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

Reserved on: 28th April, 2026
Pronounced on: 02nd July, 2026

\+ ARB.P. 605/2025 & I.A. 11842/2026

INDIACAN EDUCATION PRIVATE LIMITED .....Petitioner

Through: Mr. Anil Airi, Sr. Adv. with Mr. Vishal Tyagi, Ms. Jasmin Sokhi, Mr. Harsh Gautam, Ms. Sadhna Sharma, Mr. Sumant Nayak, Ms. Shraddha and Mr. Vedant Goel, Advs.
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versus

MINISTRY OF RURAL DEVELOPMENT & ORS. .....Respondents

Through: Mr. Premtosh K. Mishra, CGSC with Mr. Shrey Sharma, Mr. Anubhav Upadhyay and Mr. Arpit Bamal, Advocates for respondent no. 1.
(M): 9818727744
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Mr. Chetanya Puri, SPC with Ms. Vidhi Gupta, Ms. Nisha Puri and Mr. Rishab Jain, Advocates for respondent no. 2.
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Mr. Parth Awasthi and Ms. Simran Sharma, Advs. for R-3
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")**, seeking appointment of a Sole Arbitrator, for adjudication of disputes in accordance with Article VIII, Clause 14 of the Memorandum of Understanding dated 02nd April, 2016 **("MoU")**, entered into between the petitioner and respondent no. 2.

2. This Court notes that the petitioner *vide* order dated 07th April, 2025 has conceded to the fact that the MoU was executed in Hyderabad, however, the petition in paragraph 44 incorrectly shows the same as New Delhi. The said order further records the admission of the petitioner that respondent no. 1 has not executed the MoU.

3. In order to rectify the aforesaid discrepancy in the petition with respect to the place of execution of the MoU, this Court on 17th September, 2025 allowed the *I.A. 18292/2025*, seeking amendment of the present petition, and thereby, took the amended petition on record, as per which, the place of execution of the MoU is Hyderabad.

BRIEF FACTS

4. The relevant facts, necessary for adjudication of the present petition, are as under:

4.1. Respondent no. 1, i.e., Ministry of Rural Development, Government of India **("MoRD")**, to improve the educational standards and promote skill development and growth of rural India, introduces various schemes and

projects. For this purpose, respondent no. 1, with the aid of Skill Development Corporations, appoints various Project Implementation Agencies for assignment of such projects.

4.2. Under the aegis of one such scheme, namely, Deen Dayal Upadhyaya Grameen Kaushalya Yojna **("DDU scheme")**, respondent no. 1 had appointed the petitioner, who is engaged in the business of providing educational services, as a Project Implementation Agency for a tenure of one year, thereby, targeting 459 beneficiaries in the districts of Jammu and Srinagar, Union Territory of Jammu and Kashmir. The petitioner was appointed as a Project Implementation Agency *vide* Sanction Letter dated 11th February, 2016, for the purposes of capacity building and skill development in rural youths in the Union Territory of Jammu and Kashmir **("Project")**.

4.3. The entire cost of the aforesaid Project was to the tune of Rs. 1,34,17,488/-, which was to be released by respondent no. 1 to respondent no. 2, i.e., National Institute of Rural Development, Hyderabad **("NIRD")**, in three instalments in the ratio of 25:50:25. Thereafter, respondent no. 2 was to disburse the said amount to the petitioner. The first instalment was to be released along with the sanction of the Project, whereas, the second and third instalments were to be released upon achieving the corresponding milestones, as per the MoU. Consequently, respondent no. 1 had released a sum of Rs. 33,54,372/-, amounting to 25% share of the total cost of the Project.

4.4. Post sanctioning of the Project, the petitioner and respondent no. 2 duly signed and executed the MoU in Hyderabad, however, the stamp paper

affixed to the said MoU was generated in New Delhi.

4.5. In pursuance of the said Sanction Letter and the MoU, the petitioner commenced its operation in both Srinagar and Jammu districts. Thereafter, respondent no. 1 issued a revised Sanction Letter dated 19th December, 2016 to respondent no. 2, whereby, the aforesaid Project was revised for a period of 03 years, instead of 01 year, and targeting 290 beneficiaries. Further, the revised cost of the Project came to the tune of Rs. 1,40,16,985/-, which was to be incurred by respondent no. 1.

4.6. Upon completion of the requisite milestones, the petitioner duly apprised respondent nos. 1 and 2, through various representations, regarding its eligibility to claim second instalment amounting to Rs. 70,08,492/-.

4.7. As part of its transition from "Year Plan" to "Action Plan", respondent no. 1, by way of the order dated 27th November, 2018, transferred the administration and coordination of the Project being undertaken by the petitioner, from respondent no. 2 in favor of respondent no. 3, i.e., Himayat Mission Management Unit of Jammu and Kashmir State Rural Livelihood Mission. The annexure to the said order, also stated that a recommendation for release of second instalment was sent to MoRD on 01st May, 2018.

4.8. Subsequently, the petitioner completed the Project and accordingly, submitted the Project Closure Report, along with other requisite documents, *vide* its communication dated 13th May, 2020.

4.9. By way of its written representation dated 15th May, 2020 addressed to respondent no. 3, the petitioner further requested for disbursal of its dues. In response, respondent no. 3, *vide* the E-mail dated 18th May, 2020, stated

that the release of funds was under process and a communication with respect to signing of the tripartite MoU has already been sent to respondent no. 2.

4.10. Thereafter, respondent no. 1 by way of letter dated 06th January, 2021 further clarified that post transfer of the Project to respondent no. 3, only an *addendum* to the MoU was required to be executed, instead of a tripartite MoU, as proposed by respondent no. 3.

4.11. Since the petitioner did not receive the payments towards the Project, the petitioner sent various representations and follow-ups to the respondents. Further, upon not receiving the *addendum* to the MoU from the respondents, the petitioner itself had shared a draft *addendum* to the MoU, for the purposes of validation and execution. Consequently, respondent no. 3 *vide* its communication dated 01st September, 2021, stated that they have already taken up the matter with respondent no. 2 for completion of procedural formalities, as stipulated by respondent no. 1, and the same is awaited from their side.

4.12. Additionally, respondent no. 2, through its E-mails dated 25th October, 2021 and 14th December, 2021, again directed the petitioner to submit the Project Closure Report for onward submission to respondent no. 1, and other financial documents for audit and closure of the Project. Pursuant thereto, the relevant documents were accordingly supplied to respondent no. 2 by the petitioner.

4.13. On account of the non-payment of dues, the petitioner *vide* notice dated 01st April, 2022, invoked Article VIII of the MoU and requested respondent no. 2 to engage in mutual consultation in respect of the dispute in

terms of Clause 14.1 of Article VIII of the MoU. In response, respondent no. 2 shared an E-mail dated 04th August, 2022, stating that financial audit will be completed for closure of the Project, subject to necessary verifications of the candidates.

4.14. Despite the follow-ups by the petitioner and assurances from the respondents with respect to payment of dues, no proper steps were taken by the respondents. Therefore, the petitioner issued a notice dated 05th February, 2025 to the respondents, *inter alia*, seeking to arbitrate the present dispute on account of non-payment of the dues to the tune of Rs. 1,66,37,275/-.

4.15. Respondent no. 2 addressed an E-mail dated 25th February, 2025 stating that pursuant to the transition of the Project to respondent no. 3, the second instalment had not been released in favour of the petitioner. While, respondent no. 1 failed to respond to the notice invoking arbitration, respondent nos. 2 and 3 issued their respective communications, wherein, they failed to nominate/agree for initiation of arbitration proceedings.

