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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment pronounced on: 08.07.2025***

\+ **ARB.P. 1267/2024**

VIRTUOUS ENERGY PRIVATE LIMITED ..... Petitioner

Through: Mr. Shivam Goel, Ms. Ramya S. Goel, Ms. Sanya Sharma, Advs.

versus

SMART POWER GRID LIMITED & ANR. ..... Respondents

Through: Ms. Anusha Nagrajan, Ms. Aakansha Bhola, Advs. For R-2.

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CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petitions filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as *'A&C Act'*) seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. At the outset, it is noticed that these petitions are predicated on the same factual conspectus, in the backdrop of two separate Letters of Award

issued in favour of the petitioner. Since there are two Letters of Award, separate petitions have been filed *qua* each.

RELATIONSHIP BETWEEN THE PARTIES

3. The petitioner in the present petition is a 'Micro Enterprise' under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) and is engaged in the energy sector for providing Project Management Consultancy (PMC) and Operation and Maintenance Services (O&M) in respect of substations and transmission lines across India.

4. It is averred in the petition that at the time when the Letter of Awards and subsequent work orders for Operations and Maintenance (O&M) of the substations and associated transmission lines of projects owned by the respondent no.2 (transmission licensee under Section 14 of the Electricity Act, 2003) were issued by respondent no.1 in favour of the petitioner, respondent nos. 1 and 2 were part of the Essel Group and had a common majority shareholder i.e., Essel Infraprojects Ltd. However, as of 28.05.2019, the shareholding in respondent no.2 has been taken over by M/s Sekura Energy Ltd (now SEPL Energy Pvt. Ltd).

5. It is the case of the petitioner that the aforesaid takeover happened after work orders and subsequent handing over formalities culminated. It is further contended that only 49% of the shareholding of respondent no.2 was transferred to M/s Sekura Energy Ltd (now SEPL Energy Pvt. Ltd) and the remaining shareholding still remains with Essel group.

6. The two Letters of Awards dated 04.05.2017 (hereinafter referred as 'LOAs'), were issued in favour of the petitioner by respondent no.1 for the

Operations and Maintenance (O&M) of the substations and associated transmission lines of projects owned by the respondent no.2.

7. LOA/SPGL/ VEPL/ ERSS/ O&M / Transmission /130 (subject matter of ARB P. 1267/2024) was issued by respondent no.1 for '*O&M work of 400 KV transmission line and Substation for "Eastern Region System Strengthening Scheme – VI" project*'. The said project included the following transmission lines:

A	**ERSS-VI Project**	**Approx. Line Length / Substation**
1	Muzaffarpur-Darbhanga 400 kV D/C TL.	62.80 KM
2	2X500 MVA, 400/220 kV Darbhanga GIS	1
3	LILO of both Ckt of 400 kV D/C Quad Moose Barth-Gorakhpur TL	75.7 KM
4	2X200 MVA, 400/132 kV Motihari GIS	1

8. LOA/SPGL/VEPI/NRSSXXXIB/O&M/Transmission/131 (subject matter of ARB P. 1268/2024) was issued for '*O&M work of 400 KV transmission line for "Northern Region System strengthening scheme- NRSS XXXIB" Project'*, and included the following transmission lines:

Sr. No.	**Description of Asset**	**Approx. Line Length/Substation**
A	**NRSS XXXIB Project**	
1	Kurukshetra-Malerkotla 400 kV D/C line	139.20 KM
2	Malerkotla-Amritsar 400 kV D/C line	149.60 KM

9. Subsequent to the issuance of the aforesaid LOAs, work orders dated 24.07.2017 were issued in favour of the petitioner which were subsequently extended *vide* orders dated 03.07.2018 (in ARB. P 1267/2024) and 30.07.2018 (in ARB. P 1268/2024). The said work orders contain an

arbitration clause, which reads as under:

