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AC-6-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ARBITRATION CASE No. 6 of 2026

CNR No.: MPHC020010732026

*SAM INDUSTRIES LTD THROUGH AUTHORIZED
REPRESENTATIVE MR. RAJENDRA KUMAR PASARI*

*Versus**MAHESH AND OTHERS*

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Appearance:

*Shri Vijay Kumar Assudani - Advocate for the applicant.**Shri Ramesh Kumar Chandrawade - Advocate for the respondent No.1.**Shri Lokesh Kumar Bhatnagar - Advocate for the respondent No.2.**Shri Dattatray Kale - Advocate for the respondent No.3.*
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Heard on: 01.10.2026

Pronounced on: 23.10.2026.
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ORDER

1. This Arbitration Application has been filed u/S. 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") for appointment of Arbitrator by the applicant.

2. The facts suffice for disposal of this application in nutshell are that the non applicants are the real brothers and joint owners of the undivided land admeasuring 5.67 hectares of Survey No. 242/2 of village Tillor Bujurg, Tehsil Bicholi Hapsi, District Indore (hereinafter referred to as "subject land"). The applicant and non applicant no. 1 Mahesh entered into an agreement dated 4.2.2025 for development of the part of the subject land



admeasuring 2.358 hectare. Though the name of non-applicant no. 2 Brijlal has also been mentioned in the agreement as one of the executants, however, his signatures are not available on the agreement. It was recorded in the agreement itself that in respect of the balance land, a separate development agreement will be entered into between the parties. Clause 14 of the Development Agreements provides for resolution of dispute in accordance with the provisions of the 1996 Act.

3. The applicant after entering into the development agreement, issued a notice to the non applicant No. 1 for carrying out the demarcation, partition and measurement of the subject land to ascertain the part of the land, in respect of which, the development agreement was executed. The allegation of the applicant is that despite entering into the agreement, the non applicant No. 1 neglected to fulfill his part of the contract and, therefore, the notice was issued and later on the arbitration Clause was invoked by issuance of subsequent notice. The applicant further pleaded that during this period non applicant No. 2 executed a registered relinquishment deed in favour of non applicant No. 1 and 3 on 20.5.2025 and relinquished his rights in the subject land equally in favour of non applicant No. 1 and non applicant No. 3 and as a result of execution of the relinquishment deed by non applicant No. 2, the non applicant No. 1 and non applicant No. 3 have acquired 1/2 - 1/2 share in the subject land and the Development Agreement was also executed by non applicant No. 1 for 1/2 of the total subject land i.e. 2.358 hectare.

4. The applicant suggested the name of proposed Arbitrator, but in reply the non applicant denied the execution of development agreement and



levelled the allegation of forgery and fraud upon the applicant and did not extend his consent on any of the proposed name. The applicant filed an application u/s 9 of the 1996 Act, before the Commercial Court, Indore seeking temporary injunction against the non applicants on the ground that a public notice dated 22.9.2025 has been published in daily newspaper 'Agniban' and the non applicants are trying to alienate the subject land. The application was ultimately allowed and the Commercial Court has restrained the non applicants from alienating, incumbering or transferring the subject land in favour of any third party by order dated 5.3.2026, which is the subject matter of arbitration appeal pending before the division bench.

5. During the pendency of this application, the non applicant No. 3 Mukesh Dangi filed a Civil Suit RCS No. 1372-A/2025 in the Court of XXXth District Judge, Indore for declaration and permanent injunction on the allegation that the alleged Development Agreement is not binding on the non applicant No. 3 and same has been prepared by committing fraud and forgery by the applicant. In the said Civil Suit the applicant moved an application under Order 7 Rule 11 of the CPC read with Sec. 8 of the 1996 Act for rejection of the plaint and referring the parties for arbitration on the ground that the subject development agreement contains an arbitration clause. The application has been dismissed by the trial court vide order dated 5.3.2026 and that order is the subject matter of Arbitration Appeal No. 86/2026, which has been heard analogously with this arbitration application and is been decided today today itself by a separate order.

6. The daughters of the non applicant No. 2 also preferred a Civil



Suit RCSA- 1481/2025 in the Court of I Civil Judge, Jr. Division, Indore seeking the decree of declaration, partition, separate possession and perpetual injunction on the ground that their grandfather executed a will in respect of subject land, by which the grandfather made arrangement that the 1/3 share of non applicant No. 2 will be devolved on the daughters, as he is not having any male child. The suit has been filed on the basis of one will dated 28.3.2015 and it is stated in the suit that the relinquished deed executed by non applicant No. 2 in favour of non applicant No. 1 and 3 on 20.5.2025 is null and void and not binding on the interest of the daughters of the non applicant No. 2. In the suit, an application under Order 39 Rule 1 and 2 of CPC for issuance of temporary injunction is also filed by the plaintiffs therein, which has been allowed by the trial court vide order dated 2.3.2026 and the Court has issued temporary injunction in respect of the subject land and restrained the non applicants from transferring, incumbering, mortgaging or alienating the subject land during the pendency of the Suit.