4.16. Thus, dispute has arisen between the parties and the present petition came to be filed.

SUBMISSIONS ON BEHALF OF THE PARTIES:

5. The following contentions have been raised on behalf of the petitioner:

5.1. Respondent no. 1 is a necessary and proper party to the arbitral proceedings sought to be initiated by the petitioner herein, since respondent no. 2 is merely a pass-through agency acting on behalf of respondent no. 1.

5.2. The DDU scheme is an initiative under respondent no. 1 and the

Projects thereunder are funded by the Central and the State Governments. Further, the Empowered Committee, belonging to respondent no. 1, had approved the proposal of the petitioner. The total cost of the Project was to be released in three instalments in the ratio of 25:50:25 to respondent no. 2 for onward transfer to the petitioner, who was acting as a Project Implementation Agency.

5.3. Thus, respondent no. 1 was the sanctioning authority of the Project and also the fund disbursing authority. The same is clear from Clause 2 of the MoU, wherein, it has been stated that respondent no. 2 was the Programme Monitoring Agency and would only be able to release funds to the petitioner upon release of the same from respondent no. 1.

5.4. The Sanction Orders dated 11th February, 2016 and 19th December, 2016 were issued by respondent no. 1 in furtherance of the execution of the Project, and the same, thus, forms part of the MoU executed between respondent no. 2 and the petitioner. Even as per Clause 2.2 of the Sanction Order dated 11th February, 2016, respondent no. 1 herein was to release the funds for the project as a grant-in-aid to respondent no. 2. Further, Clause 5.6 of the MoU stated that the release of the funds was subject to the internal audit of respondent no. 1.

5.5. Clause 8 of the MoU also stated that respondent no. 1 could terminate the MoU, and put the petitioner under blacklist by way of issuance of notice of termination.

5.6. Respondent no. 1 exercised administrative control over the Project, as is evident from the communication/order dated 27th November, 2018, whereby, respondent no. 1 transferred the Project from respondent no. 2 to

respondent no. 3. Further, *serial no. 3* to the said order, acknowledged that the recommendation for release of second instalment had been sent to respondent no. 1 on 01st May, 2018. Therefore, without respondent no. 1's involvement in the proposed arbitral proceedings, crucial questions regarding the delay in disbursal of payments cannot be properly adjudicated, on account of the fact that all administrative and effective control towards the Project was being conducted by respondent no. 1, while respondent no. 2 was merely a coordinating agency.

5.7. The objection of the respondent no. 1 that they have no authority to take any further action with regard to the Project once the same stood transferred from "Year Plan" to "Action Plan", are precisely the questions which can be dealt with by the Arbitral Tribunal. Additionally, these issues cannot come under the scope of enquiry at the stage of Section 11 of the Arbitration Act, as it would necessitate detailed examination by the Arbitral Tribunal.

5.8. The participation of respondent no. 1, owing to its privity and access to documents, is necessary in the arbitration proceedings sought to be commenced by the present petition.

5.9. Further, respondent no. 3 was the implementing and monitoring agency of the DDU scheme within the Union Territory of Jammu and Kashmir, as evident from its own website and the *Ajeevika* State Guidelines of September, 2013. Additionally, it is a matter of record that respondent no. 1 *vide* order dated 27th November, 2018 transferred the Project from respondent no. 2 to respondent no. 3. Further, respondent nos. 2 and 3 were to take conjoint action, as evident from a bare perusal of *notification no.*

70/2015.

5.10. In the minutes of meeting dated 12th October, 2021 held in presence of all the respondents, shared *vide* communication dated 20th October, 2021, it was expressly stated that the earlier MoU is still valid, and would be honoured by both respondent nos. 2 and 3. It was further clarified in the aforesaid communication that any release of payment to be made with respect to the Project shall be done after due process, and from the funds which are with respondent no. 3. Therefore, respondent no. 3 was also bound by the terms of the MoU, and is a necessary party to the present proceedings.

5.11. Thus, respondent no. 1 is the fund disbursal agency, whereas, respondent nos. 2 and 3 are Implementing Agencies, thereby, playing a crucial role in non-disbursal of the funds to the petitioner.

5.12. The scope of inquiry under Section 11 of the Arbitration Act is limited to determination of "existence of arbitration agreement" and nothing else. Moreover, the entire exercise of determining whether a non-signatory is bound by an arbitration agreement, in contradistinction to the narrow question of the existence of the arbitration agreement, necessitates a far more expansive enquiry.

5.13. The adjudication exercised by the Referral Courts under Section 11 of the Arbitration Act is judicial in nature and any opinion of the said Courts would usurp the Arbitral Tribunal's role as the forum of first instance for dispute resolution. The grievance of respondent no. 1 pertaining to non-impleadment ought to be raised before the Arbitral Tribunal.

5.14. This Court necessarily has territorial jurisdiction to entertain the

present petition since respondent no. 2 is merely a pass-through agency, acting on behalf of respondent no. 1.

5.15. Further, when the arbitration agreement is silent on the aspect of "seat", "venue" or "place" of arbitration, the determining factor will be where the cause of action has arisen, as well as where the respondent actually/voluntarily resides or carries its business. Section 2(1)(e) of the Arbitration Act has to be read with Sections 16 to 20 of the Code of Civil Procedure Code, 1908 **("CPC")** to determine the territorial jurisdiction of the Court in a petition filed under Section 11 of the Arbitration Act.

5.16. As per the terms of the MoU, respondent no. 1, i.e., the decision-making authority, has the right to terminate the MoU by issuing a notice of termination to the petitioner. Additionally, the Sanction Letter and the revised Sanction Letter were also issued by respondent no. 1, which also specified that the total cost of the Project shall be borne entirely by the Central Government. Respondent no. 1, who was exercising the effective administrative and financial control over the Project, has its registered address within the territorial jurisdiction of this Court.

5.17. Respondent no. 1, i.e., the MoRD has its registered office at *Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi*, and is exercising an imperative role in administering the Project, thereby, conferring territorial jurisdiction upon this Court to adjudicate the present petition.

5.18. Even though the MoU between the petitioner and respondent no. 2 was signed in Hyderabad, however, the stamp paper affixed to the said MoU was generated in New Delhi.

5.19. The two suits, being *CS(COMM) 692/2025* and *CS(COMM) 43/2025*,

have been instituted by the petitioner herein, however, the same arise out of different contracts, having different subject matters. Further, the said contracts do not have an Arbitration Clause. Therefore, the said proceedings do not have substantially similar issues, as those raised in the present petition.

5.20. The present petition has been filed within the stipulated limitation period. By way of various communications, respondent nos. 2 and 3 have duly acknowledged the debt owed to the petitioner, and have assured that relevant financial disbursement would be made in favour of the petitioner. Additionally, respondents have, till date, not disputed the petitioner's entitlement to the dues, rather even in its reply to the notice invoking arbitration dated 25th February, 2025, respondent no. 2 has acknowledged the said dues, and has proposed respondent no. 1 to expedite the release of the same. Thus, these acknowledgments, on 18th May, 2020 and 04th August, 2022 are tantamount to acknowledgements of debt under Section 18 of the Limitation Act, 1963 **("Limitation Act")**, and constitute a fresh cause of action.

SUBMISSIONS MADE BY RESPONDENT NO. 1:

6. Rebutting the contentions of the petitioner, the submissions made by the respondent no. 1, are as under:

6.1. The present petition is liable to be dismissed on the grounds of misjoinder of parties since respondent no. 1 is neither a necessary nor a proper party to the present proceedings.

