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

Date of Decision : 20.04.2026

\+ ARB.P. 1589/2025

TAVASYA SSF (C/O TAVASYA CAPITAL MANAGERS LLP) .....Petitioner

Through: Mr. Anirban Bhattacharya, Mr. Apoorv Agarwal, Mr. Manthan Dixit and Ms. Tanushvi Singh, Advocates.

versus

MINISTRY OF EXTERNAL AFFAIRS & ANR. .....Respondents

Through: Mr. S.D. Sanjay, Additional Solicitor General along with Mr. Sharang Dhulia, CGSC, Ms. Nikita Sethi, Mr. Chetan Jadon, Advocate and Ms. Archana Chhibber, Legal Consultant for Respondent No. 1.

Mr. Uttam Dutt, Senior Advocate along with Mr. Debarshi Bhadra, Ms. Sonakshi Singh, Mr. Kumar Bhaskar, Mr. Naman Kumar and Mr. Rahul Singh, Advocates for Respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 [“**Act**”], seeking the

constitution of a three-member Arbitral Tribunal for adjudication of disputes *inter se* the parties arising out of the EPC Agreement dated 31.03.2017 **["Agreement"]**.

2. The material on record reflects that the Agreement stipulates a dispute resolution mechanism, which contemplates reference of disputes to Arbitration by a three-member Arbitral Tribunal. The relevant stipulation is contained in Clause 26.3.1 of the Agreement, which reads as under:-

> "26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English."

3. Mr. S.D. Sanjay, learned Additional Solicitor General [**"Learned ASG"**] appearing on behalf of Respondent No. 1, opposes the constitution of the Arbitral Tribunal primarily on three grounds. *First,* that there exists no privity of contract between the Petitioner and the Respondents. *Second,* that the Petitioner seeks to enforce rights allegedly acquired under the Sale Certificate dated 06.08.2024 [**"Sale Certificate"]**, though no such enforceable rights stand transferred thereunder. *Third,* that Respondent No. 2 has raised serious objections to the invocation of the Arbitration clause and, therefore, the element of consent, central to the said clause, is absent.

4. Elaborating the first objection, learned ASG, places reliance upon the definition of *"parties"* as contained in the Agreement to

submit that the contracting parties were C&C Constructions Limited [**"C&C"**] and M/s. Engineering Projects (India) Limited **["EPIA"]**. Therefore, since the Petitioner is not named in the Agreement, learned ASG contends that the Petitioner cannot qualify as a party within the meaning of the Agreement.

5. In support of the second objection, learned ASG submits that the Sale Certificate does not operate to vest in the Petitioner the contractual rights of C&C so as to enable it to claim status as successor to the erstwhile Joint Venture **["JV"]** partner with whom the Respondent No. 1 had entered into the Agreement.

6. He also submits that, in fact, the net consequence of the said Sale Certificate is that C&C ceases to retain any subsisting interest and, therefore no occasion arises for the Petitioner to exercise rights which were personal and exercisable only by C&C.

7. Learned ASG further submits that the Sale Certificate pertains only to transfer of identified assets and cannot be construed as effecting continuation or novation of the legal relationship that existed between the original JV partners.

8. Learned ASG submits that, even assuming *arguendo* that certain rights stood acquired by the Petitioner, such rights, at best, would remain confined to claims *inter se* the JV partners and could not be enforced against Respondent No. 1 under the Agreement.

9. Turning to his third objection, learned ASG relies upon the Arbitration clause to contend that the contractual mechanism envisages nomination of one Arbitrator by each JV partner, whereafter the two nominated Arbitrators are to appoint the Presiding Arbitrator.

10. Learned ASG further submits that, in the present case,

Respondent No. 2 has raised serious objections to the invocation of the Arbitration clause and, therefore, the element of consent, which lies at the heart of arbitral reference, is absent. If the Courts were to constitute the Tribunal notwithstanding such objection, the same would run contrary to the consensual spirit underlying the Act.

11. Learned ASG, therefore, submits that the arbitration clause has become unworkable in the present factual matrix in the absence of consent and therefore the disputes are not amenable to reference to arbitration.

