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

Judgment reserved on: 11.08.2025
Judgment pronounced on: 24.11.2025

\+ FAO (COMM) 174/2024

M/S TRIOM HOSPITALITY, THROUGH ITS PARTNER, MR. SANJAY SHARMA .....Appellant

Through: Dr. Amit George, Mr. Rajiv Kumar, Mr. Rupam Jha, Mr. Adhishwar Suri, Ms. Ibamsara Syiemlieh, Mr. Dushyant Kaul & Ms. Medhavi Bhatia, Advs.

versus

M/S J.S. HOSPITALITY SERVICES PVT. LTD.....Respondent

Through: Mr. J. Sai Deepak, Senior Advocate with Mr. Vikas Tomar, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 24.11.2025

OM PRAKASH SHUKLA, J.

Introduction

1. The present appeal under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996[1], read with Section 13(1-A) of the Commercial Courts Act, 2015 has been filed by the appellant assailing the order dated 28.08.2024 passed by the learned District Judge (Commercial Court-02), South West District, Dwarka, New Delhi, in CS (COMM)

[1] "The Act" hereinafter

No. 286/2023, whereby the application filed by the appellant under Section 8 of the Act in CS(COMM) No. 392/2024 was dismissed.

2. For the sake of convenience, parties are referred by the same name as they were before the learned Commercial Court.

Factual context

3. The appellant, who is the defendant in the civil suit pending before the learned Commercial Court claims to be a family partnership firm constituted under a partnership deed dated 12.12.2022 between (i) Mr. Sanjay Sharma, (ii) his son, Mr. Sahil Sharma, and (iii) his nephew, Mr. Tanish Sharma. Under the said deed, Mr. Sanjay Sharma holds a 50% share, while Mr. Sahil Sharma and Mr. Tanish Sharma hold a 25% share each. The registered office of the appellant/defendant firm is at 18/20, WEA, 1st Floor, Karol Bagh, New Delhi–110005.

4. The defendant has been in the business of running a restaurant since 18.10.2023 at 2nd Floor, Plot No. 6, Pankaj Arcade, Pocket-4, Sector-11, Dwarka, New Delhi–110075, under the trade name *"***Pind Balluchi**".

5. The respondent, who is the plaintiff in the pending civil suit before the learned Commercial Court, is a company incorporated under the Companies Act, 1956, having its registered office at FA-9, 10, 11, Unitech Metro Walk, Near Rithala Metro Station, Sector-10, Rohini, Delhi–110085. The plaintiff claims to be engaged in the hospitality business and running various restaurants under multiple brands

specialising in Indian cuisine. It is the plaintiff's case that it has acquired substantial goodwill and expertise in the field of running restaurants.

6. The plaintiff claimed to be the registered proprietor of the trademark "**Pind Balluchi**" under Classes 16, 29, 30, 32 and 43 and has received several national and regional tourism awards from governmental as well as private bodies. According to plaintiff, the mark "**Pind Balluchi**" enjoys nationwide goodwill and distinctiveness in the restaurant sector. It is also stated that Mr. Jaspal Singh Chadha serves as the Chairman and Managing Director of the plaintiff company.

7. It was averred by the plaintiff that on 18.07.2024, an official of the plaintiff, while travelling from Dwarka, noticed a restaurant operating under the name "**Pind Balluchi,**" and upon availing its services received an invoice bearing the name and details of the defendant. Thus, on the basis of the said invoice, the plaintiff asserted that the defendant was using the trademark "**Pind Balluchi**".

8. The plaintiff's case was that the defendant was neither licensed nor otherwise authorized to use the trademark/trade name "**Pind Balluchi**". The plaintiff alleged that such unauthorised use amounted to infringement and passing off and would have adverse effects on the plaintiff company. It was further alleged that the unauthorized use of the plaintiff's registered trademark caused financial loss, dilution of reputation to the plaintiff, and misled members of the public into believing that the defendant's restaurant was associated with or formed part of the plaintiff's chain.

