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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.611 OF 2025
WITH
COURT RECEIVER REPORT NO.342 OF 2025

Sarla Advantech Private Limited … **Petitioner**

Vs.

1. **Anil Mehta**
2. **Navneet Khanolkar**
3. **Sushma Telang**
4. **Amogh Kulkarni**
5. **Hardik Shanishchara**
6. **Ganraj Bhagat**
7. **Sibin Philip**
8. **Percivon Technologies Pvt. Ltd.**
9. **Angamalay Greenige George** … **Respondents**

WITH
INTERIM APPLICATION (L) NO.18920 OF 2026
IN
ARBITRATION PETITION NO.611 OF 2025

Anil Mehta … **Applicant**
In the matter between
Sarla Advantech Private Limited … **Petitioner**
V/s.
Anil Mehta & Others … **Respondents**

Mr. Aadil Parsurampuria with Rushil Mathur, Yash Pitroda, Amrita Natarajan and Mayur Setty i/by Kochhar & Co. for the petitioner.

Mr. Karl Tamboly with Ryan D'Souza, Vikrantsingh Negi, Ekta Tyagi, Priyamvada Singhania, Sneha Barange, Aishwarya Pawar, and Shreedhar Joshi i/by DSK Legal for respondent No.1.

Mr. Swayam S. Chopda, O.S.D., from the Office of Court Receiver, is present.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 16, 2026.

PRONOUNCED ON : JULY 21, 2026

JUDGMENT:

1. By this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner has asked for different interim ex parte reliefs against respondent Nos.1 and 8. The petitioner says that the respondents are wrongly using and disclosing its confidential and proprietary information and are also approaching its clients and employees in breach of their contractual obligations. According to the petitioner, these acts are causing serious and irreparable loss to its business. It has therefore prayed that the respondents be restrained from doing so till the arbitration proceedings are finally decided, the arbitral award is made, and the award is fully enforced.

2. According to the petitioner, the facts leading to the present petition are as follows. Respondent No.1 was working with Parekh Marketing Limited and his service conditions were governed by his appointment letter dated 20 August 1998. On 6 July 2017, Parekh Marketing Limited entered into a Business Transfer Agreement with ATS Global B.V., under which the business of Sarla

Technologies was transferred. Thereafter, on 24 August 2017, respondent No.1 sent an email to the employees of Sarla Technologies informing them about the business transfer and stating that their existing terms of employment would continue without any change. On 1 September 2017, Sarla Technologies was merged with the petitioner, which is a wholly owned subsidiary of ATS Global B.V. Respondent No.1 was thereafter appointed as the Managing Director and Chief Executive Officer of the petitioner under a fresh Employment Agreement dated 21 September 2017. The petitioner further states that in June 2022 respondent No.2 exported company contacts from his official laptop. It is the case of respondent No.1 that around July 2023 he was asked by the Chairman of ATS to sign an agreement with a back date of October 2017, but he refused. According to respondent No.1, in August 2023 he was also forced to leave the petitioner company after being promised a separation package of more than Rs.2 crores. Between 3 November 2023 and 9 November 2023, emails were exchanged between Mark McCoy, respondent No.1 and Kevin Partington regarding the formula for the proposed separation agreement. On 22 November 2023, the services of respondent No.1 came to be terminated. Thereafter, by a letter dated 19 December 2023, the petitioner alleged that respondent No.1 had misappropriated an amount of Rs.27,77,629/-. The petitioner also stated that an audit was in progress and, after adjusting the said amount, only Re.1 would be payable to respondent No.1. On 11 February 2024, respondent No.8, namely Percivon Technologies, was incorporated as a private limited company under the Companies Act, 2013. The petitioner further states that on 6 May 2024 respondent No.9 forwarded confidential information from his official email account to his personal email account. The services of respondent No.9 came to an end on 11 June 2024, and he joined Percivon Technologies in February 2025. Similarly, respondent No.5 left the petitioner on 12 June 2024 and joined Percivon Technologies in July 2024.

3. According to the petitioner, in July 2024 its Information Technology team recovered the email dated 6 May 2024, which, according to it, shows misuse of its confidential information. Respondent No.7 left the petitioner on 30 August 2024 and joined Percivon Technologies in September 2024. Respondent No.6 left the petitioner on 20 September 2024 and joined Percivon Technologies during the same month. The petitioner also states that respondent Nos.2, 3 and 4 had already joined Percivon Technologies in March and April 2024. In January 2025, respondent No.1 was appointed as Financial and Para Legal Consultant and Advisor to respondent No.8, namely Percivon Technologies. On 8 January 2025, one of the petitioner's clients informed it that respondent Nos.2 and 7 had approached the client for projects. Thereafter, on 28 January 2025, another client of the petitioner sent an email to Percivon Technologies making an inquiry regarding a possible assignment. In February 2025, respondent No.1 acquired a minority interest in Percivon Technologies through Optional Convertible Preference Shares. On 10 February 2025, the petitioner lodged a complaint at Turbhe Police Station against respondent No.1 and others alleging misappropriation of about Rs.2.5 crores. On 18 February 2025, respondent No.9, on behalf of Percivon Technologies, shared a presentation with one of its clients. On 20 February 2025, respondent No.1 submitted a reply before Manpada Police Station alleging that he was being harassed by the petitioner.

