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

COMM ARBITRATION APPLICATION (L) NO.38984 OF 2025

New Consolidated Construction Company Limited ... Applicant

Vs.

1. Limitless Contracting Private Limited
2. Man Realty Limited
3. Purvankara Limited ... Respondent

Mr. Jash Gandhi with Mr. Chirag Sancheti, Mr. Asif Lampwala, Mr. Saad Memon, and Mr. Hriday Karia i/by Bulwark Solicitors for the Applicant.

Mr. Harsh Moorjani with Mr. Jay Zaveri, Mr. Tavleen Saini i/by Crawford Bayley & Co. for Respondent No.1.

Mr. Ankit Lohia with Mr. Ujjwal Batra, and Mr. Aditya Seth i/by Sujit Lahotia and Associates for Respondent No.2.

Mr. Mutahhar Khan with Mr. Apoorv Karekar, and Mr. Aakash Mehta i/by Khaitan & Co., for Respondent No.3.

CORAM	: AMIT BORKAR, J.
RESERVED ON	: SEPTEMBER 23, 2026.
PRONOUNCED ON	: SEPTEMBER 29, 2026

JUDGMENT:

1. The Applicant has filed the present Petition under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act"), seeking protection during the period until completion of the arbitration proceedings, for the reasons stated hereinafter.

2. The facts and circumstances which have led to filing of the present Petition are as follows. On 23 September 2017, Respondent No.1 issued a Letter of Intent appointing the Applicant as a Sub-Contractor. Thereafter, on 25 September 2017, four Work Orders were executed between the Applicant and Respondent No.1 for construction of shell and core structures at the "One Park Avenue" Project, Kolshet, Thane. On 1 November 2018, a meeting was held between the Applicant, Respondent No.2 and CBRE South Asia Pvt. Ltd. for reconciliation of the Running Account Bills. Minutes of the said Meeting were prepared. On 17 February 2020, an Addendum to the Work Order was executed between the Applicant and Respondent No.1. The said Addendum recorded the revised obligations of the parties and settlement of the earlier accounts. On 3 December 2019, the NCLT initiated Corporate Insolvency Resolution Process (CIRP) against DHFL. On 7 June 2021, the NCLT approved the Resolution Plan in respect of DHFL. In September 2021, Piramal Housing Finance Limited acquired DHFL through the CIRP process. Thereafter, Puravankara, Respondent No.3, succeeded to and took over the "One Park Avenue" Project. On 29 May 2021, the Applicant addressed a letter regarding billing of Rs.23,77,662/- executed at site. On 4 October 2021, the Applicant submitted a claim towards rate difference in

RA Bill Nos. 09-13 amounting to Rs.33,45,145/- to Respondent No.1. On 13 June 2023, a letter was received from MRP & Associates, the Statutory Auditors of Respondent No.1, confirming a balance of Rs.1,28,46,246/-. On 14 June 2023, Respondent No.1 requested the Applicant to confirm the balance as on 31 March 2023. On 22 June 2023, the Applicant replied to the Statutory Auditors stating that there was a discrepancy between the balance figures reflected in the Applicant's books and the figures communicated by them. On 30 October 2024, the Applicant issued a demand letter confirming an outstanding amount of Rs.12,37,88,534/- and called upon Respondent No.1 to make payment. In October 2024, Respondent No.2 sold the land and development rights relating to the "One Park Avenue" Project to Respondent No.3. On 26 November 2024, the representatives of the Applicant were obstructed from removing their material from the project site. According to the Applicant, the said material was sold as scrap. On 27 June 2025, the Applicant issued a Notice invoking the Arbitration Clause and proposed appointment of an Arbitrator. On 26 July 2025, Respondent No.2 replied to the said notice stating that it was not a signatory to the Work Orders and, therefore, denied any liability. In these circumstances, the present Application has been filed by the Applicant.

