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

COMMERCIAL ARBITRATION PETITION (L) NO. 2846 OF 2025

I.A. & I.C. Private Limited and Ors. **...** Petitioners.
Versus
Atul & Arkade Realty **...** Respondent.

Mr. Sharan Jagtiani, Senior Advocate a/w. Mr. Karl Tamboly, Mr. Ketan Gaur, Neil Chatterjee, Mr. Ankit Pal and Hridhay Khurana i/by Trilegal for the Petitioners.
Mr. Rohaan Cama a/w. Mr. Pranav Dessai, Mr. Pheroze Mehta, Ms. Bhakti Mehta, Ms. Shubadha Khandekar i/by Wadia Ghandy & Co. for Respondents.

Coram : Sharmila U. Deshmukh, J.
Reserved on : May 07, 2026
Pronounced on : July 27, 2026

ORDER :

1. The present Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "**Arbitration Act**"), challenging the impugned Award dated 21st October, 2024 passed by the Learned Sole Arbitrator.

2. A preliminary objection of maintainability has been raised, as according to Respondent, the impugned order is passed under Section 16 of Arbitration Act, which is required to be challenged alongwith the final award under Section 34 of Arbitration Act. The rival contention is that the impugned Award is an interim Award under Section 31(6) of the Arbitration Act, as against which, petition under Section 34 of the Arbitration Act would be maintainable.

3. For the purpose of deciding the preliminary objection, the facts necessary to be exposited, as borne out of the Petition, are that in the year 2004, the Petitioner No.3 i.e. JIK Industries Limited was declared as a sick company by Board for Industrial and Financial Reconstruction. Seeking to fulfill its debt obligations, Petitioner No.3 negotiated for one time settlement with its lenders which required payments to be made in excess of INR 23 Crores and allotment of equity shares of Petitioner No.3. The directors of Petitioner No.3 entered into negotiations with one Mr. Atul Patel, who proposed to provide funding of approximately INR 23 Crore to buy-out the debt of Petitioner No.3. The case of Petitioners is that there is no conclusive agreement between the parties as to the arrangement by which INR 23 Crores rupees was to be adjusted/repaid and there was no agreement for joint development as claimed under the purported joint venture agreement dated 28th March, 2007, which was not executed by the Petitioners.

4. A sum of INR 23 Crores was remitted by Mr. Atul Patel between the period from 20th March, 2007 and 3rd May, 2007. In the year 2012, the Respondent herein made attempts to take illegal and forcible possession of the subject property. The Petitioners filed a complaint with the Commissioner of Police, Thane and in response to the same, the Petitioners learnt about purported joint venture agreement, which according to the Petitioners was forged by Atul Patel/Respondent. The Respondent also filed complaint with MIDC Police Station, Andheri and the criminal complaints against each other are pending.

5. The Respondent invoked the arbitration agreement under the purported joint venture agreement vide notice dated 4th September, 2012 nominating an Arbitrator and calling upon the Petitioner to nominate its Arbitrator within period of 30 days. On the very next date, the Respondent filed Petition under Section 9 of the Arbitration Act seeking interim relief premised on existence and validity of purported joint venture agreement and associated documents i.e. power of attorney dated 28th March, 2007, deed of indemnity dated 28th March, 2007, deed of confirmation dated 3rd May, 2007 and the receipt dated 3rd May, 2007, which were denied by the Petitioners as forged and fabricated documents. On 3rd October, 2012, the Petitioner responded to the notice invoking arbitration reiterating their stand of the joint venture agreement being forged and fabricated.

6. On 11th February, 2013, the Respondent filed Arbitration Petition No.72 of 2013 under Section 11 of the Arbitration Act for appointment of Arbitrator. In view of the defence that the joint venture agreement was unstamped and forged and fabricated document, this Court vide order dated 27th March, 2014, directed the parties to lead evidence on the execution of the Joint Venture Agreement ("JVA") of 28th March, 2007, and also directed deposit of sum of Rs.1 Crore towards the differential stamp duty and penalty payable in respect of the documents. In compliance of the order of 27th March, 2014, evidence of Atul Patel (CW-1) was filed before this Court.

7. In the meanwhile, the Respondent approached the Hon'ble Apex Court by way of Special Leave Petition(Civil) No.D 24275 of 2021 against the order of 27th March, 2014, with the application that in view of the development of law and the judicial pronouncements, the application pending before this Court can be disposed of. The Hon'ble Apex Court noted the submissions of the Respondent that the subsequent judgments passed by the Hon'ble Apex Court covers the issues raised in the SLP and/or pending before the High Court and disposed of the SLP with a request to the High Court to dispose of the matters pending adjudication before it.

8. Vide order dated 28th February, 2022, this Court disposed of the Section 9 petition by consensus as the Petitioner made a statement not to create third party rights till passing of Award. Vide order dated 6th May, 2022, the application under Section 11 of Arbitration Act was allowed and the Learned Sole Arbitrator was appointed with the direction that the Arbitrator shall first decide as preliminary issue as to whether the purported joint venture agreement is legal and valid instrument and whether an arbitration agreement exists between the parties. The evidence recorded and documents tendered in the application during the mini-trial was directed to be read as evidence in arbitration proceedings.

9. The order of appointment of Arbitrator was challenged by the Petitioners before the Hon'ble Apex Court which came to be dismissed vide order dated 19th July, 2022.

10. The Respondent examined three witnesses and the Petitioners examined the handwriting expert as its witness. Vide the impugned order dated 21st October, 2024, the learned Sole Arbitrator answered the preliminary issue as under:

"(i) The Joint Venture agreement is a legal and valid instrument and not vitiated by fraud, forgery and is not got up document.

(ii) There exists an arbitration agreement between the parties".

11. Hence, the present petition came to be filed under Section 34 of the Arbitration Act, terming the impugned order as interim Award under Section 31(6) of the Arbitration Act.

SUBMISSIONS:

12. Mr. Cama, learned counsel for the Respondent would point out the pre 2015 and post 2015 amendment position to the Arbitration Act to contend that post 2015 amendment, the High Court in Section 11 application was mandated to determine *prima facie* existence of arbitration agreement leaving the final determination of jurisdiction to the Arbitral Tribunal under Section 16 of Arbitration Act, which has been done in present case. He has taken this Court in detail through the order of 27th March, 2014 passed in the Section 11 application to contend that the order was rightly passed as per the prevailing legal position and had directed leading of evidence to determine the question of existence of arbitration clause which *ipso facto* required determination of the existence of the main JVA dated 28th March, 2007.

13. He submits that post 2015 amendment, the issue was required to be determined by the Arbitral Tribunal and hence the preliminary issue came to be framed. He submits that the Learned Arbitrator was enjoined to determine the issue of existence and validity of arbitration agreement and mere reference to the issue as preliminary issue does not make it anything more than a Section 16 exercise. He submits that the question of alleged forgery and fabrication of JVA was put in issue only in the context of determining existence of arbitration agreement for making a reference under Section 11 of Arbitration Act. He submits that such determination cannot be termed as a preliminary award or interim award.

14. He submits that it is a settled position in law that all jurisdictional issues are required to be decided as preliminary issues under Section 16 of Arbitration Act, and the issue as the existence of arbitration agreement is a jurisdictional issue. He submits that what is relevant to be considered is the nature of the application filed. He submits that while ruling on its jurisdiction under Section 16, if the Arbitral Tribunal decides on the question of main agreement, which decision touches upon an issue which would otherwise arise in the arbitration proceedings, does not make the order any less than an order under Section 16 of Arbitration Act. He submits that having invited the Arbitral Tribunal to decide the issue and leading evidence thereon, the order of the Arbitral Tribunal under Section 16 can only be challenged with the final Award under Section 34.

