cured (if capable of cure) within a period of 45 (forty five) days of such occurrence or the statutory period for cure (where possible), whichever is earlier, or upon the occurrence of a Cessation Event:-  
.....

(c) In relation to the Securities held by the Defaulting Party or the Separating Party, the Board may require:

- (i) the Defaulting Party or the Separating Party to Transfer all of the Securities held by him, at a price and on terms determined by the Board, to a Malabar Group entity: or
- (ii) the Company to buy-back all of the



Securities of the Defaulting Party or the Separating Party, at a discount to the Offered Price of the Securities, to a Malabar Group entity; or

(iii) a combination thereof.

It is hereby clarified that the provisions of Article 27(8) and Article 27(9) shall not apply where a Shareholder is determined as a Defaulting Party or is a Separating Party under Article 80.”

It is pertinent to note that the Clauses of Articles of Association relied on in all three cases are identical.

11. On 06.12.2024, the petitioner issued a legal notice invoking the arbitration clause contained in the Articles of Association. Thereafter, A.R.No.38/2025 was filed seeking nomination of an arbitrator. However, the arbitration request was rejected by this Court as premature, since the petitioner had not complied with the requirement of discussions for resolution of disputes contemplated under Clause 81. Similar arbitration requests were filed by the petitioners in A.R.Nos.264 & 265 of 2025 also. All those cases, along with some other



identical arbitration requests were rejected by a common order dated 23.6.2025.

12. According to the petitioners, after the rejection of the arbitration requests by this Court, notices were issued to the respondents requesting them to attend a meeting for resolution of the disputes. However, there was no positive outcome. Hence, the instant arbitration requests were filed.

13. Respective respondents have entered appearance in these cases. They have filed separate counter affidavits. They contend that there is no arbitrable dispute and hence these arbitration requests are liable to be rejected.

14. Heard learned Senior Counsel P.Viswanathan appearing for the petitioners and Adv.C.K.Karunakaran appearing for the respondents.

15. The learned Senior Counsel for the petitioners contended that Article 79 of the Articles of Association, referred



to above, specifically prohibits the shareholders of the petitioner companies from carrying on, engaging in, or otherwise participating in any competing business. In violation of the said provision, the respondents in these arbitration requests engaged in similar business competing with the business of the petitioners. He pointed out that the said factual aspect is not disputed by the respondents. Referring to Article 80 of the Articles of Association, he contended that the respondents have become defaulting parties within the meaning of Article 80(1) and are therefore obliged to comply with Article 80(3)(c) of the Articles of Association. In view of Article 81, disputes arising with respect to any matters under the Articles of Association are liable to be referred to arbitration. He submitted that proper notices were issued to the respondents to initiate arbitral proceedings. Though opportunity of discussion was offered in view of the common order passed by this Court in A.R.No.38 of 2025 and connected cases, it was not effectively utilized by the



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respondents. He therefore submitted that all conditions are satisfied for referring the disputes for adjudication by an arbitrator to be nominated by this Court.

16. The learned counsel for the respondents, Sri.C.K.Karunakaran, on the other hand, submitted that Annexure P2 produced by the petitioners contains the amended Articles of Association. Articles 64 to 84 were not part of the original Articles of Association. The newly incorporated provisions are not binding on the respondents. Moreover, the respondents have not executed any deeds of adherence and, hence, are not bound by the clauses relied on by the petitioners. In view of the fact that the articles relied on by the petitioners were incorporated by way of amendment, those provisions can have only prospective operation. He also submitted that some other shareholders of the petitioner companies are also involved in similar businesses and the petitioners are selectively proceeding against the respondents herein and it is a solid sign



of lack of bonafides. He also contended that the purported arbitration clause is not a valid one. When the arbitration clause is not exclusive, final and definitive, the parties cannot be compelled to arbitrate the dispute. He also alleged that there was refusal to provide copies of amended Memorandum of Association and Articles of Association to the respondents. He submitted that what is actually in dispute is the denial of the rights of the respondents as shareholders. He also contended that, in view of Article 81(3), only the Civil Court at Kozhikode has jurisdiction to adjudicate the dispute.