3. Mr. Jash Gandhi, learned Advocate appearing for the Applicant, submitted that Respondent Nos.1 and 2 are Companies registered under the Companies Act, 1956, having their registered offices at the addresses mentioned in the cause title. He submitted that Respondent Nos.1 and 2 are, inter alia, carrying on construction-related activities. Respondent No.1 is the Contractor of Respondent No.2 and is a subsidiary of Respondent No.2. He submitted that Respondent No.3 is a Company registered under the Companies Act, 1956, having its registered office at the address mentioned in the cause title. Respondent No.3 is engaged in construction-related activities. He submitted that Respondent No.3 is in the process of purchasing the project of Respondent Nos.1 and 2 situated at Village Kolshet, District Thane. He submitted that the Applicant was required to approach this Court as it came to know that Respondent No.2 had sold the land parcels forming part of the concerned project to Respondent No.3 in October 2024. Although the Applicant was not a party to the said transaction, its sub-contracting arrangement was seriously affected by the same. According to the Applicant, Respondent No.2 could not have dealt with the project in such manner without making proper arrangements for payment and protection of the interests of the contractors and sub-contractors. He submitted that after the sale in favour of Respondent No.3, the Applicant was directed to vacate the site within ten days. On or about 26 November 2024, the Applicant sent its representatives to the site for removing its construction material. Trucks were sent for loading and removing the material. However, the trucks were prevented from leaving the site. The Applicant was prevented from removing its material for about ten days and was informed that the material had been sold as scrap. The Applicant was directed to unload the material from the truck, and the truck was sent back empty. He submitted that the parties tried for a considerable period to settle the disputes amicably. Ultimately, the Applicant came to the conclusion that Respondent No.1 was not going to cooperate and decided to approach the police. In these circumstances, the Applicant sought that the present Application be allowed in accordance with law.

4. Learned Advocate for the Applicant invited my attention to the communication at Exhibit-C dated 25 September 2017, addressed to the Applicant in relation to construction of shell and core civil works for the proposed residential building. He submitted that the said communication was issued on the letterhead of Respondent No.2. He submitted that the Minutes of Meeting dated 1 November 2018, produced at Exhibit-H, between the representatives of the Applicant and Respondent No.2, were on the letterhead of Respondent No.2. He submitted that the email correspondence produced by the Applicant on record in relation to the subject matter of the present proceedings was with Respondent No.2. He relied upon the judgment of the Supreme Court in *Cox and Kings Limited Vs. SAP India Private Limited and Another*, (2024) 4 SCC 1, and submitted that Respondent Nos.1 and 2 form part of a single economic unit and, therefore, Respondent No.2 should be treated as a veritable party to the arbitration agreement.

5. In relation to Respondent No.3, learned Advocate submitted that the Applicant had not been provided with the details of the exact transaction entered into by Respondent No.3. However, according to the Applicant, it had reliably learnt that Respondent No.2 had sold the land parcels forming part of the concerned project to Respondent No.3 in October 2024. He submitted that Respondent No.3 should be treated as a veritable party. Learned

Advocate appearing for Respondent No.1 submitted that he had no objection to the matter being referred to arbitration.

6. Mr. Ankit Lohia, learned Advocate appearing for Respondent No.2, submitted that the present Application under Section 11 of the Arbitration and Conciliation Act, 1996, is based on the alleged existence of an arbitration agreement between the Applicant and Respondent No.2. According to him, the Applicant has failed to establish the existence of any such agreement. Respondent No.2 has no valid or subsisting contract with the Applicant. Therefore, there is no question of appointing an Arbitrator against Respondent No.2. He submitted that according to the Applicant, Respondent No.2 was the owner of the land in respect of which Respondent No.2 had appointed Respondent No.1 as the Contractor. Respondent No.1 appointed the Applicant as a sub-contractor for carrying out certain works. For this purpose, the Applicant and Respondent No.1 executed the Work Orders dated 25 September 2017 and the Addendum dated 17 February 2020. Respondent No.2 was not a party to any of these Agreements. Therefore, there is no privity of contract between the Applicant and Respondent No.2. He submitted that a perusal of the Application and the documents annexed thereto shows that the dispute arises from the Agreements executed between the Applicant and Respondent No.1. Therefore, any arbitration under those Agreements can only be between the Applicant and Respondent No.1. The Applicant's grievance is essentially regarding non-payment of amounts by Respondent No.1. He submitted that the mere fact that Respondent No.2 was, at one stage, the owner of the land cannot create any right in favour of the Applicant against Respondent No.2. The Applicant cannot implead Respondent No.2 or seek any relief against it merely on that basis. According to him, if the Applicant has any remedy arising out of the Agreements, that remedy is against Respondent No.1 alone. On this ground, the Application deserves to be dismissed against Respondent No.2.