15. Drawing attention of the Court to the statutory provisions of Section 2(1)(c) and Section 31(6) of Arbitration Act, he submits that in order to constitute an interim Award, the Award must decide a claim and at the stage of Section 11 proceedings, there is no statement of claim filed and resultantly, no decision on a claim. He submits that an interim Award must decide an issue arising from the pleadings or claim on merits and must grant a final relief, albeit at an interim stage. He submits that the contention that the impugned order decides matters beyond deciding the pure question of existence of arbitration agreement would have to await challenge of the final Award under Section 34. He submits that if the impugned order is permitted to be challenged under Section 34 of the Arbitration Act, Section 5 r/w Section 16(5) and 16(6) of the Arbitration Act would be rendered otiose. He submits that without prejudice even if an order transgresses beyond the scope of the

Arbitrator's authority under Section 16, it cannot convert an application under Section 16 into an application for interim award permitting a challenge under Section 34 of the Arbitration Act. He submits that all the parties were aware about the nature of inquiry being one under Section 16 of the Arbitration Act and had proceeded on the same basis. He submits that to allow a challenge to Section 16 order would violate Section 37 and would open the floodgates for litigation as the party would thereafter be entitled to challenge Section 16 order, under Section 34 rendering Section 37 otiose and rendering the mandate of Section 16(5) and Section 16(6) entirely redundant.

16. He submits that in accordance with the directions of this Court, the Arbitral Tribunal has analysed the evidence on record and has given conclusive findings on limited aspect of existence of JVA and consequently the arbitration agreement. He submits that in the process of ruling on its jurisdiction, the Arbitral Tribunal was mandated to decide existence of JVA. He submits that the significant indicia is the nature of application, which evidently was under Section 16 of Arbitration Act. He submits that notwithstanding that the existence of JVA is an issue in dispute, the issue being presented as jurisdictional issue would render the impugned order a Section 16 order, even if having a touch of finality.

17. He submits that the Petitioner's contention of absence of arbitration agreement to resist Section 11 application was founded on the JVA being forged and fabricated, which issue has been concluded by the impugned order. In support, he relies upon the following decisions:

(i) ***MCM Worldwide (P) Ltd. v. Construction Industry Development Council***[1]**,**

(ii) ***Union of India vs. East Coast Boat Builders and Engineers Ltd.***[2] **,**

(iii) ***Triad India vs. Tribal Co-operative Marketing and Development Federation of India Ltd. and Anr.***[3]**,**

(iv) ***Union of India vs. Mohindra SupplyCo.***[4] **,**

(v) ***Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.***[5] **,**

(vi) ***A. Ayyasamy vs. A. Paramasivam***[6]**,**

(vii) ***Practical Properties Pvt. Ltd. vs. Comet Overseas Pvt.Ltd.***[7] **,**

(viii) ***SBP and Co. vs. Patel Engineering Ltd. and Anr.***[8]**,**

(ix) ***National Insurance Company Ltd. vs. Boghara Polyfab Pvt.Ltd.***[9] **,**

(x) ***Bharat Rasiklal Ashra vs. Gautam Rasiklal Ashra and Anr.***[10]**,**

1 2026 SCC OnLine SC 717
2 1998 (47) DRJ
3 2007 (94) DRJ 435
4 1961 SCC OnLine SC 344
5 (2011) 8 SCC 333
6 (2016) 10 SCC 386
7 2016 SCC OnLine Del 1228
8 (2005) 8 SCC 618
9 (2009) 1 SCC 267
10 (2012) 2 SCC 144

(xi) Pravin Electricals Pvt. Ltd. vs. Galaxy Infra & Engineering Pvt. Ltd.[11] ,

(xii) GTC Ltd. vs. Royal Consulting RV and Anr.[12] ,

(xiii) Young Achivers vs. IMS Learning Resources Pvt. Ltd.[13] ,

(xiv) Adavya Projects Pvt. Ltd. vs. Vishal Structurals Pvt. Ltd.[14]

(xv) BGM and M-RPL-JMCT (JV) vs. Eastern Coalfields Limited[15],

(xvi) M.S. Commercial & Ors. vs. Calicut Engineering Works Ltd.[16],

(xvii) Harinarayan G. Bajaj vs. Sharedeal Financial Consultants[17]

(xviii) Lindsay International Pvt. Ltd. vs. IFGL Refractories Limited[18]

(xix) Uttarkhand Purv Sainik Kalyan Nigam Ltd. vs. Northern Coal Field Ltd.[19],

(xx) Interplay between Arbitration & Agreements under Arbitration and Councilation Act, 1996 & Stamp Act, 1899[20],

(xxi) Bharat Sanchar Nigam Ltd. and Anr. vs. Nortel Networks India Pvt. Ltd.[21]

18. Mr. Jagtiani, learned Senior Advocate appearing for the Petitioners would submit that the objection to the Section 11 application was founded on the purported joint venture agreement

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11 (2021) 5 SCC 671
12 2002 SCC OnLine Bom 1546
13 (2013) 10 SCC 535
14 (2025) 9 SCC 686
15 2025 SCC OnLine 1471
16 (2004) 10 SCC 656
17 2003 (2) Mh.L. J. 598
18 2022 SCC OnLine Cal 1880
19 (2020) 2 SCC 455
20 In re. [(2024) 6 SCC 1
21 (2021) 5 SCC 738

being unstamped and forged and fabricated documents. He would point out that the learned Single Judge in the order of 6th May, 2022 has considered that the allegations of fraud are of such a nature that if proved, would negate the very existence of the agreement containing the arbitration clause and that the question which comes up is whether the joint venture agreement is legal and valid. He points out that the Court framed two issues to be decided as preliminary issues as to whether the joint venture agreement is legal and valid instrument and whether the arbitration agreement exists between the parties.

19. He submits that considering the doctrine of separability, the learned Arbitrator had an option of deferring the issue of existence of arbitration agreement to a later date or could have ruled only on the jurisdiction of the Arbitrator. However, in the present case, the learned Arbitrator has not only conclusively decided the existence of the joint venture agreement but has rendered conclusive findings on existence and validity of the other associated documents such as the power of attorney, deed of confirmation, etc.

20. He submits that Section 31(6) of the Arbitration Act, uses the expression “matter” as opposed to “claim” and therefore even if there was no claim which was pending, the fact that the decision was rendered on a matter which arose in the arbitration proceedings, the order constitutes an interim Award.

21. He has taken this Court in detail through the impugned order and would point out the length and the width of the inquiry undertaken by the learned Arbitrator. He submits that in view of the extensive trial and expert evidence, the findings of learned Arbitrator cannot be said to be *prima facie* findings. He points out that the learned Arbitrator has termed the associated documents as questioned documents and has rendered conclusive findings as regards its validity and existence. He submits that the Petitioners are thus precluded from challenging their authenticity in arbitration proceedings. He submits that there has been an independent assessment of all the five questioned documents, which takes the impugned order beyond the purview of a Section 16 order. He has further taken this Court in detail through the observations of the learned Arbitrator and points out that the learned Arbitrator has considered the substance of joint venture agreement to deal with the Petitioner's submission of the agreement between the parties being commercially implausible. He submits that the reliance on Order VI of CPC and Section 100 of the Evidence Act shows the conclusive nature of the findings, which would constitute an interim Award.

22. He submits that under Section 16, the validity and existence of arbitration agreement is assessed and not existence and validity of the main contract by virtue of principle of separability. He submits that it is this principle which insulates an arbitration agreement from being impeached when the main contract is sought to be impeached. He submits that under Section 16, the issues to be decided are existence of arbitration agreement, proper constitution of arbitral tribunal and whether the matters submitted to arbitration are in accordance with arbitration agreement. He submits that this Court on 6th May, 2022 had directed both Issue No.1 and Issue No.2 to be independently decided and the decision on Issue No.1 is the subject matter of present Petition and not the ruling on jurisdiction.