12. Mr. Uttam Dutt, learned Senior Counsel appearing on behalf of Respondent No. 2, supplements the submissions advanced by the learned ASG.

13. At the outset, learned senior counsel for the Respondent No. 2 raises a preliminary objection as to the *locus* of the Petitioner, contending that recourse to Arbitration or initiation of proceedings can be undertaken only by a party to the Agreement. He submits that the Petitioner is neither a partner of the JV nor privy to the original transaction, and thus a complete alien to the transaction.

14. He further submits that the expression "*interest in the JVs*", as occurring in the Sale Certificate, cannot be interpreted so broadly as to include legal and contractual rights of a JV partner under the Agreement, and must remain confined to receivables or other claims *inter se* the JV partners.

15. Learned senior counsel, while concluding, contends that no question arises of the Petitioner stepping into the shoes of the erstwhile JV partner, particularly when the original arrangement between the JV partners has itself come to an end. Learned senior

counsel further submits that, in any event, the original Agreement did not permit assignment of the contractual rights now sought to be asserted.

16. ***Per Contra***, Mr. Anirban Bhattacharya, learned counsel appearing on behalf of the Petitioner, submits that the jurisdiction of this Court under Section 11 of the Act is extremely limited and circumscribed. Learned counsel contends that the Hon'ble Supreme Court, in a catena of Judgments, has succinctly delineated the narrow scope of judicial scrutiny permissible at the stage of exercise of powers under Section 11 of the Act.

17. He further submits that this Court, while exercising jurisdiction under Section 11 of the Act, functions essentially as a Referral Court, and it is therefore impermissible to undertake an elaborate adjudicatory exercise akin to conducting a mini-trial on disputed questions of law or fact.

18. Learned senior counsel further submits that, in the present case, the Agreement itself contemplates that the successors or permitted assigns of the original JV or its constituents would be entitled to pursue such claims as may arise under the Agreement against the parties thereto. In this regard, he places reliance upon the recital describing the parties to the Agreement, which reads as under:

> "**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**
>
> THIS AGREEMENT is entered into on this the 31st Day of March, 2017
>
> **BETWEEN**
>
> **The PRESIDENT OF INDIA through MINISTRY OF EXTERNAL AFFAIRS INDIA,** represented by its Joint Secretary (DPA-III) and having its principal office at Jawaharlal Nehru Bhawan, Janpath, New Delhi, India (hereinafter referred

to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

M/s. EPI-C&C JV [M/s. C & C Constructions Ltd. in JV with M/s. Engineering Projects (India) Ltd.] means the selected bidder having its registered office at Plot No. 70, Institutional Sector-32, Gurugram - 122001, Haryana, India, (hereinafter referred to as the **"Constructor"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part."

19. Learned counsel further refers to and places reliance upon Clause 27.12 of the Agreement to contend that a plain reading thereof makes it apparent that the Agreement was intended to bind, and enure to the benefit of, the respective successors and permitted assigns of the parties. Clause 27.12 reads as follows:-

> **"27. 12 Successors and assigns**
> This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns."

20. Learned counsel submits that, in view of the Sale Certificate, the Petitioner is, in fact, the „successor in interest" insofar as the JV is concerned and consequently the present Petition is maintainable as against the Respondents. The relevant portion of the Sale Certificate reads as follows:-

"DESCRIPTION OF ASSETS

All investments held by C&C Constructions Limited as recorded in its audited financial statements for the Financial Year 22-23 including to its investments/shareholding in subsidiaries associate companies, special purpose vehicles and interest in the joint ventures."

