



2026:DHC:5288



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 11th May, 2026

Pronounced on: 02nd July, 2026

+ ARB.P. 145/2026

CHIRAG JAIN

.....Petitioner

Through: Mr. Satvik Varma, Sr. Adv. with Mr. Wasim Beg, Miss Farheen Penwale, Miss Harshita Rawat, Mr. Shantanu Parmar, Mr. Balaram and Mr. Aditya Tewari, Advs.

versus

RAHUL JAIN & ANR.

.....Respondents

Through: Dr. Ishaan S. Sharma, Ms. Shambhavi Sharma, Mr. Shubham Shukla, Mr. Ayush and Mr. Mukund Ranjan, Advs. for R-1
Mr. Anurag Ahluwalia, Sr. Adv. with Mr. Vidhit Gupta, Mr. Kartik Dey, Mr. Dipanshu Gaba, Advs. for R-2

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SAMAYESH KHANNA & ANR.

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Through: Dr. Ishaan S. Sharma, Ms. Shambhavi Sharma, Mr. Shubham Shukla, Mr. Ayush and Mr. Mukund Ranjan, Advs. for R-1



Mr. Anurag Ahluwalia, Sr. Adv. with
Mr. Vidhit Gupta, Mr. Kartik Dey,
Mr. Dipanshu Gaba, Advs. for R-2

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA

INTRODUCTION

1. The present petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), seeking appointment of a Sole Arbitrator for adjudication of disputes between the parties, arising out of two Share Purchase Agreements (“**SPAs**”) dated 27th April, 2024. The said SPAs were subsequently amended by the *Addendums* dated 06th May, 2024.
2. The petition, being *ARB.P. 145/2026*, is with respect to the SPA dated 27th April, 2024, as amended by the *Addendum* dated 06th May, 2024, between the petitioner, namely, Mr. Chirag Jain and Mr. Rahul Jain (“**seller no. 1**”).
3. The petition, being *ARB.P. 146/2026*, has been filed in relation to disputes arising out of the SPA dated 27th April, 2024, as amended by the *Addendum* dated 06th May, 2024, between Mr. Chirag Jain and Mr. Samayesh Khanna (“**seller no. 2**”).
4. This Court notes that *vide* orders dated 28th January, 2026 and 09th March, 2026, seller nos. 1 and 2 have already made a statement that they have no objection if the matter is referred to a Sole Arbitrator, though the Arbitration Clause provides for appointment of a three-member Arbitral Tribunal.



BRIEF FACTS

5. The relevant facts, necessary for adjudication of the present petitions, are as under:

5.1 The petitioner, being an individual investor, was approached by seller nos. 1 and 2, for making an investment in respondent no. 2 – Company, i.e., Beanly Beverages Private Limited.

5.2 Seller nos. 1 and 2, are the Promoters and Directors, having a shareholding of 5,000 equity shares each in respondent no. 2. They together constitute majority shareholding of respondent no. 2, and are in complete control of its management and decision-making.

5.3 The petitioner herein entered into SPA dated 27th April, 2024 with Mr. Rahul Jain, for the purchase of 70 equity shares of respondent no. 2 at a price of Rs. 1,225/- per share, for a total consideration of Rs. 85,750/-. Additionally, the petitioner also entered into a separate but contemporaneous SPA dated 27th April, 2024 with Mr. Samayesh Khanna, for purchase of another 70 shares of the respondent no. 2, at the same rate of Rs. 1,225/- per share, for a total consideration of Rs. 85,750/-.

5.4 Subsequently, the aforesaid SPAs were duly amended *vide* the *Addendums* dated 06th May, 2024, whereby, Clause 3.3 of the SPAs was deleted in its entirety. As per the amended SPAs, in case, the petitioner herein sought to sell the purchased shares of respondent no. 2 – Company, he was obligated to initially offer the said shares to the Promoters. In the event of refusal or no response by the Promoters to buy the shares at the price offered in the market to the purchaser, the purchaser was permitted to sell the shares elsewhere at his will.

5.5 As per the terms of the SPAs, Clause 2.1.2 records that the petitioner



had paid the entire sale consideration to the seller nos. 1 and 2 by way of two cheques, at the time of the execution of the SPAs. The receipt of the consideration was also duly acknowledged by seller nos. 1 and 2 in the SPAs themselves. Thus, the only obligation left under the SPAs was the transfer and registration of the shares by seller nos. 1 and 2, in respect of the petitioner herein.

5.6 Clause 5.1.1 (a) of the amended SPAs further records that respondent no. 2 has subscribed its seal on duplicate of the SPAs, thereby, signifying its knowledge and consent to the SPAs and confirming that the Board of respondent no. 2 – Company shall carry its business in trust for the petitioner. However, admittedly, respondent no. 2 is not a signatory to the subject SPAs.

5.7 Thereafter, the petitioner upon its own independent enquiries discovered that, on 01st July, 2024, respondent no. 2 had issued and allotted fresh equity shares to third parties.

5.8 Subsequently, *vide* E-mail dated 14th July, 2024 to the petitioner, seller no. 1 stated that as agreed, the cheques pertaining to the SPAs were being sent back and the transaction was being reversed.

5.9 Further, *vide* E-mail dated 16th July, 2024, seller no. 2 informed the petitioner that in terms of the primary transfer, the petitioner was required to infuse 30 Lakhs for 0.75% of the equity shares of respondent no. 2, wherein, the petitioner has only transferred a sum of Rs. 25,000/-. Further, as far as the secondary transfer was concerned, which provided for dilution of respondent no. 2, the same was contingent and categorically linked to the said primary transfer. Moreover, since the petitioner did not complete the primary transaction, the SPAs entered into between the petitioner and seller



nos. 1 and 2 were being 'dishonoured'.

5.10 Subsequently, seller nos. 1 and 2 deposited a sum of Rs. 85,750/- each *vide* two cheques, with a narration stating "for reversal of transaction dated 28th February, 2024".

5.11 Thereafter, the petitioner issued two separate notices, seeking specific performance dated 05th September, 2024 to seller nos. 1 and 2, whereby, the petitioner, *inter alia*, stated that the sellers could not unilaterally repudiate the amended SPAs, and further called upon to transfer the purchased equity shares of respondent no. 2 – Company.

5.12 Consequently, the sellers replied to the aforesaid notice *vide* communication dated 26th September, 2024, reiterating the alleged lack of consensus and treating the amended SPAs as effectively terminated.

5.13 In response, the petitioner issued the notice for invocation of arbitration dated 20th December, 2024, thereby, denying the allegations, reiterating the binding and independent nature of the SPAs, and further invoking the Arbitration Clause, i.e., Clause 17 of the amended SPAs. However, the sellers failed to nominate an Arbitrator or take any steps for constitution of the Arbitral Tribunal, in terms of Clause 17 of the SPAs.

5.14 In the meanwhile, the petitioner herein had filed a petition under Section 9 of the Arbitration Act, bearing *Arbitration No. 467/2025* and *Arbitration No. 468/2025*, in the Patiala House Courts, New Delhi. The said Court *vide* order dated 17th October, 2025 restrained the sellers herein from transferring, alienating, disposing of, or encumbering the shares of respondent no. 2, sold by them to the petitioner herein.