23. He would further point out the final conclusion of the learned Arbitrator which answers not only the issue of existence of arbitration agreement but also the about the validity of the joint venture agreement as not being vitiated by fraud and forgery to support his submission of the Award being an interim award. He submits that the findings of learned Arbitrator of existence of concluded contract decides an issue in dispute between the parties with an air of finality, which constitutes an Interim Award. He submits that considering the conclusive findings on JVA and associated documents, there is nothing left to determine in the arbitration. He would place reliance on the following decisions:

- ***(i) MCM Worldwide Pvt. Ltd. vs. Constructions Industry Development Council[22],***
- ***(ii) Aptec Advance Protective Technologies AG vs. Union of India[23],***
- ***(iii) Union of India vs. Aptec Advance Protective Technologies AG[24] ,***
- ***(iv) Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products[25]***
- ***(v) Sushma Arya & Ors. v. Palmview Investment Overseas Ltd.[26],***
- ***(vi) Palmview Investment Overseas Ltd. vs. Ravi Arya and Ors.[27];***
- ***(vii) Sushma Arya and Ors. v. Palmview Investment Overseas Ltd. and Ors.[28],***
- ***(viii) Centrotrade Minerals and Metal Inc. vs. Hindustan Copper Limited[29],***
- ***(ix) In re: Interplay Between Arbitration Agreements under Arbitration[30],***
- ***(x) Official Trustee vs. Sachindra Nath[31] ,***

22 2026 SCC OnLine 717
23 FAO(OS) (Comm) 227/2024 and CM APPL. 59210/2024 dated 13.01.2025
24 Spl. Leave Petition (Civil) Dairy No.47211 of 2025 dated 26.09.2025
25 (2018) 2 SCC 534
26 2022 SCC OnLine Bom 4335
27 Commercial Appeal (L) No. 36947 2022
28 SLP (C) No. 16356 of 2023
29 (2017) 2 SCC 228
30 1996 [(2024) 6 SCC 1
31 AIR 1969 SC 823

(xi) Thiruvengadam Pillai v. Navaneethammal[32],

(xii) Umesh Bondre v. Wilfred Fernandes[33] ,

(xiii) Kunda v. Haribhau[34],

(xiv) Rattan Dev vs. Pasam Devi[35] ,

(xv) Pandurang Jivaji Apte v. Ramchandra Gangadhar Ashtekar[36],

(xvi) Murari Lal vs. State of Madhya Pradesh[37] ,

(xvii) Dulichand Laxminarayan v. CIT, Nagpur[38],

(xviii) Jindal Steel Limited vs. India Coke and Power Pvt. Ltd.[39],

(xix) Cinevistaas Ltd. vs. Prasar Bharati[40],

(xx) Zillion Infraprojects Pvt. Ltd. vs. Bridge and Roof Company India Ltd.[41],

24. In rejoinder, Mr. Cama would submit that if the Petitioner's contention is accepted, in every single Section 16 application, wherein issue arises as to existence of an arbitration agreement or questions of fraud, limitation or jurisdiction, the parties would simply submit their case for adjudication and then challenge the same under Section 34 which would defeat the very object of the Arbitration Act.

25. He submits that the impugned order cannot be treated as an

32 (2008) 4 SCC 530
33 AIR 2007 Bom 29]
34 2014 (5) Mh.L.J. 726
35 (2002) 7 SCC 441
36 (1981) 4 SCC 569
37 (1980) 1 SCC 704
38 AIR 1956 SC 354
39 CARBP(L)/5605/2026 dated 04.03.2026
40 2019 SCC OnLine Del 7071
41 2026 SCC OnLine Cal 372

interim award as no application was filed under Section 31(6) of the Arbitration Act. He submits that the decisions cited would show that in order to constitute an interim award, a claim or point raised in pleadings of the parties must be decided. He submits that the reference to the other documents which are executed on co-terminus terms with the joint venture agreement, was referred by the learned Sole Arbitrator only to prove the existence of the joint venture agreement and therefore the existence of the arbitration agreement therein. He would point out the relevant extracts of the impugned order *qua* the other documents to contend that the findings were necessitated as the same were put in evidence under the direction of this Court and are necessary for deciding the existence of the main joint venture agreement. He would further submit that said documents referred to and relied upon the joint venture agreement. He submits that it is open for the Petitioner to argue about the validity of the other documents and the Arbitral Tribunal can determine at the final hearing which are the aspects are not covered by Section 16 order. However, that by itself is no ground to challenge the impugned order under Section 34 of the Arbitration Act. He submits that despite the decision on the existence of joint venture agreement, the issue of specific performance of JVA and associated documents still remains.

26. He further submitted that merely because Section 31(6) uses the expression “matter”, it cannot mean that the discussion on matter constituting a decision on a Section 16 application or a jurisdictional question as to existence of an arbitration agreement, which would also be a matter arising in arbitration, would constitute an interim award. He would submit that notwithstanding that the detailed order has been passed by the learned Arbitrator, the same is only a determination of the existence of an arbitration agreement as contained in the JVA and constitutes an order passed under Section 16 of Arbitration Act. He would further submit that it is open for the Petitioners to contend before the Arbitral Tribunal that the issues which would arise for determination in the arbitration proceedings are not covered by the impugned order.

27. Rival contentions now fall for determination.

28. The issue as to the maintainability of the present petition would require consideration of the proceedings before the Section 11 Court. The opposition by the Petitioners to the reference to arbitration before the Section 11 Court stemmed from the denial to the very existence and validity of JVA containing the arbitration clause. The specific objection was that no arbitration agreement exists as the JVA was forged and fabricated document. In view of the allegation of forgery of the underlying contract containing the arbitration agreement, the pre-2015 amendment position, mandated the Section 11 Court to determine conclusively the existence of arbitration agreement, which issue was not available to the Arbitral Tribunal for adjudication.

29. The order of 27th March, 2014 was in consonance with the prevailing legal position and directed the parties to lead evidence on the issue of execution of JVA dated 28th March, 2007. According the parties commenced their evidence and in the interregnum, in view of the development of law post 2015 amendment to the Arbitration Act, on an application of Respondent, the Hon'ble Apex Court directed this Court to decide the pending applications. The post 2015 amendment position required the Section 11 Court, at the pre-reference stage, to *prima facie* ascertain the existence of arbitration agreement, while shifting the inquiry of conclusive determination of existence of arbitration agreement to the Arbitral Tribunal.

30. Noting that the nature of allegations of fraud and forgery are rooted in the execution of JVA and applying the test of *prima facie* review, the Section 11 Court opined that the Arbitral Tribunal must determine existence of arbitration agreement as preliminary issue in light of challenge to the execution of JVA. The relevant clauses of the operative part of the order in Paragraph 66 reads, thus:

> "(iii) The Arbitrator shall first decide, as a preliminary issue, as to whether the joint venture agreement is a legal and valid instrument and whether the arbitration agreement exists between the parties.
>
> (v) The evidence recorded and the documents tendered in this application during the mini trial shall be read in evidence in the arbitration proceedings
>
> (vi) Only after the learned Arbitrator finds that the Arbitration Agreement exists, the learned Arbitrator shall adjudicate upon the claims and counter claims, if any, and/or all the disputes which arise out the Joint Venture Agreement dated 28th March, 2007.
>
> (vii) In the event the aforesaid preliminary issue is answered in the negative, the mandate of the Arbitrator would stand terminated."