6.2. The MoU was exclusively between the petitioner and respondent no. 2, and admittedly, respondent no. 1 is not a signatory to the same. Therefore,

respondent no. 1 has no privity of contract with the petitioner. Further, no arbitration agreement has been signed between the petitioner and respondent no. 1, which is a mandatory requirement as per Section 7 of the Arbitration Act.

6.3. The MoU is silent on the aspect of jurisdiction and it is an admitted fact that the MoU was executed between the petitioner and respondent no. 2 at Hyderabad for the Project in Union Territory of Jammu and Kashmir. Additionally, the petitioner and respondent no. 2 are situated in Tamil Nadu and Hyderabad, respectively.

6.4. Respondent no. 1 sanctioned the Project in favour of the petitioner under the DDU scheme, and had accordingly released a sum of Rs. 33,54,372/- (being the 25% share of the total project cost of Rs. 1,34,17,488/-). Thereafter, in compliance of the *notification no. 70/2015* dated 21st December, 2015, respondent no. 1 approved the transfer of the "Year Plan" to "Action Plan". Accordingly, *vide* letter dated 27th November, 2018, the present Project was transferred to respondent no. 3, thereby, making the respondent no. 3 as an Action Plan State. In compliance of the *notification no. 70/2015*, the petitioner, respondent no. 2 and respondent no. 3 were liable to execute an *addendum* to the MoU, but they failed to execute the same.

6.5. Thus, upon the aforesaid transfer of the Project, respondent no. 1 has no authority to take any further action on any issue in the said Project. Further, respondent no. 3 is a necessary and proper party to the dispute, and in the absence of any valid arbitration agreement between the petitioner and respondent no. 3, the present matter cannot be adjudicated.

6.6. The petitioner failed to achieve the milestones of the Project sanctioned and is misrepresenting to State authorities that the petitioner has completed the requisite targets. Hence, the said issue requires detailed adjudication before the appropriate court of law.

6.7. The petitioner herein has instituted certain civil suits, namely, *CS(COMM) 692/2025* and *CS(COMM) 43/2025*, which are *sub judice* before this Court. In the said suits, substantially similar issues have been raised as those in the present proceedings. Thus, in view of the pendency of the said suits, the present petition is liable to be dismissed to prevent multiplicity of proceedings.

SUBMISSIONS MADE BY RESPONDENT NO. 2:

7. The submissions put forth by respondent no. 2, i.e., NIRD, are as follows:

7.1. Respondent no. 2 is an autonomous body working under the aegis of respondent no. 1, acting as a bridge between respondent no. 1 and the Project Implementing Agencies, by being involved in scrutinizing data, checking reports and releasing payments during all such time, while the Projects remain within the control of respondent no. 1, prior to it being transferred to the relevant State and their agencies.

7.2. The case of the petitioner is that they are entitled to certain payments, which are to be released by respondent no. 1, through respondent no. 2, until the Project stood transferred to respondent no. 3. Pursuant to the transfer, the role of respondent no. 2 was restricted to that of a Central Technical Support Agency, and the financial powers, if any, were also taken away from respondent no. 2. Thus, the payment thereafter is to be done by respondent

no. 3, in consultation with respondent no. 1.

7.3. Further, *vide* letter dated 06th January, 2021, respondent no. 1 clarified that the respondent no. 2 should not be a party to the MoU, which is to be signed by respondent no. 3 and the petitioner, subsequent to the transfer of the Project. Consequently, respondent no. 2 ceased to have any contractual/financial dealings with the petitioner. Thus, respondent no. 2 is legally barred from performing any obligations under the MoU due to superseding *notification* transferring the Project to respondent no. 3.

7.4. The MoU, by way of which, the petitioner is invoking arbitration, has already attained nullity, upon the transfer of the Project in favour of respondent no. 3. Further, upon such transfer, the petitioner was to execute an *addendum* to the MoU, which it failed to do, and is now trying to impose the liability on respondent no. 2.

7.5. Thus, the notice invoking arbitration was wrongly addressed to respondent no. 2, who no longer has privity or control over the funds. Therefore, the invocation of the Arbitration Clause itself is invalid.

7.6. This Court has no jurisdiction to entertain the present petition since neither the MoU has been entered upon in Delhi, nor any of the parties are situated within the jurisdiction of this Court. Further, admittedly, the petitioner is situated in Chennai, Tamil Nadu, and it entered into the MoU with respondent no. 2 in Hyderabad, where the respondent no. 2 is situated, for the work to be executed in Union Territory of Jammu and Kashmir.

7.7. The petitioner has filed the present petition solely on account of the fact that the stamp paper over which the MoU was executed, was created in New Delhi. However, the same would not, *ipso facto*, make New Delhi as

the place for conducting the arbitration proceedings, in the absence of any covenant in the MoU with regard thereto.

7.8. Additionally, the present dispute emanates from independent administrative decisions of the Government of India **("GOI")** and not from any private commercial contracts. Issues related to implementation of Government policies and release of public funds are public functions and are not amenable to arbitration.

7.9. Moreover, the present petition is also not maintainable on account of it being barred by limitation.

SUBMISSIONS MADE BY RESPONDENT NO. 3:

8. The submissions on behalf of respondent no. 3, are as follows:

8.1. Respondent no. 3 works under the aegis of Department of Rural Development and Panchayati Raj of Jammu and Kashmir, and as such, is a completely distinct body from respondent nos. 1 and 2.

8.2. Respondent no. 3 herein is neither a party nor a signatory to the MoU, and as such, could not have been arrayed as a respondent in the present petition. Further, the MoU and its terms cannot be made binding upon respondent nos. 1 and 3.

8.3. The claims of the petitioner for pending dues with regard to the Project are based upon the MoU, Sanction Letter dated 11th February, 2016 and revised Sanction Letter dated 19th December, 2016, and none of the said documents fasten any liability on respondent no. 3 for making payments to the petitioner.

8.4. Subsequent to the transfer of the Project to respondent no. 3, a proposal was sent by respondent no. 1 *vide* letter dated 06th January, 2021,

that only an *addendum* to the MoU is required to be executed, instead of tri-partite agreement.

8.5. However, in pursuance of the same, respondent no. 3 had neither sent any such draft of the *addendum*, nor replied to the draft of *addendum* sent *vide* E-mail dated 10th June, 2021 by the petitioner to respondent no. 3. Thus, there exists no *addendum* to the MoU, thereby, concluding that respondent no. 3 has no privity with the MoU and the Sanction Letters.

ANALYSIS AND FINDINGS:

9. I have heard learned counsels appearing for the parties and have perused the documents on record.

10. The paramount question that arises for determination by this Court is whether this Court has territorial jurisdiction to entertain the present petition. Furthermore, the other issue to be considered by this Court is as to whether respondent nos. 1 and 3, not being signatories to the MoU, can be referred to arbitration. Both the issues being intertwined, they are taken up by the Court together.

11. At the outset, this Court notes that the petitioner has its registered office in Chennai at *The Hive, 3rd Floor, No. 44, Pilliayar Koil Street, Anna Nagar, Chennai, Tamil Nadu – 600040*.

12. Respondent no. 1, i.e., MoRD, is situated in Delhi at *Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110001*. Further, respondent no. 2, namely, NIRD is an autonomous organisation of respondent no. 1 and acts as a Technical Support Agency for coordinating and monitoring projects for respondent no. 1 and is located in Hyderabad at *NIRD Road, Hyderabad, Telangana – 500030.* Additionally, respondent no. 3 is also a state

government entity for monitoring the development projects in Union Territory of Jammu and Kashmir and is situated at both Jammu and Srinagar, Jammu and Kashmir.