21. Learned counsel further draws the attention of this Court to the Judgment of the Hon'ble Supreme Court in ***Andhra Pradesh Power***

Generation Corporation Limited (APGENCO) versus Tecpro Systems Limited [(2026) 3 SCC 491] and in particular, Paragraph Nos. 13 to 19 thereof. The said paragraph reads as under:-

> **"13.** In our considered view, these objections must be answered in the broader perspective of the nature and scope of the jurisdiction exercised by a referral court under Section 11 of the Act. With the introduction of the *statutory restraint* under Section 11(6-A), the legislature has consciously confined the domain of judicial scrutiny to the mere "existence of an arbitration agreement". This legislative design is further reinforced by the express empowerment of the AT under Section 16 to rule on; (*i*) its own jurisdiction, (*ii*) objections with respect to the very existence of the arbitration agreement, and also (*iii*) objections relating to the validity of such an agreement. The statutory scheme thus envisages a clear demarcation between the limited threshold scrutiny at the referral stage on the one hand and the substantive jurisdictional adjudication to be undertaken by the AT on the other.
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> **14.** The legislative policy under the 1996 Act strongly favours minimal judicial intervention at the pre-arbitral stage. A long line of precedents, such as *Duro Felguera, S.A.* v. *Gangavaram Port Ltd* [*Duro Felguera, S.A.* v. *Gangavaram Port Ltd*, (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , the Constitution Bench decision in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*, (2024) 6 SCC 1] , and *SBI General Insurance Co. Ltd.* v. *Krish Spg.* [*SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567] have authoritatively settled that the enquiry under Section 11 is confined to a *prima facie* determination of the existence of an arbitration agreement and no further. The referral court is required to undertake only a *prima facie* determination of the existence of an arbitration agreement [*Goqii Technologies (P) Ltd.* v. *Sokrati Technologies (P) Ltd.*, (2025) 2 SCC 192 : (2025) 1 SCC (Civ) 47] , and refrain from entering into contentious factual or legal issues related to authority, capacity, arbitrability, maintainability, or merits of claims.
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> **15.** It is certainly a matter of *institutional discipline* for the referral courts to enable "parties" to identify and exercise alternative remedies, particularly that of arbitration, with clarity and consistency. The question whether a member of a consortium can itself invoke Section 11 of the 1996 Act is not one that admits of a monolithic or a uniform answer. Answer to that question will necessarily depend on enquiry into the terms of the principal

contract, as well as the Consortium agreement. The specific terms of the Consortium agreement, parties to that agreement, and the nature of the rights and mutual obligations that the agreement creates will have to be examined in detail. The Reference Court will, however, confine its enquiry only to a *prima facie* satisfaction as to whether a member of a consortium qualifies as a "party" to the arbitration agreement. This *prima facie* satisfaction is sufficient for the referral court to constitute and refer the dispute to the AT.

16. Thereafter, it is for the AT to undertake the detailed enquiry as to whether a member of the consortium is in fact a veritable party to the arbitration agreement or not. This is exactly the limited enquiry permitted and prescribed 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] , the relevant portion of which is as under : (SCC pp. 76 & 90-91, paras 126, 169 & 170.12)

"*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.

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169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the

requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

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

(emphasis supplied)

17. Beyond the *prima facie* enquiry, it should be the discipline of the referral court to refrain from undertaking a detailed enquiry on basis of evidence to arrive at a finding of fact in the nature of a "proof". The scope of such an enquiry, by virtue of Section 11(6-A) is very well articulated in the decision of this Court in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*, (2024) 6 SCC 1] wherein this Court observed : (SCC pp. 87-88, paras 165-67)

"*165*. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In *Duro Felguera* [*Duro Felguera, S.A.* v. *Gangavaram Port Ltd*, (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in *Vidya Drolia* [*Vidya Drolia* v. *Durga Trading Corpn.*, (2021) 2

SCC 1 : (2021) 1 SCC (Civ) 549] in the context of Section 8 and Section 11 of the Arbitration Act.

"166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd.* v. *Aksh Optifibre Ltd.* [*Shin-Etsu Chemical Co. Ltd.* v. *Aksh Optifibre Ltd.*, (2005) 7 SCC 234 : (2005) 127 Comp Cas 97] "

18. Following this Court's mandate in the above decision, this Court in *Bihar State Food and Civil Supply Corpn. Ltd.* v. *Sanjay Kumar*[*Bihar State Food and Civil Supply Corpn. Ltd.* v. *Sanjay Kumar*, (2026) 4 SCC 649 : 2025 SCC OnLine SC 1604] explaining the contemporary legal position of the referral court emphasised that : (SCC p. 671, para 28)

"*28.* The curtains have fallen. Courts exercising jurisdictions under Section 11(6) and Section 8 must follow the mandate of sub-section (6-A), as interpreted and mandated by the decisions of this Court and their scrutiny must be *'confine(d) to the examination of the existence of the arbitration agreement*'."