7. He submitted that the present Application under Section 11 of the Arbitration and Conciliation Act, 1996, invokes Clause 17 of the four Work Orders dated 25 September 2017, read with the Addendum dated 17 February 2020, which are collectively referred to as the "Sub-Contract". The Applicant seeks reference of the disputes to arbitration against Respondent No.2 along with Respondent Nos.1 and 3. He submitted that Respondent No.2 opposes the Application at the threshold because it is not a party to the arbitration agreement. Respondent No.2, by its reply dated 26 July 2025, had raised this objection when the arbitration was invoked.

8. He submitted that Respondent No.2 is not a signatory to the agreement. The Work Orders are entered into "by and between" Respondent No.1 and the Applicant. They alone are described as the "Parties" and they alone have signed the Work Orders. Clause 17 provides for resolution of disputes "between the Parties". Respondent No.2 is not one of those parties. He submitted that the Addendum was executed only between Respondent No.1 and the Applicant. The recitals of the Addendum record that Respondent No.2 owns the land and had appointed Respondent No.1 as its

Contractor, who "in turn" appointed the Applicant as the sub-contractor. Thus, according to him, the Applicant was fully aware of the role of Respondent No.2 and, despite such knowledge, consciously entered into the contract only with Respondent No.1. The Applicant has pleaded that it was appointed "by Respondent No.1" in paragraph 5. The Applicant raised its RA Bills upon Respondent No.1. It addressed its demand dated 30 October 2024 only to Respondent No.1. There is no written agreement between the Applicant and Respondent No.2 satisfying the requirements of Section 7 of the Arbitration Act.

9. He submitted that Respondent No.2 cannot be treated as a "veritable party". In *Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises (P) Ltd.*, (2026) 3 SCC 711, the Supreme Court held that it is "primordial" that the non-signatory must be shown prima facie before the Referral Court to be a veritable party. According to the learned Advocate, where a non-signatory is not shown to be a veritable party, the matter should not simply be left to the Arbitral Tribunal, as that would reduce the Referral Court to "a monotonous automation". He relied upon paragraphs 24, 25 and 34 of the said judgment. He submitted that the fact that Respondent No.1 is a wholly owned subsidiary of Respondent No.2 does not alter the position. Mere commercial relationship between a signatory and a non-signatory cannot by establish a legal relationship between them. The group of companies doctrine cannot remove or replace the requirement of consent. He relied upon *Cox and Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1, particularly paragraph 117, as extracted in paragraph 35 of the judgment in *Hindustan Petroleum Corporation Ltd.*

10. He submitted that none of the factors referred to in *Ajay Madhusudan Patel v. Jyotrindra S. Patel*, (2025) 2 SCC 147, paragraph 81, are present in the present case. According to him, there is no mutual intention between the Applicant and Respondent No.2 to be bound by the arbitration agreement. There is no commonality of subject matter between Respondent No.2 and the Sub-Contract. There is no composite transaction involving Respondent No.2, nor has Respondent No.2 undertaken any obligation under the Sub-Contract. He submitted that Respondent No.2 does not claim "through or under" Respondent No.1. Respondent No.2 is neither an assignee nor a successor of Respondent No.1. Mere legal or commercial connection between the two companies cannot be sufficient to bind Respondent No.2 to an arbitration agreement to which it never agreed. He relied upon paragraph 36 of *Hindustan Petroleum Corporation Ltd.* He submitted that this Court, in *Hemant D. Shah HUF & Anr. v. Chittaranjan D. Shah HUF & Ors.*, Commercial Arbitration Application No.184 of 2026, judgment dated 6 July 2026, has held at the Section 11 stage that non-signatories operating on "separate orbits" cannot be referred to arbitration merely on the ground that otherwise the award may become difficult to enforce. He submitted that equity and convenience cannot take the place of consent to arbitration. He relied upon paragraphs 21 and 26 to 28 of the said judgment. According to him, the Applicant's grievance regarding the sale of the land by Respondent No.2 to Respondent No.3, referred to in paragraph 21 of the Application, is of the same nature.