17. In response to the contentions of the learned counsel for the respondents, the learned Senior Counsel for the petitioners submitted that the Articles of Association were duly amended on 20.09.2021 in accordance with the provisions of the Companies Act. Under Section 14 of the Companies Act, a Company has the right to alter its Articles by passing a special resolution. Under Section 10 of the Act, upon registration, the



Articles bind the company and all its members thereof to the same extent as if they respectively had been signed by the company and each member. Therefore, the amended provisions would bind the respondents also. He also refuted the contention regarding non-execution of deeds of adherence. He submitted that, in view of Article 28(9), execution of such deeds is mandatory only with respect to persons becoming entitled to securities by reason of death or insolvency of a member. He also denied the contention that copies of the Articles of Association were not served on the respondents. The learned Senior Counsel further submitted that Article 81(3) does not confer jurisdiction on a Civil Court and Article 81 contains a clear, unambiguous and binding arbitration agreement. The learned Senior Counsel further submitted that, in an application under Section 11 of the Arbitration and Conciliation Act, 1996, the jurisdiction of the Court is limited and if the Court is satisfied about the existence of a valid arbitration agreement and



compliance with the other requirements under the Act, nomination of arbitrator cannot be refused. He further contended that all other disputes, including the dispute regarding arbitrability, shall be left to be dealt with by the arbitrator. He relied on the judgment of the Hon'ble Supreme Court in **Cox and Kings Limited. v. SAP India Private Limited and Another** [(2025) 1 SCC 611]. He also made reference to a judgment of this Court in **Sajid Pasha v. Abdunnasir** [2025 (6) KLT 813].

18. Sri.C.K.Karunakaran relied on the judgment of the Hon'ble Supreme Court in **Jagdish Chander v. Ramesh Chander and Others** [(2007) 5 SCC 719] to contend that the existence of an arbitration agreement is a condition precedent to exercise the power to appoint an arbitrator/arbitral tribunal. He submitted that, since there is no valid arbitration agreement between the parties, the power under Section 11 of Arbitration and Conciliation Act cannot be exercised by this Court. In order



to explain the rights of shareholders under the provisions of the Companies Act, he relied on the judgment of the Hon'ble Supreme Court in **Life Insurance Corporation of India v. Escorts Ltd. and Others** [(1986) 1 SCC 264].

19. In **Cox and Kings Limited.** (Supra), the Hon'ble Supreme Court held as under:

"**28.** On the scope of powers of the referral court at the stage of S.11(6), it was observed by us in Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. [(2024) 4 SCC 341] as follows:(SCC p.363, para.26)

"26. Taking cognizance of the legislative change, this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. (2017 (9) SCC 729 : 2017 (4) SCC (Civ) 764), noted that post 2015 Amendment, the jurisdiction of the Court under S.11(6) of the 1996 Act is limited to examining whether an arbitration agreement exists between the parties - "nothing more, nothing less."

(Emphasis supplied)

**29.** A Constitution Bench of this Court in Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066], speaking through one of us (Dr D.Y. Chandrachud, C.J.), considered the scope of judicial interference by the referral court in a Section 11 application. A



few relevant observations made therein are reproduced hereinbelow : (SCC p. 62, para 88)

"88. One of the main objectives behind the enactment of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process by confining it only to the circumstances stipulated by the legislature. For instance, Section 16 of the Arbitration Act provides that the Arbitral Tribunal may rule on its own jurisdiction 'including ruling on any objection with respect to the existence or validity of the arbitration agreement'. The effect of Section 16, bearing in view the principle of minimum judicial interference, is that judicial authorities cannot intervene in matters dealing with the jurisdiction of the Arbitral Tribunal. Although Sections 8 and 11 allow Courts to refer parties to arbitration or appoint arbitrators, Section 5 limits the Courts from dealing with substantive objections pertaining to the existence and validity of arbitration agreements at the referral or appointment stage. A referral court at Section 8 or Section 11 stage can only enter into a prima facie determination. The legislative mandate of prima facie determination ensures that the referral courts do not trammel the Arbitral Tribunal's authority to rule on its own jurisdiction."

**30.** In a recent decision in SBI General Insurance Co. Ltd. v. Krish Spg. [(2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532], it was observed by us that the Arbitral Tribunal is the preferred first authority to look into the questions of arbitrability and jurisdiction, and the courts at the referral stage should not venture into contested questions involving complex facts.



