2025 INSC 1401

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.14647 OF 2025
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 25803 of 2025)

Hindustan Petroleum Corporation Ltd. …Appellant(s)

Versus

BCL Secure Premises Pvt. Ltd. …Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment and order dated 07.04.2025 passed by the learned Single Judge of the High Court of Judicature at Bombay in Comm. Arbitration Application No.125/2025. By the said order, the learned Single Judge allowed the Section 11(4)-Application filed under the Arbitration and Conciliation Act, 1996 (for short the "A&C Act) of the respondent-BCL Secure Premises Pvt. Ltd. (hereinafter referred to as the

"BCL") and appointed an arbitrator to adjudicate upon the disputes and differences between the parties herein. Aggrieved, the appellant-Hindustan Petroleum Corporation Ltd. (for short 'Corporation') is in appeal.

3. The facts giving rise to the appeal are as follows:

4. The appellant-Corporation floated a tender for design, supply, installation, integration, testing, commissioning and post-commissioning warranty support services of Tank Truck Locking System (for short the "TTLS").

5. The tender conditions had a specific clause stating that the contractor shall not be entitled to sublet, transfer or assign, the work under the contract without the prior consent of the owner obtained in writing. The relevant clauses of the tender conditions are set out hereinbelow:-

> "2.6 The **"Contract"** between the Owner and the Contractor shall mean and include all documents like enquiry, tender submitted by the contractor and the purchase order issued by the owner and other documents connected with the issue of the purchase order and orders, instruction, drawings, change orders, directions issued by the Owner/Engineer-in-Charge/Site-in-Charge for the execution, completion and commissioning of the works and the period of contract mentioned in the Contract including such periods of time

extensions as may be granted by the owner at the request of the contractor and such period of time for which the work is continued by the contractor for purposes of completion of the work.

3.17 Contractor shall not be entitled to sublet, subcontract or assign; the work under this Contract without the prior consent of the Owner obtained in writing.

5.c SUBLETTING OF WORK
5.c.1 No part of the contract nor any share or interest thereof shall in any manner or degree be transferred, assigned or sublet, by the Contractor, directly or indirectly to any firm or corporation whatsoever without the prior consent in writing of the Owner.

14. ARBITRATION
14.1 All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the agreement, meaning, operation or effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either party to the agreement to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.

14.9 Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder, shall apply to the Arbitration proceedings under this Clause.

> 14.10 The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts situated at Mumbai for all purposes. The Arbitration shall be held at Mumbai and conducted in English language."

6. On 20.08.2013, the appellant issued a purchase order in favour of the successful tenderer-M/s AGC Networks Ltd (for short "AGC") (presently known as Black Box Limited) and AGC duly accepted the purchase order by a letter of acceptance on 21/22.08.2013. On 08.09.2016, the appellant issued a notice to AGC with regard to non-functioning of Electro Magnetic Locking System [for short 'EMLS'] at Pilot locations of Vashi and Manmad. Further, on 02.02.2017, the appellant issued a show cause notice to AGC for unsatisfactory performance of EMLS at the said two locations.

7. On 14.06.2018, the respondent-BCL informed the appellant that they were working as sub-vendor of AGC and were entitled to receive 94% of the payment due. On 25.06.2018, appellant informed AGC that since it could not complete the project successfully, no payment was due to them. On 26.06.2018, appellant informed respondent-BCL in

reply to BCL's letter dated 14.06.2018 stating that the appellant had not entered into any contract with BCL and as such no payments are due to BCL from the appellant. Thereafter, a series of proceedings ensued between the respondent-BCL and the AGC.

8. On 27.07.2018, a civil suit came to be filed by BCL against AGC before Patiala House Court at New Delhi seeking injunction against AGC from invoking the bank guarantee submitted by BCL. The appellant was not a party to this suit. Thereafter, a Section 9-Petition under the Insolvency and Bankruptcy Code, 2016 was filed by BCL against AGC. The Section 9-Petition came to be rejected on 17.07.2019.