13. It is pertinent to note that in the present case, the MoU containing the Arbitration Clause has been signed in Hyderabad on 02nd April, 2016, only between the petitioner and respondent no. 2, in relation to the Project in Union Territory of Jammu and Kashmir, having a total Project cost of Rs. 1,34,17,488/-. Admittedly, the stamp paper for the MoU has been purchased/created in the NCT of Delhi.

14. In terms of the MoU, the petitioner was designated as a Programme Implementation Agency for the Project, aimed at assisting rural youths in Union Territory of Jammu and Kashmir under the scheme introduced by respondent no. 1. Further, the dispute between the parties herein has arisen on account of alleged non-payment of amounts due and payable to the petitioner towards the Project.

15. The Dispute Resolution Clause is contained in Article VIII, Clause 14 of the MoU, which is reproduced hereinbelow:

ARTICLE- VIII

14. Dispute Resolution

14.1 In case of any disagreement or dispute between the parties attempt shall be made to resolve the dispute through consultations between the parties.

14.2 The decision regarding breach of any clause under this agreement by the Second Party shall be discussed and arrived at after mutual consent and in case any breach has been committed by the Second Party of any of the terms and conditions of this Agreement/ sanction letter/ guidelines, such decisions taken by the First Party shall be conclusive, final

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Addl. Project Director
DDU-GKY Division
NIRD&PR, Rajendranagar
Hyderabad - 500 030.

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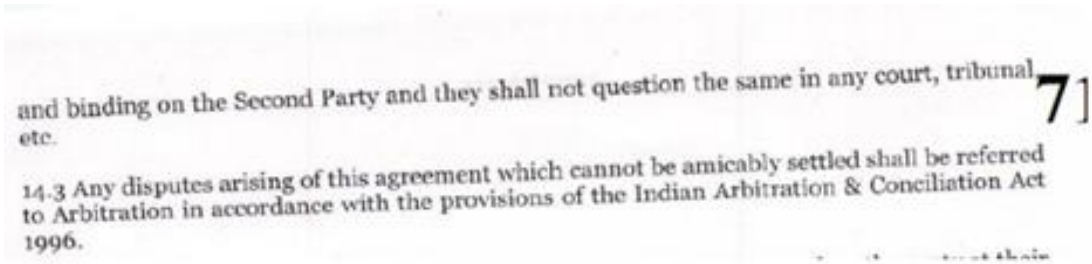

and binding on the Second Party and they shall not question the same in any court, tribunal, etc. 71

14.3 Any disputes arising of this agreement which cannot be amicably settled shall be referred to Arbitration in accordance with the provisions of the Indian Arbitration & Conciliation Act 1996.

16. A perusal of the aforesaid Dispute Resolution Clause shows that all disputes arising out of the MoU, which cannot be amicably settled, shall be referred to arbitration in accordance with the provisions of the Arbitration Act. However, the said Clause does not specify either the seat or the venue of the arbitration.

17. Since the Dispute Resolution Clause is silent with regard to the seat or venue of the arbitration, it is necessary to ascertain whether this Court can be said to have territorial jurisdiction to entertain the present petition. In this regard, it is to be noted that the dispute raised by the petitioner essentially pertains to the non-payment of the amounts due in relation to the Project. Thus, delving on the aspect of territorial jurisdiction and holding that while determining territorial jurisdiction of a Court, what is decisive is the accrual of cause of action, this Court in the case of ***Prashant Kumar Parashar Versus Sumit Singla and Another, 2025 SCC OnLine Del 1745***, has held as under:

> *"xxx xxx xxx*
>
> ***9. As regards the question of territorial jurisdiction of this Court, it is purely decided based on the arbitration agreement existing in the Partnership Deed. It is a settled position in law that when the arbitration agreement is silent on the aspect of 'seat', 'venue' or 'place' of arbitration, the determining factor will be where the cause of action arises as well as where the defendant/respondent actually or voluntarily resides or carries on their business. In other words, Section 2(1)(e) of the A&C Act has to be read in light with Sections 16 to 20 of CPC to***

determine the territorial jurisdiction of the Court at the stage of considering referral to arbitration in a petition under Section 11 A&C of the Act.

10. *A gainful reference may be made to the decisions of the Supreme Court in BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., (2023) 1 SCC 693, and Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, reported as 2022 SCC OnLine SC 568. In the latter, it was held, as under:*

> *"27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction.* ***Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.***
>
> *28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent."*

11. ***A perusal of the aforenoted legal position makes it amply clear that at the stage of determining the jurisdiction of the Court to entertain a Section 11 A&C Act petition, in case of lack of consent between the parties as to the seat/venue of arbitration, which is reflected from the arbitration clause of the subject agreement, the Court must determine jurisdiction by taking the aid of Sections 16 to 20 of the CPC. In such a case, two factors are of relevance– (i) where the respondent actually or voluntarily resides or carries on their business, and (ii) where the cause of action, wholly or in part, arises. As regards the first factor, it is undisputed that both the respondents reside in Bangalore. Therefore, our discussion becomes predominantly centred around examining the second factor, i.e., where the cause of action arises***.

12. ***A catena of Supreme Court decisions have clarified that while determining territorial jurisdiction of a Court, what is decisive is the accrual of cause of action. In other words, cause of action is a bundle of facts which create rights and obligations and gives rise to the right to sue to a party. Moreover, cause of action is made up of material and integral facts. This implies that not every insignificant or inconsequential fact***

becomes a part of cause of action. In fact, for a fact to be considered material enough to lead to the conclusion as to accrual of cause of action, it must be proved that the said fact has a nexus with lis between the parties and that it is integral to the dispute at hand. Reference may be made to the decision of the Apex Court in Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335*. Relevant part of it is reproduced herein:*

> *"25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case****. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action****. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered."*

13. Territorial jurisdiction of a Court is ascertained having regard to the place of accrual of cause of action. Some of the relevant principles that have developed in this area of jurisprudence are, including but not limited to, that making and signing of a contract constitutes cause of action; that facts which are necessary to decide the lis between the parties must have wholly or at least in part, arisen within the territorial jurisdiction of the Court; that each fact pleaded in the petition would not ipso facto be considered relevant while determining cause of action and that they must have a nexus with the issues involved in the matter; and importantly, that an insignificant or trivial part of cause of action would not be sufficient to confer territorial jurisdiction, even if incidentally forming a part of cause of action*.*

14. Moreover, while determining accrual of cause of action vis-à-vis part payment, law is clear on the aspect insofar as the relevant factor for consideration is where money is expressly or impliedly payable. Such a place, when either specified by the terms of the contract or evident by the intent of the parties, shall validly have jurisdiction to adjudicate upon disputes arising out of the concerned contract. *Reliance is placed on the decision of the Apex Court in A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163; relevant parts being reproduced hereinunder:*

> *"13. Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be*

remembered that earlier Section 7 of Act 7 of 1888 added Explanation III as under:

"Explanation III.—In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:
(1) the place where the contract was made;
(2) the place where the contract was to be performed or performance thereof completed;
(3) ***the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."***

xxx xxx xxx"

(Emphasis Supplied)

18. Accordingly, the settled legal position is that where the Arbitration Clause is silent on the aspect of seat, venue, or place of arbitration, the Court, at the stage of considering a petition under Section 11 of the Arbitration Act, is required to determine the territorial jurisdiction by reference to Sections 16 to 20 of the CPC, read with Section 2(1)(e) of the Arbitration Act. In terms thereof, the Court will have to consider as to where the cause of action, wholly or in part, arises, or where the respondent actually/voluntarily resides or carries on business.