> *"28. Governing Law & Dispute Resolution:*
> *The applicable laws of India shall govern the PO with the Supplier/Seller, difference, which may arise out of the PO and cannot be settled in an amicable way between the parties, shall be settled by arbitration in Mumbai/Delhi, as per the provisions of the Arbitration and Conciliation Act 1996 and the language of arbitration shall be English."*

10. The aforesaid work orders were to expire on 03.11.2018, however, *vide* emails/communications dated 29.10.2018, the respondent no.1 extended the validity of work orders till 30.11.2018. The said communications however indicated that the work orders shall not be extended any further and directed the petitioner to accordingly proceed with handing over of the activities at the project sites and submit the pending bill/s for the services rendered. The said communications read as under:

Bharat Chaudhari

From: Narendra Sahare <Narendra.Sahare@utility.esselgroup.com>
Sent: Monday, October 29, 2018 12:20 PM
To: Bharat Chaudhari; npandey
Cc: Nimish Sheth Rameshchandra; Rajesh Lemos; Amit Prasad Dixit
Subject: "Notice for Termination". of O&M Service Darbhanga- Motihari & NRSS XXXI (B) from 30.11.2018.

Dear Sir,
M/s Virtuous Energy Pvt. Ltd.
New Delhi

This is to Inform you that we have Issued the Work order No 8612004577, 8612004257 & 8612004256 for OPERATION AND MAINTENANCE service for Darbhanga- Motihari & NRSS XXXI (B) and same is valid up to 3rd Nov 2018. We hereby extend the same further up to 30/11/2018.

Sr No	Site	Work order No	Valid up to	Extended Up to
1	DMTCL	8612004256	3rd Nov 2018	30.11.2018
2	DMTCL	8612004257	3rd Nov 2018	30.11.2018
3	NRSS 31 B	8612004577	3rd Nov 2018	30.11.2018

Further to this please note that in line with the contract (as extended above) we will not be extending timelines after **30th November 2018** and consider this as " Notice of Termination". Request you to proceed handing over activities in line with the same and submit your all pending Bills.

Thanks & Regards
Narendra Mohan Sahare
Manager -SCM

Supply Chain Management
Smart Utility & Essel Infraprojects Ltd.
Sixth Floor, Plot No. 19 & 20
Sector 16-A, Film City
Noida, Uttar Pradesh -201301
Board: +91-120- 4849648
Mobile:+91 7987408966

B +Ve, B Happy

11. It is the case of the petitioner that despite handing over of the materials and relevant documents as per the directions stated in emails/communication dated 29.10.2018 and communicating the same to respondent no.1 *vide* letters dated 30.11.2018 and 13.02.2019, the respondents failed to clear the outstanding bills of the petitioner.

12. It is averred in the present petition that the petitioner received communications/emails dated 11.09.2019 from officials of parent/group company confirming that the aforesaid outstanding amounts are payable by respondent no.2 and 'no-claim' letters are required from the petitioner for clearance of the pending bills. In compliance of the aforesaid communication, petitioner issued 'no claim' letters dated 11.09.2019, in favour of the respondents. However, upon request of the official/s of the parent/group company the 'no claim' letters came to be re-issued by the petitioner, backdated to 28.05.2019. It is alleged that despite acknowledging and counter-signing the 'no claim' letters, the respondents failed to clear the outstanding dues.

13. Since the disputes between the parties persisted, the petitioner issued notices dated 30.08.2021 to the respondents, invoking arbitration as per clause 28 of the work orders for adjudication of disputes between the parties. However, respondent no.1 failed to respond whereas respondent no.2 *vide* letters dated 22.09.2021 refuted the aforesaid invocation notice primarily on the premise that there was no privity of contract between the petitioner and respondent no.2. The letter dated 22.09.2021 reads as under:-

ANUSHA NAGARAJAN
Advocate
A-35, First Floor, Defence Colony, New Delhi – 110024
T: +91 11 4100 6643; M: +91 9654116464
E-mail: anusha.nagarajan@anlawchambers.in

BY COURIER/ E-MAIL

22 September 2021

Shivam Goel,
Advocate
D-1, LGF, Pamposh Enclave,
New Delhi – 110048
Email: adv.shivamgoel@gmail.com

Sub: Notice dated 30.08.2021 (**"Arbitration Notice"**) purportedly issued under Section 21 of the Arbitration and Conciliation Act, 1996 (**"Arbitration Act"**).