5.15 However, by way of the aforesaid order, the said Court declined to grant any restraint against respondent no. 2, and directed the petitioner



herein to initiate arbitration proceedings within 90 days.

5.16 In the *interregnum*, the petitioner herein filed an application seeking extension of the interim relief granted as aforesaid, however, the same was dismissed by the aforesaid Court *vide* order dated 30th January, 2026. Further, the sellers herein had also filed an application, seeking vacation of the interim order dated 17th October, 2025, which was dismissed for being infructuous.

5.17 Subsequently, the petitioner herein has filed appeals under Section 37 of the Arbitration Act before this Court, being *FAO 70/2026*, *FAO 72/2026*, *FAO 73/2026*, against the order dated 30th January, 2026, wherein, by way of order dated 29th May, 2026, the sellers have undertaken to comply with the initial directions passed on 17th October, 2025 till the Arbitral Tribunal is constituted. The said appeals are presently pending adjudication before this Court.

5.18 Thus, in view of the aforesaid, disputes have arisen between the parties and the present petitions have been filed before this Court for constitution of an Arbitral Tribunal to adjudicate the disputes arising out of and in relation to the SPAs.

SUBMISSIONS ON BEHALF OF THE PARTIES:

6. This Court notes that in the present petitions, seller nos. 1 and 2 have consented to the appointment of a Sole Arbitrator. Accordingly, the issue that arises for consideration before this Court is regarding impleadment of respondent no. 2, which is a non-signatory to the Arbitration Agreement.

Submissions made on behalf of the petitioner:

7. The contentions raised on behalf of the petitioner, are as follows:

7.1. It is the case of the petitioner that the disputes raised in the present



petitions arise directly out of and in relation to the amended SPAs and are squarely governed by the Arbitration Clause contained in Clause 17 thereof. Thus, issues, *inter alia*, relating to breach and repudiation of the SPAs, are all arbitrable disputes liable to be adjudicated by an Arbitral Tribunal.

7.2. A bare reading of the terms of the amended SPAs clearly establishes that upon receipt of the entire sale consideration, the contract between the parties stood concluded and binding. Thus, seller nos. 1 and 2 were bound to complete the transaction by handing over the duly signed share transfer deeds along with the physical share certificates representing the sale shares, and by ensuring that the Board of Directors of respondent no. 2 – Company approved the transfer and registered the petitioner as a shareholder of the respondent no. 2 – Company.

7.3. The parties were further bound by the Positive and Negative Covenants, mentioned under Clauses 5.1 and 5.2 of the amended SPAs, which obliged the seller nos. 1 and 2 and respondent no. 2 to inform the petitioner of any material events affecting the respondent no. 2, and to refrain from altering the capital structure of the Company. However, in complete violation of the said Clauses, the respondents herein issued fresh equity shares to the third parties. This unilateral allotment resulted in dilution of the economic and voting rights, thereby, directly prejudicing the petitioner's vested contractual rights.

7.4. Further, existence of the Arbitration Agreement is not in dispute, and the only issue raised by the respondent no. 2 is that it is not bound by the SPAs. Respondent no. 2 has been impleaded in the present petition owing to the fact that amended SPAs itself record that the Company's knowledge, consent and trust obligation, and completion of transaction, necessarily



required corporate acts of respondent no. 2.

7.5. Clause 5.1.1(a) of the amended SPAs expressly records that the Company subscribed its seal on a duplicate of the SPAs, thereby, signifying its knowledge and consent to the SPAs, and that the Board of the Company acknowledged, confirmed and declared that it shall carry out its business until the closing date, in trust for the purchaser/petitioner.

7.6. Clause 7 of the amended SPAs required the seller to procure Board approval and registration of the petitioner as shareholder, which are the acts that could only be performed through the respondent no. 2. The Company is, therefore, structurally embedded in the performance of amended SPAs, and hence, the aforesaid itself is a direct contractual recording of respondent no. 2's involvement.

7.7. In furtherance thereof, the Articles of Association of respondent no. 2 – Company, placed on record by respondent no. 2 itself, expressly provide under Article 76 that the seal of the Company shall not be affixed to any instrument except by authority of a resolution of the Board and in the personal presence of at least two Directors, who must sign the instrument.

7.8. It is further a matter of record that respondent no. 2 *vide* its reply to the present petitions, did not deny affixation of common seal of the Company, but only contended that such affixation amounts at best to acknowledgement. However, in its additional affidavit to the rejoinder of the petitioner, respondent no. 2 has introduced an altogether new case that the common seal was never affixed. Hence, a party cannot be permitted to withdraw the position consciously taken in its earlier pleadings.

7.9. Additionally, duplicate copy of the SPAs, bearing the common seal is in possession of respondent no. 2 and has never been produced. The



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questions, with regard to whether the common seal was affixed, by whom, on whose authority, and in whose presence, is an arbitrable dispute requiring evidence, which cannot be done at the stage of Section 11 of the Arbitration Act.

7.10. Respondent no. 2 was the direct commercial beneficiary of the overall transaction and the plea that amended SPAs were purely bilateral and that the Company derived no benefit from the same, is directly contradicted by records. The present arrangement was structured to induct the petitioner as an equity shareholder in respondent no. 2 to the extent of 2%, with 1.25% through the amended SPAs, and the balance through the proposed infusion of Rs. 30 Lakhs in the Company.

7.11. Subsequently, the amount of Rs. 25,000/- towards the primary transaction, was in fact paid by the petitioner in the bank account of respondent no. 2. Additionally, the respondents themselves claim that the dispute arose because the petitioner allegedly failed to complete the infusion of the remaining amount into the Company. Therefore, respondent no. 2 cannot simultaneously be central enough to constitute the basis of the alleged failure of the transaction and yet remote enough to be excluded from the arbitral proceedings.

7.12. The amount of Rs. 25,000/- was returned not only through any disclosed corporate process but by seller no. 2, personally through UPI, and no Board Resolution authorising seller no. 2 to return the monies paid by the petitioner towards the investment in the Company has been placed on record. If the payment was made to respondent no. 2, it could only be legitimately returned by the Company, through its proper corporate process. Thus, the manner of the alleged refund is a standalone admission that seller



nos. 1 and 2 treated the Company's affair as indistinguishable from their own.

7.13. Further, the acts of seller nos. 1 and 2 and respondent no. 2 are so intertwined that the parties could not separate them in their own pleadings. While the respondents have relied on an alleged "composite structure" of the primary and secondary transaction to terminate the amended SPAs, however, they invoked separateness of the same to exclude the Company.

7.14. Therefore, if the transactions were composite, respondent no. 2 is necessarily a part of it, and if the transactions were not composite, the amended SPAs stand on their own, as a concluded transaction supported by paid and encashed consideration.

7.15. Further, respondent no. 2 is a veritable party, whose presence is indispensable in the present matter. Since, respondent no. 2's shares are the subject matter of the dispute, its Register is where the transfer had to be recorded and its capital structure was diluted, during the subsistence of the SPAs, through allotment of shares to third parties in direct breach of Clause 5.1.1 (a) of the SPAs, and its corporate machinery was the vehicle through which the alleged breach was implemented.

7.16. Moreover, the Company's consent has been recorded in the amended SPAs and its Directors, i.e., the majority shareholders, assumed the trust obligations and the common seal of the Company has been subscribed in the copy of the SPAs.