9. In 2020, BCL filed its first claim (No. 1446/2020) with the Micro, Small and Medium Enterprises (MSME) Facilitation Council, Haryana against AGC for the payment of outstanding dues. The matter was referred to arbitration and here again the appellant was not a party. On 20.06.2020, the respondent BCL withdrew the claim from the Arbitral Tribunal in view of the amicable settlement with AGC. On 17.07.2020,

respondent-BCL withdrew the civil suit filed against AGC.

10. In 2021, respondent-BCL filed its second claim (No. 2411/2021) against AGC with the MSME Facilitation Council. The matter was referred to arbitration and here again the appellant was not a party.

11. On 25.11.2022, the second claim was rejected by the arbitrator as not maintainable due to relinquishment of rights by BCL under the 20.06.2020 settlement.

12. On 25.03.2023, third claim was filed against AGC by BCL in MSME Facilitation Council, Haryana and this was rejected as not maintainable.

13. On 28.08.2024, respondent-BCL issued a notice to the appellant invoking arbitration under Section 21 of the A&C Act, setting out the following:-

A. After AGC was awarded a purchase order, AGC entered into an agreement dated 15.01.2014 on back-to-back basis with BCL wherein entire performance concerning the supply of TTLS was to be undertaken by BCL.

B. That as per the said contractual arrangement of 15.01.2014, BCL was obligated to perform the services and AGC was merely an intermediary since 96% of the total amount payable by HPCL was accruing in favour of BCL. The relevant clauses of the contractual arrangement between BCL and AGC are set out hereinbelow:-

> "And whereas **"AGC"** wishes to engage **"BCL"** and **"BCL"** has agreed to supply install integrate test commission and warranty and post-warranty support services of HPCL TTLS (Tank Truck Locking System) to "AGC" on a back-to-back basis and more specifically described in the referred Tender as per Annexure - I forming an integral part of this Agreement BCL has reviewed all the annexures, fully understood HPCL's requirement and has agreed to bear all costs take full responsibility and to Indemnify AGC in case of this Pilot Project not being successful and resultant cancellation of contract by HPCL.
>
> **4. OBLIGATIONS OF "BCL"**
> **4.1 "BCL" shall provide a Project Manager at its own cost and towards the successful completion of the entire HPCL TTLS project The Project Manager shall be responsible for the communication and co-ordination between BCL/AGC/HPCL. However, the Project Manager mentioned herein above shall not make any such communication/co-ordination with HPCL without obtaining the prior written approval from AGC."**
>
> **11. ARBITRATION**
> Any and all dispute(s) or difference(s) between the parties hereto arising out of or relating to this agreement and which

is not amicably settled between the parties within 60 (Sixty) days from the date of such dispute or difference, the same shall be referred for arbitration to such person as may be appointed by the parties hereto and the same shall be adjudicated in accordance with the Arbitration and Re-Conciliation Act 1996 and its latest amendments.

The cost of any such Arbitration shall be solely borne by the defending party. The place of arbitration shall be jurisdiction of New Delhi/Mumbai Court. The language of the arbitration shall be English. Award of Arbitration shall be final and binding on both the parties."

(Emphasis supplied)

C. That after the resolution of disputes between BCL and AGC, a Settlement-cum-Assignment Agreement was signed by AGC and BCL on 31.10.2023, to assign the receivables of AGC against HPCL to BCL. Relevant clauses read as under: -

"2. ASSIGNMENT OF RECEIVABLES

2.1 The present Agreement further records the existing position that all claims and counter-claims of Parties against each other have been settled, relinquished, closed and Parties are discharged against each other for all future claims and liabilities. However, it is understood that BCL may be desirous of proceeding against HPCL. by filing the necessary application/petition before the competent authority or court for recovery of purported dues arising out of the HPCL PO. It is however agreed by BCL that, Black Box shall not be impleaded or joined as a party to any such legal action or litigation/proceedings that may be initiated by BCL and such actions of BCL shall not result in any adverse

action or cause any prejudice to Black Box.