31. The referral order makes it clear that the inquiry, mandated to be conducted by Section 11 Court in pre-2015 amendment era, in view of the development of law, was shifted to the Arbitral Tribunal to be considered as preliminary issue before the respective claims/counter claims are decided on merits. At that stage, neither the statement of claim nor the statement of defence was filed, no issues were framed and parties were conscious of the nature of inquiry. The issue presented for adjudication was lack of jurisdiction attached to the adjudicating authority premised on the denial of the existence of the arbitration agreement and not an issue on the merits of the claim, which claim was not yet filed and was not under consideration. The stage of proceedings, the nature of order and the findings of the learned Arbitrator are determinative factors while considering whether the impugned order is Section 16 order or order passed under Section 31(6) of the Arbitration Act determining the substantive claim of the parties.

32. The parties were conscious of the nature of inquiry which was continuation of the inquiry directed by order of 27th March, 2014 to decide the threshold issue of existence of arbitration agreement before referral order under Section 11 can be passed. The direction that the evidence adduced before the Section 11 Court to be read in evidence in the arbitration proceedings is indicative of the nature of inquiry.

33. The order of 6th May, 2022 terming the issue as “preliminary issue” is not suggestive that the reference to Arbitral Tribunal was anything apart from the determination of existence of arbitration agreement under Section 16 of Arbitration Act. Section 16(1) clearly provides that the arbitral tribunal may rule on its own jurisdiction including ruling on any objection with respect to existence and validity of arbitration agreement. It is the existence of arbitration agreement which was raised as an objection at pre-reference stage, which inquiry was shifted to arbitral tribunal.

34. The Section 11 Court directed the learned Arbitrator to decide the preliminary issue (singular as opposed to plural) being conscious of the objection raised by the Petitioners that as JVA is forged and fabricated document, no arbitration agreement exists. Mr. Jagtiani would bifurcate the preliminary issue into Issue No.1 and Issue No.2 to contend that these issues were independent issues and conclusive findings on Issue No.1 i.e existence and validity of JVA is susceptible of challenge under Section 34 of Arbitration Act.

35. Mr. Jagtani's contention is based on the principle of separability enshrined in Section 16 of the Arbitration Act that an arbitration clause forming part of the contract shall be treated as an agreement independent of the other terms of the contract. In ***Young Achievers vs IMS Learning Resources Private Limited*** (supra), the Hon'ble Apex Court in context of application under Section 8 of Arbitration Act, was considering the survival of arbitration clause in an agreement which has been superseded/

novated by later agreement. It held that the principle laid down is that if contract is superseded by another, the arbitration clause, being a component of part of earlier contract, falls with it. But where the dispute is whether such contract is void ab initio, the arbitration clause cannot operated on those disputes, for its operative force depends on the existence of contract and its validity.

36. In ***Re Interplay between arbitration agreements under A &C Act, 1996 and Stamp Act, 1899*** (supra), the Hon'ble Apex Court has held that the scheme of Arbitration Act shows that although an Arbitral Tribunal is given priority to determine *all issues pertaining to its jurisdiction* based on the principle of competence-competence, the tribunal's decision is subject to judicial review at the stage when an award is challenged. In ***Uttarakhand Purv Sainik Kalyan Nigam Ltd vs Northern Coal Field Ltd*** (supra), the Hon'ble Apex Court has held that Section 16 is an inclusive provision, which would comprehended all preliminary issues touching upon the jurisdiction of Arbitral Tribunal.

37. The learned Single Judge in the order of 6th May, 2022 noted that the allegations pertain to the very execution of the underlying agreement and the allegations are of such a nature that if proved, they would negate the very existence of arbitration agreement containing the arbitration clause, favours the finding that the validity of the joint venture agreement was presented for adjudication as a jurisdictional issue. It is not a case of underlying contract being alleged to be non existent by reason of discharge or frustration or novated etc but on the ground of forgery and fabrication. The determination of existence of arbitration agreement was intertwined with the issue of existence and validity of JVA and presented for consideration to the Learned Arbitrator. It is in light of directions of this Court that the Arbitrator decided as preliminary issue, which could not be decided independently of each other. If the Learned Arbitrator would have accepted that JVA is forged and fabricated document, the arbitration proceedings would have been terminated.

38. The non-filing of an application under Section 16 is irrelevant as pre-2015 amendment and at Section 11 stage, the determination of existence of arbitration agreement was to be done by the High Court.

39. The issue is whether the impugned order qualifies as an interim Award under Section 31(6) of the Arbitration Act and the resultant remedy which is required to be adopted. The Arbitration

Act does not define an interim award and only provides that under Section 31(6) of the Arbitration Act, an Arbitral Tribunal has the power to make an interim Award on any matter with respect to which makes an Arbitral Award.

40. The validity of joint venture agreement containing the agreement clause was presented as a jurisdictional issue which necessitated that the same be decided at the threshold as noted in the order of 6th May, 2022. There was no claim filed before the learned Arbitrator and the order of 6th May, 2022 itself directs after the preliminary issue is decided, the adjudication be undertaken on merits of claim/counterclaim. In ***Harinarayan G. Bajaj vs Sharedeal Financial Consultants Pvt Ltd & Anr*** (supra), this Court exemplified the distinction between decision and Award in the context of challenge to a decision under Section 27 of Arbitration Act. Examining the statutory scheme of the 1940 Act and 1996 Act, this Court held :

> "3 …..Therefore, all orders/decisions passed under the Act of 1996 do not necessarily fall under the expression "Awards". It is only a decision/order which satisfies the requirements of Section 31 which is an Award. All others are orders and decisions in the course of the proceedings deciding procedural issues or terminating the arbitral proceedings themselves on the ground that the submission does not fall within the arbitration agreement or that there is no arbitral agreement or that there is no dispute required to be decided by the Arbitral Tribunal.

> 7…..An important indication in holding what is an award, flows from the expression in matter with respect to which it may make a final arbitral award. In other words, it must be in respect of claims or counter claims which have been subject matter of submission or reference to arbitral tribunal…...In *M/s Anuptech Equipment Pvt Ltd* (supra0, the issue was of challenge to an order passed under Section 25(a) terminating the arbitral proceedings for failure to file statement. Considering the expression "Award" this is what is observed:-
>
> > "What that means is that the expression order and award are distinct and different. One is termination of proceedings without deciding the merits of the matter, the other is termination on merits. Therefore, it is clear that looking at the Act itself, there is no provision to challenge certain orders or decisions."
>
> …. Therefore, an order culminating in termination of arbitral proceedings with respect to the existence of validity of the arbitration agreement is not an award. The expression "award" therefore, must mean something different from mere termination of proceedings. The award, whether interim award or final considering the judgment of the Apex Court in *Satwant Singh Sodhi* (supra) the English judgment and the scheme of Act of 1996 must mean the final determination of a claim, part of a clim or counter claim by the Arbitral Tribunal of a submission to the Arbitral Tribunal. …For example, the issue of jurisdiction which has to be decided under Section 16, yet does not form part of the expression 'award', though in a challenge to an award where proceedings are continued rejecting the challenge to arbitrability or otherwise that order can be challenged whilst challenging the Award under Section 34 of Act of 1996. The decision or order to be an award must result in final determination of the claim, part of the claim and/or counter claim referred or submitted to arbitration and must normally meet the other requirements of Section 31 of which signing the award is mandatory…"

41. The decision is sought to be distinguished as in those facts, the issue arose out an order passed under Section 27 of Arbitration

Act. In my view, the exposition of law is binding and the fact that the same arose out an order under Section 27 of Arbitration Act is immaterial. The distinction between decision and award lies in the final determination of a claim, part of claim or counter claim, which was present before the Arbitral Tribunal.