(emphasis in original)

> **19.** Once the High Court was satisfied that an arbitration agreement *prima facie* existed, an aspect neither seriously disputed nor refutable at this stage, its decision to constitute the AT cannot be faulted. In the earlier part of our judgment, we have reproduced the detailed arguments of the appellants and respondents on the issue of maintainability only to draw a distinction between a *prima facie* consideration of such contentions for the purpose of Section 11 on the one hand and for a detailed examination by the AT. While we hold that there is certainly a *prima facie* case for referring the dispute to arbitration under Section 11, a detailed scrutiny on the basis of evidence must be left to AT."

22. A reading of the aforesaid Judgment thus indicates that this Court, while acting as a referral Court, is required to confine its enquiry only to a prima facie satisfaction as to whether the Petitioner can assert a credible claim of being a party, successor, or person claiming through a party to the arbitration agreement.

23. In the present case, this Court is *prima facie* of the opinion that the Sale Certificate expressly records transfer, inter alia, of the "interest in the joint ventures" held by C&C. Consequently, at this threshold stage, a prima facie basis exists for the Petitioner to assert rights flowing from the position earlier held by C&C as a constituent of the JV. The expression "interest in the joint ventures", when read conjointly with Clause 27.12 as well as the recital and description of parties in the Agreement, lends support to the aforesaid *prima facie* view.

24. Furthermore, this Court also takes note of Paragraph No. 20 of the afore-cited judgment, which is reproduced hereunder:

> "**20.** Whether the first respondent has validly invoked arbitration individually, whether the Consortium continues to exist, whether consent of other Consortium partners was necessary, and whether claims are maintainable after commencement of liquidation, are all matters which may legitimately be raised, contested and

> determined before the AT under Section 16. Entertaining these questions here would amount to conducting a mini trial at the Section 11 stage, contrary to the settled principles of minimal judicial intervention and *kompetenz-kompetenz*."

25. A plain reading of the aforesaid observations makes it apparent that the objections canvassed by the Respondents herein are of the very nature which the Hon'ble Supreme Court has held ought to be relegated to the learned Arbitral Tribunal for adjudication under Section 16 of the Act, rather than being conclusively examined at the Section 11 stage.

26. In view of the foregoing discussion, this Court deems it appropriate that the matter may be referred to arbitration by a three-member Arbitral Tribunal, in consonance with the Arbitration Clause as set out in the Agreement, for the purpose of the resolution of disputes between the parties.

27. The material on record indicates that the valuation of the subject matter of the disputes is stated to be approximately Rs. 500 crores.

28. Accordingly, the Respondent No. 1 has nominated **Hon'ble Mr. Justice (Retd.) Ajit Sinha, Former Judge of Hon'ble Jharkhand High Court** to enter upon the reference and adjudicate the disputes *inter se* the parties.

29. Further, since the original party to the JV, who was vested with the right to nominate the learned Arbitrator, has now been replaced by the Petitioner, this Court deems it appropriate to nominate an Arbitrator on their behalf.

30. Accordingly, this Court hereby requests **Hon'ble Mr. Justice (Retd.) K.R. Shriram, Former Chief Justice of Rajasthan High Court, (** [redacted] **)** to enter upon the reference and

adjudicate the disputes *inter se* the parties.

31. The learned Arbitrators, so appointed hereinabove, are requested to appoint the Presiding Arbitrator within a period of two (02) weeks from today, whereafter the Arbitral proceedings may commence.

32. The learned Arbitral tribunal, so constituted, may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act.

33. The parties shall share the learned Arbitrators‟ fee and arbitral costs equally.

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

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

36. Let a copy of the said Order be sent to the learned Arbitrators through all permissible modes, including electronic mode as well.

37. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the above-stated terms.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 20, 2026/nd/jk/DJ