7.17. The objections raised by respondent no. 2 that no notice under Section 21 of the Arbitration Act has been addressed to it, is misconceived. Respondent no. 2 in its reply to the present petition chose to rely upon and extract language from the petitioner's notice invoking arbitration, a notice



that was not addressed to it, was not issued by it and to which it was not even a party.

7.18. Furthermore, Section 21 of the Arbitration Act merely operates as statutory mechanism to ascertain the date of initiation of the arbitration proceedings for the limited purpose of ascertaining limitation.

7.19. Respondent no. 2's plea of non-arbitrability is equally misconceived. Respondent no. 2 has failed to identify any specific circumstance that brings the present dispute within the exclusive domain of the Companies Act, 2013 ("**Companies Act**") or involves any public law element.

7.20. Hence, excluding respondent no. 2 from the arbitral reference, at this stage, would not only be premature but would rather fragment the dispute, leaving a necessary party to the controversy outside the adjudication and render any award incomplete and potentially unenforceable under the Arbitration Act.

7.21. Further, the scope of inquiry at the stage of adjudicating a petition under Section 11 of the Arbitration Act is limited to the existence of the Arbitration Agreement under Section 11(6A) of the Arbitration Act. Therefore, questions of arbitrability, jurisdiction and the scope of the Tribunal's authority are matters for the Arbitral Tribunal under Section 16 of the Arbitration Act.

7.22. Thus, *prima facie*, threshold is more than satisfied in the present case and any further examination is for the proposed Arbitral Tribunal under Section 16 of the Arbitration Act.

Submissions made on behalf of respondent no. 2:

8. Rebutting the contentions of the petitioner, the following submissions have been made by respondent no. 2:



8.1. The present petition in so far as it seeks to proceed against respondent no. 2, is fundamentally misconceived.

8.2. The two SPAs were entered into between the petitioner and seller nos. 1 and 2, respectively, for the purchase of equity shares of respondent no. 2 – Company. The *addendum* dated 06th May, 2024 also does not introduce respondent no. 2 as a contracting party and is confined solely to modification of Clause 3.3 of the SPAs, with all the terms to remain unchanged. The subject shares were proposed to be dealt with by seller nos. 1 and 2 in their individual capacity as shareholders. Thus, any alleged obligations arise purely, *inter se*, the petitioner and seller nos. 1 and 2.

8.3. The amended SPAs are bilateral agreements, each executed between two individuals, and are not composite transactions involving multiple interlinked agreements or reciprocal obligations of a corporate group. Respondent no. 2, being a separate legal entity, neither negotiated the amended SPAs nor derived any commercial benefit from it, nor assumed any contractual obligation thereunder. The petitions, insofar as they seek reliefs against respondent no. 2, suffers from clear misjoinder of parties, is vexatious in nature, and constitutes an abuse of the process of law.

8.4. It is an admitted position that respondent no. 2 is not a signatory to the contractual arrangement based on which the present petition has been filed. Further, neither reciprocal promise/contractual undertaking was ever given by respondent no. 2, nor any consideration flowed from the petitioner to respondent no. 2.

8.5. In the absence of an Arbitration Agreement satisfying Section 7 of the Arbitration Act, respondent no. 2 cannot be forced into arbitration.



8.6. The Arbitration Clause, i.e., Clause 17 of the amended SPAs expressly confines to disputes “*between the parties hereto*”. Additionally, respondent no. 2 is not described as a party to the amended SPAs. Thus, once the Arbitration Clause is textually limited to the contracting parties, there is no scope for the petitioner to enlarge it by implication and drag in a distinct legal entity that neither signed the bargain nor accepted the arbitral mechanism.

8.7. Further, Clause 17 of the amended SPAs expressly provide for constitution of a three-member Arbitral Tribunal, wherein, each contracting party is entitled to appoint one Arbitrator and the two appointed Arbitrators are required to nominate the Presiding Arbitrator. Respondent no. 2, not being a party to the amended SPAs, is neither conferred any right nor saddled with any obligation under the said Clause; it was never required, expected or called upon to nominate an Arbitrator, nor did it participate in or consent to the arbitral appointment mechanism in any manner whatsoever.

8.8. In view of the aforesaid, it is clear that the case of the petitioner is founded on a private share arrangement with seller nos. 1 and 2. Further, neither the SPAs and its *Addendums* induct respondent no. 2 as a party, nor respondent no. 2 executed any agreement or put its common seal on any SPAs or its copy. Thus, no corporate acts exist by virtue of which respondent no. 2 assumed any obligation under the SPAs or the Arbitration Clauses therein.

8.9. Admittedly, no notice invoking arbitration under Section 21 of the Arbitration Act was ever issued or served upon respondent no. 2. It is a settled position that a party, who has never been served with the notice invoking arbitration and never consented to arbitrate, cannot be pushed to



participate in the arbitral proceedings. Thus, in the absence of a valid notice under Section 21 of the Arbitration Act, no arbitral proceedings can be said to have commenced *qua* respondent no. 2 and the present petitions are accordingly premature *in limine* insofar as it concerns respondent no. 2.

8.10. Further, reliance placed by the petitioner upon the affixation of the alleged common seal of respondent no. 2 on the SPAs is misconceived. The said common seal was never affixed on any SPAs or its copy. Moreover, the petitioner erroneously relies upon the provisions of Articles of Association of respondent no. 2 relating to affixation of the common seal, as well as on the Board Resolution dated 01st July, 2024.

8.11. The existence of provisions governing the manner of affixation of the common seal or conferring authority in that regard does not, by itself, establish that the seal was ever affixed on the SPAs, nor does it create any contractual or arbitral obligation on the part of respondent no. 2.

8.12. Further, the additional affidavit filed by the respondent no. 2 to the rejoinder of the petitioner, was filed to clarify that the reply filed by respondent no. 2 was, at all times, a denial of the petitioner's claim and objection to the impleadment in the arbitral proceedings. The petitioner has sought to selectively extract and mischaracterise portions of the reply filed by respondent no. 2 and portrayed them as admissions.

8.13. The present petitions, in substance, seeks to ignore the separate legal personality of respondent no. 2 and to collapse the Company into seller nos. 1 and 2's independent share transactions, which is impermissible.

8.14. Respondent no. 2 is a distinct juristic person functioning under the Companies Act, and therefore, the reliefs sought by the petitioner insofar as pertaining to respondent no. 2, amount to a direct invitation to interfere with



internal corporate management, viz. Board approvals, share transfers, restraint on issuance of allotment of shares, and reversal of steps allegedly taken in the Company's affairs.

8.15. The aforesaid reliefs are inherently statutory in character and are governed exclusively by the provisions of the Companies Act. The adjudication of disputes relating to share transfers, rectification of statutory registers, validity of corporate actions and compliance with statutory duties, is specifically entrusted by the legislature to designated statutory *fora*, including the National Company Law Tribunal ("NCLT"), and such matters are incapable of being adjudicated by a private Arbitral Tribunal, which derives its jurisdiction solely from contract between the parties.

8.16. The petitioner's attempt to invoke "lifting of corporate veil" is equally untenable since no fraud, sham structure, or any other exceptional circumstances have been shown. A Company's separate legal structure cannot be discarded merely because one of its shareholders entered into a disputed transaction.