19. It is apposite to note that territorial jurisdiction for entertaining civil suits has been provided in Sections 16 to 20 of the CPC. Accordingly, a Court within whose jurisdiction, the defendant actually or voluntarily resides or carries on business, or where any part of cause of action, wholly or in part, has arisen, would have territorial jurisdiction to entertain the suit. Consequently, where the arbitration agreement does not specify the seat or place of arbitration, the territorial jurisdiction of the Court for entertaining the petition under Section 11 of the Arbitration Act, is required to be determined by referring to Sections 16 to 20 of the CPC.

20. Reference in this regard is made to the judgment passed in the case of ***Ravi Ranjan Developers Pvt. Ltd. Versus Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568,*** wherein, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***23.*** *Subject to the pecuniary or other limitations prescribed by any law, suits for recovery of immovable property or determination of any other right to or interest in an immovable property or compensation for wrong to immovable property, is to be instituted in the Court, within the local limits of whose jurisdiction, the property is situated. Certain specific suits relating to immovable property can be instituted either in the Court within the limits of whose jurisdiction the property is situated, or in the Court within the local limits of whose jurisdiction the Defendant actually or voluntarily resides or carries on business.*
>
> ***24. All other suits are to be instituted in a Court, within the local limits of whose jurisdiction the Defendant voluntarily resides or carries on business. Where there is more than one Defendant, a suit may be instituted in the Court within whose jurisdiction any of the Defendants voluntarily resides or carries on business. A suit may also be instituted in a Court within whose jurisdiction the cause of action arises either wholly or in part****.*
>
> *xxx xxx xxx*
>
> ***26.*** *Of course, under Section 11(6), an application for appointment of an Arbitrator necessarily has to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits. As such, the definition of Court in Section 2(1)(e) of the A&C Act would not be applicable in the case of a High Court exercising jurisdiction under Section 11(6) of the A&C Act to appoint an Arbitrator/Arbitral Tribunal.*
>
> ***27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act****.*
>
> ***28.*** *It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in*

India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.

xxx xxx xxx"

(Emphasis Supplied)

21. Likewise, reiterating that the territorial jurisdiction of a Court is ascertained, having regard to the place where the cause of action, wholly or in part, has accrued, this Court in the case of ***Faith Constructions Versus N.W.G.E.L Church, 2025 SCC OnLine Del 1746***, held as follows:

"xxx xxx xxx

*7. **As regards the primary objection taken by the respondent vis-à-vis territorial jurisdiction of this Court to entertain the present petition, the same warrants a factual and legal analysis. It is a settled position in law that when the arbitration agreement is silent on the aspect of 'seat', 'venue' or 'place' of arbitration, the determining factor will be where the cause of action arises as well as where the defendant/respondent actually or voluntarily resides or carries on their business. In other words, Section 2(1)(e) of the A&C Act has to be read in light with Sections 16 to 20 of CPC to determine the territorial jurisdiction of the Court at the stage of considering referral to arbitration in a Section 11 A&C Act petition**.*

A gainful reference may be made to the decisions of the Supreme Court in BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., (2023) 1 SCC 693, and Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568. In the latter, it was held, as under:

*"27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. **Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.***

28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any

High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent."

***8**. **A perusal of the aforenoted legal position makes it amply clear that at the stage of determining the jurisdiction of the Court to entertain a petition under Section 11 A&C Act, in case of lack of consent between the parties as to the seat/venue of arbitration, which is reflected from the arbitration clause of the subject agreement, the Court must determine jurisdiction by taking the aid of Sections 16 to 20 of the CPC. In such a case, two factors are of relevance- (i) where the respondent actually or voluntarily resides or carries on their business, and (ii) where the cause of action, wholly or in part, arises.** As regards the first factor, it is undisputed that the respondent resides and carries on its business in the state of Odisha. Therefore, the discussion becomes predominantly centred around examining the second factor, i.e., where the cause of action arises.*

***9. A catena of Supreme Court decisions have clarified that while determining territorial jurisdiction of a Court, what is decisive is the accrual of cause of action. In other words, cause of action is a bundle of facts which create rights and obligations and gives rise to the right to sue to a party. Moreover, cause of action is made up of material and integral facts.** This implies that not every insignificant or inconsequential fact becomes a part of cause of action. In fact, for a fact to be considered material enough to lead to the conclusion as to accrual of cause of action, it must be proved that the said fact has a nexus with lis between the parties and that it is integral to the dispute at hand. Reference may be made to the decision of the Apex Court in Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335. Relevant part of it is reproduced herein:*

*"25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. **In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action.** It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered."*

(Emphasis supplied)

10. Territorial jurisdiction of a Court is ascertained having regard to the

place of accrual of cause of action. Some of the relevant principles that have developed in this area of jurisprudence are, including but not limited to, that making and signing of a contract constitutes cause of action; that facts which are necessary to decide the lis between the parties must have wholly or at least in part, arisen within the territorial jurisdiction of the Court; that each fact pleaded in the petition would not ipso facto be considered relevant while determining cause of action and that they must have a nexus with the issues involved in the matter; and importantly, that an insignificant or trivial part of cause of action would not be sufficient to confer territorial jurisdiction, even if incidentally forming a part of cause of action.

11. ***Having discussed the prevalent legal position as to determination of accrual of cause of action, it is evident that for a fact to form part of the cause of action, it must be material and substantial in nature, in such a way that it effects the rights or obligations of the parties, and not incidental or remote thereto****. Keeping in view the above, the factual position of the present case may be analysed.*

xxx xxx xxx"

(Emphasis Supplied)

22. Thus, considering that the MoU containing the Arbitration Clause was executed in Hyderabad, in relation to a Project to be implemented in Union Territory of Jammu and Kashmir, and was executed between the petitioner, having its registered office at Chennai, and respondent no. 2, having its office at Hyderabad, this Court is required to determine whether any part of the cause of action has arisen within its territorial jurisdiction.

23. In this regard, a gainful reference may be made to the relevant terms and conditions of the MoU dated 02nd April, 2016.

I. Clause 1 of the MoU as contained in the *Recital*, stipulates that respondent no. 1 was to provide grant-in-aid to the petitioner, through respondent no. 2, in three instalments in the ratio of 25:50:25. Further, Clause 7(iv) of the MoU as contained in the *Recital* records that respondent no. 1 and the petitioner had mutually agreed to pool their resources for the

implementation of the Project.

II. As per Clause 5 of the MoU as contained in the *Recital*, respondent no. 1 had approved respondent no. 2 as "Programme Monitoring and Pass Through Agency" for the purposes of implementation of the Project.

III. Article I, Clause 2 of the MoU further provides for the services to be provided by respondent no. 2 as a Monitoring Agency, which, *inter alia*, includes disbursing payments to the petitioner from the funds received from respondent no. 1, reviewing the Project and submitting reports thereof to respondent no. 1.

IV. Article II, Clause 5 of the MoU pertains to the cost structure of the Project, wherein, it has been stated in Clause 5.6 that the release of funds shall be subject to internal audit of respondent no. 1.

V. Article III, Clause 8 of the MoU deals with termination of the MoU and provides that respondent no. 1 may terminate the MoU and put the petitioner under blacklist after giving 30 days' notice, upon occurrence of the events as specified therein.

VI. In terms of Article IV, Clause 10, i.e., Programme Implementation, the petitioner had to submit the time-table, cost and financial schedule for implementation of the Project to the MoRD, through respondent no. 2. It further provides that any modifications to the Project shall be undertaken only after consultation with respondent no. 1. The said Clause also contemplates the constitution of a Project Steering Committee, with the Joint Secretary of respondent no. 1 as its Chairperson, to review the progress of the Project. Additionally, the petitioner was required to furnish progress reports and other information relating to the Project to respondent no. 2,

which, in turn, was obligated to forward the same to respondent no. 1.