11. He submitted that the only agreement between the Applicant and Respondent No.2 is dated 11 April 2025. That agreement does not contain any arbitration clause. Under the said agreement, the Applicant received Rs.70,00,025/- towards full satisfaction of its claims relating to the scrap material and withdrew its police complaint. According to him, the present Application was filed and does not disclose the said settlement. He submitted that the Application against Respondent No.2 is liable to be dismissed and any reference to arbitration, if made, should be confined to the Applicant and Respondent No.1. All other contentions of Respondent No.2 are reserved in that regard.

12. Mr. Mutahhar Khan, learned Advocate appearing for Respondent No.3, submitted that, without prejudice to the contentions and rights of Respondent No.3, the dispute raised by the Applicant appears to arise from the sub-contracting arrangement between the Applicant and Respondent No.1 concerning development of the concerned property. He submitted that Respondent No.3 has no involvement in the subject matter of the dispute and has no right, title or interest in the said property. According to him, it is Purva Oak Private Limited, a sister concern of Respondent No.3 and a separate legal entity, which is the owner of the said property. This position was communicated by Respondent No.3 to the Applicant by its letter dated 26 July 2025. He submitted that Purva Oak Private Limited acquired the right, title and interest in the said property under two Sale Certificates, both dated 7 June 2024, registered under Serial No. TNN-

8/14243/2024 and Serial No. TNN-8/14249/2024 respectively. He submitted that the Work Orders dated 25 September 2017 relied upon by the Applicant were executed much before the said Sale Certificates. According to him, this shows that even Purva Oak Private Limited could not have been involved in the dispute arising out of those Work Orders. He submitted that neither Respondent No.3 nor Purva Oak Private Limited is a signatory to the arbitration agreement. Neither of them is a proper party to the arbitral proceedings. According to him, the Applicant has failed to make out any case against Respondent No.3 and the present Application, insofar as it seeks reference against Respondent No.3, is wholly misconceived.

REASONS AND FINDINGS:

13. I have considered the submissions made for Applicant and Respondent Nos.1, 2 and 3. At this stage, the main question is whether there is an arbitration agreement which can be acted upon under Section 11 of the Arbitration and Conciliation Act, 1996. Another question is whether Respondent Nos.2 and 3, though they have not signed the Work Orders, can prima facie be taken as parties to such arbitration agreement.

14. There is not much dispute that there was a contract between the Applicant and Respondent No.1. The document at Exhibit-C is the Work Order dated 25 September 2017. From this document, it appears that the contract was between M/s Limitless Contracting Pvt. Ltd. and the Applicant, M/s New Consolidated Construction Co. Ltd. The names of Respondent Nos.2 and 3 are not shown as contracting parties in the Work Order. The said Work Order is accepted by the Applicant and Respondent No.1. Therefore, from the material which is before the Court at present, it prima facie appears that the work arrangement was between the Applicant and Respondent No.1.

15. The Applicant has stated that Respondent No.1 was the Contractor of Respondent No.2 and Respondent No.1 had appointed the Applicant as its sub-contractor. It is the case of the Applicant that Respondent No.1 is a subsidiary of Respondent No.2. Thus, the broad position between the parties is not in dispute. Respondent No.2 was concerned with the larger project. Respondent No.1 was the Contractor and Respondent No.1 appointed the Applicant for doing the particular construction work. At the same time, there is some material showing that persons connected with Respondent No.2 had participated in discussions relating to the project. The Minutes of Meeting dated 1 November 2018 relied upon by the Applicant contain the names of representatives of Man Realty Limited, CBRE South Asia Pvt. Ltd. and NCCCL. The Minutes relate to financial and matters, including release of amounts, additional payments, hold amounts and other matters relating to the work. Therefore, the submission of Respondent No.2 that it had no dealings whatsoever with the Applicant cannot be accepted. There were communications and dealings concerning the project. The Minutes placed on record show this much. But having some dealings concerning the project is a different matter from consenting to the arbitration agreement. This distinction is required to be kept in mind. The Supreme Court in Cox & Kings Ltd, has held the position in paragraph 84 as follows:

> "Therefore, the decisive question before the Courts or Tribunals is whether a non-signatory consented to be bound by the arbitration agreement."