42. It is sought to be contended that the expression used in Section 31(6) is “matter” as opposed to “claim” and it is not necessary that the statement of claim was required to be filed before the order can be termed as an interim Award. I am not inclined to accept the submission that the use of the expression “matter” would clothe an order under Section 16 with the character of an interim Award. An order on a Section 16 application would also be an order on a matter arising in arbitration and if the contention is accepted, the determination of a matter as opposed to a claim under Section 16 would also constitute an interim Award. Such an interpretation would run contrary to the statutory provisions of Arbitration Act and would render Section 37 otiose.

43. During the mini trial conducted in Section 11 application, the Respondent had filed their evidence and Affidavit of Documents which included the joint venture agreement dated 28th March, 2007, power of attorney dated 28th March, 2007, deed of indemnity dated 28th March, 2007, deed of confirmation dated 3rd May, 2007 and original receipt dated 3rd May, 2007.

44. The Respondent placed in evidence the joint venture agreement and the associated documents i.e. power of attorney dated 28th March, 2007, deed of indemnity dated 28th March, 2007, deed of confirmation dated 3rd May, 2007 and original receipt dated 3rd May, 2007, in order to establish the chain of documents substantiating the execution of the joint venture agreement and to demonstrate that the parties had acted upon the joint venture agreement. To counter the evidence, the contention of the Petitioners was that the purported joint venture agreement was never executed and is forged and fabricated document and the other alleged ancillary documents are also forged and cannot render legality to the forged joint venture agreement.

45. In paragraph 34, the Learned Arbitrator noted the assertion of the Petitioners that the continuous paginations appearing on top of the alleged joint venture agreement and alleged receipt though stated to be executed on different dates exemplifies the fraud. It noted in paragraph 38, that the Petitioners had denied that they had issued any power of attorney in favour of the Respondent. In paragraph 47, it noted the denial of the Petitioners that any deed of indemnity and deed of confirmation were ever executed between the parties and the said documents were forged and fabricated.

46. The conspectus of the Petitioner's submissions as noted in paragraph 270 and 271 by the Learned Arbitrator is as under:

> "270. The Respondents therefore submit that a harmonious compilation of the above-mentioned materials when put together evinces a plausible conclusion that the purported Joint Venture Agreement, purported Power of Attorney, Purported Deed of Indemnity, purported Deed of Confirmation and purported Receipt are fraudulent, forged and fabricated document. The Respondents therefore submit that in the absence of existence of the purported Joint Venture Agreement, the question of Claimant invoking the arbitration clause therein does not arise.
>
> 271. It is apparent therefore that:
>
> (a) The purported Joint Venture Agreement and the other alleged documents relied upon by the Claimant are forged and fabricated.
>
> (b) There is therefore no legal and valid instrument *interalia* based on which an arbitration agreement can be said to have been entered into or exist between the Claimant and the Respondent."

47. The findings of the Learned Arbitrator on the joint venture agreement and other documents are contained in paragraph 298, 303, 330, 335 and 336 as under:

"298. As noted earlier Mr. Surendra C. Gurav has filed Reply dated 25th October 2012 to arbitration Petition No. 1137 of 2012. In my opinion, Mr. Rajendra G. Parikh instead of Mr. Surendra C. Gurav should have filed the reply as it is the case of the Respondents that the signature, initials and thumb impressions of Mr. Rajendra G. Parikh are forged and fabricated. It is also material to note that in reply dated 30th July 2012 Mr. Parikh relied upon the fingerprints' opinion/report dated 28th July 2012 (Exhibit R-1, Pages 13 to 22 of the AOE of RW-1 of Ms. Nisha Menon). Not only that though Mr. Rajendra G. Parikh had sought opinion of fingerprint expert, he did not deem it appropriate to obtain opinion of expert at that time i.e. in July 2012 in respect of his signatures and/or initials on the Joint Venture Agreement dated 28th March 2007. <u>No explanation is given by Mr. Rajendra G. Parikh as to why he did not obtain expert's opinion in respect of signatures and initials on the Joint Venture Agreement, Power of Attorney, Deed of Indemnity, Deed of Confirmation and Receipt and sought opinion only in respect of thumb impressions on the Joint Venture Agreement and the Power of Attorney only.</u>

303. Mr. Rajendra G. Parikh thereafter filed Additional Affidavit dated 15th July 2013 placing on record subsequent events after filing his Sur-rejoinder dated 20th March 2013. He has placed on record Written Statement dated 25th June 2013 filed by Mr. Ramrao S. Kedar, Notary in complaint No. 1 of 2013 filed by the Respondents as Annexure-1. He has further placed on record copies of reports by Ms. Nisha Menon, handwriting and fingerprint expert as Annexures 2, 3 and 4. <u>Nowhere in the pleadings is there any dispute about the initials of Mr. Rajendra Parikh on each and every page of all the 5 questioned documents.</u> The arbitration agreement at Clause 52 of the Joint Venture

Agreement is also initialled by ivir. Rajendra G. Farikh and the same was not disputed. While the pleadings contain general allegations of fraud and forgery, there are no particulars or details. <u>Though the Respondents claimed that all the 5 questioned documents are forged, they have not led any evidence in respect of 3 of the documents viz. (i) Deed of Indemnity dated 28th March 2007; (i) Deed of Confirmation; and (iii) Receipt both dated 3rd May 2007.</u>

330. As noted earlier, Mr. Surendra C. Gurav had filed Afidavit in Replies in Section 9 Petition and Section 11 Application. In fact, he has specifically asserted that he is not dealing with the factual aspects in respect of the transactions and the same would be dealt with by Mr. Rajendra G. Parikh. I have already noted the Affidavit in Sur-Rejoinder dated 20th March 2013 filed by Mr. Rajendra G. Parikh. It is however material to note that neither Mr. Surendra C. Gurav nor Mr. Rajendra G. Parikh stepped into witness box. As per Section 101 of the Evidence Act, the burden of proof was squarely on the Respondents to establish the plea of fraud. Section 102 of the Evidence Act lays down that the burden of proof in the suitor proceeding lies on that person who would fail if no evidence at all were given on either side. Section 106 of the Evidence Act lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the instant case, whether Mr. Rajendra G. Parikh has signed this Joint Venture Agreement, Power of Attorney, Deed of Indemnity all dated 28th March 2007, Deed of Confirmation and Receipt both dated 3rd May 2007 is especially within the knowledge of Mr. Rajendra G. Parikh. In other words, the Respondents did not examine a party witness/fact witness. This is more so as Mr. Rajendra G. Parikh was throughout present in the arbitration proceedings. Having not entered into the witness box

and having not presented -himself for cross-examination in the instant case, an adverse presumption has to be drawn against the Respondents on the basis of the principals contained in illustration (g) of Section 114 of the Evidence Act. Illustration (g) of Section 111 provides that the Court nay presume - that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. In this regard, useful reference can be made to paragraph 17 of Iswar Bhai Patel (Supra) and paragraph 32 of Sardar Gurbakhsh Singh (Supra).