4. According to the petitioner, on 1 March 2025 one of its clients forwarded the above presentation to it, because of which it came to know about the alleged misuse of its information. A complaint was thereafter registered at Turbhe Police Station on 3 March 2025. The petitioner also filed an application under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The said application was rejected and was treated as a pending private complaint. In April 2025, respondent No.1 was appointed as the Vice Chairman of Percivon Technologies. Thereafter, on 3 June 2025, the petitioner filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. On 27 June 2025, this Court passed an ex parte ad interim order restraining the respondents from using the petitioner's confidential information and also appointed the Court Receiver.

5. Mr. Parsurampura, learned counsel appearing for the petitioner, invited my attention to the Employment Agreements dated 20 August 1998 and 21 September 2017. He submitted that both the agreements contain a specific clause relating to confidentiality. According to him, although the arbitration clause is expressly found in the Employment Agreement dated 20 August 1998, the documents placed on record show that the same arbitration clause stands incorporated into the Employment

Agreement dated 21 September 2017. He also relied upon the email dated 24 August 2017 sent by respondent No.1 to the employer and other employees, wherein respondent No.1 stated that after the business transfer the operations of Sarla Technologies would continue as before and there would be no change in the employees' roles, responsibilities or service conditions. With regard to the termination letter dated 22 November 2023, learned counsel submitted that the difference between the termination letter produced at Exhibit "S" and the other termination letter has been explained by the petitioner in paragraphs 15 to 20 of the rejoinder. He pointed out that in paragraph 16 the petitioner has stated that after noticing an error in the first termination letter, a corrected termination letter containing the proper contractual references was personally handed over to respondent No.1, and he was requested to return the earlier letter. However, respondent No.1 refused to do so. He further submitted that since the petitioner's representative genuinely believed that only one termination letter existed, the same position was conveyed before the police authorities and the petitioner's advocates were shown the original termination letter relied upon by respondent No.1 during inspection of documents.

6. Learned counsel further submitted that paragraph 17 of the rejoinder explains that even the second termination letter contains typographical mistakes regarding the relevant employment agreement. According to him, while referring to the service conditions of respondent No.1, the date and reference relating to the employment of Mrs. Sushma Telang, respondent No.3, were mistakenly carried forward. He submitted that there is no question of forgery because both the termination letters admittedly originated from the petitioner and were issued by its Chief Executive Officer. According to him, the only difference between the two letters is regarding the contractual references in the opening paragraphs, whereas the decision to terminate the services of respondent No.1 has never been disputed.

7. Inviting my attention to page 325 of the petition, learned counsel submitted that the document contains details of Jaguar and Land Rover projects showing commencement in March 2013 and completion in April 2015. He submitted that respondent No.8 was incorporated only on 11 February 2024 and respondent Nos.2 to 7 and 9, who were earlier employees of the petitioner, thereafter joined respondent No.8. According to him, these respondents have been using confidential and proprietary information collected during their employment with the petitioner, which was developed by the petitioner over nearly twenty-five years, for the benefit of respondent No.8. He submitted that by using this information, respondent No.8 has been approaching the petitioner's clients and offering similar services at substantially lower rates. In support of this submission, he relied upon the email dated 8 January 2025 wherein one of the petitioner's clients informed that respondent Nos.2 and 7 had approached it for project work.

8. Learned counsel further submitted that respondent No.8 was fully aware that respondent Nos.1 to 7 and 9 were allegedly using the petitioner's confidential and proprietary information for expanding its business. Despite such knowledge, respondent No.8

did not take any steps to stop such acts. On the contrary, according to him, the conduct of respondent No.8 shows that it actively encouraged such activities in order to gain an unfair business advantage. He further submitted that respondent No.8 also encouraged its employees to approach the petitioner's employees by offering attractive benefits with the intention of obtaining more confidential information belonging to the petitioner. Learned counsel submitted that during a routine data management exercise conducted by the petitioner's Information Technology team in July 2024, an email dated 6 May 2024 was recovered from the deleted folder. According to him, the said email had been secretly sent by respondent No.9 from his official email account to his personal email account. He submitted that the email was sent after respondent No.9 had tendered his resignation and while he was serving the notice period. According to him, the email contained several confidential files belonging to the petitioner, including Non Disclosure Agreements, rate charts, supplier selection criteria, costing sheets, estimation data and other technical information and trade secrets developed by the petitioner over a period of time at its registered office at Navi Mumbai.