16. This principle has to be considered while examining the Applicant's submission that Respondent No.2 should be made part of the arbitration proceedings. The Applicant has relied upon three circumstances. One is that Respondent No.1 is a subsidiary of Respondent No.2. The second is that some communications and the Minutes of Meeting were on the letterhead of Respondent No.2 and persons representing Respondent No.2 were present in those discussions. The third is that the email correspondence relating to the project was with Respondent No.2. These circumstances may show some commercial connection of Respondent No.2 with the project. But that does not answer whether Respondent No.2 intended to be bound by the arbitration clause in the Work Orders between the Applicant and Respondent No.1. That question still remains.

17. In my view, these circumstances do not show such intention. The Work Order has significance. It shows the Applicant and Respondent No.1 as the parties to the contract. The Applicant's own case is that Respondent No.1 appointed it. The RA Bills were raised against Respondent No.1. The demand dated 30 October 2024 was addressed to Respondent No.1. No document has been shown to me by which Respondent No.2 agreed to take the obligations of Respondent No.1 under the Sub-Contract or expressly accepted the arbitration clause contained in the Work Orders. The fact that Respondent No.1 is a subsidiary of Respondent No.2 does not make the case of the Applicant stronger. Paragraph 93 of *Cox & Kings* makes it clear that separate legal personality of companies cannot be ignored only because there is common ownership or control. The Court observed that "the mere fact that the two companies have common shareholders or a common Board of Directors will not constitute a sufficient ground to conclude that they are a single economic entity." The Court has held that the matter has to be seen from the concerted efforts of the companies in pursuing a common endeavour or enterprise.

18. The same principle has been stated in paragraph 117 of *Cox & Kings*, as noticed and extracted by the Supreme Court in HPCL:

> "However, we clarify that mere presence of a commercial relationship between the signatory and non-signatory parties is not sufficient to infer "legal relationship" between and among the parties. If this factor is applied solely, any related entity or company may be impleaded even when it does not have any rights or obligations under the underlying contract and did not take part in the performance of the contract. The group of companies doctrine cannot be applied to abrogate party consent and autonomy."

19. Therefore, the present case cannot be decided only because Respondent No.1 is a subsidiary of Respondent No.2 or because both were connected with the same project.

20. The Applicant is right to the extent that merely because a person has not signed the arbitration agreement, that fact alone does not finish the matter. There are situations recognised in law where a non-signatory can be bound by an arbitration agreement. Paragraph 101 of *Cox & Kings* holds that there may be a case where a company has not signed the agreement but has actively participated in negotiation and performance of the contract to such an extent that the other party may reasonably believe that such company was a veritable party to the contract as well as to the arbitration agreement. Paragraph 126 gives importance to participation of the non-signatory in negotiation, performance or termination of the contract.

21. Therefore, the question is not only that Respondent No.2 has not signed the agreement. The question is whether the material before the Court is enough to arrive at a prima facie conclusion that Respondent No.2 was a veritable party to the particular contract containing the arbitration clause. On the documents before me, such conclusion cannot be reached.

22. The decision in HPCL is relevant on this point. In paragraph 25, the Supreme Court has stated:

> "But what is primordial is that it should be demonstrated prima facie before the Referral Court that the non-signatory is a veritable party."

23. The word "veritable" has been held as meaning "real; rightly so called". Therefore, at the Section 11 stage, the Court is not required to conduct a long trial about disputed facts. But at the same time, the Court is not expected to refer every person named by the Applicant to arbitration in a mechanical manner. There must first be some material which shows a and genuine connection of that person with the arbitration agreement.

24. In *Mukesh Patel and Others v. Pant Nagar Ganesh Krupa Cooperative Housing Society Limited and Others, 2025 SCC OnLine Bom 6393* in paragraph 29, this Court held:

> "The privity of a veritable party has to be a de facto privity to the agreement in which disputes have arisen."