8.17. It is also clear from the record that out of the agreed Rs. 30 Lakhs towards primary infusion, the petitioner paid only Rs. 25,000/-, leaving Rs. 29,75,000/- outstanding. The amount of Rs. 25,000/- earlier paid towards the primary transaction was refunded to the petitioner on 09th July, 2024, and seller no. 2 also refunded the entire sale consideration, thereby, restoring the petitioner to his original financial position. The petitioner's own conduct, namely, his failure to complete the primary transaction, his acceptance by silence of the refunded amounts over a substantial period, and his long delay in prosecuting his claims, undercuts his plea of an alleged concluded and fully performed amended SPAs.



8.18. *In arguendo*, even if the alleged transactions in relation to the said shares had been concluded, the petitioner would not have acquired any right to control, restrain or otherwise dictate any subsequent issuance or allotment of shares by respondent no. 2. The petitioner's claim concerns an alleged transaction of approximately 70 shares each through the amended SPAs, stated to constitute about 0.625% of the equity, against an asserted payment of Rs. 85,750/-. However, yet the petitioner seeks sweeping reliefs affecting the Company's internal operations and future capital investments.

8.19. Lastly, the petitioner's own conduct demonstrates that no independent cause of action was ever understood to exist against respondent no. 2. The petitioner had earlier filed petitions under Section 9 of the Arbitration Act in the Patiala House Courts, New Delhi and sought to proceed against respondent no. 2. However, the said Court refused to issue notice to the respondent no. 2, and in fact, the order refusing to issue notice to respondent no. 2 was not even challenged by the petitioner.

8.20. Thus, having failed to secure any effective footing against the respondent no. 2 in earlier proceedings, the petitioner now seeks to indirectly fasten arbitral jurisdiction by way of the present petitions, which is impermissible and should be rejected at the threshold.

ANALYSIS AND FINDINGS:

9. I have heard learned counsels appearing for the parties and have perused the pleadings and documents on record.

10. As per the facts on record, by way of the two SPAs, the petitioner herein has purchased 70 shares each from seller nos. 1 and 2, who are the holders of 5000 equity shares of respondent no. 2 – Company.

11. A perusal of the SPAs executed between the parties herein shows that



the Arbitration Clause is contained in Clause 17, which reads as under:

17. ARBITRATION

All disputes and difference, if any, which may arise between the parties hereto relating to or in any manner concerning or affecting these presents and which are not to be settled by mutual discussion shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The arbitration tribunal shall consist of three arbitrators, one of whom shall be appointed by each party and the third

arbitrator shall be appointed by the two arbitrators appointed by the parties. Any decision of the arbitral tribunal shall be made by a majority of its members. The arbitration proceedings shall be held in New Delhi.

18. NOMINATION

12. A bare reading of the aforesaid Clause makes it manifest that the place of arbitration for adjudication of disputes between the parties is New Delhi. Further, it is also clear that the parties to the SPAs shall first strive for mutual discussions of “all disputes/difference” relating to or in any manner concerning the amended SPAs. However, upon failure of such mutual discussions, the parties shall be referred to arbitration for resolution of their disputes by a three-member Arbitral Tribunal, wherein, each party shall appoint its nominee Arbitrators, who ultimately shall appoint the third Arbitrator.

13. Thus, the intention of the parties to arbitrate all disputes and differences is expressly clear from the categorical language of the Arbitration Clause.

14. In the present case, although the Arbitration Clause stipulates that the disputes shall be referred to a Tribunal of three Arbitrators, however, the petitioner herein has sought appointment of a Sole Arbitrator, and the same has been concurred to by the sellers. In this regard, the order dated 09th March, 2026 recording the consent of sellers for appointment of a Sole Arbitrator, is reproduced as under:



“xxx xxx xxx

3. This Court takes note that respondent no.1 has already made a statement that they have no objection if the matter is referred to a Sole Arbitrator, though the Arbitration Clause makes provision for appointment of a three-member Arbitral Tribunal.

xxx xxx xxx”

(Emphasis Supplied)

15. Thus, though sellers have expressed their consent to the reference of disputes to arbitration, however, respondent no. 2 has raised its objections with respect to such reference.

16. With respect to the aforesaid, respondent no. 2 has raised the primary objection that it is not a party to the Arbitration Agreement, and therefore, the same is not binding upon it. It has further been contended by respondent no. 2 that the scope of enquiry under Section 11 of the Arbitration Act is very limited, and therefore, the enquiry as to respondent no. 2 being a veritable party cannot be conducted by this Court in the present proceedings.

17. It is to be noted that disputes herein have arisen between the parties, owing to respondent no. 1's non-compliance to the SPAs, wherein, as per the case put forth by the petitioner, the sellers have failed to hand over the duly signed copies of the share transfer deed and the physical share certificates to the petitioner. Thus, the claim raised by the petitioner essentially pertains to the approval of the transfer of shares in question by the Board of Directors of respondent no. 2, and for acknowledging the petitioner as a registered member/shareholder of respondent no. 2. The further plea of the petitioner is to desist the respondents from making any changes to the existing capital structure of respondent no. 2, pending completion of the transfer of the subject shares under the SPAs, as per Clause 5.2.1 of the respective SPAs.



18. At the outset, it is to be noted that the adjudication by this Court under Section 11 of the Arbitration Act is circumscribed owing to the inclusion of Section 11(6A) of the Arbitration Act. Further, the final determination of the issue as to whether a non-signatory party is a veritable party, is to be left to the Arbitral Tribunal.

19. As per the law laid down by the Supreme Court in plethora of judgments, such as, ***SBI General Insurance Company Limited Versus Krish Spinning, (2024) 12 SCC 1*** and ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996, and Stamp Act, 1899, In Re. (2024) 6 SCC 1***, the referral proceedings are preliminary and summary, and not in the nature of a mini-trial. Rarely as a demurrer, the Referral Court may decline reference when there is not even a vestige of doubt that the claim is non-arbitrable. If there is a slightest doubt, the rule is to refer the dispute(s) to arbitration. Further, when contentions relating to non-arbitrability are plainly arguable, or when facts are contested, the Court by default would refer the parties to arbitration.

20. The aforesaid judgments further lay down that the use of the term “*examination*” under Section 11(6A) of the Arbitration Act 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 of the Arbitration Act. Moreover, the 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.

21. As regards the issue pertaining to impleadment of non-signatory to arbitration proceedings, this Court notes that in terms of the judgment of the



Supreme Court in the case of *Cox and Kings Limited Versus SAP India Private Limited and Another*, (2024) 4 SCC 1, the determining factor is primarily an assessment regarding the conduct, role, and involvement of the non-signatory in the underlying contract. In order to assess the same, this Court is required to consider factors, such as, mutual intent, relationship between the signatories and non-signatories, commonality of subject matter, as well as composite nature of transactions and performance of the contract.

22. Thus, the Supreme Court in the aforesaid judgment of *Cox and Kings Limited Versus SAP India Private Limited and Another*, (2024) 4 SCC 1, held as follows:

“xxx xxx xxx

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.