9. Learned counsel submitted that after conducting an internal inquiry, the petitioner addressed an email dated 4 July 2024 to respondent No.9 questioning him regarding the alleged theft of data during his employment. According to him, respondent No.9 thereafter sent an email dated 26 July 2024 apologising to the petitioner for the said act. Learned counsel also invited my attention to the email dated 6 May 2024 allegedly sent by respondent No.9 to his personal email account. According to him, the email contained several files relating to the petitioner's business, including rate charts, JLR MLA High Queries Assumptions, control brochures, JLR Halewood quotation matrix, case studies relating to BIW projects and various other business documents.

10. Learned counsel further submitted that the petitioner requested one of its clients to make an inquiry with respondent No.8 regarding a possible assignment. Accordingly, on 28 January 2025, the said client sent an email to respondent No.8 seeking details regarding the proposed work. In reply, respondent No.9, on 18 February 2025, sent a company presentation along with certain case studies. According to learned counsel, the client thereafter forwarded the said material to the petitioner on 1 March 2025. It was only then that the petitioner came to know that respondent No.9 had also joined respondent No.8. He submitted that on comparing the documents shared by respondent No.8 with the petitioner's confidential material, it was found that respondent No.8 had used the petitioner's proprietary case studies while responding to the client. He pointed out that the petitioner has prepared a comparison chart to demonstrate the alleged similarity between the two sets of documents. He also submitted that respondent Nos.2 and 7 were marked in the email correspondence exchanged between respondent No.9 and the client, which, according to him, further supports the allegation of unauthorised use of the petitioner's confidential information. He therefore submitted that the dispute regarding the contents of the termination letters has no bearing on the real controversy involved in the present petition.

11. In support of his submission that the Court should exercise only limited jurisdiction at this stage, learned counsel relied upon the decision of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning, reported in* (2024) 12 SCC 1. Referring to the said decision, learned counsel submitted that Section 5 of the Arbitration and Conciliation Act has both positive and negative aspects. According to him, while the provision permits judicial intervention only in matters specifically provided under the Act, it simultaneously prohibits the Courts from interfering in matters which are exclusively entrusted to the Arbitral Tribunal.

12. Learned counsel further submitted that when Section 5 is read together with Section 16 of the Act, it becomes clear that issues relating to the jurisdiction of the Arbitral Tribunal must ordinarily be decided by the Tribunal itself. According to him, at this stage the Court is required to undertake only a prima facie examination. Learned counsel then referred to the negative aspect of the doctrine of competence recognised under Section 16 of the Act.

13. According to him, Section 16 recognises the principle that the Arbitral Tribunal has the first authority to decide questions relating to its own jurisdiction. This principle gives effect to the intention of the parties to resolve their disputes through arbitration and avoids parallel proceedings before the Courts. He submitted that the negative aspect of the doctrine is intended to restrict interference by the Courts at the initial stage by requiring them to refrain from deciding questions relating to the jurisdiction of the Arbitral Tribunal before the Tribunal itself has considered them. Learned counsel submitted that, therefore, the Court is required to examine only whether a prima facie arbitration agreement exists and nothing beyond that. In support of this submission, he relied upon paragraphs 116 and 117 of the above judgment.

14. He further submitted that all issues relating to the arbitration agreement and disputes arising from it fall within the exclusive jurisdiction of the Arbitral Tribunal. According to him, the Court's enquiry at this stage is confined only to a prima facie examination of the existence of the arbitration agreement, whereas all other objections, including questions of accord and satisfaction, should ordinarily be left for determination by the Tribunal. Learned counsel also submitted that the Court should not undertake a detailed examination of the merits of the dispute or decide issues which fall within the jurisdiction of the Arbitral Tribunal, as such an exercise would defeat the principles of arbitral autonomy and competence. Learned counsel thereafter referred to paragraphs 122 and 123 of the judgment while explaining the extent of judicial review available under the Arbitration Act. According to him, although the Arbitral Tribunal is the first authority to decide questions relating to its jurisdiction and the arbitration agreement, its decision is not final in all respects. Such decision remains open to judicial scrutiny at the appropriate stage under the Arbitration and Conciliation Act.

15. Learned counsel also submitted that even issues relating to ex facie frivolous claims and allegations of dishonesty should ordinarily be examined by the Arbitral Tribunal. According to him, the Arbitral Tribunal is fully competent to appreciate the evidence led by the parties and determine whether the claims or defences are ex facie frivolous or dishonest.