A few relevant paragraphs of the said decision are extracted hereinbelow : (SCC paras 101, 117 & 128)

“101. What follows from the negative facet of arbitral autonomy when applied in the context of Section 16 is that the national courts are prohibited from interfering in matters pertaining to the jurisdiction of the Arbitral Tribunal, as exclusive jurisdiction on those aspects vests with the Arbitral Tribunal. The legislative mandate of prima facie determination at the stage of Sections 8 and 11, respectively, ensures that the referral courts do not end up venturing into what is intended by the legislature to be the exclusive domain of the Arbitral Tribunal.

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117. In view of the observations made by this Court in Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [(2024) 6 SCC 1 : 2023 INSC 1066], it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. ...

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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)

.....  
**32.** As discussed above, the respondents have raised a number of objections against the present petition, however, none of the objections raised question or deny the existence of the arbitration agreement under which the arbitration has been invoked by the petitioner in the present case. Thus, the requirement of prima facie existence of an arbitration agreement, as stipulated under Section 11 of the 1996 Act, is satisfied.”

20. Recently, in **A.P. Power Generation Corpn. Ltd. v. Tecpro Systems Ltd.**, [(2026) 3 SCC 491] the Hon’ble Apex Court reiterated the same view. Pertinent paragraphs of the judgement are extracted hereunder-

“**13.** In our considered view, these objections must be answered in the broader perspective of the nature and scope of the jurisdiction exercised by a referral court under Section 11 of the Act. With the introduction of the statutory restraint under Section 11(6-A), the legislature has consciously confined the domain of



judicial scrutiny to the mere “existence of an arbitration agreement”. This legislative design is further reinforced by the express empowerment of the AT under Section 16 to rule on; (i) its own jurisdiction, (ii) objections with respect to the very existence of the arbitration agreement, and also (iii) objections relating to the validity of such an agreement. The statutory scheme thus envisages a clear demarcation between the limited threshold scrutiny at the referral stage on the one hand and the substantive jurisdictional adjudication to be undertaken by the AT on the other.

**14.** The legislative policy under the 1996 Act strongly favours minimal judicial intervention at the pre-arbitral stage. A long line of precedents, such as *Duro Felguera, S.A. v. Gangavaram Port Ltd* [(2017) 9 SCC 729], the Constitution Bench decision in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re* [(2024) 6 SCC 1], and *SBI General Insurance Co. Ltd. v. Krish Spg.* [(2024) 12 SCC 1] have authoritatively settled that the enquiry under Section 11 is confined to a prima facie determination of the existence of an arbitration agreement and no further. The referral court is required to undertake only a prima facie determination of the



existence of an arbitration agreement [Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., (2025) 2 SCC 192 : (2025) 1 SCC (Civ) 47], and refrain from entering into contentious factual or legal issues related to authority, capacity, arbitrability, maintainability, or merits of claims.

**15.** It is certainly a matter of institutional discipline for the referral courts to enable “parties” to identify and exercise alternative remedies, particularly that of arbitration, with clarity and consistency. The question whether a member of a consortium can itself invoke Section 11 of the 1996 Act is not one that admits of a monolithic or a uniform answer. Answer to that question will necessarily depend on enquiry into the terms of the principal contract, as well as the Consortium agreement. The specific terms of the Consortium agreement, parties to that agreement, and the nature of the rights and mutual obligations that the agreement creates will have to be examined in detail. The Reference Court will, however, confine its enquiry only to a prima facie satisfaction as to whether a member of a consortium qualifies as a “party” to the arbitration agreement. This prima facie satisfaction is sufficient for the referral court to constitute and refer



the dispute to the AT.

.....

**17.** Beyond the prima facie enquiry, it should be the discipline of the referral court to refrain from undertaking a detailed enquiry on basis of evidence to arrive at a finding of fact in the nature of a “proof”. The scope of such an enquiry, by virtue of Section 11(6-A) is very well articulated in the decision of this Court in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*, [(2024) 6 SCC 1] wherein this Court observed : (SCC pp. 87-88, paras 165-67)

“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, S.A. v. Gangavaram Port Ltd*, [(2017) 9 SCC 729] , 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 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 (2<sup>nd</sup> 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 : (2005) 127 Comp Cas 97] ".



**18.** Following this Court's mandate in the above decision, this Court in Bihar State Food and Civil Supply Corpn. Ltd. v. Sanjay Kumar [(2026) 4 SCC 649 : 2025 SCC OnLine SC 1604] explaining the contemporary legal position of the referral court emphasised that : (SCC p. 671, para 28)

"28. The curtains have fallen. Courts exercising jurisdictions under Section 11(6) and Section 8 must follow the mandate of sub-section (6-A), as interpreted and mandated by the decisions of this Court and their scrutiny must be 'confine(d) to the examination of the existence of the arbitration agreement'."