7. Mr. Vijay Assudani, the learned counsel for the applicant submits that the non applicants entered into Development Agreement though the development was executed in respect of only 2.358 hectares of land, but it was stipulated in the agreement itself that the development permission will be obtained for complete land and separate development agreement will be executed for balance land. He further submits that all the non applicants extended their consent on the Development Agreement, but the development agreement was signed by non applicant No. 1 only. He further submits that the non applicant no. 2 executed the relinquishment deed in favour of other



non applicants in furtherance of the development agreement and the expenses for execution of relinquishment deed were borne by the applicant. All the non applicants are acting jointly and a public notice was also issued in respect of joint efforts of the non applicants to alienate the property.

8. The Commercial Court, Indore has issued the injunction against all the non applicants in an application filed u/S. 9 of the 1996 Act and the interim order was also passed by the Commercial Court during the pendency of Sec. 9 application. He submits that as the non applicants are not co-operating in development of the land, therefore, a dispute is in existence between the parties and deserves to be referred to arbitration as per the Clause No. 14 of the Development Agreement, which contains arbitration agreement.

9. Mr. Assudani further submits that though the non applicant No. 2 and 3 are non signatories, but they are also bound by the arbitration agreement as they are not only real brothers of non applicant No. 1, but are the joint co-owners of the subject land and they cannot wriggle out their contractual obligation only on the ground that they are non signatories to the agreement. He further submits that the question as to whether a non signatory will be bound by arbitration agreement is to be decided by arbitral tribunal and the referral Court must refer the parties to arbitration in case the existence of arbitration clause is not in dispute. He relied on the judgment delivered by Supreme Court in **Cox and Kings Ltd. Vs. SAP India Pvt. Ltd.** (2024) 4 SCC 1 and in **ASF Buildtech Pvt.Ltd Vs. Shapoorji Pallonji and Company Pvt. Ltd.** 2025 SCC Online SC 1016 and submits that an Arbitrator



be appointed to resolve the dispute between the parties and dispute be referred to the arbitration.

10. The counsel appearing on behalf of non applicant no. 1, who is signatory to the development agreement opposed the application on the ground that no such development agreement was ever executed by the non applicant No. 1 and the applicant has prepared a forged Development Agreement. As such the issue of forgery and fraud are involved in this case, therefore, the matter is not referable to the arbitration as held by the Supreme Court in **Rajia Begum Vs. Barnali Mukherji 2026 INSC 106** by order dated 2.2.2026. He further submits that some loan was obtained by the non applicant No. 1, but by practicing fraud, the forged agreement in the nomenclature of "*souda chitti*" has been prepared and the present application has been filed on the basis of the forged agreement, therefore, the matter is not referable for the arbitration.

11. Non applicant no. 2 also opposed the application mainly on the ground that he has not signed the Development Agreement, though his name is mentioned in the agreement but he was not party to any such contract or agreement. The Development Agreement was not executed in respect of the complete land. Non applicant no. 1 was not entitled to enter into the agreement for 2.358 hectare of land. The Development Agreement is a forged document and in the absence of any contract or any signature of the non applicant no. 2, even *prima facie* there is no existence of arbitration agreement between the applicant and the non applicant no. 2. He submits that his daughters have already filed a Civil Suit questioning the relinquishment



deed and seeking the declaration of title on the basis of the will executed by his father in favour of his daughters and the same is pending before the Court, wherein the temporary injunction has also been issued by the competent Court, therefore, the matter cannot be referred to the arbitration.

12. He further raised the issue that the referral Court while evaluating the involvement of non signatory party in the negotiation, performance or termination of agreement is an important factor for referring the matter to the arbitration and in the case in hand the non applicant no. 2 was neither involved in any negotiation, performance or termination of the agreement and, therefore, he cannot be treated as a veritable party to the contract containing, the arbitration agreement and thus in the absence of interest of non applicant no. 2 in the Development Agreement, the arbitration cannot be invoked against the non applicant no. 2. He heavily relied upon the judgment delivered by the Supreme Court in the matter of **Hindustan Petroleum Corporation Ltd Vs. BCL Secure Premises Pvt. Ltd. 2025 INSC 1401**, wherein the Supreme Court has held that the involvement in the negotiation or performance of the contract must be positive, direct, substantial and not merely incidental of the non signatory party to the contract and there should be other attending circumstances, which may led the referral Court to draw a legitimate performance that it is a veritable party to the arbitration agreement and these all are lacking in the case in hand and, therefore, the application is not maintainable against the non applicant no. 2.