24. Apart from the aforesaid terms of the MoU, reference may also be made to the correspondence exchanged between the parties, which throws considerable light on the role played by respondent nos. 1 and 3, in relation to the MoU in question, notwithstanding the fact that they are not signatories thereto.

I. The Sanction Letter dated 11th February, 2016 was issued by respondent no. 1 at New Delhi in favour of the petitioner, whereby, the Project was sanctioned and the entire Project Cost was to be borne by respondent no. 1. Pursuant thereto, the first instalment of Rs. 33,54,372/-, towards the total cost was released by respondent no. 1, through respondent no. 2, to the petitioner.

II. Thereafter, respondent no. 1 issued a revised Sanction Letter dated 19th December, 2016 at New Delhi to the petitioner, whereby, it revised the target of the Project and also the cost of the Project to Rs. 1,40,16,985/-.

III. Upon a request made by the petitioner for release of the second instalment, respondent no. 2 addressed a communication dated 01st May, 2018 to respondent no. 1 recommending the release of the second instalment of Rs. 70,08,492/-, since the documents for the Project, as verified by respondent no. 2, were found to be in order.

IV. By the order dated 27th November, 2018, respondent no. 1 informed respondent no. 2 that in terms of *notification no. 70/2015* dated 21st December, 2015, respondent no. 1 has approved the transfer of the Project to respondent no. 3, as part of its transition from "Year Plan" to "Action Plan".

V. Thereafter, the petitioner addressed letters dated 07th May, 2019 and

21st April, 2020 to respondent no. 1, requesting the release of funds and raising other issues concerning the Project.

VI. By way of its letter dated 06th January, 2021 addressed to respondent no. 2, respondent no. 1 stated that action with regard to release of funds shall be taken subsequent to the signing of *addendum* to MoU by the State.

VII. Reference may also be made to the minutes of meeting dated 12th October, 2021 held in presence of all the respondents, convened to resolve the issue relating to payment for the Project. The said minutes of meeting records that since the Project already stands completed, there was no requirement to sign an *addendum* to the MoU, and thus, the existing MoU was valid and to be honoured by respondent nos. 2 and 3.

VIII. It was further stipulated in the said minutes of meeting that respondent no. 3 was required to take action with regard to the aforesaid, and for any clarification, it may write to respondent no. 2 or respondent no. 1. It was further noted that any release of funds was to be made from the funds lying with respondent no. 3. However, prior to any such release, respondent no. 3 was to inform respondent no. 1, in case, any adjustment was required in the Project.

IX. Reference may further be made to the letter dated 25th February, 2025, addressed by respondent no. 2 to respondent no. 1, wherein, respondent no. 2 has stated that despite its recommendation, the amount due and payable to the petitioner had not been released. Respondent no. 2 further proposed that respondent no. 1 may advise respondent no. 3 to release the pending amount, as the petitioner had achieved the prescribed targets.

X. It is also pertinent to note that the notice invoking arbitration dated

05th February, 2025 was issued by the petitioner, wherein, respondent no. 2 along with respondent nos. 1 and 3, were also the recipients, and were duly served.

XI. Furthermore, by way of the reply dated 06th March, 2025 to the notice invoking arbitration, respondent no. 3 denied being part of the appointment process, however, has admitted that the communications made by the petitioner were towards respondent no. 1 and respondent no. 2. Respondent no. 3 further stated that it had addressed a communication to respondent no. 1 clarifying that it had no involvement in the disbursal of the payments under the Project.

25. In the present case, admittedly, the MoU was executed between respondent no. 2 and the petitioner for the Project. The said Project was initiated under the DDU scheme introduced by respondent no. 1. Further, the cost of the said Project was to be borne by respondent no. 1, which was to grant funds to respondent no. 2, and respondent no. 2 was thereafter required to disburse the same to the petitioner.

26. Moreover, the terms of the MoU, as noted herein above, clearly show that respondent no. 1 was also involved in the Project on account of the fact that respondent no. 1 has the power to terminate the MoU. Additionally, respondent no. 2, as a Monitoring Agency, was required to review and report any updates regarding the Project to respondent no. 1, and *inter alia*, any modifications to the Project was to be done pursuant to consultation with respondent no. 1.

27. Furthermore, the correspondence placed on record, between the petitioner and respondents, such as, the letter dated 25th February, 2025

issued by respondent no. 2 to respondent no. 1, also shows that the action regarding disbursal of the dues to the petitioner was to be done pursuant to the advice/recommendation given by respondent no. 1.

28. Further, it is an admitted position that subsequent to the *notification no. 70/2015* dated 21st December, 2015, the Project stood transferred to respondent no. 3. The minutes of meeting dated 12th October, 2021, clearly records that any release of funds was to be made from the funds, which are with respondent no. 3. Prior to any such release, respondent no. 3 may inform respondent no. 1, in case, any adjustment is required in the Project. In the said minutes of meeting, it has also been recorded that on account of the Project being completed, there was no need to sign an *addendum*, and thus, the existing MoU is still valid and to be honoured by respondent nos. 2 and 3.

29. Thus, perusal of the aforenoted terms of the MoU and the correspondence exchanged between the parties clearly brings forth that although respondent no. 1 and 3 were not signatories to the MoU, however, the mutual intent, conduct, relationship with the signatory parties, commonality of the subject matter coupled with performance and termination, clearly *prima facie* signify the intention of non-signatories to be bound by the arbitration agreement.

30. Accordingly, in view of the aforesaid, this Court is of the *prima facie* opinion that notwithstanding the fact that respondent nos. 1 and 3 have not specifically signed the MoU, their conduct in relation to the Project and their role under the MoU are sufficient, at this stage, to indicate that they were intended to be bound by the terms thereof, including the Arbitration Clause.

Thus, this Court, while exercising jurisdiction under Section 11 of the Arbitration Act, has the authority to refer the parties to arbitration, however, leaving it open to the Arbitral Tribunal to finally determine, on the basis of the evidence on record, whether the non-signatories, i.e., respondent nos. 1 and 3, are indeed bound by the arbitration agreement.

31. In this regard, reliance is placed upon the judgment in the case of ***Hindustan Petroleum Corporation Limited Versus BCL Secure Premises Private Limited, (2026) 3 SCC 711***, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***24.*** *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.*
>
> ***25.*** ***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.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

32. Furthermore, while elucidating the principles governing the binding

nature of an arbitration agreement upon a non-signatory, the Supreme Court in the case of ***Ajay Madhusudan Patel and Others Versus Jyotrindra S. Patel and Others, (2025) 2 SCC 147***, observed that the conduct of the non-signatory, along with other attending circumstances, may leave the Referral Court to draw a legitimate inference that such non-signatory is, in fact, a veritable party to the arbitration agreement. In this regard, it has been held as follows:

> *"xxx xxx xxx*
>
> ***71.*** *This very Bench in SBI General Insurance Co. Ltd. v. Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1: 2024 SCC OnLine SC 1754] dealt with the scope and standard of judicial scrutiny in an application made under Section 11(6) of the 1996 Act specifically when a plea of "accord and satisfaction" is taken by the defendant.* ***It was observed that in a scenario where the courts delve into the domain of the Arbitral Tribunal at the Section 11 stage and reject the application, there is a risk of leaving the claimant forum-less for the adjudication of its claims. It was stated that a detailed examination at this stage would also be counterproductive to the objective of expediency in deciding a Section 11 application and simplification of pleadings. It was also stated that even if ex facie frivolity is made out by the referral court, the Arbitral Tribunal has the benefit of extensive pleadings and evidentiary material and therefore, it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at a similar conclusion****."*
>
> *xxx xxx xxx*
>
> ***75. Therefore, on the pivotal issue whether the non-signatories can be referred to arbitration, this Court took the view that the referral court is required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement. However, recognising the complexity of such a determination, the Arbitral Tribunal was considered the proper forum since it can decide whether the non-signatory is a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine.*** *In this process, the non-signatory must also be given an opportunity to raise objections regarding the jurisdiction of the Arbitral Tribunal in accordance with the principles of natural justice.*
>
> *xxx xxx xxx*