25. The Court observed:

> "It is impossible to draw linkages to unconnected parties to make them veritable parties."

26. Thus, merely having some connection with one contracting party or with the project in which the contract was performed cannot by make a person a party to the arbitration.

27. The same judgment in paragraph 32 holds:

> "The underpinning of all the principles of law declared in relation to arbitration proceedings is the foundational need for consent to arbitrate."

28. Therefore, the idea of a veritable party does not take away the basic requirement of consent. In a proper case, consent may be express or it may be gathered from the conduct and relationship of the parties. But such consent must be capable of being found from the material placed before the Court.

29. In the present case, the Applicant has relied upon the Minutes of Meeting dated 1 November 2018 and the correspondence with Respondent No.2. I have considered these materials. However, they are not sufficient, even prima facie, to show that Respondent No.2 intended to be bound by Clause 17 of the Work Orders. The Minutes record discussions about the project and financial matters. They do not say that Respondent No.2 was taking upon the liabilities of Respondent No.1 or that it accepted the arbitration clause in the Sub-Contract. Participation in the administration of a project cannot mean that every term of a contract to which that person is not a party has been accepted by such person. The Applicant has relied upon the fact that Respondent No.2 owned the project and had appointed Respondent No.1 as Contractor. This may explain how the parties were connected. But it does not change the separate sub-contract between the Applicant and Respondent No.1 into a contract between the Applicant and Respondent No.2. Respondent No.2 may have had commercial interest in the project. That alone does not mean that Respondent No.2 accepted the claims of the Applicant or the arbitration mechanism contained in the agreement between the Applicant and Respondent No.1.

30. The Addendum relied upon by Respondent No.2 is relevant. As submitted by Respondent No.2, the Addendum was between Respondent No.1 and the Applicant. It records that Respondent No.2 was the owner and had appointed Respondent No.1 as Contractor, and Respondent No.1 appointed the Applicant as sub-contractor. Unless some stronger document is shown to say otherwise, this description supports the chain stated by Respondent No.2. It does not make Respondent No.2 a party to the arbitration agreement. I find that Respondent No.2 has not been shown, even prima facie, to be a veritable party to the arbitration agreement in the Work Orders. This position does not change only because some correspondence was made on the letterhead of Respondent No.2. The letterhead may show from which company the communication came. But it does not show that the company became a party to another company's contract or accepted the arbitration clause contained in that contract.

31. Respondent No.2 has submitted that an agreement dated 11 April 2025 was entered into with the Applicant, under which Rs.70,00,025/- was paid towards full satisfaction of the claims concerning the scrap material and the police complaint was withdrawn. It is submitted that this agreement does not contain any arbitration clause. Even if this submission is considered, it cannot be a ground for appointing an arbitrator against Respondent No.2. At the most, that transaction may have some effect on the Applicant's claim relating to the scrap material. The agreement is not shown to contain the arbitration clause relied upon in the present Application. A separate settlement relating to a particular dispute cannot, without anything, make Respondent No.2 a party to an earlier arbitration agreement.

32. I now turn to Respondent No.3. The case of the Applicant against Respondent No.3 is on a different footing. The Applicant states that the actual transaction by which Respondent No.2 sold the project land to Respondent No.3 in October 2024 has not been provided to it. Therefore, even according to the Applicant, the basis for its case against Respondent No.3 is information received by it and not the actual document of transaction.

33. The Sale Certificate placed on record shows another position. The Sale Certificate records sale of the scheduled property in favour of Purva Oak Private Limited. It refers to the property at Village Kolshet, Taluka and District Thane and describes it as the property known as “One Park Avenue”. The document records the sale by VSJ Investments Private Limited as authorised officer for the secured creditor and not a sale in favour of Respondent No.3, Purvankara Limited. This document is of importance while considering the case of Respondent No.3. The Applicant proceeds on the basis that Respondent No.2 sold the concerned land parcels to Respondent No.3. But the Sale Certificate on the record shows Purva Oak Private Limited as the purchaser. Respondent No.3 states that Purva Oak Private Limited is its sister concern and is a separate legal entity. Unless there is material showing that Respondent No.3 acquired the or property rights concerned, merely because the purchaser may be a sister concern of Respondent No.3 cannot make Respondent No.3 a party to the Applicant's arbitration agreement.