335. A perusal of Joint Venture Agreement would show that each and every page of the Joint Venture Agreement and other agreements has been initialled by Mr. Atul Patel for and on behalf of the Claimant and Mr. Rajendra G. Parikh for and on behalf of the Respondents. CW-1 has expressly deposed as regards initials of Mr. Atul Patel and Mr. Rajendra G. Parikh on each and every page of the Joint Venture Agreement, Power of Attorney and Deed of Indemnity all dated 28th March 2007 and the Deed of Confirmation and Receipt both dated 3rd May 2007. The Respondents have never denied initials of Mr. Rajendra G. Parikh on the Joint Venture Agreement and other agreements, In fact, the Respondents did not lead any evidence in respect of the initials. As mentioned earlier, the Respondent did not examine Mr. Rajendra Parikh or Mr. Surendra C. Gurav or any other fact witness to substantiate their contention that Mr. Rajendra G. Parikh did not initial the Joint Venture Agreement and other agreements, Even in the pleadings the Respondents have maintained a studied silence on the point of initials of Mr. Rajendra G. Parikh on the agreements. This lends support to the contention of the Claimant that the agreements have been duly initialled by Mr. Rajendra G. Parikh for and on behalf of the Respondents. The Respondents

have not led any evidence on initials of Mr. Rajendra G. Parikh on each and every page of the 5 questioned documents. None of the reports issued by RW-1, Ms. Nisha Menon deal with the initials on the agreements In fact, in her cross-examination Ms. Nisha Menon admitted that she wanted to analyse the initials of Mr. Rajendra Parikh appearing on the agreements and were also marked them for examination, but later on the assignment was cancelled and she was instructed not to examine the initials. This also lends support to the contention of the Claimant that adverse inference ought to be drawn against the Respondents as although Ms. Nisha Menon had informed them that initials ought to be examined, they instructed her not to do so.

336. The Deed of Confirmation and Receipt both dated 3rd May 2007 confirmed the execution of the Joint Venture Agreement and Power of Attorney. No evidence is led by the Respondents on these documents. As the contents of the Deed of Confirmation and Receipt remain uncontroverted, the contention of the Claimant that the same establishes the existence, legality and validity of the Joint Venture Agreement and Power of Attorney deserves acceptance." (Emphasis supplied)

48. In context of the evidence presented for consideration and the submissions canvassed, the Arbitral Tribunal held in paragraph 344 as under:

"344. In the light of the aforesaid discussion, it is not possible to accept the submissions advanced on behalf of the Respondents that the evidence on record demonstrates that:

(i) The Joint Venture Agreement dated 28th March 2007 was never executed and is a forged and a fabricated document.

(ii) The Power of Attorney, the Deed of Indemnity, Deed of Confirmation and Receipt are forged and fabricated documents.

(iii) The signatures on the questioned documents are not of Mr.Rajendra Parikh as the Report at Exhibit R-3 dated 15th October 2012 is not based on the analysis of original letters dated 25th August 2008 and 29th September 2007 but was based on the photocopies of these letters."

49. Perusal of the said paragraph would indicate that the same crystallizes the submissions advanced on behalf of the Petitioners, which have been rejected. The Petitioners herein have called upon the learned Arbitrator to render a finding on the documents in a proceeding under Section 16 and having presented the issue as jurisdictional issue cannot thereafter characterise the adjudication on the other documents as constituting an interim Award.

50. The Learned Arbitrator dealt with the submission of the Petitioners that the alleged thumb impressions on the purported joint venture agreement are not of Atul Patel and Rajendra Parikh in paragraph 363 as under:

"363. The Respondents have contended that the alleged thumb impressions on the purported Joint Venture Agreement are not of Mr. Rajendra G. Parikh and/or of Mr. Atul Patel. They have further contended that the rubber stamps of the Respondents are forged. <u>The Claimant has contended that there are no thumb impressions/seals on (1) Deed of Indemnity dated 28th March 2007, (2) Deed of Confirmation and Receipt both</u>

dated 3rd May 2007. The Respondents have not led evidence as regards to these documents. As noted earlier, the Deed of Confirmation and the Receipt both dated 3rd May 2007 confirm execution of Joint Venture Agreement and Power of Attorney. That apart the Respondents have not led any evidence as regards initials of Mr. Rajendra G. Parikh on the five questioned documents. This lends support to the contention of the Claimant that the common seals and thumb impressions are not required for the document to be executed and to come into existence. Common seals/thumb impressions are not required in law to execute a document. That apart Mr. Rajendra G. Parikh did not step into the witness box to depose that the agreements were not received by him in his office and that thumb impressions were not affixed by him in his office. The burden of proof was squarely on the Respondents to establish the said fact. In any event once the initials and signatures are proved, the existence of the arbitration agreement is proved and also, the legality and validity of the Joint Venture Agreement and other documents. The alleged forgery by reference to thumb impression/ company gal has no relevance. The very fact that the agreement is in writing containing the initials and signatures of both the parties and it contains an arbitration clause, establishes beyond that there is a concluded contract in existence." (Emphasis supplied)

51. In paragraph 373, the Learned Arbitrator Arbitral Tribunal answered the preliminary issue as under:

"373. As now after considering the evidence on record, I have come to the conclusion that the arbitration agreement exists, it is now necessary to adjudicate upon the claims and counterclaims, if any and/or all the disputes which arise out of the Joint Venture Agreement dated 28th March 2007."

52. The conspectus of the findings of the Learned Arbitrator can be stated as under:

(i) There is no categorical pleading by the Petitioners that Rajendra Parikh has not signed the joint venture agreement dated 28th March, 2007. There is no dispute in the pleadings about initials of Rajendra Parikh on each and every page of all five questioned documents.

(ii) There is no explanation for not obtaining the expert's opinion in respect of signatures and initials on the joint venture agreement, power of attorney, deed of indemnity, deed of confirmation and receipt and opinion was sought only in respect of thumb impression of Rajendra Parikh on the joint venture agreement and power of attorney.

(iii) Though Petitioners claim that all five questioned documents are forged, they did not lead evidence in respect of deed of indemnity, deed of confirmation and receipt.

(iv) Rajendra Parikh has signed the joint venture agreement, power of attorney, deed of indemnity all dated 28th

March, 2007, deed of confirmation and receipt both dated 3rd May, 2007, which was especially within his knowledge and did not enter the witness box.

(v) The background in which the documents came to be executed by the parties was noted as the proposal of one time settlement by the Petitioner No 3 to the lenders on 28th March, 2007 enclosing demand draft and bankers cheque for Rs.19,27,06,000/, the execution of the Joint venture agreement, power of attorney and deed of indemnity on 28th March, 2007, the payments made on 29th March, 2007 and 3rd May, 2007 and the receipt and deed of confirmation dated 3rd May, 2007 executed in favour of Respondent confirming execution of the joint venture agreement.

(vi) The Deed of Confirmation and receipt dated 3rd May, 2007 confirmed execution of the joint venture agreement and power of attorney and as they remain uncontroverted, the contention of the Respondent that the same establishes the existence, legality and validity of the joint venture agreement and power of attorney deserves acceptance.

53. The Learned Arbitrator has termed the associated documents i.e. power of attorney, deed of indemnity all dated 28th March, 2007, deed of confirmation and receipt both dated 3rd May, 2007, as questioned documents for the reason that the associated documents produced to support the Respondent's case were disputed by the Petitioners. The submissions canvassed by the Respondent summarised as under clearly indicates that the associated documents were produced to establish the execution of the joint venture agreement:

(a) The joint venture agreement and power of attorney both dated 28th March, 2007 have been executed by both sides.

(b) The questioned documents have initials on all pages.

(c) The power of attorney dated 28th March, 2007 refers to the execution of the joint venture agreement.

(d) The deed of indemnity dated 28th March, 2007 bears initials of Rajendra Parikh.

(e) The receipt dated 3rd May, 2007 refers to the execution of the joint venture agreement.

(f) The deed of confirmation dated 3rd May, 2007 contains the signature of Rajendra Parikh and refers to the joint venture agreement.

(g) The power of attorney and deed of indemnity were executed alongwith the joint venture agreement at the time of Rajendra Parikh handing over the payments to the officials of the asset reconstruction company.

54. The submissions are indicative of the fact that reference to the various correspondence and documents other than the JVA was to built up the case of execution of JVA by showing contemporaneous documents accepting the existence of the JVA agreement and some of the documents were of the same date as that of the JVA corroborating the execution of JVA.