2.2 Subject to compliance of the reciprocal obligations under this Agreement by the BCL Black Box hereby represents and warrants that any amount/receivables accruing to Black Box as a result of the litigation/proceedings initiated by BCL against HPCL shall stand transferred/assigned to, BCL in entirety. Black Box shall not retain any amount/receivable that may accrue to it in terms of the order/direction of the competent authority or court in any such litigation/proceedings initiated against HPCL.

3.20 GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION:

This Agreement shall be governed by and construed in accordance with the laws of India and shall be subject to the exclusive jurisdiction of the competent courts in New Delhi only.

Both Parties agree that all disputes and/or differences arising out of or relating to or under this Agreement between the Parties shall, unless amicably resolved within 30 days of mutual discussions, be finally settled by reference to arbitration in accordance with the Arbitration and Conciliation Act, 1996 read with its subsequent amendments and the Rules framed thereunder. The Arbitration shall be conducted at New Delhi. The Arbitration proceedings shall be conducted in English language. The decision of the arbitral tribunal shall be binding on the Parties."

D. That BCL has entered into the position of AGC and can agitate all pending claims with the appellant and a claim

was raised to the tune of Rs. 3,00,01,810/- along with 18% interest.

14. The Arbitration Clause for Indian Bidders issued in the tender of the appellant was invoked vide legal notice dated 28.08.2024.

15. On 26.09.2024, appellant sent a reply denying the contentions made by BCL setting out the following grounds:-

A. There was no privity of contract between the appellant and BCL.

B. The claim amount and assignment agreement were unfounded, false and denied.

C. That the purported assignment agreement was not valid in law as no prior written consent was obtained from HPCL by AGC.

D. There was no valid purchase order between HPCL and BCL.

16. BCL issued another notice dated 12.11.2024 and followed it up with a petition under Section 11(4) of the A&C Act before the High Court of Judicature at Bombay dated 28.02.2025. The

appellant-Corporation objected by raising all the contentions set out in their reply along with the additional contention that the application was time-barred.

17. By the judgment dated 07.04.2025, the High Court allowed the Section 11-Application with the following reasoning:-

> "3. This to my mind raises a clear capacity for the Respondent to file an application under Section 16 of the Act, whereby the arbitral tribunal should decide the arbitrability of the disputes. In the peculiar facts of this case, while allowing this Section 11 Application by making a reference to the arbitral tribunal, it is directed that the arbitrability of the disputes should be decided as preliminary issue upfront by the arbitral tribunal, so that the interests of the parties are well balanced and protected and unnecessary time is not wasted, should the arbitral tribunal reach a conclusion that the arbitration agreement would not bind the Respondent with the assignee of AGC Networks Limited.
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> 4. Being satisfied that an arbitration agreement is in existence but taking into account the objection raised by the Respondent that the Respondent had a right to approve the counter-party prior to the assignment of rights of the Applicant, this aforesaid request to the Arbitral Tribunal, asking for the Section 16 Application to be decided first as a preliminary issue is being made."

18. Aggrieved, the appellant-Corporation is before us.

19. We have heard Mr. Tushar Mehta, learned Solicitor

General and Mr. Sanjay Kapur, learned counsel for the appellant. We have also heard Mr. Nalin Kohli, learned senior counsel for the respondent. We have perused the records.