13. Non applicant no. 3 also opposed the application preferred by the applicant mainly on the ground that he is completely a third party to the



agreement. He is neither a signatory nor his land has been involved in the contract. He submits that a forged and fabricated Development Agreement has been prepared by the applicant and on the basis of the said agreement, the applicant is trying to involve all the non applicants. He further submits that he has already filed a Civil Suit for declaration and injunction in respect of the forged Development Agreement, which is not binding on him because the non applicant No. 1 and applicant had no authority to enter into any Development Agreement in respect of the undivided share in the subject land and in the absence of any partition among the co owners, if any agreement is executed between applicant and non applicant No. 1, the same is illegal, void and cannot be acted for referring the matter to the Arbitration. He also relied upon the judgment delivered by the Supreme Court in the matter **Hindustan Petroleum Corporation Ltd** (supra) and submits that he is neither a signatory to the contract nor a veritable party to the arbitration agreement and, therefore, he cannot be referred to the arbitration on the strength of alleged arbitration Clause. He prays for dismissal of the application.

14. In rejoinder, Mr. Assudani, learned counsel appearing on behalf of the applicant has reiterated the stand of the applicant that the development agreement was executed in respect of the subject land owned by all the non applicants and the allegation of forgery, fabrication would be considered by the Arbitrator as the said allegations of fraud does not entirely invalidate the arbitration clause as held by the Supreme Court in the matter of **Vidya Drolia & others Vs. Durga Trading Corporation** (2021) 2 SCC 1. He further submits that the pendency of the civil suits filed by the daughters of the non



applicant No. 2 and by the non applicant No. 3 are not having any impact upon the present application and the same do not create any bar to refer the dispute to the Arbitrator, when a valid arbitration agreement is in existence. He further submits that there is no impediment in referring the dispute to arbitration, even the non signatories, who are veritable party and having direct interest in the subject matter. He relied upon the judgment delivered on 15.04.2024, by the co-ordinate bench in **Arbitration Case No. 37/2023 Santosh Patidar Vs. Smt. Ayodhya Bai & Ors.**, whereby the co-ordinate bench has referred the non signatory parties to the arbitration in view of the judgment delivered by the Supreme Court in case of **Cox & Kings Ltd.** (supra). Para 13 of the judgment relied by the counsel for the applicant which reads as under:-

"13 A perusal of the aforesaid decision of the Supreme Court in the case of Cox & King (supra), makes it is clear that it has been held categorically by the Supreme Court that a party who is not a signatory to arbitration agreement is also amenable to arbitration agreement, and its defence is liable to be decided by the Arbitrator only, as in the present case, admittedly the non-signatories, the respondent No. 3 Savita, respondent No. 7 Priya and respondent No. 8 Shukhi are also the close family members of the other signatories/respondents. In such circumstances, this Court is of the considered opinion that the applicant has made out a case for appointment of Arbitrator, and all the objections raised by the respondents/signatories/non-signatories can very well be decided by the Arbitrator only in the light of the decision rendered by the Supreme Court in the case of Cox & King (supra)."

15. The counsel for the applicant further relied upon the judgment delivered by the co-ordinate bench in **Arbitration Case No. 90/2023** on 19.7.2024 in **Prateek Dixit and another Vs. Anil Madan**, wherein the co-ordinate bench has referred the non signatory party to the arbitration. He relied on para 10 of the judgment which reads as under:-



"10. So far as the objection that MOR has been signed by the applicant no.1 only, and not by applicant no.2, counsel for the applicants has submitted that even if the applicant no.2 has not signed the MOR, he has joined in present application being a party to the MOR itself, and this Court, in the case of Santosh Patidar Vs. Smt. Ayodhya Bai and others passed in Arbitration Case.No.37/2023 vide order dated 15.4.2024 has already held that a non-signatory can also join in the application for appointment of the arbitrator as the same can be decided by the Arbitration Tribunal itself."

16. Counsel submits that considering the judgment delivered by the Supreme Court in the matter of **Cox & Kings** (supra) and in the matter of **ASF Buildtech P. Ltd** (supra), the application be allowed and after appointing the independent and impartial Arbitrator, the parties be referred for arbitration.

17. Heard the counsel for parties at length.

18. The question involved in this case is that whether at the pre-referral stage, despite the existence of an arbitration clause in development agreement, the allegation of fraud and the issue of reference of non signatory party to the agreement can be considered by the Referral Court or it should be left open for the Arbitrator to decide these issues ?

19. Before considering the facts of the case, it is profitable to consider the latest legal position on the issue. After the insertion of Section 11(6A) in the 1996 Act, by way of amendment in the year 2015, the issue of non arbitrability is required to be adjudicated at referral stage, since the allegation of commission of forgery has been leveled by the signatory party to the agreement and the applicant is seeking reference to the arbitrator in respect of non signatory parties also. The same is required to be decided at this stage prima facie for the purpose of reaching to the conclusion that



whether the allegation of commission of forgery is having any impact on the case in hand to the extent that the same cannot be referred for the arbitration and whether the non signatory parties in the facts and circumstances of the case can be referred to the Arbitrator.