55. Pertinently, the evidence led by the Petitioners through their forensic expert was not restricted to the joint venture agreement and the report of the expert tendered in evidence was in respect of joint venture agreement as well as the power of attorney both dated 28th March, 2007.

56. The contention of Mr. Jagtiani that the finding on the other documents precludes his right from disputing the genuineness of the other documents overlooks the fact that it was the Petitioners themselves, who had presented the dispute for adjudication before the learned Arbitrator for objecting to the jurisdiction and had canvassed the submissions that not only the joint venture agreement but also the other documents are forged and fabricated documents. The issue of existence and validity of JVA could not have been considered in isolation without considering the corroborative evidence in form of the contemporaneous documents. It is open for the Petitioners to raise an objection to the finality of findings on the associated documents before the learned Arbitrator.

57. The evidence was assessed by the learned Arbitrator and as the Petitioners herein claimed that the joint venture agreement was a forged and fabricated and got up document, the provisions of Code of Civil Procedure, 1908, Indian Evidence Act, 1872, the Indian Contract Act, 1872 as well as the Indian Penal Code, 1860, were considered, and as against the statutory provisions, the issue of fraud was adjudicated by the learned Arbitrator. In paragraph 289, the learned Arbitrator notes that the Petitioners herein had specifically come with a case that the joint venture agreement and associated documents are forged and fabricated and got up documents and in view of the case of the Petitioners have ventured into the issue of other documents. The learned Arbitrator has concluded that the existence of the arbitration agreement is proved and also the legality and validity of the joint venture agreement and other documents, which establishes that there is a concluded contract in existence containing the arbitration clause and answered the issue in favour of the Respondent.

58. Mr. Jagtiani would submit that the conclusive nature of the findings that the joint venture agreement is valid and legal document would constitute a finding on the substantive claim and would constitute an interim Award. There can be no dispute that the existence and validity of JVA was presented as jurisdictional issue and decision on jurisdiction would be an order under Section 16 of Arbitration Act. The decision of the Hon'ble Apex Court in ***MCM Worldwide Pvt Ltd vs Constructions Industry Development Council*** (supra) clinches the issue. In the case of ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products*** (supra), the issue for consideration was whether an award delivered by the Arbitrator which decides the issue of limitation can be said to be an interim award, which can thereafter be challenged under Section 34 of the Arbitration Act. In that case, the issues came to be framed and the learned Arbitrator thought it fit to take up the issue of limitation first. The issue was decided in favour of the claimant therein as against which the petition came to be filed under Section

34 of the Arbitration Act claiming the award to be the first partial award. The Hon'be Apex Court considered the submissions on behalf of the Respondent that a ruling on the point of limitation is a ruling on jurisdiction and that being the case the drill of Section 16 has to be followed and the challenge has to be postponed only after all the issues have been decided. The Hon'ble Apex Court considered the scheme of Section 16 and 31(6) of the Arbitration Act, and held that a reading of Section 31(6) makes it clear that it extends to any matter with respect to which the arbitral tribunal may make a final arbitral award and even subsumes issues at which the parties are in dispute. It noted that more than one award finally determining any particular issue before the arbitrator can be made made on before aspect of the matters to be determined. It held that as the Arbitrator had disposed of one matter between the parties i.e. the issue of limitation, the award was an interim award and was subsumed within the expression "Arbitral Award" which could be challenged under Section 34 of the Arbitration Act.

59. Pertinently, it held that the jurisdiction mentioned in Section 16 has reference to three things, (i) as to whether there is existence of valid arbitration agreement, (ii) whether the Arbitral Tribunal is properly constituted, and (iii) matter submitted to arbitration should in accordance with the arbitration agreement. The decision in the case of ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products*** (supra), was clarified in ***MCM Worldwide Pvt. Ltd. vs. Constructions Industry Development Council*** (supra). The Hon'ble Apex Court noted that the decision in the case of ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products*** (supra), did not refer to an order passed under Section 16 of the Arbitration Act. It further held in paragraph 13, 14 and 15, as under:

> "13. However, if an arbitrator deals with the very same issue of limitation on an application filed under Section 16 of the Arbitration Act, on the ground that the arbitrator lacks jurisdiction on that count, it would be traceable to Section 16(2) of the Arbitration Act and if the arbitrator rejects that plea, Sections 16(5) and Section 16(6) would apply. In that situation, there is no option for the party aggrieved by the decision of the arbitrator upon the application filed under Section 16 except to wait till the conclusion of the arbitral proceedings and then raise that issue by way of an application under Section 34 against the final award.
>
> 14. Though the final award, even in this situation, would not focus upon the issue of limitation as it already stood decided by the rejection of the application filed under Section 16(2) of the Arbitration Act, the scheme of Section 16 and, more particularly, Sections 16(5) and 16(6), would keep the issue alive and enable the party aggrieved to challenge the validity of the rejection order under Section 16 at the final stage, even after the passing of the final award.
>
> 15. However, the scheme of Sections 16(5) and 16(6) would not apply if the arbitrator deals with limitation as a preliminary issue and makes a decision thereon in favour of the claimant. That is the reason why this Court observed that, in such a situation, the drill of Sections 16(5) and 16(6)

> would not have to be followed. This Court went on to observe that even such interim awards should be made amenable to challenge under Section 34 of the Arbitration Act after the passing of the final award, instead of going in for 'piecemeal' challenges.”

60. The Hon’ble Apex Court has therefore clarified that where the same issue is dealt by the Arbitrator in an application filed under Section 16 of Arbitration Act on the ground of jurisdiction, the same is traceable to Section 16(2) of the Arbitration Act. The decision squarely applies to the facts of the present case inasmuch as though a formal application under Section 16 of the Arbitration Act was not filed, the proceedings before the Arbitral Tribunal were in the context of the Arbitrator’s jurisdiction in view of the objection raised that there is no arbitration agreement in existence. The ruling in the present case is therefore a ruling on the jurisdiction of the arbitral tribunal under Section 16, which will have to await the final outcome and cannot be termed as an interim Award.

61. The contention that by virtue of rendering the findings on the joint venture agreement and other documents, there is nothing further remaining for determination cannot constitute a ground for terming the order as an interim Award irrespective of the fact that the issue of whether the agreement is required to be specifically performed still survives for adjudication. The Arbitral Tribunal in view of specific direction in order of 6th May, 2022 was required to decide the issue as preliminary issue before adjudication on merits and could not have deferred the jurisdictional issue to a later stage.

62. Dealing with the citations on which reliance is placed in support of maintainability, in the case of ***Aptec Advance Protective Technologies AG vs. Union of India*** (supra), the issue for consideration was whether the Award was an interim award and subject to a challenge under Section 34 of Arbitration Act. The factual background as noted in the said decision is that on completion of pleadings of the parties therein ,the final issues came to be framed in the arbitration proceedings as well as in the counter claim. Affidavit of evidence came to be filed and applications came to be filed before the learned Sole Arbitrator seeking discovery of documents, which came to be dismissed by the Arbitrator by its decision dated 18th November, 2010, and was challenged terming the decision as an interim Award. Learned Single Judge dismissed the Section 34 petition observing that the decision is not an interim award and the Hon'ble Division Bench considered one of the issues, which were framed by the Arbitrator related to the aspect of discovery of documents and held that the learned Arbitrator had given a final finding on the issue framed and held the same to be an interim Award.