CONTENTIONS OF THE APPELLANT:-

20. Mr. Tushar Mehta, the learned Solicitor General, appearing for the appellant contends that there is no legal relationship between the appellant and the respondent inasmuch as there was no privity of contract between them. Learned Solicitor General contends that, at no stage, BCL was ever involved either in the preliminary negotiation or at the execution stage. It is further contended that there is no material/document which discloses that the appellant had the knowledge of BCL participating in the performance of the underlying contract. Learned Solicitor General contended that the respondent had entered into series of litigation with AGC, and the court below had not made any reference to it in the impugned order. Learned Solicitor General contends that the claim was also ex facie time-barred and it is manifest from

the record. Learned Solicitor General contends that at the Section 11 stage that the court has an obligation to prima facie examine whether the dispute is arbitrable and even applying that limited test, the records reveal that the dispute was not arbitrable. Learned Solicitor General extensively relied on Clauses 3.17 and 5 of the General Terms and Conditions of Works Contract to contend that there was express prohibition to sub-let, sub-contract or assign the work or any share of interest thereof without the prior consent of the owner obtained in writing.

21. Refuting the submissions, Mr. Nalin Kohli, learned Senior Advocate, appearing for the respondent contended that the test whether a non-signatory would be bound by an arbitration agreement entails a fact-intensive inquiry involving a mixed question of fact and law and, therefore, the arbitral tribunal would be the more appropriate forum to carry out the said inquiry. Mr. Kohli, learned Senior Advocate, further contends that the appellant had knowledge of the sub-letting agreement between the respondent and AGC,

presently known as Black Box Limited. Mr. Kohli, learned Senior Advocate, referred to the agreement signed between the respondent and the AGC dated 15.01.2014; the purchase orders issued to the respondent by AGC, the escrow account opened by AGC; the monies transferred to the escrow account by the appellant. Mr. Kohli also referred to certain email communications, copies of which are marked to the appellant. Mr. Kohli further referred to the Settlement-cum-Assignment Agreement dated 31.10.2023 assigning the right to receivables and AGC giving up its rights and invoked the veritable party doctrine to sustain the impugned order. Mr. Kohli, learned Senior Advocate, prayed for the dismissal of the appeal.

22. We have considered the rival submissions and perused the records of the case.

QUESTION FOR CONSIDERATION: -

23. The question that arises for consideration is whether the High Court, on facts, was justified in referring the parties to

arbitration by allowing the Section 11(4) petition filed by the respondent?

24. The scope of jurisdiction of the referral court hearing a Section 11-Petition when faced with an issue of joinder of a non-signatory to the arbitration agreement has been lucidly set out by the five-judge Bench of this Court in ***Cox and Kings Limited*** **vs.** ***Sap India Private Limited and Another***[1]. Though said in the context of considering the Group of Companies doctrine, the said judgment has a great bearing for the present case. This Court, speaking through Chief Justice D.Y. Chandrachud, held 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

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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. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1531.]

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**. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1568.]

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.

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.''

(Emphasis supplied)

25. A careful reading of the above passage reveals that the referral court should be *prima facie* satisfied that there exists an arbitration agreement and as to whether the non-signatory is a veritable party. It further holds that even if the referral court *prima facie* arrives at the satisfaction that the non-signatory is a veritable party, the Arbitral Tribunal is not denuded of its jurisdiction to decide whether the non-signatory is indeed a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine. The Court further reinforces this proposition by holding that as to whether the non-signatory is bound would be for the Arbitral Tribunal to decide.

26. But what is primordial is that it should be demonstrated *prima facie* before the referral court that the non-signatory is a veritable party. According to the ''Illustrated Oxford Dictionary (Revised Edition 2003)'' the word:

''veritable'' means ''real; rightly so called

(a veritable feast)",

In substance, it means truly, genuinely or for all intended purposes. The referral court under Section 11 is not deprived of its jurisdiction from examining whether the non-signatory is in the real sense a party to the arbitration agreement. The answer thereof will depend on the facts and circumstances of each case after examining the documents pertaining thereto.

27. As was held in **In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899**[2], since the scope of referral court has to be within the parameter of Section 11 (6-A), the exercise carried thereon is "examination of the existence of an arbitration agreement". While "examination" does not contemplate a laborious or a contested inquiry there is an obligation in the referral court to "inspect and scrutinize" the dealings, if any, between the parties. Para 167 of **Interplay** (supra) reads as under:-

"167. Section 11(6-A) uses the expression "examination of

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> **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.*, (2005) 7 SCC 234]''
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> (Emphasis supplied)

28. This principle was reiterated lucidly in ***SBI General Insurance Company Limited*** **vs.** ***Krish Spinning***[3], wherein this Court (speaking through one of us, J.B. Pardiwala J.) observed 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.