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

170.1. The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;

xxx xxx xxx”

(Emphasis Supplied)

23. Likewise, the Supreme Court in the case of ***Hindustan Petroleum Corporation Limited Versus BCL Secure Premises Private Limited, (2026) 3 SCC 711***, while dealing with the scope of enquiry under Section 11 of the Arbitration Act, has held as follows:

“xxx xxx xxx

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.

xxx xxx xxx”

(Emphasis Supplied)

24. A reading of the aforesaid judicial precedents makes it evident that, at the stage of referral, the Referral Court is only required to arrive at a *prima facie* satisfaction regarding the existence of a valid Arbitration Agreement. The final determination as to whether a non-signatory is a veritable party to such Agreement is one that falls within the domain of the Arbitral Tribunal, which is vested with the adjudicatory authority to determine the issue on the basis of the pleadings, evidence, and other materials placed before it.

25. Another significant judgment of the Supreme Court on the issue of impleadment of a non-signatory is the case of *Chloro Controls India Private Limited Versus Severn Trent Water Purification Inc. and Others, (2013) 1 SCC 641*, wherein, the Supreme Court held as follows:

“xxx xxx xxx

103. Various legal bases may be applied to bind a non-signatory to an arbitration agreement:

103.1. The first theory is that of implied consent, third-party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities.

103.2. The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called “the alter ego”), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.

xxx xxx xxx”

(Emphasis Supplied)



26. On the same footing, in the case of *Ajay Madhusudan Patel and Others Versus Jyotrindra S. Patel and Others*, (2025) 2 SCC 147, the Supreme Court, while recognizing the complexity involved in determining whether a non-signatory constitutes a veritable party to an Arbitration Agreement, reiterated that the Arbitral Tribunal is the proper forum for undertaking such determination. The relevant paragraphs of the judgment passed by the Supreme Court in *Ajay Madhusudan (Supra)* are as follows:

“xxx xxx xxx

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.

xxx xxx xxx

79. This Court in Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1: (2024) 2 SCC (Civ) 1: (2024) 251 Comp Cas 680] held that the definition of “parties” under Section 2(1)(h) read with Section 7 of the 1996 Act includes both the signatory as well as non-signatory parties. Persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may also intend to be bound by the terms of the agreement. Further, the requirement of a written agreement under Section 7 of the 1996 Act does not exclude the possibility of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties. Therefore, the issue as to who is a “party” to an arbitration agreement is primarily an issue of consent. Actions or conduct could be an indicator of the consent of a party to be bound by the arbitration agreement. This aspect is also evident from a reading of Section 7(4)(b) which emphasises on the manifestation of the consent of persons or entities through actions of exchanging documents.

xxx xxx xxx



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.

xxx xxx xxx

83. It is evident that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such an agreement. Further, when the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement. However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental. Thus, the conduct of the non-signatory party along with the other attending circumstances may lead the referral court to draw a legitimate inference that it is a veritable party to the arbitration agreement.

xxx xxx xxx”

(Emphasis Supplied)

27. The aforementioned legal position makes it abundantly clear that while considering a petition filed under Section 11 of the Arbitration Act, the scope of enquiry before this Court is primarily confined to examining the existence of an Arbitration Agreement, which is a *sine qua non* for the reference of disputes to arbitration. Such satisfaction is required to be arrived at on a *prima facie* basis, and without embarking upon a detailed examination of the merits of the dispute.



28. The question whether a non-signatory can be treated as a party to the Arbitration Agreement, in the facts and circumstances of the present case, would require a more comprehensive enquiry, which may not be appropriate at this stage. Such an exercise is best left to the Arbitral Tribunal.

29. Fundamentally, the notion of a “veritable party” to an Arbitration Agreement denotes a non-signatory, who, despite not being expressly named in the Arbitration Clause, shares such a proximate legal or factual nexus with the signatories, transaction and the subject agreement, that its exclusion from the arbitral process would be unjust, improper and would defeat the true intent underlying the Arbitration Agreement.

30. In the facts of the present case, the petitioner seeks to implead respondent no. 2 in the arbitration proceedings, who is admittedly a non-signatory to the Arbitration Agreement of the SPAs.

31. It is the case of the petitioner, that respondent no. 2 constitutes a veritable party to the arbitral proceedings, on the ground that its shares form the subject matter of the present proceedings; its Register is where the transfer had to be recorded; its capital structure was diluted during the subsistence of the SPAs through allotment of shares to third-party investors in breach of the trust obligations contained in Clause 5.1.1(a) of the respective SPAs, and its corporate machinery was the vehicle through which the alleged breach was implemented.

32. *Per contra*, respondent no. 2 has raised the contention that it is neither a party nor a signatory to the SPAs, and consequently, could not have been arrayed as a respondent in the present petitions.

33. Respondent no. 2 has put forth the submission that the petitioner’s case is founded entirely on a private share arrangement between the



petitioner and the sellers, to which, respondent no. 2 was never a party. Respondent no. 2 has further argued that the *Addendums* do not induct respondent no. 2 as party to the SPAs, inasmuch as they confined solely to the modification of Clause 3.3 thereof, while all other terms and conditions remained unchanged. Furthermore, it is contended that respondent no. 2 did not execute any agreement nor affix its common seal on any duplicate/SPAs. It is also submitted that there exists no corporate act to demonstrate that respondent no. 2 ever assumed any obligation under the SPAs or the Arbitration Agreement therein.

34. In this regard, it is apposite to note that respondent no. 1 in the present petitions, namely, Mr. Rahul Jain and Mr. Samayesh Khanna, have majority shareholding and decision-making authority in respondent no. 2 – Company. In their capacity as Directors and majority shareholders, they are empowered to undertake the corporate acts of respondent no. 2, including, procuring the requisite Board approvals and affixing the common seal of the Company.

35. As recorded in the *Third Recital* of the respective SPAs, Mr. Rahul Jain and Mr. Samayesh Khanna, respectively, agreed to sell and transfer, and the petitioner agreed to purchase, 70 equity shares each of respondent no. 2 at a price of Rs. 1,225/- per share, for a total sale consideration of Rs. 85,750/- under each SPA. Further, Clause 2.1.2 of the respective SPAs records that the aforesaid sale consideration has been duly paid by the petitioner, as purchaser, and that the respective sellers have acknowledged receipt thereof. The relevant Clause, in this regard, is reproduced as under:



2.1.2. The aggregate Purchase Consideration as per fourth whereas clause, for the Sale Shares will be paid as follows:

A sum of Rs. 85,750/- (Rupees Eighty Five Thousand Seven Hundred and Fifty only) have been paid by the Purchaser to the Seller as per details below simultaneously with the execution of this Agreement (the payment and receipt whereof the Seller hereby admit and acknowledge):

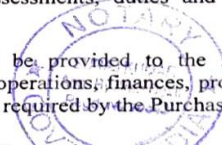
36. Furthermore, Clause 5.1 of the respective SPAs, i.e., Positive Covenants/undertakings by the sellers, is reproduced hereinbelow:

5. UNDERTAKINGS AND COVENANTS BY SELLER

5.1. POSITIVE COVENANTS

5.1.1. During the currency of this Agreement and pending completion, the Seller hereby agree and Covenant to the Purchaser that:

- a) The Seller and the directors of the Target Company shall as and from the date of this Agreement until Closing, carry on the business of the Company in the ordinary course of business as Trustees for the Purchaser. The Company has simultaneously subscribed its seal on a duplicate of this Agreement signifying its knowledge and consent to this Agreement and acknowledges, confirms and declares that the Board of the Company shall carry out its business until the Closing Date, in trust for the Purchaser.
- b) The Company shall inform the Purchaser of any material event, which adversely affects or as likely to affect the business, properties or assets of the Target Company.
- c) The Target Company shall maintain its books of accounts in accordance with generally accepted accounting principles to reflect the true and correct state of affairs of the Target Company.
- d) The Company shall pay all taxes, assessments, duties and levies legally payable from time to time.
- e) The Seller shall provide or cause to be provided, to the Purchaser any information in relation to the business, operations, finances, properties, assets and liabilities of the Company as may be required by the Purchaser.