63. It is not only the finality of finding which is a sole determinative factor in deciding the whether the same constitutes an interim award. It is the nature of proceedings coupled with the findings which would determine whether the finding can be termed as an interim award or ruling on jurisdiction. At the cost of repetition, the decision in ***MCM Worldwide Pvt. Ltd. vs. Constructions Industry Development Council*** (supra), has clarified that when the same issue is decided under Section 16 of Arbitration Act on the ground of lack of jurisdiction, it would be traceable to Section 16(2) of the Arbitration Act.

64. In the case of ***Palmview Investment Overseas Ltd. vs. Ravi Arya and Ors.*** (supra), the pleadings filed by the party and evidence of the Appellant therein was recorded and witness's affidavit of two persons were filed. After completion of cross-examination of one of the witnesses and before the cross-examination of the other witnesses, an application under Section 31(6) r/w Section 32 of the Arbitration Act was filed by Respondent Nos.1 and 2, specifically seeking an interim award. In this factual scenario, the Hon'ble Division Bench of this Court held that the application under Section

34 was maintainable. It considered the decision in the case of ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products*** (supra). The Hon'ble Division Bench noted that one of the observations of the Hon'ble Division Bench was that Section 31(6) of the Arbitration Act is very wide in nature and uses the expression "matter" which may subsume issues at which the parties are at dispute. In those facts there was a specific application filed seeking an interim award and that too after the pleadings were filed issues were framed and it is in that context that the observations of the Hon'ble Division Bench can be traced.

65. In the case of ***Centrotrade Minerals and Metal Inc. vs. Hindustan Copper Limited*** (supra), the issue which arose for consideration whether the settlement of dispute through three tier arbitration procedure as provided in Clause 15 of the contract therein between the parties is permissible under the laws of India. The Hon'ble Apex Court observed that while decision is generic, an Award is more specific decision that affects the rights of the parties and has important consequences and can be enforced. It observed that an Award (i) concludes the dispute as to the specific issue determined in the award, so that it has *res judicata* effect between the parties as if it is a final award, if it terminates the Tribunal's jurisdiction, (ii) disposes of parties' respective claims, (iii) may be confirmed by recognition and enforcement, and (iv) may be challenged in the courts of the place of arbitration. The Hon'ble Apex Court quoted the passage from Comparative International Commercial Arbitration, where the distinction was drawn between an award and decision of the Tribunal. It is not possible to read the distinction disjunctively and there has to be a cumulative satisfaction of the distinction set out therein.

66. In the case of ***In re: Interplay Between Arbitration Agreements under Arbitration, 1996 and Stamps Act***, the Hon'ble Apex Court observed that the concept of separability and severability of an arbitration agreement from an underlying contract being a legal fiction which acknowledges the separate nature of an arbitration agreement to hold that the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of arbitral tribunal and it encapsulates the general law on the substantial independence of an arbitration agreement. There is no quarrel with the said proposition.

67. The decision of ***Official Trustee vs. Sachindra Nath*** (supra), explains the concept of jurisdiction, which needs no debate.

68. In the case of ***Jindal Steel Limited vs. India Coke and Power Pvt. Ltd.*** (supra), this Court considered an identical issue as to whether in that case the order was an interim award or ruling on jurisdiction under Section 16. This Court noted in that case that the learned Arbitrator had framed the issues in arbitration and the finding of the Arbitrator on binding nature of the documents therein transgressed into the prohibited arena of the merits of the dispute. It is in the facts of that case where the pleadings were completed and the issues came to be framed and this Court on consideration of the order of the Tribunal came to a finding that the impugned order rendered findings one on jurisdictional aspect and other on merits of the dispute.

69. In the case of ***Cinevistaas Ltd. vs. Prasar Bharati*** (supra), the petition came to be filed under Section 34 challenging the decision of the Arbitrator in respect of amendment of claim and did not pertain to the ruling on jurisdiction under Section 16 of the Arbitration Act. It held that whether the impugned award constitutes an interim award is not, is to be decided by seeing the nature of the order and not the title of the application which was cited.

70. The facts of the present case are peculiar inasmuch as by virtue of the development in law, the inquiry of conclusively determining the existence of the arbitration agreement was shifted from Section 11 Court to the Arbitral Tribunal and it is in these proceedings, the order has been passed.

71. In the case of ***Zillion Infraprojects Pvt. Ltd. vs. Bridge and Roof Company India Ltd.*** (supra), the impugned order held that the claims raised by the Petitioner were barred by limitation. In that facts of the case, it was held that it is in effect the substance of the order that governs the issue of maintainability and as to whether it constitutes an interim award. The subsequent decision in the case of ***MCM Worldwide (P) Ltd. v. Construction Industry Development Council*** (supra), passed by the Hon'ble Apex Court would govern the law on the subject. It cannot be debated that the issue of the validity of the joint venture agreement to object to the existence of the arbitration agreement was presented as a jurisdictional issue which came to be decided by the Arbitrator and it is these facts which make the difference in the present case.

72. In the case of ***Lindsay International Pvt. Ltd. vs. IFGL Refractories Limited*** (supra), the Calcutta High Court considered whether the order was one passed under Section 16 of the Arbitration Act or constituted an interim award. It noted the arguments that the Arbitrator could not have decided on the novation/supersession issue since this amounted to a decision on merits of the case and the finding of the Arbitrator is rendered on one of the primary disputes between the parties. One of the contentions was that the Arbitrator had prejudged issue Nos.5 and 6 framed in arbitration proceeding. The Calcutta High Court held that the application was made under Section 16 of the Act questioning the jurisdiction of the arbitral tribunal and was not an application under Section 31(6). The Arbitrator was invited to decide the issue of novations in the Section 16 application, which was raised as a jurisdictional issue and not as an issue on the merits of the dispute. It further noted that the issues were framed by the Arbitrator after the impugned decision and therefore, did not accept that the Arbitrator decided on or the issues framed.

73. Mr. Jagtiani would distinguish the judgment in the case of ***Lindsay International Pvt. Ltd. vs. IFGL Refractories Limited*** (supra), by contending that in the present case, there were two preliminary issues which were framed and the petition did not invite the ruling. It is also not possible to accept the contention that the Petitioner did not invite the ruling on the validity of the joint venture agreement and other associated documents as the same was presented as jurisdictional issue.

74. As discussed above, the objection to the jurisdiction was premised on the joint venture agreement being forged and fabricated document and hence, the arbitration agreement does not exist between the parties. It is in order to support the case of the joint venture agreements being a duly executed document that the associated documents were put in evidence and the Petitioner's own evidence was in respect of the joint venture agreement as well as the power of attorney. It was a specific claim of the Petitioner that all the documents are forged and fabricated documents. It is precisely in view of this evidence which was presented for consideration of the Learned Arbitrator that the Learned Arbitrator decided the issue as regards the existence of arbitration agreement. Merely because the referral order refers to this issue as preliminary issue, the issue cannot be said to constitute an issue on merits of the claim.

75. In the case of ***Jindal Steel Limited vs. India Coke and Power Pvt. Ltd.*** (supra), this Court had distinguished the decision in the case of ***Lindsay International Pvt. Ltd. vs. IFGL Refractories Limited*** (supra), as in the case of ***Jindal Steel Limited vs. India Coke and Power Pvt. Ltd.*** (supra), the Arbitrator had adjudicated the specific issue No.4, which was framed and rendered a finding which it could not have done under Section 16 of the Arbitration Act, as there was dual finding on the jurisdictional aspect as well as on the merits of the case.

76. In light of the above discussion, the impugned order is a ruling on the jurisdiction under Section 16(2) of the Arbitration Act and will have to be challenged along with the final award.

77. The petition under Section 34 of Arbitration Act is not maintainable and is dismissed on the ground of maintainability. It is open for the Petitioners to raise the issue as regards the findings on the associated documents not being conclusive findings before the learned Arbitrator.

[Sharmila U. Deshmukh, J.]