16. Learned counsel also relied upon the decision of the Supreme Court in *Vidya Drolia v. Durga Trading Corporation,* reported in (2021) 2 SCC 1. Relying upon the said judgment, he submitted that a detailed examination of disputed questions should ordinarily be left to the Arbitral Tribunal. He submitted that where a prima facie examination by the Court is insufficient or inconclusive, the matter should be left for full consideration by the Arbitral Tribunal. According to him, a detailed enquiry by the Court at this stage would encroach upon the jurisdiction of the Tribunal and would be contrary to the legislative scheme of the Arbitration Act. Learned counsel further referred to the observations in *Vidya Drolia* regarding the scope of a prima facie examination by the Court. According to him, while Section 11 of the Act does not prescribe any detailed standard of judicial review for deciding the existence of an arbitration agreement, Section 8 makes it clear that the Court's examination at the stage of reference is only prima facie and not final. Learned counsel further submitted that questions relating to non arbitrability should ordinarily be decided by the Arbitral Tribunal in the first instance. . According to him, the principles of severability and competence require that the Arbitral Tribunal should be treated as the preferred first forum to decide all issues concerning non arbitrability. Lastly, learned counsel submitted that respondent No.1 questioned the existence of the arbitration agreement only after nearly one year from the date of service of the present petition and after the petitioner had already invoked arbitration claiming an amount of Rs.11,45,00,000/- before the Arbitral Tribunal.

17. On the other hand, Mr. Tamboly, learned counsel appearing for respondent No.1, invited my attention to the ad interim order dated 27 June 2025 passed by this Court. He submitted that while passing the said order, this Court proceeded on the basis that the employment agreement between the parties contained an arbitration clause. However, according to him, the Employment Agreement dated 21 September 2017 between the petitioner and respondent No.1 does not contain any arbitration clause. He submitted that the terms of the agreement dated 21 September 2017 are substantially different from those contained in the earlier Employment Agreement dated 20 August 1998. According to him, the later agreement does not specifically incorporate the terms and conditions of the earlier agreement.

18. Learned counsel submitted that the appointment letter dated 20 August 1998 was issued on the letterhead of Parekh Group and was signed by a Senior General Manager on behalf of Pidilite Industries Limited. According to him, Parekh Group and the present petitioner are separate entities. He submitted that merely because there was a transfer of business, it cannot be presumed that the earlier service conditions continued. He invited my attention to Clauses 2 and 5 of the Employment Agreement dated 20 August 1998, which provided that respondent No.1 could be transferred from one company to another under the same management anywhere in India. He then referred to the Employment Agreement dated 21 September 2017, which records that the business of Sarla Technologies was transferred pursuant to the Business Transfer Agreement dated 6 July 2017. He submitted that Clause 9 of the said agreement deals with the duration and termination of employment, while Clause 12 separately deals with dispute resolution. According to him, Clauses 12.1 and 12.2 only require the parties to make efforts to resolve disputes in accordance with the company's policies and also reserve the petitioner's right to seek an injunction in case of breach by the employee.

19. Learned counsel submitted that a plain reading of Clauses 12.1 and 12.2 shows that while the parties have provided a mechanism for dispute resolution, they have consciously omitted to include any arbitration clause. According to him, such an omission cannot be supplied by implication. He therefore submitted that the petitioner was fully aware that the Employment Agreement dated 21 September 2017 did not contain an arbitration clause. Despite this, the petitioner represented before this Court that such a clause existed and obtained an ad interim order. According to him, the petitioner, having made a false statement on this material aspect, is not entitled to any discretionary relief under Section 9 of the Arbitration and Conciliation Act, 1996.

20. Learned counsel further submitted that respondent No.1 was employed with Parekh Marketing Limited from 20 August 1998 and his service conditions were governed by the Employment Agreement of that date. During his employment, respondent No.1 was in charge of the business activities of Sarla Technologies, which was one of the business divisions of Parekh Marketing Limited. He submitted that after the business transfer, Sarla Technologies was merged with the petitioner on 1 September 2017, which is a wholly owned subsidiary of ATS Global B.V. According to him, upon such transfer, the employment of respondent No.1 with Parekh Marketing Limited came to an end and the Employment Agreement of 1998 also stood terminated.

21. Learned counsel submitted that thereafter respondent No.1 was appointed as the Managing Director and Chief Executive Officer of the petitioner under a fresh Employment Agreement dated 21 September 2017. According to him, this agreement does not contain any arbitration clause and also does not incorporate by reference any other agreement containing such a clause. He further submitted that although the petitioner is a separate legal entity, it was completely controlled by ATS Global B.V. and its representatives, including Kevin Partington and Deborah Pritchard, exercised complete control over the petitioner's affairs, including decisions of the Board, finances, inter-company fund transfers, audits and legal matters. According to him, when respondent No.1 noticed certain financial irregularities and issues relating to corporate governance, he repeatedly raised those concerns with the petitioner, ATS Global B.V. and their senior officials.