Under instructions from my client, Darbhanga-Motihari Transmission Company Limited (hereinafter referred to as **"my Client"** or **"DMTCL"**), in response to the Arbitration Notice issued on behalf of your client, Virtuous Energy Private Limited (**"VEPL"**), it is stated as under:

1. At the outset, my Client, DMTCL denies the contents of your Arbitration Notice. The Arbitration Notice is wholly misconceived and has been issued without basis to DMTCL.

2. Please note that DMTCL has not entered into any agreement and/or arbitration agreement with VEPL. It is pertinent that the alleged arbitration clause referred to in the Arbitration Notice does not even identify the agreement in which it is allegedly contained. DMTCL is in any event, not party to any such alleged arbitration agreement referred to in the Arbitration Notice. In the absence of an arbitration agreement, my Client cannot be forcibly drawn into any arbitration proceedings that your Client may intend to initiate.

3. In addition to the aforesaid, none of the correspondence referred to in the Arbitration Notice establishes any privity between DMTCL and VEPL. Much less do such correspondence constitute an arbitration agreement between DMTCL and VEPL.

4. My Client takes strong exception to your Client's dishonest attempt to drag my Client into an arbitration, in the absence of any agreement, much less, any arbitration agreement between DMTCL and VEPL. It is my Client's belief that the Arbitration Notice is nothing but an attempt on the part of your Client to extort and coerce my Client to settle your Client's claims, despite my Client having no liability whatsoever, towards the same. Your Client has made baseless and untenable claims against DMTCL in the past and sent mis-guided communications in this regard, which my Client has categorically and unequivocally refuted, clearly pointing out that DMTCL has no privity of contract with VEPL and has no liability or obligation whatsoever towards VEPL. My Client refers to its communication of 10th February 2021 and similar other communications in this regard.

5. The *malafides* in your Client's intent and actions is evident from the fact that in the past, your Client had also communicated with a shareholder of DMTCL, which only acquired a stake in DMTCL from Essel Infraprojects Limited, on 28th May 2019.

6. You are therefore called upon to forthwith withdraw your Arbitration Notice with respect to my Client. Any attempt to proceed further qua my Client would be resisted by my Client, by taking recourse to such legal remedies as my Client may be advised, entirely at your risk, cost and consequences. Needless to add, any petition that your Client may prefer under Section 11 of the Arbitration Act qua my Client would be equally without merit, and my Client will oppose the same and urge that heavy costs be imposed upon your Client. My Client is part of a renowned and well-reputed brand and strongly believes that such *malafide* attempts on the part of your Client to forcibly drag my Client into frivolous litigation is damaging to my Client's reputation and standing. If your Client chooses to persist with any proceedings against my Client, it will take all necessary action to safeguard its reputation and seek heavy compensation for any injury caused to it.

7. Strictly without prejudice to the aforesaid, in response to the contents of the Arbitration Notice, my Client further states as under:

9. My Client's rights and remedies are reserved.

14. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute between the parties.

15. In the present proceedings, notice was issued by the Court on 16.08.2024. However, since none appeared on behalf of the respondent no.1, the Court *vide* order dated 18.11.2024 granted petitioner with a liberty to take fresh steps to serve the respondent no.1. An affidavit of service dated 06.12.2024 has been filed by the petitioner wherein it has been brought out that the petitioner has taken requisite steps to serve the respondent no.1 at its known address/es *via* speed post/s. The aforesaid communication is stated to be delivered on 04.12.2024 to the office of respondent no.1 situated in Noida, Uttar Pradesh whereas communication sent to the office of respondent no.1 situated at Delhi returned with a notation "*Item returned, as Addressee left without instructions*".