20. The Supreme Court in **Vidya Drolia & Ors. Vs. Durga Trading Corporation (2021) 2 SCC 1** settled the issue of arbitrability and observed that violation of criminal law is offence against the State and not just against the victim and further matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial or economic value. The relevant paragraphs of the judgment read as under:-

"77. Applying the above principles to determine non-arbitrability, it is apparent that insolvency or intracompany disputes have to be addressed by a centralised forum, be the court or a special forum, which would be more efficient and has complete jurisdiction to efficaciously and fully dispose of the entire matter. They are also actions in rem. Similarly, grant and issue of patents and registration of trade marks are exclusive matters falling within the sovereign or government functions and have erga omnes effect. Such grants confer monopoly rights. They are non-arbitrable. Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offences against the State and not just against the victim. Matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights, etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial and economic value. The decisions have erga omnes effect. Matters relating to probate, testamentary matter, etc. are actions in rem and are a declaration to the world at large and hence are non-arbitrable.

78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] inter alia observing that allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating



to non-arbitrability. We have also set aside the Full Bench decision of the Delhi High Court in HDFC Bank Ltd. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.

82. Issue of non-arbitrability can be raised at three stages. First, before the court on an application for reference under Section 11 or for stay of pending judicial proceedings and reference under Section 8 of the Arbitration Act; secondly, before the Arbitral Tribunal during the course of the arbitration proceedings; or thirdly, before the court at the stage of the challenge to the award or its enforcement. Therefore, the question — “Who decides non-arbitrability?” and, in particular, the jurisdiction of the court at the first look stage, that is, the referral stage.

147.4. Most jurisdictions accept and require prima facie review by the court on non-arbitrability aspects at the referral stage.

147.6. Exercise of power of prima facie judicial review of existence as including validity is justified as a court is the first forum that examines and decides the request for the referral. Absolute “hands off” approach would be counterproductive and harm arbitration, as an alternative dispute resolution mechanism. Limited, yet effective intervention is acceptable as it does not obstruct but effectuates arbitration.”

21. The judgment delivered by the Supreme Court in the matter of **Vidya Drolia** (supra) was further explained by the Supreme Court in the case of **Pravin Electricals(P) Ltd Vs. Galaxy Infra & Engg.(P) Ltd** (2021) 5 SCC 671, wherein the Supreme Court has held that the consideration of whether arbitration agreement exists between the parties is required to be examined only on the touchstone of factual aspect to come to the conclusion of prima facie existence of the agreement and the issue should be left to the Arbitrator for deeper examination and consideration during proceedings. The Supreme Court has held in the matter of **Vidya Drolia** (supra) that if the allegation of fraud has been taken into consideration and it appears that the allegation of



fraud is not having wider impact and the same is a subject matter of civil dispute, then the matter will be referred to the Arbitrator despite the allegation of fraud and forgery.

22. The case in hand is examined, in the light of law laid down by the Supreme Court in the matter of **Vidya Drolia** (supra) and it appears that the applicant and non applicant No. 1 are the signatory parties to the agreement (*souda chitti*), whereby the applicant company agreed to develop part of the subject land of Survey No. 242/2. Some amounts were also transferred by the applicant company in the bank account of non applicant No. 1. Clause 14 of the agreement provides an arbitration clause and despite levelling the allegation of fraud and forgery, the matter is referable to the arbitration in so far it relates to the dispute between applicant and non applicant No. 1, as the allegation of fraud and forgery is connected with the civil dispute and not having any larger impact on the society. The execution of agreement and the allegation of fraud and forgery can be examined by the Arbitrator on the basis of pleadings of the parties and therefore, in view of this Court the dispute between applicant and non applicant No. 1 is referable arbitration as per the terms of the agreement.

23. The second issue involved in this case is reference of non signatory parties to the agreement for arbitration. The scope of consideration by the referral Court at the time of deciding a petition filed u/S. 11 insofar the issue of joinder of a non signatory to the arbitration agreement has been dealt by a five judges bench of the Supreme Court in **Cox & Kings Ltd.** (supra), wherein at the time of considering the doctrine of the group of



companies, the Apex Court considered the issue and held that the referral Court should prima facie satisfied that there exists an arbitration agreement and the issue that whether the non signatory parties are veritable parties or not, should be left over to be decided by the Arbitrator and should be considered by the referral Court *prima facie* on the basis of the factual evidence and material available on record, as the arbitral Tribunal is having the exclusive jurisdiction to decide that whether the non signatory is indeed a party to the arbitration agreement or not. The relevant paragraphs of the judgment read as under:-

"84. It is presumed that the formal signatories to an arbitration agreement are parties who will be bound by it. However, in exceptional cases persons or entities who have not signed or formally assented to a written arbitration agreement or the underlying contract containing the arbitration agreement may be held to be bound by such agreement. As mentioned in the preceding paragraphs, the doctrine of privity limits the imposition of rights and liabilities on third parties to a contract. Generally, only the parties to an arbitration agreement can be subject to the full effects of the agreement in terms of the reliefs and remedies because they consented to be bound by the arbitration agreement. Therefore, the decisive question before the Courts or tribunals is whether a non-signatory consented to be bound by the arbitration agreement. To determine whether a non-signatory is bound by an arbitration agreement, the Courts and tribunals apply typical principles of contract law and corporate law. The legal doctrines provide a framework for evaluating the specific contractual language and the factual settings to determine the intentions of the parties to be bound by the arbitration agreement.