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37. A perusal of the Clause 5.1.1 (a) of the SPAs makes it clear that respondent no. 2 is obligated to carry on its business in the ordinary course, as trustee for the petitioner from the date of the SPAs until the closing. It further stipulates that respondent no. 2 has subscribed its common seal to a duplicate of the SPAs, and that its Board shall be bound to carry out the Company's business in trust for the petitioner, until the closing date.



38. Clause 5.1.1 (b) further obligates the Company to inform the petitioner of any material event that adversely affects or is likely to affect the business, properties, or assets of respondent no. 2.

39. Further, Clause 5.1.1 (e) obligates the respective sellers to provide, or cause to be provided, to the petitioner such information relating to the business, operations, finances, properties, assets and liabilities of respondent no. 2, as may be required by the petitioner.

40. This Court also deems it apposite to refer to Clause 5.2 of the SPAs, i.e., Negative Covenants, which is reproduced hereinbelow:

5.2. Negative covenants

5.2.1. During the currency of this agreement and pending completion, the Seller hereby undertake and covenant to the Purchaser that the Seller shall not

1. Sell or dispose of or agree to sell or dispose of the Sale Shares to any other person.
2. Create any encumbrance in respect of the Sale Shares.
3. Acquire or subscribe to any further shares or any other securities of the Company.

41. In the present case, the existence of the Arbitration Agreement is not in dispute. The principal contention of respondent no. 2 is that, being a non-signatory, it is not bound by the Arbitration Agreement contained in the SPAs. However, the question whether a Company, acting through its controlling shareholders and Directors, who are themselves parties to the Arbitration Agreement, can be treated as a party thereto by virtue of the transaction structured and implemented through them, is an issue which would necessarily require a detailed examination of the facts and evidence. It is trite law that this question cannot be conclusively determined at the stage of Section 11 of the Arbitration Act.



42. It is further pertinent to note that respondent no. 2, *vide* its additional affidavit, has specifically denied that “*respondent no. 2 ever affixed its common seal on SPA or on any copy thereof.*” However, as noted above, the respective SPAs, through Clause 5.1.1 (a), record that the Company has simultaneously subscribed its common seal.

43. Further, in its reply to the present petitions, respondent no. 2 has submitted that “*it is clarified that a mere affixation of respondent no. 2’s seal on a duplicate copy of the SPA, in the context of Clause 5.1.1(a) of the amended SPA, is only a mode of acknowledging the existence of the agreement and by no stretch can the same be extended to any liabilities being extended to respondent no. 2, especially with reference to the terms of the amended SPA.*”

44. On the other hand, the petitioner has contended that the duplicate copy of the SPAs, bearing the common seal of the respondent no. 2 is in the possession of respondent no. 2, and the same has not been produced before this Court.

45. Thus, in the facts of the present case, although Clause 5.1.1 (a) of the SPAs records that the Company has affixed its common seal to a duplicate of the SPAs, respondent no. 2 has specifically disputed the same. At this stage, this Court cannot embark upon an adjudication of such disputed questions of fact so as to determine whether the common seal was, in fact, affixed. Further, the questions whether the common seal of the Company was affixed to the duplicate of the SPAs and, if so, the manner, capacity, and legal effect of such affixation, are matters which can only be determined upon a detailed examination of the evidence led by the parties.



46. In view of the facts of the present case, this Court is of the considered opinion that the question whether respondent no. 2 constitutes a veritable party to the Arbitration Agreement would necessitate an expansive enquiry, comprehensive examination of the transactions between the parties and the conduct of the parties. As discussed hereinabove, such detailed exercise is not possible at the stage of adjudicating a petition filed under Section 11 of the Arbitration Act. Therefore, this Court is of the view that the said issue ought to be decided by the Arbitral Tribunal, which is the authority to delve into factual and circumstantial evidence in order to decide the said issue.

47. In this regard, reference may be fruitfully made to the judgment of this Court in the case of *Paradise Plastics Enterprises Limited Versus JRG Automotive Industries India Pvt. Ltd & Ors.*, (2025) SCC OnLine Del 9815, wherein, it has been held as follows:

“xxx xxx xxx

13. Recently, the Supreme Court in *ASF Buildtech Private Limited y. Shapoorji Pallonji and Company Private Limited*, (2025) SCC OnLine SC 1016, referring to and relying on an earlier judgment of the Supreme Court in *Cox and Kings Limited v. SAP India Private Limited and Another*, (2024) 4 SCC 1, held that from the said decision it is discernible that the entire exercise of determining whether a non-signatory is bound by an Arbitration Agreement, in contradistinction to the narrow question of the existence of the Arbitration Agreement, necessitates a far more expansive enquiry. It was observed that this enquiry transcends the limited question of mere existence as it entails an interpretation of the scope and contours of the principal agreement, an assessment of the commercial understanding between the parties, examination of the nature and purpose underlying the principal contract and the character of the transactions and conduct of the parties vis-a-vis, the object and wisdom of the parties underlying contractual agreement. Such an exercise mandates a detailed and comparative evaluation of the substantive provisions of both the principal and supplementary agreements and not merely of the Arbitration Agreement or Clause, in isolation.

14. It was further held that by no stretch of imagination can the issue whether non-signatory is bound by the Arbitration Agreement be



characterised as one that is either significant or sine qua non to the determination of the existence of the Arbitration Agreement. The former necessitates a substantive examination of the entire contractual relationships, whereas the latter is a limited exercise directed only at confirming the formal validity of the Arbitration Agreement itself. Such a question is not one of 'existence' of the Arbitration Agreement, but one of interpretation and scope of the principal agreement. The Supreme Court observed that once the referral Court identifies an Arbitration Agreement that satisfies the formal requirements of Section 7 of 1996 Act, the existence of the Arbitration Agreement is established, even though its binding nature qua the non-signatory may not be established. The question whether a non-signatory is bound by the Arbitration Agreement involves a more nuanced determination of parties' intentions etc., and the broader context of the Agreement and as held in Cox and Kings (supra), 'existence of Arbitration Agreement' and 'veritable party to the Arbitration Agreement' are two separate and independent enquiries. It was further held that even if it is assumed that the referral Court in its jurisdiction under Section 11 of 1996 Act has the discretion to determine whether a non-signatory is a veritable party to the Arbitration Agreement or not, by virtue of Cox and Kings (supra), the referral Court should not only refrain but rather loathe the exercise of such discretion and this exercise should be left to the Arbitral Tribunal, which can delve into factual and circumstantial evidence along with the legal aspects to decide this issue. The Supreme Court emphasized on the hands off approach of referral Court on this issue underscoring that once the Arbitral Tribunal stands constituted, it becomes automatically open to all parties to raise any preliminary objection, including one touching on the impleadment of a non-signatory party and/or whether the non-signatory party qualifies as a veritable party to the Arbitration Agreement.