16. It is stated that the respondent no.1 was also served *via* email at esselinfra2019@gmail.com (as mentioned on the Master Data of the company), and the same has not bounced back. However, the communications delivered *via dasti* order on behalf of the petitioner remained unserved.

17. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondent no.1 and has thereby discharged its onus to effect service on the respondent no.1.

18. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent no.1.

SUBMISSIONS ON BEHALF OF THE PETITIONER

19. Learned counsel on behalf of the petitioner submitted that the respondents have been part of Essel Group and had a common majority shareholder i.e., Essel Infraprojects Ltd. It is stated that there has existed a strong organizational and financial link which clearly indicates that the respondents could be considered as a 'Single Economic Entity'. It is further stated that even after 49% of the shareholding of respondent no.2 were transferred to M/s Sekura Energy Ltd., the remaining shareholding still remained with Essel Group.

20. Learned counsel on behalf of the petitioner contends that the respondent no.2 is a veritable party to the work orders issued by the

respondent no.1 inasmuch as the respondent no.2 was the direct beneficiary of the contract in question. It is stated that the predominant obligation in terms of clauses 2 and 4 of the Technical Specifications of LoA (hereinafter referred as '*Technical Specifications'*) was towards respondent no.2 and not respondent no.1. It is further submitted that as per clause 1.1 of the Technical Specifications, the respondent no.2 has been defined as the "Owner" and in terms of clause 8 of the Technical Specifications, release of payments to the petitioner were consequential to various certifications issued by the respondent no.2. In this regard, reliance is placed upon "Direct Benefits Estoppel Theory" discussed by this Court in ***DLF Limited vs PNB Housing Finance Limited***, MANU/DE/2237/2024.

21. It is further submitted that email/communication dated 11.09.2019 received by the petitioner from officials of the Finance and Accounts Department, Essel Infraprojects Ltd. confirmed that the aforesaid outstanding amounts were to be paid by respondent no.2. It is further submitted that the 'no claim' letters dated 28.05.2019 (back-dated), were countersigned by the respondent no.2 and the said respondent expressly undertook the obligation to pay the dues of the petitioner on behalf of the respondent no.1. By placing reliance on judgment rendered by this Court in ***RBCL Piletech Infra vs Bhola Singh Jaiprakash Construction Ltd,*** MANU/DE/4804/2024, the petitioner contends that where payments are dependent on certification by a third party/ non-signatory, the non-signatory can also be referred to arbitration by a referral court.

SUBMISSIONS ON BEHALF OF THE RESPONDENT No.2

22. Learned counsel on behalf of the respondent no.2 submits that the respondent no.2 is neither a party to the arbitration agreement relied upon nor related to the disputes agitated by the petitioner. It is further stated that the petitioner has failed to place on record any correspondence or communications/documents to demonstrate that there exists any privity of contract between the petitioner and respondent no.2.

23. It is submitted that the reliance placed by the learned counsel of the petitioner on Technical Specifications is misplaced inasmuch as it outlines the scope of services to be rendered in the contract executed between the petitioner and respondent no.1.

24. It is stated that the respondent no.2 has never agreed to the terms and conditions specified in the Technical Specifications. Furthermore, the actual certificate of completion of work has also been issued by the respondent no.1.

25. It is stated that the respondent no.2 appointed respondent no.1 as its contractor for carrying out the O&M of the transmission system under a separate contract. Respondent no.1 at its own discretion sub-contracted the aforesaid contracted work to the petitioner by way of the LoAs and subsequent work orders, to which respondent no.2 was not a party. Thus, the respondent no.2 was only liable to make payments to respondent no.1, which it has already paid in full and for which respondent no.1 has also issued a no-dues certificate dated 28.05.2019 to the respondent no.2.

26. It is submitted that the ‘direct beneficiary estopple theory’ is not applicable in the present petition inasmuch as any project/contract which involves execution of different parts of the work through sub-contractor/s,

would inevitably have interference of the owner/s during the execution of the said contract. However, the same cannot be construed to conclude that owner/s is deriving direct benefits from the sub-contracted party. It is further submitted that under the sub-contract it was the respondent no.1 who was obligated to pay the petitioner and evidently, the petitioner never raised any invoices upon respondent no.2.