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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."

(Emphasis supplied)

29. Elaborating further as to the broad features to determine whether a party is a veritable party or not, this Court in ***Ajay Madhusudan Patel and others*** **vs.** ***Jyotrindra S. Patel and others***[4] (wherein one of us, J.B. Pardiwala J.) held 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.

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> 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."

30. Applying the above law to the present set of facts, we find that even prima facie the respondent has not been able to establish that it was a veritable party to the contract between HPCL and AGC. HPCL has no privity at all with the respondent BCL. Admittedly, to the documentation between AGC and BCL, HPCL was not a party. After obtaining the contract from HPCL, AGC appears to have engaged BCL to supply, install, integrate, test, commission and grant warranty and post-warranty support services to AGC. In fact, Clause 4 of the contractual arrangement of 15.01.2014 expressly proscribes the Project Manager of the respondent-BCL to not make any communication/coordination with HPCL without obtaining prior written approval from AGC.

31. Further, the Settlement Agreement of 31.10.2023 also is between AGC and BCL and between them there is an arrangement that any receivable accruing to AGC from HPCL

shall stand transferred/assigned to the respondent BCL. This does not mean that there is an arbitration agreement existing between HPCL and BCL or that BCL was a veritable party to the agreement between HPCL and AGC.

32. On the facts of this case, it is clear that the appellant and the respondent have been operating on separate orbits. It has not been established even prima facie that there was any intention to bind BCL to the contract between HPCL and AGC.

33. Mr. Nalin Kohli, learned Senior Advocate, made a strenuous effort to sustain the impugned judgment by relying on the judgment of this Court in ***ASF Buildtech Private Limited*** vs. ***Shapoorji Pallonji and Company Private Limited***[5], to contend that the Referral Court should leave the matter to the Arbitral Tribunal to decide the issue. We have carefully examined the judgment of this Court in ***ASF Buildtech (Supra),*** authored by one of us J.B. Pardiwala J. We hold that the judgment of this Court in ***ASF Buildtech (Supra)***

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is in harmony with the judgments of this Court in ***Interplay (Supra)***, ***Krish Spinning (Supra)***, ***Cox & Kings (Supra)***, ***Ajay Madhusudan Patel (Supra)*** and ***ASF Buildtech (Supra)*** does not sing any discordant note. For the sake of convenience, the following crucial Paragraphs in ***ASF Buildtech (Supra)*** are extracted hereinbelow: -

> **"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, 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.

113.Cox & Kings (1) Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1, 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.
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> 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."

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, 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."

34. In fact, ***ASF Buildtech (Supra)*** expressly notices the holding in Para 169 of ***Cox & Kings (Supra)*** to conclude that

the Referral Court was required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory was a veritable party. All that it holds further in reiteration of the earlier line of judgments is that even if the Court holds that prima facie a party is a veritable party that will not foreclose the Arbitral Tribunal from concluding to the contrary after an intensive inquiry.

35. 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. To hold so, would relegate the Referral Court to the status of a monotonous automation. Further, 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 perforce go to the Arbitral Tribunal for a decision on the veritable nature of the party. We are not prepared to accept such an extreme proposition.

36. It could happen that one party having undertaken a contract from the other may engage one or more third parties

like in the present case. In such a scenario, if there is nothing even prima facie to show that there was any semblance of an intent to effect legal relationship between that party and the party originally granting the contract and/or to indicate that such a third party was a veritable party, such parties cannot be found to be veritable parties. The following pertinent observations from ***Cox and Kings (Supra)*** are relevant: -

> "117. ….However, we clarify that mere presence of a commercial relationship between 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…."