15. It was further held by the Supreme Court that the Arbitral Tribunal would be the appropriate forum for deciding this issue and this approach is necessitated by the inherent complexity involved in deciding this question, determination of which hinges upon a multiplicity of factual aspects and demands a high threshold of satisfaction based on a cumulative and holistic evaluation of the entire factual matrix. Such an intricate and evidence driven exercise makes the Arbitral Tribunal the most appropriate forum to adjudicate, as it possesses the institutional advantage of conducting a comprehensive scrutiny of all evidences and materials adduced by the parties. Significantly, the Supreme Court also highlighted the legislative intent underlying Section 11 of 1996 Act, more particularly sub-Section (6A), which is expeditious disposal of applications for appointment of Arbitrators and held that this legislative objective militates against the referral Courts undertaking any elaborate or detailed factual enquiry, which would inevitably delay proceedings and



therefore, prudence dictates that referral Courts confine themselves to a prima facie examination of the existence of the Arbitration Agreement and leave substantive determinations such as binding nature of non-signatories to the Arbitral Tribunal.

16. The Supreme Court also underscored an additional and equally compelling consideration in taking this approach. It was observed that power exercised by referral Courts under Section 11 of 1996 Act is judicial in nature. Any premature adjudication or opinion by the referral Court would not only usurp the Arbitral Tribunal's role as the forum of first instance for dispute resolution but could also cause irremediable prejudice, especially where the referral Court were to refuse impleadment of a non-signatory, there would be no statutory right of appeal to challenge such a refusal, whereas a determination by the Arbitral Tribunal on this aspect under Section 16 of 1996 Act will be amenable to challenge under Section 37 of 1996 Act.

xxx xxx xxx

18. In light of the binding dictum of the Supreme Court, I am unable to agree with the Respondents that this Court must enter into the exercise of determining whether Respondents No. 2 to 5 as non-signatories, are bound by the Arbitration Agreement. This exercise is to be left to the Arbitral Tribunal, as and when constituted. It will be open to the Respondents to raise this objection before the Arbitral Tribunal by taking recourse to appropriate remedies under the 1996 Act. Once the existence of the Arbitration Agreement is not in dispute in SSA and SHA, there is no impediment in appointing the Arbitrator.

xxx xxx xxx”

(Emphasis Supplied)

48. Therefore, as a *sequitur* to the aforesaid, this Court is of the *prima facie* opinion that the existence of the Arbitration Agreement is not in dispute. Having regard to the terms of the SPAs, including the stipulation regarding the affixation of the common seal, as well as the communications/documents on record, this Court, while exercising its jurisdiction under Section 11 of the Arbitration Act, is competent to refer the parties to arbitration, however, leaving it to the Arbitral Tribunal to decide whether the non-signatory is indeed a party to the SPAs, based on factual evidence and other oral evidence led before it.



49. Another issue raised by respondent no. 2 pertains to the non-issuance of notice under Section 21 of the Arbitration Act. It is the case of respondent no. 2 that no notice invoking arbitration was ever issued or served upon it. On this basis, respondent no. 2 contends that the petitions under Section 11 of the Arbitration Act have been filed without complying with the mandatory pre-condition of issuance and service of a notice invoking arbitration.

50. As per the facts on record, the notice invoking arbitration dated 26th September, 2024 was only issued to respective sellers. In this regard, it is pertinent to note that Section 21 of the Arbitration Act does not expressly mandate the claimant to send a notice invoking arbitration to the respondents. The object of notice under Section 21 of the Arbitration Act is only for the purpose of commencement of arbitral proceedings and determining the commencement of the dispute for the purpose of reckoning limitation.

51. At this juncture, it is apposite to refer to the judgment of the Supreme Court in *Bhagheeratha Engineering Ltd. Versus State of Kerala, 2026 SCC OnLine SC 5*, wherein, it was held as follows:

“xxx xxx xxx

14. In our opinion, the High Court totally erred in setting aside the award on the basis that the appointment of the Tribunal was only to adjudicate dispute No. 1. The High Court also erred in holding that the non-issuance of notice under Section 21 of the A&C Act by the appellant with regard to dispute no. 2 to 4 was fatal for it to pursue its claim before the arbitrator. The High Court erred in holding that the Arbitral Tribunal exceeded its jurisdiction in deciding the entire dispute. We say so for the following reasons.

xxx xxx xxx

16. Secondly, the object of Section 21 of A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for



issuance of a Section 21 notice prior to the commencement of Arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable.....

xxx xxx xxx”

(Emphasis Supplied)

52. Likewise, delving on the aspect of notice under Section 21 of the Arbitration Act, the Supreme Court in the case of ***Adavya Projects Private Limited Versus Vishal Structurals Private Limited and Others, 2025 SCC OnLine SC 806***, held that notice under Section 21 of the Arbitration Act is relevant for commencement of arbitral proceedings and limitation, however, non-service thereof on a party does not, by itself, bars its impleadment in arbitration. Relevant paragraphs of the said judgment are reproduced as under:

“xxx xxx xxx

23. In this case, a Section 21 notice was undisputedly issued by the appellant under Clause 40 of the LLP agreement on 17-11-2020; but the problem arises because this notice was issued only to Respondent 1. However, there is nothing in the wording of the provision or the scheme of the ACA to indicate that merely because such notice was not served on Respondents 2 and 3, they cannot be impleaded as parties to the arbitral proceedings. The relevant considerations for joining them as parties to the arbitration will be discussed at a later stage.

24. At this point, it is important to note this Court's decision in State of Goa v. Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581] wherein it was held that the claims and disputes raised in the notice under Section 21 do not restrict and limit the claims that can be raised before the Arbitral Tribunal. The consequence of not raising a claim in the notice is only that the limitation period for such claim that is raised before the Arbitral Tribunal for the first time will be calculated differently vis-à-vis claims raised in the notice. However, non-inclusion of certain disputes in the Section 21 notice does not preclude a claimant from raising them during the arbitration, as long as they are covered under the arbitration agreement. Further, merely because a respondent



did not issue a notice raising counterclaims, he is not precluded from raising the same before the Arbitral Tribunal, as long as such counterclaims fall within the scope of the arbitration agreement. [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581, paras 19, 20, 26]

25. A similar rationale may be adopted in this case as well, especially considering the clear purpose served by a Section 21 notice. Extending this logic, non-service of the notice under Section 21 and the absence of disputes being raised against Respondents 2 and 3 in the appellant's notice dated 17-11-2020 do not automatically bar their impleadment as parties to the arbitration proceedings.

xxx xxx xxx

60.1. A notice invoking arbitration under Section 21 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.

xxx xxx xxx”

(Emphasis Supplied)

53. In view of the law laid down by the Supreme Court in the aforesaid judgments, it is clear that there is no mandatory pre-requisite for issuance of a Section 21 notice, prior to the commencement of arbitration. The requirement of such notice is procedural and not jurisdictional, since, it does not create the Arbitration Agreement, or validate the Arbitral Tribunal's authority or is a pre-condition to reference.