27. It is submitted that there exists no connection between the shareholders and management of respondent nos.1 and 2 pursuant to the transferring of shareholdings of the respondent no.2 to M/s Sekura Energy Ltd. It is further stated that the respondents have an independent corporate existence and are functionally, financially and economically neither interconnected nor intertwined.

28. The existence and authenticity of 'no claim' letter dated 28.05.2019 (allegedly back-dated) and email/communications dated 11.09.2019 exchanged between the petitioner and officials of Essel Infraprojects Ltd, prior to the issuance of the aforesaid letters is strenuously controverted by the learned counsel on behalf of the respondent no.2. It is contended that respondent no.2 neither authorized any person to execute any document pursuant to the change of management nor there is record or reference to any correspondence or email by which the said purported counter-signed letters appear to have been agreed to or sent to the petitioner by the respondents, particularly respondent no.2.

29. It is further submitted that the facts and circumstances alleged by the petitioner would require a detailed and elaborate examination of the facts, each of which would require to be proved by leading oral evidence, which

clearly is outside the purview of a referral court under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '*the A&C Act'*).

REASONING AND CONCLUSION

30. The legal position is now well settled that although normally, only formal signatories to an arbitration agreement will be bound by it, in certain circumstances, non-signatories may become bound therewith in certain situations.

31. Various tests and legal theories are applied to determine whether a non-signatory is to be bound by an arbitration agreement.

32. In ***Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and Others,*** (2013) 1 SCC 641 and ***Cox and Kings Limited v. SAP India Private Limited and Another***, (2024) 4 SCC 1, it has been recognized that consent-based theories such as agency, novation, assignment, operation of law, merger and succession and third-party beneficiaries can be applied to bind non-signatories to an arbitration agreement. Further, non-consensual theories such as alter ego and estoppel have also been applied to bind a non-signatory to an arbitration agreement. The Group of Companies Doctrine has also been applied in certain situations to bind non-signatories to an arbitration agreement.

33. In ***ONGC Ltd. v. Discovery Enterprises (P) Ltd.,*** 2022 8 SCC 42 the Supreme Court has taken note of the fact that there are at least two distinct estoppel doctrines that apply in the non-signatories context, that is, 'the direct benefits' estoppel theory and the 'intertwined' estoppel theory. It is

noticed that 'intertwined estoppel theory' looks at the nature of the disputes between the signatories and the non-signatories and in particular whether "issues the non-signatories seeking to resolve in arbitration are intertwined with the agreement with estoppel (signatory party) signed". The relevant observations of the Supreme Court in ***ONGC Ltd.*** (supra) are reproduced as under:-

> *"37. Gary B. Born in his treatise on International Commercial Arbitration indicates that" The principal legal basis for holding that a non-signatory is bound (and benefited) by an arbitration agreement … include both purely consensual theories (e.g., agency, assumption, assignment) and non-consensual theories (e.g. estoppel, alter ego)."*
>
> *38. Explaining the application of the alter ego principle in arbitration, Born also notes:*
>
> *"Authorities from **virtually all jurisdictions hold that a party who has not assented** to a contract containing an arbitration clause may nonetheless be bound by the clause if that party is an 'alter ego' of an entity that did execute, or was otherwise a party to, the agreement. This is a significant, but exceptional, departure from the fundamental principle … that each company in a group of companies (a relatively modern concept) is a separate legal entity possessed of separate rights and liabilities.*
>
> ***
>
> *"the group of companies doctrine is akin to principles of agency or implied consent, whereby the corporate affiliations among distinct legal entities provide the foundation for concluding that they were intended to be parties to an agreement, notwithstanding their formal status as non-signatories."*
>
> *39. Recently, John Fellas elaborated on the principle of binding a non signatory to an arbitration agreement from the lens of the doctrine of estoppel. He situated the rationale behind the application of the principle of direct estoppel against competing considerations of party autonomy and consent in interpreting arbitration agreements. Fellas observed that non-signatory parties can be bound by the principle of direct estoppel to prohibit such a party from deriving the benefits of a contract while disavowing the obligations to arbitrate under the same:*
>
> *"There are at least two distinct types of estoppel doctrine that apply in the*