101. A formalistic construction of an arbitration agreement would suggest that the decision of a party to not sign an arbitration agreement should be construed to mean that the mutual intention of the parties was to exclude that party from the ambit of the arbitration agreement. Indeed, corporate entities have the commercial and contractual freedom to structure their businesses in a manner to limit their liability. However, there have been situations where a corporate entity deliberately made an effort to



be not bound by the underlying contract containing the arbitration agreement, but was actively involved in the negotiation and performance of the contract. The level of the non-signatory party's involvement was to the extent of making the other party believe that it was a veritable party to the contract, and the arbitration agreement contained under it. Therefore, the Group of Companies doctrine is applied to ascertain the intentions of the parties by analysing the factual circumstances surrounding the contractual arrangements.

117. Section 7 of the Arbitration Act broadly talks about an agreement by the parties in respect of a defined legal relationship, whether contractual or not. Such a legal relationship must give rise to legal obligations and duties. In a corporate group, a company may have various related companies. The legal relationship must be analysed in the context of the underlying contract containing the arbitration agreement. The nature of the contractual relationship can either be formally encrusted in the underlying contract, or it can also be inferred from the conduct of the signatory and non-signatory parties with respect to such contract. 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. The doctrine, properly conceptualised and applied, gives effect to mutual intent and autonomy.

126. Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.



140. 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.

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement "

24. Supreme Court in **SBI General Insurance Co. Ltd. Vs. Krish Spinning** (2024) 12 SCC 1 considered the scope of Section 11(6A) of Act 1996 and held as under:-



"113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

114. The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth."

25. Further in the matter of **In re Interplay between Arbitration Agreements under Arbitration and Conciliation Act 1996 & Stamp Act, 1899 (2024)6 SCC 1** the Supreme Court has considered the scope of referral court and held as under:

*"167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* [*Shin-Etsu**



Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]."

26. The core question involved in this case is that whether the non applicant No. 2 and 3 are the veritable party to the agreement or not. The veritable party means a party, who is really interested in the matter or for whose benefits the agreement has been executed, but the agreement was not signed by that party. The law is settled on that issue that which party will be a veritable party will depend on the facts and circumstances or each case. Supreme Court in *Ajay Madhusudan Patel & Ors. vs. Jotinder S. Patel & Ors. (2025) 2 SCC 147* further elaborated the features to determine whether the party is veritable party or not and the relevant para reads as under:-

"81. The fact that a non-signatory did not put pen to paper may be an indicator of its intention to not assume any rights, responsibilities or obligations under the arbitration agreement. However, the courts and tribunals should not adopt a conservative approach to exclude all persons or entities who intended to be bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties. The mutual intent of the parties, relationship of a non-signatory with a signatory, commonality of the subject-matter, composite nature of the transactions and performance of the contract are all factors that signify the intention of the non-signatory to be bound by the arbitration agreement."

27. In *ASF Buildtech P. Ltd (supra)* the Supreme Court held that the referral court should leave the matter to the arbitral tribunal to decide the issue that whether a party is veritable party or not and observed as under:-

"110. Even if it is assumed for a moment that the Referral Court in its jurisdiction under Section 11 of the 1996 Act has the discretion to determine whether a non-signatory is a veritable party to the arbitration agreement or not, by virtue of Cox & Kings (1) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680], the Referral Court should only refrain but rather loathe the exercise of such discretion. Any discretion which is conferred upon any authority, be it Referral Courts must be exercised reasonably and in a fair manner. Fairness in this context does not just extend to a non-signatory's rights and its apprehension of prejudice, fairness also



demands that the arbitration proceedings is given due time to gestate so that the entire dispute is holistically decided. Any determination even if prima facie by a Referral Court on such aspects would entail an inherent risk of frustrating the very purpose of resolution of dispute, if the Referral Courts opine that a non-signatory in question is not a veritable party. On the other hand, the apprehensions of prejudice can be properly mitigated by leaving such question for the Arbitral Tribunal to decide, as such party can always take recourse to Section 16 of the 1996 Act and thereafter in appeal under Section 37, and where it is found that such party was put through the rigmarole of arbitration proceedings vexatiously, both the Tribunal and the courts, as the case may be, should not only require that all costs of arbitration insofar as such non-signatory is concerned be borne by the party who vexatiously impleaded it, but the Arbitral Tribunal would be well within its powers to also impose costs.