79. *This Court in Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1: (2024) 2 SCC (Civ) 1: (2024) 251 Comp Cas 680] held that* ***the definition of "parties" under Section 2(1)(h) read with Section 7 of the 1996 Act includes both the signatory as well as non-signatory parties. Persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may also intend to be bound by the terms of the agreement. Further, the requirement of a written agreement under Section 7 of the 1996 Act does not exclude the possibility of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties. Therefore, the issue as to who is a "party" to an arbitration agreement is primarily an issue of consent. Actions or conduct could be an indicator of the consent of a party to be bound by the arbitration agreement. This aspect is also evident from a reading of Section 7(4)(b) which emphasises on the manifestation of the consent of persons or entities through actions of exchanging documents****.*

xxx xxx xxx

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****.*

xxx xxx xxx

83. ***It is evident that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such an agreement. Further, when the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement. However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental. Thus, the conduct of the non-signatory party along with the other attending circumstances may lead the referral court to draw a legitimate inference that it is a veritable***

party to the arbitration agreement.
xxx xxx xxx"

(Emphasis Supplied)

33. Similarly, delving on the issue of a non-signatory being a veritable party to the contract containing the arbitration agreement, the Supreme Court in the case of ***Cox and Kings Limited Versus SAP India Private Limited and Another, (2024) 4 SCC 1***, held as follows:

"xxx xxx xxx

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.

xxx xxx xxx

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.

xxx xxx xxx"

(Emphasis Supplied)

34. Having regard to the limited scope and standard of judicial scrutiny under Section 11 of the Arbitration Act, this Court considers it inappropriate to make a conclusive determination as to whether respondent nos. 1 and 3 are veritable parties to the arbitration agreement. The said issue necessarily entails an extensive appreciation of pleadings and evidentiary material. Accordingly, the final determination of whether respondent nos. 1 and 3 are amenable to the arbitral proceedings is best left to be adjudicated by the Arbitral Tribunal.

35. In light of the aforesaid discussion, this Court is of the *prima facie* opinion that respondent nos. 1 and 3 are veritable parties to the MoU, though being non-signatories thereto. However, the said issue shall be finally determined by the Arbitral Tribunal, upon a comprehensive consideration of the evidence and materials placed before it.

36. Having *prima facie* held that respondent no. 1 is a veritable party to the MoU containing the Arbitration Clause, this Court further notes that in terms of the MoU, the amounts are ultimately payable from the office of respondent no. 1, thus, the same provides this Court with material cause of action to adjudicate the present petition.

37. As a *sequitur* to the aforesaid, since respondent no. 1 has its head office in Delhi and, *prima facie*, respondent no. 1 has certain involvement in the dispute concerning the alleged non-payment of the petitioner's dues, this Court is satisfied that it possesses the requisite territorial jurisdiction to

entertain the present petition.

38. The next issue which falls for consideration before this Court is regarding the contention raised by respondent no. 2 that the present petition is barred by limitation.

39. In this regard, it is pertinent to note that the request for the second instalment was made by the petitioner in the year 2017. Thereafter, respondent no. 2 by its letter dated 01st May, 2018 addressed to respondent no. 1, has acknowledged the fact that petitioner has surpassed the prescribed milestones, and is eligible for the payments, and accordingly, recommended the respondent no. 1 to disburse the funds.

40. Moreover, the annexure to the order dated 27th November, 2018 issued by respondent no. 1 further acknowledges that the recommendation for release of second instalment has been forwarded *vide* letter dated 01st May, 2018.

41. The communication dated 18th May, 2020, issued by respondent no. 3, further acknowledged that the release of funds was under process and the requisite communication in this regard was sent to respondent no. 1. Further, the letter dated 06th January, 2021 also states that the action to be taken by the respondent no. 1 for release of funds shall be subsequent to signing of *addendum* to the MoU.

42. Even the minutes of meeting dated 12th October, 2021 records that the release of the outstanding payments was to be effected by respondent no. 3, after due process.

43. Lastly, in its communication dated 25th February, 2025, issued by respondent no. 2, it has once again acknowledged that the petitioner has duly

achieved the prescribed targets under the Project, and therefore, recommended that the outstanding amount be released in its favour.

44. Thus, the aforesaid communications demonstrate that, on multiple occasions between the years 2018 and 2025, the respondents acknowledged the petitioner's request for payment and have stated that the same was under process. Such communications, *prima facie*, constitute acknowledgments of liability within the meaning of Section 18 of the Limitation Act, thereby, giving rise to fresh cause of action and making the present petition within the prescribed period of limitation.

45. Reliance, in this regard, is placed on the judgment passed in ***Paisalo Digital Limited Versus Sat Priya Mehamia Memorial Educational Trust & Ors., ARB. P. 396/2024 and another connected matter***, wherein, this Court has held as follows:

> *"xxx xxx xxx*
>
> *32. A perusal of the said letter shows that for clearing of the dues, an assurance was given by the Respondent No.1.* ***In the opinion of this Court, in view of Section 18 of the Limitation Act, 1963, this is an acknowledgement of the debt and therefore, constitutes a fresh cause of action.*** *After considering the judgments of the Supreme Court in* ***M/s Arif Azim Co. Ltd (supra)*** *and* ***B and T AG (supra)****, this position was recently reiterated by this Court in* ***Technical Construction Company v. Engineering Project (India) Limited (Arb. P. 510/2023 decision dated 15th March, 2024).*** *The relevant paragraphs of the said order are extracted hereinbelow:*
>
> > *18.* ***In the opinion of this Court, the acknowledgement in the said reply, prima facie, constitutes an acknowledgment in terms of Section 18 of the Limitation Act, 1963 and would also constitute a fresh cause of action for the Petitioner to seek its claimed amount. The same has been established in Food Corporation of India v. Assam State Cooperative Marketing & Consumer Federation Ltd., (2004) 12 SCC 360****.*
> >
> > *xxx xxx xxx*

20. In all the three decisions cited by the Respondent, there was no acknowledgement and only negotiations were taking place. The relevant paragraphs of the said decisions are set out below:

i. *In* ***Vishram Varu (supra)*** *the Supreme Court held as under:*

"11. At the outset, it is required to be noted that in the present case, work order was issued on 7.4.1982 and the work/excess work was completed in the year 1986. Even as per the statement of claim, the amount due and payable was under work order dated 7.4.1982, which was executed up to 11.05.1986 and work order dated 15.01.1984 which was executed up to 26.8.1985. Therefore, right to claim the amount, due and payable, if any, can be said to have accrued in the year 1985/1986. Thereafter, the correspondences under the RTI Act had taken from the year 2012 onwards. Thereafter, for the first time, the appellant served a legal notice upon the General Manager, South Eastern Railway on 22.10.2018 requesting either to release the amount which was overdue or to refer the dispute to the arbitrator under clauses 63 & 64 of GCC under the 1996 Act. The aforesaid legal notice is thereafter followed by three to four letters/communications and thereafter the appellant herein filed the present application under Section 11(6) of the 1996 Act before the High Court in the year 2019. Merely because for the claim/alleged dues of 1985/1986, the legal notice calling upon the respondent to pay the amount due and payable or to refer the dispute to the arbitrator is made after a period of approximately thirty-two years, the appellant cannot be permitted to say that the cause of action to file the application under Section 11(6) of the 1996 Act had accrued in the year 2018/2019. In the present case, the legal notice has been served and the arbitration clause is invoked and request to appoint the arbitrator was made after a period of approximately thirty-two years from the date of completion of work. Therefore, the appellant, who served the legal notice invoking the arbitration clause and requesting for appointment of an arbitrator after a period of approximately thirty-two years, cannot contend that still his application under Section 11(6) of the 1996 Act be considered as the limitation would start from the date of serving the legal notice and after completion of 30 days from the date of service of the legal notice and invoking arbitration clause."

ii. *In* ***B and T AG (supra)*** *the Supreme Court observed as under:*

"65. On a conspectus of all the aforesaid decisions what is discernible is that there is a fine distinction between the plea that the claims raised are barred by limitation and the plea that the application for appointment of an arbitrator is barred by limitation.