> *non-signatory context: "the direct benefits" estoppel theory and the "intertwined" estoppel theory. The direct benefits theory bears the hallmark of any estoppel doctrine-prohibiting a party from taking inconsistent positions or seeking to "have it both ways" by "relying] on the contract when it works to its advantage and ignoring] it when it works to its disadvantage." Tepper Realty Co. v. Mosaic Tile Co. The direct benefits doctrine reflects that core principle by preventing a party from claiming rights under a contract but, at the same time, disavowing the obligation to arbitrate in the same contract.*
>
> ***
>
> *By contrast, the intertwined estoppel theory looks not to whether any benefit was received by the non-signatory, but rather at the nature of the dispute between the signatory and the non-signatory, and, in particular whether "the issues the non-signatory is seeking to resolve in arbitration are intertwined with the agreement that the estoppel [signatory party] has signed.…the intertwined estoppel theory has as its central aim the perseveration of the efficacy of the arbitration process is clear when one looks at the typical fact pattern of an intertwined estoppel case."*

34. In ***Cox & Kings Limited v. SAP India Private Limited and Another*** (supra), a Five-judge Bench of the Supreme Court while taking note of the observations in ***ONGC Ltd. v. Discovery Enterprises (P) Ltd***. (supra) has also observed that "the doctrine of arbitral estoppel suggests that a party is estopped from denying its obligation to arbitrate when it received a "direct benefit" from a contract containing an arbitration agreement". (Paragraph 59)

35. This Court in ***Shapoorji Pallonji and Co. Pvt. Ltd. v. Rattan India Power Ltd.,*** (2021) 281 DLT 246 has expressly noticed that several jurisdictions have drawn heavily on the principle of estoppel to include non-signatories within the sweep of an arbitration agreement. Particularly so, when the rights created in favour of the non-signatories are pursuant to the benefits derived under the main agreement containing the arbitration clause.

In this regard reference may be made to paragraph 30 of the judgment in case of ***Shapoorji Pallonji*** (supra) wherein it has been observed as under:

> "*30. Courts in several jurisdictions have drawn heavily on the principle of estoppel and have compelled non-signatories to arbitrate.*
>
> *31. In Avila Group Inc. v. Norma J. of California : 426 F. Supp. 537 (S.D.N.Y. 1977) the court found that a party cannot assert the existence of a valid contract to base its claims and at the same time deny the contract's existence to avoid arbitration. The court observed that "to allow [plaintiff] to claim the benefit of [a] contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act."*
> *32. In Life Techs. Corp. v. AB Sciex Prop. Ltd. : 803 F. Supp. 2d 270, 273-274 (S.D.N.Y. 2011) it was held that "a non-signatory may be estopped from avoiding arbitration where it knowingly accepted the benefits of an agreement with an arbitration clause. The benefits must be direct – which is to say, flowing directly from the agreement"."*

36. It is well settled that the scope of determining impleadment of non-signatories to an arbitration by a referral Court is confined to asserting, *prima facie* the existence of an arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement. In circumstances where complexity is involved in such a determination, the same is best to be left for consideration by an Arbitral Tribunal. The aforesaid view has been rendered by a Constitution Bench of the Supreme Court in ***Cox and Kings Ltd. vs SAP India (P) Ltd*** (supra) as under:

> *"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."*

37. Further, ***Cox & Kings*** (supra) also clearly acknowledges that "the issue of binding a non-signatory to an arbitration agreement is more of a fact specific aspect" (paragraph 60) and in this light, has clearly laid down that once existence of an arbitration agreement is established, the referral court can leave it to the Arbitral Tribunal to decide whether impleadment of non-signatory parties is warranted on application of the parameters laid down in ***Chloro Control India*** (supra), ***ONGC Ltd***.(supra) & ***Cox & Kings*** (supra).