111. The aforesaid may be looked at from one another angle. This Court in Cox & Kings (1) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] also discussed the role and scope of jurisdiction of the Referral Courts and Arbitral Tribunals under Section(s) 11 and 16 of the 1996 Act, particularly in the context of binding a non-signatory to the arbitration agreement. It reiterated that under Section 11, the Referral Court only has to determine the prima facie existence of an arbitration agreement. Whereas, the issue of determining parties to an arbitration agreement is quite distinct from “existence” of the arbitration agreement, as such issue goes to the very root of the jurisdictional competence of the Arbitral Tribunal, and thus, empowered to decide the same under Section 16. Placing reliance on the decision of this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234 : (2005) 127 Comp Cas 97], it held that the Referral Court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction for deciding such issues.

112. The relevant observations read as under: [Cox & Kings (1) case [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680], SCC pp. 88-89, paras 162-63 & 166]

“162. When deciding the referral issue, the scope of reference under both Sections 8 and 11 is limited. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the court's jurisdiction



to the existence of the examination of an arbitration agreement.

163. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

166. The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the Referral Court cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal. The Referral Court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. InShin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234 : (2005) 127 Comp Cas 97] , this Court observed that there are distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the Tribunal...”
(emphasis supplied)

113. Cox & Kings(1)[Cox & Kings Ltd. v. SAP(India)(P)Ltd; (2024) 4 SCC 1: (2024) 2 SCC(Civ)1:(2024)251 Comp Cas 680] further observed that in case of joinder of non-signatory parties to an arbitration agreement, the Referral Court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration. However, it further clarified that, due to the inherent complexity in determining whether the non-signatory is indeed a veritable party, the Referral Court should leave this question for the Arbitral Tribunal to decide as it can delve into the factual and circumstantial evidence along with its legal aspects for deciding such an issue. The relevant observations read as under: (SCC p. 90, paras 168-69)



“168. ... Thus, when a non-signatory person or entity is arrayed as a party at Section 8 or Section 11 stage, the Referral Court should prima facie determine the validity or existence of the arbitration agreement, as the case may be, and leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the Referral Court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the Referral Court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.”

(emphasis supplied)

114. Thus, even if it is assumed for a moment, that the question whether a non-signatory is a veritable party to the arbitration agreement is intrinsically connected with the issue of “existence” of arbitration agreement, the Referral Courts should still nevertheless, leave such questions for the determination of the Arbitral Tribunal to decide, as such an interpretation gives true effect to the doctrine of competence-competence enshrined under Section 16 of the 1996 Act.

115. This hands-off approach of Referral Courts in relation to the question of whether a non-signatory is a veritable party to the arbitration agreement or not was reiterated in Cox & Kings (2) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2025) 1 SCC 611 : (2025) 1 SCC



(Civ) 314 : (2024) 251 Comp Cas 802] , wherein one of us, (J.B. Pardiwala, J.), observed that once an Arbitral Tribunal stands constituted, it becomes automatically open to all parties to raise any preliminary objections, including preliminary objections touching upon the jurisdiction of such tribunal, and to seek an early determination thereof. Consequently, the issue of impleadment of a non-signatory was deliberately left for the Arbitral Tribunal to decide, after taking into consideration the evidence adduced before it by the parties and the principles enunciated under Cox & Kings (1) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680]."

28. The judgment delivered by the Supreme Court in the matter of **Vinod Kumar Sachdeva dead through LRs Vs. Ashok Kumar Sachdeva (2023) 20 SCC 190** is also important in respect of the reference of non signatory parties to the agreement. Supreme Court in the matter of **Vinod Kumar Sachdeva dead through L.Rs. (supra)** has decided the issue that the party, who is not signatory to the arbitration agreement can be referred to the Arbitrator and held as under:-

"8. The narration of facts indicates that the MoU dated 14-9-2010 is between the appellant and the first respondent. The appellant instituted two suits. In the first suit, the first respondent has been impleaded as the first defendant while Sachdeva and Sons Industries Private Limited is impleaded as the second respondent. Admittedly, Sachdeva and Sons Industries Private Limited is not a party to the MoU which is executed solely between the appellant and the first respondent. In the second suit, apart from the two defendants who are parties to the first suit, relief has been sought against Canara Bank. While the relief which has been sought in the first suit is in terms of an injunction simpliciter from the alienation of certain land, the relief which has been sought in the second suit is for a permanent injunction restraining Canara Bank from disbursing or releasing any loan or finance in the name of the first respondent and the second respondent in respect of the landed property. Certain consequential reliefs have been sought against Canara Bank.

9. Hence, it is evident that there are several parties to the suit who are not parties to the arbitration agreement. The MoU which is executed between the parties indicates that the Sachdeva family comprising of both, the appellant and the first respondent, was carrying on business in



several companies, partnership firms and proprietorship under the joint ownership of the Sachdeva family. The MoU contains a description of the respective family units and their concerns. The MoU indicates that there are certain non-family shareholdings.