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*67. "**Cause of action" means the whole bundle of material facts, which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit**. In delivering the judgment of the Board in Mussummat Chand Kour v. Partab Singh, reported in ILR (1889) 16 Cal 98, Lord Watson observed:*

*"**Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff it refers entirely to the grounds set forth in the plaint as the cause of action, or in other words to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour**."*

*68. **Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the Act 1996 because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.***

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71. In Law of Arbitration by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the Act 1963, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of arbitration" should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to

raise the question, that is, when the claimant acquires the right to require arbitration. ***An application under Section 11 of the Act 1996 is governed by Article 137 of the Schedule to the Act 1963 and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.***

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77. Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the "cause of action" for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating."

iii. In M/s Arif Azim Co. Ltd (supra) *the relevant observations of the Court read:*

"77. From the email communications placed on record, it appears that due to the pre- existing disputes between the parties in relation to the franchise agreements, the respondent sent a demand notice to the petitioner seeking payment of royalty and renewal fees from the petitioner. It appears that in reply to the said notice dated 23.03.2018, the petitioner raised the issue of payment of dues relating to the ICCR project. Some more emails were exchanged between the parties on the issue however it can be seen that vide email dated 28.03.2018, the respondent clearly showed unwillingness to continue further discussions regarding payments related to the ICCR project. Thus, it can be said that the rights of the petitioner to bring a claim against the respondent were crystallised on 28.03.2018 and hence the cause of action for invocation of arbitration can also said to have arisen on this date. This position has also been admitted in the Written Submission dated 05.02.2024 wherein the petitioner has submitted as follows:

"4. The limitation for claiming the due amount would expire on 27.03.2021...."

78. We are not impressed with the submission canvassed on

behalf of the respondent that the cause of action for raising the claims arose on 01.11.2017 and thus the limitation period for invoking arbitration should commence from the said date. The petitioner has alleged that the respondent received the payment for the course from the ICCR on 03.10.2017. However, the perusal of the communication exchanged between the parties indicates that it is only on 28.03.2018 that the right of the petitioner to bring a claim against the respondent could be said to have been crystallised. ***The position of law is settled that mere failure to pay may not give rise to a cause of action. However, once the applicant has asserted its claim and the respondent has either denied such claim or failed to reply to it, the cause of action will arise after such denial or failure.***

79. ***In B and T AG (supra) three principles of law came to be enunciated by this Court regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders. It was further emphasised by this Court that it was important to find out the "breaking point" at which any reasonable party would have abandoned the efforts at arriving at a settlement and contemplated referral of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced****.*

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89. In the present case, the notice invoking arbitration was received by the respondent on 29.11.2022, which is within the three-year period from the date on which the cause of action for the claim had arisen. Thus, it cannot be said that the claims sought to be raised by the petitioner are ex-facie time-barred or dead claims on the date of the commencement of arbitration.

90. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that ***while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves***

on two aspects by employing a two-pronged test - first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. *If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal.*

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95. Before we part with the matter, we would like to mention that this Court while dealing with similar issues in many other matters has observed that the applicability of Section 137 to applications under Section 11(6) of the Act, 1996 is a result of legislative vacuum as there is no statutory prescription regarding the time limit. We would again like to reiterate that the period of three years is an unduly long period for filing an application under Section 11 of the Act, 1996 and goes against the very spirit of the Act, 1996 which provides for expeditious resolution of commercial disputes within a time-bound manner. Various amendments to the Act, 1996 have been made over the years so as to ensure that arbitration proceedings are conducted and concluded expeditiously. We are of the considered opinion that the Parliament should consider bringing an amendment to the Act, 1996 prescribing a specific period of limitation within which a party may move the court for making an application for appointment of arbitrators under Section 11 of the Act, 1996. The Petition stands disposed of in the aforesaid terms.

21. As can be seen from the above decisions, in none of the above-mentioned cases, was there an acknowledgement of the debt. The above decisions also do not deal with cases where the provision of limitation for filing of a petition in view of an express acknowledgement provided by the parties during the stage of notice, as per Section 18 of the Limitation Act, 1963 is raised as an issue. Thus, the fact situation in the present case is distinguishable.

22. Section 18 of the Limitation Act, reads:

(1) Where, ***before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such***

property or right is claimed, *or by any person through whom he derives his title or liability,* ***a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.***

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

23. ***The above-mentioned provision clearly provides that if there is an express acknowledgement of liability in writing by the opposite party, a fresh period of limitation shall be computed from the time when acknowledgement was signed. The same has also been laid down by the Supreme Court in Food Corporation of India(supra), wherein it was held that that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication****. The relevant paragraphs of the said judgement are set out below:*

> *"14.* ***According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication****.*
>
> *15. The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability,*

though the exact nature or the specific character of the said liability may not be indicated in words. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. ***A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor.*** *Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement is excluded but surrounding circumstances can always be considered. Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning. So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made."*

24. Adverting to the facts of this case, in the letter dated 22nd February 2023, the Respondent states categorically that the amount is payable and that the same would be paid once payment is received from PVVNL. ***Considering the acknowledgment which has been given, at this stage, the Court is unable to hold that the claims and the petition are barred by limitation. This issue shall, however, be adjudicated by the ld. Arbitrator after evidence is led in the matter****.*

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(Emphasis Supplied)

46. Thus, the legal position with regard to considering the aspect of limitation at the stage of Section 11 of the Arbitration Act is that once a party has asserted its claim for money, and the respondent has either denied such claim or failed to reply to it, the cause of action will arise only after

such denial or failure. Further, in view of the acknowledgments to the claims of the petitioner by the respondents in the aforesaid correspondence, this Court is unable to hold that the present petition is barred by limitation.

47. Accordingly, on a conspectus of the facts and circumstances of the present case, it cannot be *prima facie* said that the claim of the petitioner is barred by limitation. The issue of limitation, being a mixed question of facts and law, is essentially within the domain of adjudication by the Arbitral Tribunal, on the basis of the facts and evidence before it.

48. Thus, the following directions are issued:

i. Mr. Varun Chopra, Advocate, (Mobile No. 9811851711) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

ii. The remuneration of the Sole Arbitrator shall be in terms of Schedule IV of the Arbitration Act.

iii. The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event, there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.

iv. It shall be open to the respondents to raise counter-claims, if any, in arbitration proceedings.

v. It is made clear that all the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

vi. The parties shall approach the Arbitrator within two (2) weeks from today.

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

50. The present petition is disposed of in the aforesaid terms.

51. The Registry is directed to send a copy of this order to the learned Sole Arbitrator, for information and compliance.

MINI PUSHKARNA
(JUDGE)

JULY 02, 2026
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