38. Furthermore, considering the dicta laid down by the Supreme Court in ***Cox and Kings Ltd. vs SAP India (P) Ltd*** (supra) a Three-judge Bench of the Supreme Court in ***Ajay Madhusudan Patel and Others v. Jyotrindra S. Patel and Others***, 2024 SCC OnLine SC 2597 held that when a detailed examination of disputed questions of facts are necessary to determine whether a non-signatory is bound by the arbitration agreement, it should be left for a duly constituted arbitral tribunal to consider and a referral court should refrain from conducting 'mini trials' and delving into contested or disputed questions of facts. Relevant portion of the said judgment reads as under: -

> *"**79.** A detailed examination of numerous disputed questions of fact are imperative in deciding whether the SRG Group participated in the*

> *negotiation and performance of the underlying contract and can be bound by the arbitration agreement. At the cost of repetition, we may state that under our limited jurisdiction afforded under Section 11(6) of the Act, 1996 we should not conduct a mini trial and delve into contested or disputed questions of fact. This has been categorically laid down in several decisions of this Court including Vidya Drolia (supra) and Krish Spinning (supra). Further, it is also the case of the SRG Group that a dual test needs to be satisfied before it is compelled to be a party to the present arbitration proceedings i.e., (a) SRG Group should be shown to have agreed to the underlying contract and (b) SRG Group should also be shown to have agreed to be bound by the arbitration agreement. We are of the considered view that the same requires a much more detailed examination of the evidence that may be adduced by the parties which can only be gone into by the Arbitral Tribunal.*
>
> ***80.** Therefore, considering the complexity involved in the determination of the question whether the SRG Group is a veritable party to the arbitration agreement or not, we are of the view that it would be appropriate for the arbitral tribunal to take a call on the question after taking into consideration the evidence that may be adduced by the parties before it and the application of the legal doctrine as elaborated in the decision in Cox and Kings (supra).”*

39. In the present case, there is no controversy as regards existence of the arbitration agreement in the work orders issued in favor of the petitioner by the respondent no.1. As such, there is no impediment in constituting an arbitral tribunal for adjudicating the disputes between the petitioner and respondent no.1 as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. vs. Krish Spinning,*** 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, In re, 2023 SCC OnLine SC 1666.

40. As regards the issue whether the respondent no.2 is veritable party to the arbitration agreement by virtue of (i) being a group company; (ii) by virtue of being a direct beneficiary of the contractual mechanism (iii)

assumption of contractual obligations under the work order/s (by the respondent no.2) by virtue of correspondence – are all aspects which require an intricate factual analysis and determination.

41. In terms of the judgment of Supreme Court in ***Cox and Kings Ltd. vs SAP India (P) Ltd*** (supra) and ***Ajay Madhusudan Patel and Others v. Jyotrindra S. Patel and Others*** (supra), the aforesaid aspects are necessarily required to be considered by a duly constituted arbitral tribunal.

42. In the circumstances, on a *prima facie* conspectus, there is no impediment to constituting an arbitral tribunal in these proceedings. The issue as to whether the respondent no.2 can be brought within the sweep of the proposed arbitration would necessarily be decided by the learned arbitrator in accordance with law, upon consideration of the relevant factual conspectus.

43. Needless to say, it shall be open to the respondent no.2 to raise appropriate jurisdictional objections which shall be duly considered by the Arbitral Tribunal in accordance with law.

44. Accordingly, Mr. Ravinder Aggarwal, Advocate (Mob. No.: + 91 9810056263) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

45. The reference under each work order shall be independent of each other. However, the learned Arbitrator may hold common sittings for the sake of convenience.

46. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

47. It is directed that the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

48. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

49. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

50. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

JULY 8, 2025/*sl*