(emphasis in original)

**19.** Once the High Court was satisfied that an arbitration agreement prima facie existed, an aspect neither seriously disputed nor refutable at this stage, its decision to constitute the AT cannot be faulted. In the earlier part of our judgment, we have reproduced the detailed arguments of the appellants and respondents on the issue of maintainability only to draw a distinction between a prima facie consideration of such contentions for the purpose of Section 11 on the one hand and for a detailed examination by the AT. While we hold that there is certainly a prima facie case



for referring the dispute to arbitration under Section 11, a detailed scrutiny on the basis of evidence must be left to AT.”

21. In view of the unequivocal declaration of law by the Hon’ble Supreme Court in the judgments referred to above, as well as S.11 (6A) of the Arbitration and Conciliation Act, 1996, the jurisdiction of this Court under Section 11 of the Act is restricted to examine the singular question as to whether an arbitration agreement exists between the parties. All other aspects raised, including the arbitrability of the dispute are to be decided by the arbitrator, if this Court concludes that there is a valid arbitration agreement.

22. Article 81 of Annexure P2 Articles of Association deals with dispute resolution. It reads as under:

“DISPUTE RESOLUTION

(81) (1) In the event of a dispute or difference relating to any of the matters set out in these Articles



("Dispute"), the Company and its Shareholders shall discuss in good faith to resolve such Dispute, and such discussion shall commence within 15 (fifteen) days from the date of notification of such Dispute. In case the Dispute is not settled within 30 (thirty) days of the commencement of discussion in good faith, it shall be referred to arbitration in accordance with Article 81(2) below.

(2) Disputes failing to be resolved by discussion as set out in Article 81(1), shall be settled in accordance with the Arbitration and Conciliation Act, 1996. All proceedings of the arbitration shall be in the English language and a written transcript of the proceedings shall be made and provided to the parties. The venue/place of arbitration shall be Kozhikode, Kerala. In the event that the disputing parties or the Company and the disputing parties do not appoint an arbitrator within 30 (thirty) days from the notice of such appointment from one party to another, the arbitration shall be conducted by an arbitrator to be appointed in accordance with the Arbitration and Conciliation Act, 1996. Arbitral awards rendered shall be final and binding. The cost of arbitration, including without limitation the fees of the arbitrators and



other legal costs shall be borne and paid by each of the Company and Shareholders, as applicable, in respect of themselves.

(3) Subject to the above, in the event of any claim, dispute or difference arising out of or in connection with the Shareholding in the Company, the Shareholders irrevocably shall submit to the exclusive jurisdiction of the Courts at Kozhikode.”

23. In view of Article 81(2), disputes that fail to be resolved by discussion as set out in Article 81(1) shall be settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996. As the Articles of Association encompasses such a specific provision, I am of the considered view that the disputes between the parties in these arbitration requests are liable to be referred for arbitration. Various other contentions raised by the respondents, noted in the previous paragraphs, need not be examined in depth by this Court in the instant proceedings. All those aspects can be considered and



decided by the arbitrator. If this Court ventures to address such contentions on merits, it may amount to transgression of the constricted jurisdiction under Section 11 of the Arbitration and Conciliation Act 1996. I, therefore, refrain from making any observations on the merits of the contentions of both sides except rejecting the contention of the respondents that there is no binding arbitration agreement. All other contentions of the respondents are left open, for adjudication by the arbitrator. In the nature of the identical contentions involved in these cases I am of the view that a single arbitrator can be nominated in all three cases.

24. In the light of the foregoing discussion, these arbitration requests are allowed and the following directions are issued:

1. The Kerala High Court Arbitration Centre is directed to nominate a retired District Judge from Panel- III, preferably from Kozhikode, as the sole Arbitrator to resolve



the disputes that have arisen between the petitioners and the respondents under the respective Articles of Associations produced in these cases

2. The learned Arbitrator may entertain all issues between the parties in connection with the said Articles of Associations including questions of arbitrability, jurisdiction and limitation, if any, raised by the parties. All contentions of the parties are left open and they are at liberty to raise their claims and counterclaims, if any, before the learned Arbitrator, in accordance with law.
3. The Registry shall communicate the substance of this order to the Kerala High Court Arbitration Centre within ten days and the Centre shall inform the learned Arbitrator within a further period of one week and shall obtain duly signed Form 3 as required under Rule 20(4) of the Kerala High Court (Arbitration Centre) Rules, 2025 and forward the same to this Court.