10. In this backdrop and since the MoU was executed exclusively between the appellant and the first respondent, the reference to arbitration under Section 8 of the trial Judge was patently in error. Neither Canara Bank nor the company are parties to the arbitration agreement. The MoU has been executed between the appellant and the first respondent. The non-family shareholdings, in any event, cannot be bound by the terms of the MoU since they are not parties to the document.

11. For the above reasons, we set aside the impugned judgment and order of the Single Judge of the High Court dated 1-8-2017 [Ashok Kumar Sachdeva v. Vinod Kumar Sachdeva, 2017 SCC OnLine P&H 6514]. In consequence, the applications filed by the first respondent under Section 8 of the 1996 Act shall stand dismissed. The High Court, while allowing the applications under Section 8 of the 1996 Act had directed the Civil Judge (Junior Division) to pass consequential orders. As a consequence of the present judgment, the consequential order which has been passed by the trial Judge shall no longer survive."

29. The issue further decided by the Supreme Court in detail in **Hindustan Petroleum Corporation Ltd. (supra)**, wherein the Supreme Court after considering the judgment delivered in the matter of **Cox & Kings (supra)**, **Interplay between Arbitration (supra)**, **SBI General Insurance (supra)**, **Ajay Madhusudan Patel (supra)**, **ASF Buildtech P. Ltd. (supra)** and other judgments has held that for referring the non signatory party to the arbitration, *prima facie* examination to the existence of an arbitration agreement is essential, which includes whether a non signatory is veritable party to the agreement or not. The Supreme Court held that it 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. To hold so, would relegate the



referral Court to the status of a monotonous automation. To countenance such an extreme proposition would lead to disastrous consequences, where absolute strangers could walk into the referral court and contend that the matter has to refer to the arbitral Tribunal for a decision on the veritable nature of the party. The Supreme Court held that the same proposition cannot be accepted and such position may be extreme. It is further held that it could happen that one party having undertaken a contract from another may engage one or more third parties and in such a scenario, if there is nothing even prima facie to show that there was any relationship between that party and third parties, which is not a veritable party, the matter cannot be referred to the Arbitrator and the issue cannot be left upon the the Arbitrator for taking decision.

30. The applicant further relied upon the judgment delivered by the Supreme Court in **Hemant D Shah Huf Vs. Chittaranjan D. Shah HUF** 2026 SCC On Line 2125 (supra), wherein after considering the judgment delivered in the matter of **Cox & Kings** (supra) the Supreme Court has held as under:-

"14. Be that as it may, in the present case, the dispute revolves around the 'subject asset' which is an immovable property. Admittedly, the asset was acquired by the partnership firm, in which, later the appellants and the 1st and 2nd respondents were partners, along with the original partners. The original partners retired and though the said document is disputed by the appellants, the original partners do not raise any dispute on the said document. The retirement of the original partners also does not affect the rights of the appellants, if the deed of 09.12.1985 subsists. The bone of contention is the deed of retirement dated 03.07.1995, by which the appellants are said to have retired; which is alleged to be a forged document.

15. In fact, it is this retirement which led to the eventual constitution of another partnership by the 1st and 2nd respondents; subsequently with the retirement of 2nd respondent, the firm continued as a proprietorship



with the 1st respondent, who inducted 3rd and 4th respondents and then retired from the firm. If the deed of retirement of 03.07.1995 is found to be invalid on the allegations raised, then necessarily the parties revert to the partnership of 09.12.1985. In which event, it would affect the rights of the 3rd and 4th respondents, who were inducted by the 1st respondent, as partners who obtained rights over the 'subject asset' by that partnership deed, in which neither the appellants nor the 1st and 2nd respondents are partners. The dispute raised for arbitration revolves around the ownership of the 'subject asset'; whether it be by virtue of the deed of 09.12.1985 or by the deed of 04.11.2009.

16. On the facts and circumstances of this case, we are of the opinion that 3rd and 4th respondents are veritable parties to the dispute, since it would substantially affect their rights also as per the partnership deed of 30.11.2009 which can be valid only if the deed of retirement of the appellants is valid. However, this is not to say that the questions of limitation raised by 3rd and 4th respondents and whether the appellants are estopped from including 3rd and 4th respondents, as they were not included in the earlier arbitration proceedings, despite knowledge of the retirement deed at that point of time, would not survive. These aspects are definitely left to be agitated before the Arbitral Tribunal.

17. The impugned order is modified only to the extent of finding the 3rd and 4th respondents to be veritable parties to the arbitration, despite the said respondents being not signatories to the partnership deed of 09.12.1985."

31. At the time of passing the judgment in **Hemant D Shah** (supra) the judgment delivered in the matter of **Hindustan Petroleum Corporation** (supra) has also been taken into consideration and the Supreme Court has held that prima facie it is essential to decide the issue that whether the non signatory parties are veritable party or not.