22. Learned counsel submitted that around July 2023 the Chairman of ATS Global B.V. asked respondent No.1 to sign an agreement between the petitioner and ATS Global B.V. by giving it a back date of October 2017. According to him, the proposed agreement was beneficial to ATS Global B.V. but prejudicial to the petitioner. He submitted that respondent No.1 refused to sign the agreement in discharge of his fiduciary duties as the Managing Director and Chief Executive Officer of the petitioner. According to him, because of this refusal and because respondent No.1 continued to point out what he considered to be unethical and illegal conduct, he was ultimately removed from the company.

23. Learned counsel further submitted that in August 2023 respondent No.1 was compelled to leave the petitioner's employment. According to him, to secure his early exit, the petitioner and ATS Global B.V. assured respondent No.1 that he would be paid ten months' gross salary, bonus for the financial year 2023 to 2024 and other contractual and statutory dues aggregating to more than Rs.2 crores as a separation package. He submitted that the employment was thereafter terminated without assigning any reason by the letter dated 22 November 2023 under Clause 9 of the Employment Agreement. According to him, it was only later, by letter dated 19 December 2023, that the petitioner for the first time alleged misappropriation of funds by respondent No.1 and stated that an external audit and investigation were in progress in relation to an alleged amount of Rs.27,77,629/-.

24. Learned counsel submitted that although the petitioner took no action for about fourteen months, it again started taking action against respondent No.1 immediately after he became associated with Percivon Technologies. According to him, the petitioner lodged a complaint before Turbhe Police Station on 3 March 2025 alleging misappropriation of funds. He submitted that the investigating agency treated the matter as civil in nature and closed the complaint. Thereafter, the petitioner filed an application under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 before the Magistrate at Belapur. According to him, the said application was rejected and converted into a private complaint under Section 223 of the said Code, on which no cognizance has yet been taken. He submitted that these parallel civil and criminal proceedings on the same allegations clearly show a mala fide intention to harass respondent No.1.

25. Learned counsel further submitted that thereafter the petitioner filed the present petition under Section 9 of the Arbitration and Conciliation Act and obtained an ad interim order. According to him, since the Employment Agreement did not contain any arbitration clause, the petitioner produced a forged and fabricated termination letter dated 22 November 2023 before this Court instead of the original termination letter issued to respondent No.1. He submitted that this alleged fabricated letter referred to certain non-existent employment terms dated 31 August 2017 and 3 September 1999, which, according to him, had no connection with the employment of respondent No.1.

26. Learned counsel submitted that by relying upon the alleged fabricated termination letter and by suppressing the original termination letter, the petitioner misled this Court into passing the ex parte order dated 27 June 2025. According to him, by the said order this Court restrained the respondents, including respondent No.1, from using the petitioner's alleged confidential and proprietary information and also appointed a Court Receiver with wide powers to enter the premises of respondent Nos.1 to 9, conduct searches, seize electronic devices and take mirror images of electronic data, including from the residential premises of respondent No.1. He therefore submitted that the present petition is misconceived, is not maintainable either in law or on facts and deserves to be dismissed.

27. In support of his submission that an arbitration clause cannot be incorporated into a subsequent agreement merely by reference and that there must be a clear and specific incorporation of such a clause, learned counsel relied upon the decisions of the Supreme Court in *MR Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd.,* (2009) 7 SCC 696, *NBCC (India) Ltd. v. Zillion Infraprojects Pvt. Ltd.,* (2024) 7 SCC 174, *Elite Engineering & Construction (Hyderabad) Pvt. Ltd. v. Techtrans Construction India Pvt. Ltd.,* (2018) 4 SCC 281 *and Young Achievers v. IMS Learning Resources Pvt. Ltd.,* (2013) 10 SCC 535.

28. In support of his submission that interim relief under Section 9 can be refused or vacated if the petitioner fails to make out a prima facie case regarding the existence of an arbitration agreement, learned counsel relied upon the decisions in *Rajia Begum v. Barnali Mukherjee,* 2026 INSC 106 and *Sundaram Finance Ltd. v. NEPC India Ltd.,* (1999) 2 SCC 479.

29. In support of his submission that a party approaching the Court without clean hands is not entitled to equitable or discretionary relief, learned counsel relied upon the decisions in *Tomorrowland Ltd. v. Housing & Urban Development Corporation Ltd.,* (2025) 4 SCC 19*, Dalip Singh v. State of U.P.,* (2010) 2 SCC 114 *and Chandra Shashi v. Anil Kumar Verma,* (1995) 1 SCC 421.

30. Learned counsel further submitted that a party seeking ex parte interim relief has a greater duty to disclose all material facts and relevant documents to the Court. In support of this submission, he relied upon the decisions in *Lallubhai Amichand Ltd. v. Absolink Enterprises Pvt. Ltd. & Ors.,* Interim Application (L) No.8399 of 2023 in Suit (L) No.8396 of 2023 decided on 3 July 2023 and *Kewal Ashokbhai Vassoya v. Suarabhakti Goods Pvt. Ltd.,* 2022 SCC OnLine Bom 3335.