As pointed out earlier, on the facts of the present case, we hold that the parties operated on separate orbits.

37. We are not impressed with the argument that the respondent had a right to invoke the arbitration clause for the Indian Bidders in the tender issued by the appellant, despite being a non-signatory, since the respondent was a person

claiming through or under AGC. Reliance placed in this regard on ***Cox and Kings*** (supra) is completely unjustified. As held in ***Cox and Kings*** (supra), mere legal or commercial connection is not sufficient for a non-signatory to claim through or under a signatory party. Para 140 of ***Cox and Kings*** (supra) is extracted hereinbelow :-

> "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."

38. Apart from the above, not only has the respondent not shown any consent for assignment as required under clause 3.17 of the tender document, nothing even prima facie has been shown to establish that there was any semblance of an intent to effect legal relationship between the respondent and the party originally granting the contract and/or to indicate

that the respondent was a veritable party.

39. It will be apt to refer to the judgment of this Court in ***Khardah Company Limited vs. Raymon & Co.***[6] wherein this Court held as under:-

> "The law of the subject is well settled and might be stated in simple terms. An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promise, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand rights under a contract are assignable unless the contract is personal in its nature the rights are incapable of assignment either under the law or under an agreement between the parties."

40. Applying the consensual theory or the non-consensual theory, the respondent has not established its case to show even prima facie the existence of an arbitration agreement between HPCL and the respondent. Reference to copies of group emails being marked to HPCL or the creation of an escrow account on account of the contract between AGC and

[6] 1963 3 SCR 183

the respondent BCL, fall far short of making out of a prima facie case. We have also perused the Settlement-cum-Assignment Agreement between AGC and respondent-BCL dated 31.10.2023, and particularly clause 2.2 thereto. Under this clause, AGC (Black Box) has represented and warranted that any amount/receivables accruing to AGC (Black Box) as a result of litigation/proceeding initiated by BCL against the HPCL was to be transferred to BCL. Here again, the respondent fails the prima facie test of being a veritable party to the arbitration agreement between HPCL and AGC. As to what is the legal status otherwise of clause 2.2 of the Settlement Agreement dated 31.10.2023 is not for us to comment in the present proceeding.

41. The judgment in ***Pravin Electricals Private Limited*** vs. ***Galaxy Infra & Engineering Private Limited***[7], cited by Mr. Nalin Kohli, learned Senior Advocate, has no relevance to the present case. There was a dispute between employer and the

[7] (2021) 5 SCC 671

tendering party directly and the dispute was as to whether there existed any agreement between them. Hence, ***Pravin Electricals (Supra)*** is also of no help to the respondent. Equally, the reliance on ***Cox & Kings Ltd. (2)*** vs. ***SAP (India) Pvt. Ltd.***[8], does not carry the case of the respondent any further. That case turned on its own facts. As is clear from para 34 of the said judgment, this Court felt that in view of the complexities involved in the determination of the question as to whether the respondent No.2 therein was a party to the arbitration agreement or not, the matter was felt best left to the arbitral tribunal to take a call. Unlike in ***Cox & Kings (2) (supra)***, the situation here is simple, leaving us with no difficulty in arriving at the conclusion that we indeed have arrived at.

42. In view of our holding on the issue of the non-existence of an arbitration agreement between the parties herein, we are not required to go into the issue of whether the claim was

[8] (2025) 1 SCC 611

ex-facie time-barred.

43. For the reasons stated above, we allow the appeal and set aside the judgment and order dated 07.04.2025 passed by the Learned Single Judge of the High Court of Judicature at Bombay in Comm. Arbitration Application No.125/2025. Comm. Arbitration Application No.125/2025, on the file of the High Court of Judicature at Bombay, shall stand dismissed. If the respondent has any other remedy available in law, it is at liberty to pursue the same. If any such proceedings are resorted to, they have to be decided in accordance with law and on their own merits. No order as to costs.

.....J.
[**J.B. PARDIWALA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
9th December, 2025