32. In view of above law laid down by the Supreme Court time to time, for the purpose of deciding the issue that whether the non applicant No. 2 and 3 can be referred to the arbitration or not, it is essential to first consider that they are veritable parties or not.

33. Considering the facts of the case, it appears that non applicant



No. 1 allegedly executed the agreement in favour of applicant for development of the Colony on a part of the land bearing survey No. 242/2 admeasuring 2.358 hectare of village Tillor Bujurg, Tehsil Bicholi Hapsi, District Indore and some amounts were also transferred in the bank account of the non applicant No. 1. The name of non applicant No. 2 was though mentioned in the agreement as party to the agreement, but it is an admitted position that he has not signed the agreement and the complete share of non applicant No. 2 in subject land was also not included in the agreement. The subject land is ancestral land and the daughters of non applicant No. 2 have already filed a suit for declaration, partition, possession and perpetual injunction, which is pending before the competent Court, wherein it will be decided by the competent Court that whether any will was executed by the father of non applicant No. 2 in favour of his daughters or not, whether the father was having any competency to execute the will in favour of his grand daughters considering the fact that the non applicant No. 2 is not having any male issue, whether the non applicant No. 2 was competent to execute the relinquishment deed in favour of non applicant No. 1 and 3 to defeat the interest of his daughters, whether the relinquishment deed will be applicable to his complete share or his daughters are also having share in the subject property. These are the serious legal issues those are pending in a civil suit, wherein the applicant is not a party.

34. The non applicant No. 1 executed the development agreement in respect of 50% of the total subject land of survey No. 242/2 and it appears that in a hope that non applicant No. 2 will execute the relinquishment deed



in his favour, he executed the Development Agreement for half portion of the land meaning thereby at the time of execution of the Development Agreement, there was no intention of non applicant No. 2 to join the Development Agreement, otherwise the 2/3 land of Survey No. 242/2 could be included in that development agreement and some amount ought to have been paid to non applicant No. 2, but this is not the case of the applicant. Insofar non applicant No. 3 is concerned, neither his name was mentioned in the agreement nor his share in the land was included in the agreement and only one recital is made in the agreement that the development permission will be obtained in respect of the complete land and subsequently another development agreement will be executed in respect of other part of the land. In respect of development permission is concerned, law is very clear that development permission cannot be obtained in part of any land, without there being any partition and in the case in hand there is no partition between the brothers and it was mentioned in the agreement that the non applicant No. 1 would apply for measurement, demarcation and partition, meaning thereby there was no such intention to include complete land in the development agreement, otherwise there was no requirement of partition. Non applicant No. 3 has also filed a suit seeking declaration that the development agreement is null and void and not binding on him, with the further relief of perpetual injunction, which is also pending before the civil Court, wherein the application filed by the applicant u/S. 8 of the Act 1996 read with O. 7 R 11 of CPC has been dismissed and Arbitration Appeal No. 86/2026 is pending arising out of said order before this Court.



35. After considering the totality of the facts and circumstances of the case, *prima facie* there is no material on record to connect the non applicant No. 2 and 3 with the Development Agreement allegedly executed between the applicant and non applicant No. 1. Even by their conduct it cannot be inferred that they were veritable parties to the agreement and should be referred for the arbitration. The notice issued by the applicant is very material, wherein no such allegation was levelled by the applicant that the agreement was executed in respect of the entire land or the non applicant No. 2 and 3 are the veritable parties to the agreement and they should act as per the terms of the agreement. The notice has been placed on record, which was issued on 18.9.2025, whereby Mr. Sumit Gupta was proposed to act as mediator between the non applicant No. 1 and the applicant. In that notice there was no whisper in respect of the involvement of non applicant No. 2 and 3 in the transection and, therefore, after carrying out the exercise, which is required as per the law laid down by the Supreme Court in the matter of **Hindustan Petroleum** (supra), in view of this Court even *prima facie* in the absence of any material, it cannot be accepted that non applicant No. 2 and 3 are the veritable parties to the agreement and thus the non applicant No. 2 and 3, those are the non signatory parties cannot be referred for arbitration in the absence of any privity of contract between the applicant and non applicant No. 2 and 3.

36. Consequently, this application is allowed in part. The dispute between applicant and non applicant No. 1 is referable to the arbitration for redressal in accordance with the provisions of the Act 1996 and the



application is dismissed qua non applicant No. 2 and 3.

37. As this Court has held that the dispute is referable to the arbitration between applicant and non applicant No. 1, the Court proposes to appoint Shri Justice J.K. Maheshwari, Former Judge of Supreme Court of India to decide the issue in accordance with the law. Principal Registrar is directed to seek consent and declaration from Shri Justice J. K. Maheshwari and place the same before this Court.

38. List for further consideration on 16.11.2026.

(VINAY SARAF)
JUDGE

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