31. In support of his submission that a fact can be treated as proved on the basis of the test of preponderance of probabilities, learned counsel relied upon the decision of the Supreme Court in *Dr. N.G. Dastane v. S. Dastane,* (1975) 2 SCC 326 : 1975 SCC OnLine SC 122.

REASONS AND ANALYSIS:

32. I have carefully gone through the rival submissions, pleadings, documents produced by both sides and the judgments relied upon by the learned advocates. I have looked into the Employment Terms dated 20 August 1998 and the Employment Agreement dated 21 September 2017 placed on record. At this stage, this Court is not required to finally decide whether the

Arbitral Tribunal has jurisdiction. Even so, before any relief under Section 9 of the Arbitration and Conciliation Act, 1996 is granted, this Court has first to satisfy, at least prima facie, that there exists a valid arbitration agreement covering the present dispute. If such prima facie satisfaction is not reached, jurisdiction under Section 9 itself cannot be exercised.

33. Respondent No.1 has raised an objection that the Employment Agreement dated 21 September 2017 does not contain any arbitration clause. According to him, after transfer of the business, a fresh employment contract came into existence and the earlier Employment Terms dated 20 August 1998 stood replaced. It is his case that once the earlier contract came to an end, the arbitration clause forming part of that contract came to an end. On this basis, he submits that the present petition is not maintainable.

34. The petitioner has disputed this objection. According to the petitioner, transfer of Sarla Technologies did not bring respondent No.1's employment to an end. It is submitted that only the employer changed because of transfer of the undertaking, whereas the employment continued without any interruption. Reliance has been placed upon the email dated 24 August 2017 sent by respondent No.1 himself to all employees, wherein he stated that business operations would continue in the usual manner and there would be no change in their role, responsibility or employment terms. According to the petitioner, when service conditions continued without change, the arbitration clause also continued though it was not again reproduced in the later agreement.

35. Therefore, real controversy is whether the parties intended to substitute the earlier employment contract or whether they merely continued the existing employment under another company after transfer of the business. This question cannot be answered by reading one clause in isolation. Both agreements, the surrounding circumstances and the conduct of the parties are required to be considered together before arriving at any prima facie conclusion.

36. On reading the Employment Terms dated 20 August 1998, it appears that respondent No.1 was appointed under the Parekh Group. The said terms contain conditions regarding confidentiality, transfer from one company to another under the same management, disciplinary matters and other service conditions. More importantly, Clause 21 provides that disputes arising out of or relating to the contract shall be referred to arbitration under the Rules of the Indian Merchants' Chamber. Therefore, there is no dispute before this Court that the Employment Terms dated 20 August 1998 contain a valid arbitration agreement.

37. It is not disputed that thereafter a Business Transfer Agreement dated 6 July 2017 came into existence under which the undertaking known as Sarla Technologies stood transferred. The Employment Agreement dated 21 September 2017 records this position. It states that because of the Business Transfer Agreement executed between Parekh Marketing Limited, ATS Global B.V. and the petitioner, the undertaking stood transferred to the petitioner and respondent No.1 thereafter came to be appointed as Managing Director and Chief Executive Officer of the petitioner. Thus, the later agreement indicates that appointment of respondent No.1 was connected with transfer of the existing undertaking and was not because of independent recruitment.

38. One more provision in the Employment Agreement dated 21 September 2017 appears significant. Clause 2.2 records that leave balance, provident fund balance, insurance cover and other accrued benefits standing with Parekh Marketing Limited would stand transferred to the petitioner. It further provides that respondent No.1's date of joining would continue to remain 1 August 1998 for the purpose of calculating continuous service and all service benefits, including gratuity. Therefore, respondent No.1 was not treated as a fresh employee from September 2017. On the contrary, continuity of service from the year 1998 was specifically preserved.

39. Prima facie, Clause 2.2 weakens the submission of respondent No.1 that the earlier contract came to an end after execution of the later agreement. If the parties had intended to wipe out all earlier rights and obligations, there would be no reason to preserve continuity of service from 1998. Carrying forward the original date of joining, provident fund, gratuity and other service benefits prima facie indicates that the parties themselves treated the employment as continuing though the employer had changed because of transfer of the undertaking.

40. Respondent No.1 submitted that such continuity was maintained for limited statutory and financial benefits. According to him, the parties executed a fresh Employment Agreement containing new terms and conditions. He submits that once a complete agreement was executed dealing separately with duration of employment, termination, confidentiality, non compete obligations, non solicitation obligations, dispute resolution and jurisdiction, the earlier agreement stood replaced.