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4. Upon receipt of the Form 3, the Registry shall issue a certified copy of this order with a copy of the Form 3 appended to the Kerala High Court Arbitration Centre. The original of the Disclosure Statement shall be retained by the Kerala High Court Arbitration Centre.
5. The fees of the learned Arbitrator of the Kerala High Court Arbitration Centre shall be governed by Rule 28 of the Kerala High Court (Arbitration Centre) Rules, 2025. The manner in which the fees and costs payable by the parties shall be governed by Rule 27 of the Kerala High Court (Arbitration Centre) Rules, 2025.

Sd/-  
**S.MANU**  
**JUDGE**

skj



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**PETITIONER'S ANNEXURES**

- |                |  |
|----------------|--|
| Annexure - P/1 | A COPY OF THE MASTER DATA OF THE PETITIONER ALONG WITH BOARD RESOLUTION  |
| Annexure - P/2 | A COPY OF THE MEMORANDUM OF ASSOCIATION AND ARTICLES OF THE ASSOCIATION OF THE COMPANY   |
| Annexure - P/3 | THE MASTER DATA PROCURED FROM THE MINISTRY OF CORPORATE AFFAIRS WEBSITE SHOWING THAT THE RESPONDENT IS DESIGNATED PARTNER AND MANAGING DIRECTOR IN THE ABOVE-MENTIONED LLP AND COMPANY |
| Annexure - P/4 | A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 14.01.2023   |
| Annexure - P/5 | A COPY OF THE LEGAL NOTICE ISSUED TO THE RESPONDENT DATED 16.10.2023   |
| Annexure - P/6 | A COPY OF THE LEGAL NOTICE ISSUED TO THE RESPONDENT DATED 06.12.2024, ALONG WITH THE POSTAL RECEIPT AND DELIVERY RECEIPT   |
| Annexure 7     | A COPY OF A COMMON JUDGEMENT PASSED BY HON'BLE HIGH COURT IN AR NO. 38/2025 DATED 23.06.2025   |
| Annexure - P/8 | A COPY OF THE COUNTER FILED BY THE RESPONDENT  |
| Annexure - P/9 | A COPY OF THE NOTICE DATED 12.07.2025, ALONG WITH ITS POSTAL RECEIPT   |
| Annexure 10    | A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 04.09.2025 WITH POSTAL RECEIPT   |
| Annexure P/11  | A copy of the postal tracking report with respect to Annexure P/9  |



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**RESPONDENT'S ANNEXURES**

- Annexure R1 (a) LIST OF COMPANIES WITH SHRI ABDUL JALEEL R AS A DIRECTOR
- Annexure R1 (b) A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION OF THE PETITIONER COMPANY DATED 01.02.2006
- Annexure R1 (c) A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION AS AMENDED ON 20.07.2011
- Annexure R1 (d) A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION AS AMENDED ON 27.07.2012
- Annexure R1 (e) A TRUE COPY OF THE ORIGINAL VERSION OF THE ARTICLES OF ASSOCIATION DATED 01.02.2006
- Annexure R1 (f) A TRUE COPY OF THE ARTICLES OF ASSOCIATION AMENDED ON 15.09.2014
- Annexure R1 (g) A TRUE COPY OF THE ARTICLES OF ASSOCIATION AMENDED ON 29.09.2015

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**PETITIONER'S ANNEXURES**

- Annexure - P/1 A COPY OF THE MASTER DATA OF THE PETITIONER ALONG WITH BOARD RESOLUTION
- Annexure -P/2 A COPY OF THE MEMORANDUM OF ASSOCIATION AND ARTICLES OF THE ASSOCIATION OF THE COMPANY
- Annexure - P/3 THE MASTER DATA PROCURED FROM THE MINISTRY OF CORPORATE AFFAIRS WEBSITE SHOWING THAT THE RESPONDENT IS DESIGNATED PARTNER AND DIRECTOR IN THE ABOVE-MENTIONED LLP AND COMPANY
- Annexure P/4 A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 17.09 2022