34. The Work Orders between the Applicant and Respondent No.1 are dated 25 September 2017. The Sale Certificates referred to by Respondent No.3 are dated 7 June 2024. The purchaser named in those Sale Certificates is Purva Oak Private Limited. Therefore, from the record available, the property transaction was after the original sub-contract and was in favour of a separate legal entity. Nothing has been shown to me by which the arbitration clause in the 2017 Work Orders can be said to have travelled along with the property transaction and become binding upon

Respondent No.3.

35. The judgment in *Cox & Kings* gives guidance in relation to a person claiming "through or under" a signatory. Paragraph 140 states:

> "An analysis of the cases cited above establishes the following propositions of law: first, the typical scenarios where a person or entity can claim through or under a party are assignment, subrogation, and novation; second, a person "claiming through or under" can assert a right in a derivative capacity, that is through the party to the arbitration agreement, to participate in the agreement; third, the persons claiming through or under do not possess an independent right to stand as parties to an arbitration agreement, but as successors to the signatory parties' interest; and fourth, mere legal or commercial connection is not sufficient for a non-signatory to claim through or under a signatory party."

36. On the material before me, there is no assignment of the Applicant's arbitration agreement in favour of Respondent No.3. There is no novation or succession of the type referred to above. Therefore, the Applicant cannot bring Respondent No.3 within the arbitration agreement merely because of its alleged connection with the project. The Applicant has relied upon the sale of the project and on the fact that it was directed to vacate the site and remove its material. The Applicant has stated that it was not permitted to remove its material and that the material was sold as scrap. These allegations may give rise to some substantive claim of the Applicant in accordance with law. I am not deciding the truth or otherwise of these allegations in the present Section 11 proceedings. The limited question here is whether these later events make Respondent Nos.2 and 3 parties to the arbitration agreement contained in the contract between the Applicant and Respondent No.1. In my view, they do not.

37. The principle stated in *Mukesh Patel* is relevant. Paragraph 31 of that judgment distinguishes between a remedy and the forum in which such remedy can be pursued. The question before this Court is not whether the Applicant may have some other remedy against Respondent No.2 or Respondent No.3. The question is whether such remedy can be pursued against them in the arbitration arising out of the Work Orders between the Applicant and Respondent No.1. This has to depend upon consent and privity to the arbitration agreement.

38. I have considered the submission that the question relating to Respondent Nos.2 and 3 should be left to the Arbitral Tribunal under the doctrine of competence-competence. It is true that *Cox & Kings* states that the Arbitral Tribunal can decide, on the basis of evidence and legal principles, whether a non-signatory is in fact bound by the arbitration agreement. However, HPCL makes the position clear. The Referral Court must first be prima facie satisfied that the non-signatory is a veritable party. Only where such prima facie basis is available can the more detailed factual issue be left to the Arbitral Tribunal.

39. This is why paragraph 34 of HPCL becomes important. The Supreme Court observed:

> "This does not mean that where the Referral Court finds prima facie a party is not a veritable party still the matter is left to the Arbitral Tribunal."

40. The Court cautioned against reducing the Section 11 Court to "a monotonous automation". Therefore, the Court is required to look at the material placed before it. A complete stranger cannot be sent to arbitration only on the ground that the issue can be raised before the Arbitral Tribunal under Section 16.

41. Applying the above principle to the present case, I find that the material against Respondent No.2 shows some commercial involvement with the project. But it does not show the necessary prima facie consent to the arbitration agreement. So far as Respondent No.3 is concerned, the material does not even show that Respondent No.3 acquired the property which is the subject matter of the grievance of the Applicant. The Sale Certificate on record names Purva Oak Private Limited as the purchaser. Therefore, there is no sufficient material to hold either Respondent No.2 or Respondent No.3 as a veritable party to the arbitration agreement.