41. Prima facie, this submission cannot be lightly brushed aside. The Employment Agreement dated 21 September 2017 contains detailed provisions relating to confidentiality, intellectual property rights, non compete obligations, non solicitation obligations, duration of employment and termination. These provisions appear more elaborate than those contained in the earlier Employment Terms. Therefore, respondent No.1 is justified to the extent that the parties executed a fresh document governing various aspects of employment. However, mere execution of a fresh document is not decisive. Law recognizes a distinction between execution of another agreement and complete substitution of the earlier contract. Every subsequent agreement does not wipe out all earlier contractual obligations. Whether complete substitution has taken place depends upon the intention of the parties gathered from the entire transaction. Therefore, merely because the Employment Agreement dated 21 September 2017 was executed, it cannot follow that the arbitration clause contained in the earlier contract also came to an end.

42. Respondent No.1 placed emphasis upon Clause 12 of the Employment Agreement dated 21 September 2017. According to him, Clause 12 deals with dispute resolution but omits any arbitration clause. It only provides that the parties should first attempt to resolve disputes according to the company policy and reserves liberty to the company to seek injunction in case of breach. According to respondent No.1, omission of arbitration was conscious and, therefore, the parties gave up arbitration.

43. This submission deserves careful consideration. Prima facie, Clause 12 does not contain any arbitration clause. It also does not make any reference to the arbitration clause contained in the earlier Employment Terms. If Clause 12 alone is considered, the submission advanced by respondent No.1 appears to carry some force. However, what Clause 12 does not provide is important. It nowhere states that the arbitration agreement contained in the earlier employment arrangement stands cancelled, revoked or replaced. It also does not declare that all previous agreements stand extinguished. It merely provides one method of resolving disputes and reserves liberty to seek injunction. Mere absence of an arbitration clause may not amount to express exclusion of arbitration. Whether such silence was intended to abandon arbitration is a matter which would require fuller evidence regarding the intention of the parties.

44. The petitioner has also relied upon the email dated 24 August 2017 sent by respondent No.1 himself. According to the petitioner, respondent No.1 informed all employees that after transfer of business there would be no change in their role, responsibility, or employment terms. At this stage, existence of this communication is not disputed. Though respondent No.1 may explain the circumstances in which the email was issued, prima facie the said document supports the petitioner's contention that continuity and not complete replacement was represented to the employees at the relevant time.

45. One more aspect also deserves notice. Obligations relating to confidentiality, protection of intellectual property, restriction on soliciting employees and clients, and protection of proprietary information appear in both employment arrangements though the language used is different. In the later agreement these obligations have been stated in detail. Prima facie, this indicates continuation of the same business interests sought to be protected rather than creation of a fresh employment relationship.

46. Learned counsel for respondent No.1 relied upon the judgments in *M.R. Engineers*, *NBCC*, *Elite Engineering* and *Young Achievers* to contend that an arbitration clause cannot be imported into another agreement merely by implication. There can be no dispute regarding the principle laid down in those judgments. An arbitration clause cannot be brought into another contract by a vague or general reference. There must be a clear intention of the parties showing incorporation of such clause. However, prima facie those judgments appear to arise on different facts. In the present case, the petitioner is not relying only upon a eference to the earlier agreement. Its case is that the employment continued after transfer of the undertaking. It has also relied upon continuity of service, continuation of service benefits and the email issued by respondent No.1 himself. Therefore, the controversy before this Court is wider than mere incorporation by reference. The Court is required to examine whether the earlier employment relationship continued notwithstanding execution of the later agreement.

47. Respondent No.1 submitted that while obtaining the ex parte order the petitioner produced a fabricated termination letter and, therefore, did not approach the Court with clean hands. Much emphasis has been placed upon the difference between the two termination letters. Prima facie, this Court is not in a position to record such a serious finding at this stage. The petitioner has explained in the rejoinder that the first termination letter contained certain mistakes and, therefore, a revised letter came to be issued. The petitioner has further stated that even the revised letter contains typographical mistakes. Whether this explanation is correct or otherwise cannot finally be decided only on affidavit evidence. Allegation of fabrication is a serious allegation carrying civil as well as criminal consequences. Such finding cannot be recorded without proper evidence and full trial.

48. At present, what remains undisputed is that respondent No.1's employment came to an end on 22 November 2023. The dispute regarding contractual references appearing in the two termination letters may have some bearing while deciding the rights of the parties. However, it is not sufficient to hold that there never existed any arbitration agreement or that this Court lacks jurisdiction to entertain the present petition.

49. Respondent No.1 also argued that the petitioner obtained the ex parte order by suppressing material facts and therefore should not receive discretionary relief. It is true that a party seeking ex parte relief is expected to disclose all material facts fairly before the Court. Deliberate suppression of material facts may disentitle such party from equitable relief. However, before recording such finding, the Court must first reach a conclusion that suppression was related to a material fact. On the present record, such conclusion cannot be reached. The explanation offered by the petitioner regarding both termination letters cannot be rejected at this stage.