54. Accordingly, non-issuance of notice under Section 21 of the Arbitration Act, specifically to respondent no. 2, cannot act as an impediment for referring it to arbitration.

55. Another objection raised by respondent no. 2 pertains to the non-arbitrability of the disputes between the parties. It is the case of the respondent no. 2 that the reliefs sought in the present petitions are, in



substance and effect, reliefs that impinge directly upon the internal management, statutory obligations and corporate governance of respondent no. 2, a Company duly incorporated under the Companies Act. Thus, the adjudication of such reliefs falls outside the scope of a private Arbitral Tribunal, and is reserved exclusively for statutory *fora*, including, the NCLT.

56. In this regard, this Court notes the submission of the petitioner that it neither seeks to compel respondent no. 2 to violate its statutory duties under the Companies Act, nor it seeks any relief that is in the nature of a right *in rem*.

57. The disputes raised in the present petitions arise entirely out of concluded SPAs between private parties, and the reliefs sought, namely, specific performance of the SPAs, registration of the share transfer and injunction against further dilution of the shareholding, are all reliefs *in personam*, flowing directly from the alleged contractual breach committed by the respondents.

58. Thus, *prima facie*, disputes concerning breach of the SPAs and the obligations flowing therefrom, including, obligations relating to procurement of Board approvals and registration of transfer of shares, are arbitrable.

59. The disputes as raised, do not, on a *prima facie* consideration, appear to fall within the category of disputes that are *ex-facie* non-arbitrable. Further, the question of arbitrability is not required to be conclusively adjudicated by the Referral Court at the stage of adjudication of a petition filed under Section 11 of the Arbitration Act, unless the non-arbitrability of the dispute is apparent on the face of the record and beyond doubt.



60. Reliance in this regard is placed upon the judgment passed by the Supreme Court in the case of *Vidya Drolia and Others Versus Durga Trading Corporation, (2021) 2 SCC 1*, wherein, it has been held as follows:

“xxx xxx xxx

46. *Having examined and analysed the judgments, we would coalesce and crystalise the legal principles for determining non-arbitrability. We begin by drawing principles that draw distinction between adjudication of actions in rem and adjudication of actions in personam.*

47. *A judgment is a formal expression of conclusive adjudication of the rights and liabilities of the parties. The judgment may operate in two ways, in rem or in personam. Section 41 of the Evidence Act, 1872 on the question of relevancy of judgments in the context of conclusiveness of a judgment, order or decree provides:*

"41. Relevancy of certain judgments in probate, etc. jurisdiction.- *A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.*

Such judgment, order or decree is conclusive proof-

that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

48. A judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment "settles the destiny of the res itself" and binds all persons claiming an interest in the property inconsistent with the



judgment even though pronounced in their absence. By contrast, a judgment in personam, "although it may concern a res, merely determines the rights of the litigants inter se to the res". Distinction between judgments in rem and judgments in personam turns on their power as res judicata, i.e. judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute. Use of expressions "rights in rem" and "rights in personam" may not be correct for determining non-arbitrability because of the interplay between rights in rem and rights in personam. Many a times, a right in rem results in an enforceable right in personam. Booz Allen & Hamilton Inc. refers to the statement by Mustill and Boyd that the subordinate rights in personam derived from rights in rem can be ruled upon by the arbitrators, which is apposite. Therefore, a claim for infringement of copyright against a particular person is arbitrable, though in some manner the arbitrator would examine the right to copyright, a right in rem. Arbitration by necessary implication excludes actions in rem.

49. Exclusion of actions in rem from arbitration, expositis the intrinsic limits of arbitration as a private dispute resolution mechanism, which is only binding on "the parties" to the arbitration agreement. The courts established by law on the other hand enjoy jurisdiction by default and do not require mutual agreement for conferring jurisdiction. The Arbitral Tribunals not being courts of law or established under the auspices of the State cannot act judicially so as to affect those who are not bound by the arbitration clause. Arbitration is unsuitable when it has erga omnes effect, that is, it affects the rights and liabilities of persons who are not bound by the arbitration agreement. Equally arbitration as a decentralised mode of dispute resolution is unsuitable when the subject-matter or a dispute in the factual background, requires collective adjudication before one court or forum. Certain disputes as a class, or sometimes the dispute in the given facts, can be efficiently resolved only through collective litigation proceedings. Contractual and consensual nature of arbitration underpins its ambit and scope. Authority and power being derived from an agreement cannot bind and is non-effective against non-signatories. An arbitration agreement between two or more parties would be limpid and inexpedient in situations when the subject-matter or dispute affects the rights and interests of third parties or without presence of others, an effective and enforceable award is not possible. Prime objective of arbitration to secure just, fair and effective resolution of disputes, without unnecessary delay and with least expense, is crippled and mutilated when the rights and liabilities of persons who have not consented to arbitration are affected or the collective resolution of the disputes by including non-parties is required. Arbitration agreement as



an alternative to public fora should not be enforced when it is futile, ineffective, and would be a no result exercise.

xxx xxx xxx”

(Emphasis Supplied)

61. Accordingly, the objection raised by respondent no. 2 with regard to the non-arbitrability, is an issue that falls squarely within the domain of the Arbitral Tribunal, and cannot be examined or adjudicated by this Court at the stage of a petition under Section 11 of the Arbitration Act.

62. This Court is of the view that even though the respondents herein have raised certain objections to the present petitions, however, none of the objections impugn or dispute the very existence of the Arbitration Agreement, pursuant to which the petitioner has invoked arbitration proceedings. As noted hereinabove, consequently, the requirement of *prima facie* existence of an Arbitration Agreement, as contemplated under Section 11 of the Arbitration Act, stands satisfied.

63. Further, having regard to the narrowly circumscribed scope of scrutiny vested in this Court in the present proceedings, this Court is of the view that, at this referral stage, it cannot conclusively deal with the disputed questions of facts which require, detailed examination.

64. In the overall conspectus of the case, this Court is of the view that the final determination of whether respondent no. 2/non-signatory is bound by the Arbitration Agreement, would be on the basis of full factual evidence and application of legal doctrine, which is a matter that must be, and is accordingly, left to the Arbitral Tribunal to decide.

65. It will be open to respondent no. 2 to raise all objections pertaining to jurisdiction before the Arbitral Tribunal, and thereafter, avail appropriate remedies, in accordance with law.



66. Accordingly, the following directions are issued:

- i. Ms. Veena Ralli, Advocate, (Mobile No. 9899987093) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii. The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.
- iii. The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event, there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
- iv. It shall be open to the respondents to raise counter-claims, if any, in arbitration proceedings.
- v. The parties shall approach the Arbitrator within two (2) weeks, from today.
- vi. It is made clear that all the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

67. It is made clear that this Court has not expressed any opinion on the merits of the case. The issue as to whether respondent no. 2, being a non-signatory, is bound by the Arbitration Agreement is left open to the Arbitral Tribunal. It shall be open to respondent no. 2 to raise such objection before the Arbitral Tribunal.

68. All the rights and contentions of the respective parties are left open.

69. Petition is disposed of in the aforesaid terms.



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70. The Registry is directed to send a copy of the order to the Sole Arbitrator, for information and compliance.

JULY 02, 2026

c

**MINI PUSHKARNA
(JUDGE)**