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- Annexure -P/5 A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 16.10.2023
- Annexure- P/6 A COPY OF THE LEGAL NOTICE ISSUED TO THE RESPONDENT DATED 06.12.2024, ALONG WITH THE POSTAL RECEIPT AND DELIVERY RECEIPT
- Annexure - P/7 A COPY OF A COMMON JUDGEMENT PASSED BY HON'BLE HIGH COURT IN AR NO. 39/2025 DATED 23.06.2025
- Annexure P/8 A COPY OF THE COUNTER FILED BY THE RESPONDENT
- Annexure- P/9 A COPY OF THE NOTICE DATED 12.07.2025, ALONG WITH ITS POSTAL RECEIPT
- Annexure- P10 A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 04.09.2025 WITH POSTAL RECEIPT
- Annexure P/11 A copy of the postal tracking report with respect to Annexure P/9

**RESPONDENT'S ANNEXURES**

- Annexure R1 (a) A LIST OF COMPANIES WITH SHRI ABDUL JALEEL R AS A DIRECTOR
- Annexure R1 (b) A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION OF THE PETITIONER COMPANY DATED 24.09.2007
- Annexure R1 (c) A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION AS AMENDED ON 15.07.2011
- Annexure R1 (d) A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION AS AMENDED ON 03.09.2012
- Annexure R1 (e) A TRUE COPY OF THE ORIGINAL VERSION OF THE ARTICLES OF ASSOCIATION DATED 24.09.2007
- Annexure R1 (f) A TRUE COPY OF THE ARTICLES OF ASSOCIATION AMENDED ON 12.09.2015



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**PETITIONER'S ANNEXURES**

- Annexure - P/1 A COPY OF THE MASTER DATA OF THE PETITIONER ALONG WITH BOARD RESOLUTION
- Annexure - P/2 A COPY OF THE MEMORANDUM OF ASSOCIATION AND ARTICLES OF THE ASSOCIATION OF THE COMPANY
- Annexure - P/3 THE MASTER DATA PROCURED FROM THE MINISTRY OF CORPORATE AFFAIRS WEBSITE SHOWING THAT THE RESPONDENT IS DESIGNATED PARTNER AND DIRECTOR IN THE ABOVE-MENTIONED LLP AND COMPANY
- Annexure - P/4 A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 17.09.2022 AND 16.01.2023
- Annexure -P/5 A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 14.10.2023 AND REPLY DATED 30.11.2023
- Annexure - P/6 A COPY OF THE LEGAL NOTICE ISSUED TO THE RESPONDENT DATED 06.12.2024, ALONG WITH THE POSTAL RECEIPT AND DELIVERY RECEIPT
- Annexure - P/7 A COPY OF A COMMON JUDGEMENT PASSED BY HON'BLE HIGH COURT IN AR NO. 41/2025 DATED 23.06.2025
- Annexure - P/8 A COPY OF THE COUNTER FILED BY THE RESPONDENT
- Annexure - P/9 A COPY OF THE NOTICE DATED 12.07.2025, ALONG WITH ITS POSTAL RECEIPT
- Annexure - P/10 A COPY OF THE NOTICE ISSUED TO THE RESPONDENT DATED 04.09.2025 WITH POSTAL RECEIPT
- Annexure P/11 A copy of the postal tracking report with respect to Annexure P/9



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**Annexure R1 (a)            A LIST OF COMPANIES WITH SHRI ABDUL  
JALEEL R AS A DIRECTOR  
RESPONDENT'S ANNEXURES**

**Annexure R1 (b)            A TRUE COPY OF THE MEMORANDUM OF  
ASSOCIATION OF THE PETITIONER COMPANY  
DATED 10.06.2005**

**Annexure R1 (c)            A TRUE COPY OF THE MEMORANDUM OF  
ASSOCIATION AS AMENDED ON 14.08.2012**

**Annexure R1 (d)            A TRUE COPY OF THE MEMORANDUM OF  
ASSOCIATION AS AMENDED ON 24.07.2013**

**Annexure R1 (e)            A TRUE COPY OF THE ORIGINAL VERSION OF  
THE ARTICLES OF ASSOCIATION DATED  
10.06.2005**

**Annexure R1 (f)            A TRUE COPY OF THE ARTICLES OF  
ASSOCIATION AMENDED ON 14.09.2015**