50. On overall consideration of the material available, this Court finds that respondent No.1 has raised substantial questions regarding absence of an arbitration clause in the Employment Agreement dated 21 September 2017. These objections cannot be described as frivolous. At the same time, the petitioner has produced contemporaneous documents showing continuity of employment from 1998, continuity of service benefits, continuity of business and the representation made by respondent No.1 himself after transfer of the undertaking. When all these circumstances are considered together, they prima facie support the petitioner's case that the earlier relationship was not brought to an end.

51. Therefore, after considering both agreements as a whole, this Court is prima facie not inclined to accept the submission of respondent No.1 that the Employment Agreement dated 21 September 2017 replaced the earlier employment arrangement in every respect. At the same time, this Court is also not recording any final finding that the arbitration clause has survived. That issue would require fuller examination by the Arbitral Tribunal under Section 16. However, for the limited purpose of Section 9, the petitioner has produced sufficient material to show, prima facie, that the arbitration agreement contained in the Employment

Terms dated 20 August 1998 continues to operate in relation to the present dispute arising out of the continuing employment relationship.

52. Accordingly, the preliminary objection regarding maintainability of the present petition cannot be accepted at this stage. This Court records a tentative and prima facie finding that an arbitration agreement governing the present dispute is shown to exist. This finding is recorded only for deciding the present petition under Section 9. It shall neither bind the Arbitral Tribunal while deciding its jurisdiction under Section 16 nor prejudice the rights and contentions of either party in the arbitral proceedings or in any other proceedings.

53. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

i) The preliminary objection raised by respondent No.1 regarding maintainability of the present petition is rejected. It is held, prima facie, that the petitioner has established the existence of an arbitration agreement sufficient for invocation of jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996. This finding is purely tentative and shall not bind the Arbitral Tribunal while deciding any application under Section 16 of the Arbitration and Conciliation Act, 1996;

(ii) Pending commencement and final disposal of the arbitral proceedings, making of the arbitral award and its enforcement, respondent Nos.1 and 8, their directors, partners, servants, agents, employees and all persons claiming through or under them are restrained from disclosing, copying, using, reproducing, transmitting, exploiting, parting with possession of, or permitting any third party to use the petitioner's confidential and proprietary information, including the information described in Exhibits "N" and "O" to the petition or any part thereof, whether stored in electronic form or in physical form;

(iii) Pending the arbitral proceedings, respondent Nos.1 and 8 are further restrained from carrying on or continuing any business activity by using the petitioner's confidential and proprietary information or trade secrets;

(iv) The Court Receiver, High Court, Bombay, appointed under the ad interim order dated 27 June 2025, shall continue as Receiver with the powers already granted under the said order. The Receiver shall remain in symbolic possession of the electronic devices, documents, and materials already inventoried and shall continue to preserve the mirror images and electronic data secured pursuant to the earlier order;

(v) The Court Receiver shall not disclose, permit inspection of, or part with the mirror images, electronic data or seized material to either party except with further orders of the Arbitral Tribunal or this Court;

(vi) Respondent Nos.1 and 8 shall preserve all electronic devices, servers, cloud storage, email repositories, hard disks, pen drives, mobile phones and other digital storage media containing information relating to the petitioner's business and shall not delete, alter, erase, encrypt or destroy any data stored therein till further orders of the Arbitral Tribunal;

(vii) Respondent Nos.1 and 8 shall file, within four weeks, an affidavit disclosing all electronic devices and storage media presently in their possession containing any data or information belonging to the petitioner and also disclose whether any copy thereof has been transferred to any third party;

(viii) Respondent Nos.1 and 8 shall render, within six weeks, a statement disclosing the projects, if any, executed by using the petitioner's confidential or proprietary information, without prejudice to their rights and contentions that no such use has taken place;

(ix) Prayer seeking deposit of alleged profits earned by respondent Nos.1 and 8 is kept open to be considered by the learned Arbitral Tribunal upon evidence being led and is not granted at this interlocutory stage;

(x) Prayer seeking a blanket restraint against respondent Nos.1 and 8 from dealing with or alienating all their assets is rejected at this stage, there being no prima facie material to show any immediate attempt to defeat a future award;

(xi) The observations made in this order are only prima facie in nature and confined to adjudication of the present petition under Section 9. Neither the learned Arbitral

Tribunal nor any Court dealing with subsequent proceedings shall be influenced by these observations while deciding the disputes on merits;

(xii) The parties are at liberty to apply before the learned Arbitral Tribunal for modification, variation, continuation, or vacation of the interim measures granted herein after constitution of the Tribunal;

(xiii) Arbitration Petition is partly allowed in the aforesaid terms.

(xiv) There shall be no order as to costs.

(xv) All pending interlocutory application(s) stand disposed of in terms of this order.

(AMIT BORKAR, J.)