42. The position of Respondent No.1 is different. Respondent No.1 is the signatory to the Work Orders along with the Applicant. The dispute raised by the Applicant arises from those Work Orders and the Addendum. Respondent No.1 has not opposed the reference to arbitration. The notice invoking arbitration dated 27 June 2025 was issued by the Applicant. Respondent No.2 replied on 26 July 2025 stating that it was not a signatory. The Applicant's case is that Respondent Nos.1 and 3 did not respond to the notice within the stated period. Therefore, from the material before the Court, there is an arbitration agreement between the Applicant and Respondent No.1 and there is a dispute arising from that relationship.

43. One clarification is required. At this stage, the Court is not required to decide whether the Applicant is actually entitled to the amount of Rs.12,37,88,534/-. The Court is not deciding whether the earlier balance confirmation amounts to an admission, whether the RA Bills were correctly prepared, whether the claim is affected by delay or limitation, or whether any amount paid under a later settlement affects any part of the claim. These matters are to be considered by the forum which has jurisdiction over the substantive dispute. Appointment of an arbitrator against Respondent No.1 does not mean that the monetary claim of the Applicant has been accepted. At the same time, the submission of the Applicant that the whole dispute must be referred against all the three Respondents cannot be accepted. The arbitration agreement determines who has consented to arbitrate. It cannot become wider merely because the dispute has involved different companies or because later events concerning the property have affected the Applicant.

44. On considering the material as a whole, I find that the Applicant has established the existence of an arbitration agreement with Respondent No.1. The dispute raised by the Applicant is referable to that arbitration agreement. Respondent No.1 is a signatory to the Work Orders and the Addendum and is the contracting party which appointed the Applicant. Respondent No.1

is amenable to the reference. So far as Respondent No.2 is concerned, the Applicant has not established the necessary prima facie case that Respondent No.2 was a veritable party to the arbitration agreement. The corporate relationship, ownership of the larger project, participation in meetings and correspondence, whether taken separately or together, do not establish consent to the arbitration clause. The principles stated in *Cox & Kings, HPCL* and *Mukesh Patel* do not permit its joinder in the arbitration. So far as Respondent No.3 is concerned, there is still less material connecting it with the arbitration agreement. The property document relied upon records Purva Oak Private Limited as the purchaser and not Respondent No.3. There is no material showing any assignment, novation, succession or any other legal arrangement by which Respondent No.3 became bound by the arbitration agreement of the Applicant. The later conduct complained of by the Applicant may be relevant in some other proceeding or for some independent remedy, if such remedy is available in law. But such conduct by cannot create an arbitration agreement where none is shown.

45. The result, therefore, is that the arbitration can proceed between the Applicant and Respondent No.1 in accordance with the arbitration clause contained in the documents. On the material before the Court, no reference can be made under the said arbitration agreement against Respondent Nos.2 and 3. This conclusion is confined to the question whether Respondent Nos.2 and 3 are parties to the arbitration agreement at the Section 11 stage. It does not mean that the Applicant has no remedy at all against either of them in respect of any independent cause of action, if such remedy is otherwise available in law.

46. In the aforesaid circumstances, the present Application under Section 11 of the Act, is deserved to be disposed of in terms of the following order:

A) Mr. Tushad Kakalia, an Advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with Clause 17 of the Work Orders dated 25 September 2017;

Office Address:- Aban House, 25-31, 6th Floor, Kakushroo Dubash Marg, Kala Ghoda, Fort, Mumbai – 400001.

Contact No.9833212724

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as may be indicated by the Learned Sole Arbitrator, for obtaining appropriate directions with regard to the conduct of the arbitral proceedings, including fixing the schedule for filing of pleadings, examination of witnesses, if any, and dates of hearing. At such meeting, the parties shall furnish to the Arbitral Tribunal valid and functional email addresses, together with the mobile and landline telephone numbers of their respective Advocates. Communications sent to the said email addresses shall constitute valid service of correspondence in connection with the arbitral proceedings;

F) All arbitral costs and fees of the arbitration and of the Arbitral Tribunal shall be borne by the parties equally in the first instance. The same shall, however, remain subject to any final Award that may be passed by the Arbitral Tribunal in relation to costs.

47. The Learned Sole Arbitrator shall be at liberty to adjudicate upon the claims and counterclaims, if any, and to determine all questions relating to merits, in accordance with law.

48. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)