9. In the aforesaid background, the plaintiff instituted a Civil Suit No. 392/2024 seeking (i) a decree of permanent injunction restraining the defendant from using the trademark "**Pind Balluchi**" or any other deceptively similar mark; (ii) a decree of mandatory injunction directing the defendant to return or surrender all material, menus, hoardings, signages, bills, invoices, packaging, etc. bearing the impugned mark; and (iii) consequential reliefs.

10. Upon institution of the suit, summons were issued to the defendant in the suit and notice was also issued in the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908[2], filed by the plaintiff. After the appearance of the learned counsel for the defendant, the learned Trial Court, *vide* order dated 16.08.2024, allowed the plaintiff's application under Order XXXIX Rules 1 and 2 of the CPC, 1908, and granted an ad interim *ex parte* injunction restraining the defendant from using the trademark "**Pind Balluchi**".

11. As a consequence of the aforesaid interim order, the defendant was restrained from using the said trademark in respect of the restaurant business being run from 2nd Floor, Plot No. 6, Pankaj Arcade, Pocket-4, Sector-11, Dwarka, New Delhi–110075.

12. On 21 August 2024, the defendant filed two applications: (i) under Order XXXIX Rule 4 of the CPC, seeking vacation of the interim order dated 16.08.2024; and (ii) under Section 8 of the Act, along with

[2] "The CPC", hereinafter

a copy of the Memorandum of Understanding[3] dated 22.06.2022, invoking the power of the court to refer the parties to arbitration. Additionally, *vide* the said application under Section 8, the defendant sought exemption under Section 8(2) of the Act from filing the original MOU, asserting that the original MOU was in possession of the plaintiff for filing before the "IPR registry", as stated in Clause 12 of the MOU.

13. In response to the application filed by the defendant under Section 8 of the Act seeking reference of the parties to arbitration, the plaintiff asserted that no MOU dated 22.06.2022, as alleged by the defendant, was ever signed by the plaintiff and that the original document had not been produced by the defendant for this very reason. An affidavit to this effect was also filed by Mr. Jaspal Singh Chadha, wherein he stated that he had not signed the MOU dated 22.06.2022, as alleged by the defendant, and that the said document was forged and fabricated.

14. The learned Trial Court, *vide* the impugned order dated 28.08.2024, dismissed the defendant's application filed under Section 8 of the Act and refused to refer the parties to arbitration.

15. The defendant, being aggrieved by the impugned order dated 28.08.2024, has preferred the present appeal before this Court.

Impugned Order

16. The main issue for determination before the learned Commercial Court was whether the allegations of forgery, pertaining to the MOU

[3] "MOU" hereinafter

dated 22.06.2022, that contained the arbitration clause, renders the dispute non-arbitrable. The issue formulated by the learned Commercial Court in the impugned order is reproduced below for convenience:

> *"Whether on the allegations of plaintiff that the MOU dated 22.06.2022, having the arbitration clause, is a forged and a fabricated document, dispute becomes non-arbitrable and the application under Section 8 of the Arbitration and Conciliation Act, 1996 is required to be dismissed or not?"*

17. The learned Commercial Court, relying on the judgment of the Supreme Court in ***A. Ayyasamy v. A. Paramasivam & Ors.***[4], noted that although the Act does not expressly exclude any category of disputes from arbitration, judicial precedents have carved out certain exceptions, including cases involving fraud, criminal offences of a public nature, disputes arising out of illegal agreements, and matters relating to status, such as divorce.

18. The learned Commercial Court observed that mere allegations of fraud in the pleadings are not sufficient to oust the jurisdiction of the arbitral tribunal. However, where allegations of fraud or forgery are of a serious and complex nature that permeate the entire contract or go to the very validity of the arbitration agreement itself, such disputes are non-arbitrable and must be adjudicated by a Civil Court.

19. The learned Commercial Court reiterated that, as held in ***A. Ayyasamy*** *(supra)*, a "*strict and meticulous inquiry*" into the allegations of fraud is required, and only when the Court is satisfied that the allegations are grave and demand extensive evidence, should the

[4] **(2016) 10 SCC 386**

dispute be adjudicated by a Civil Court rather than being referred to arbitration.

20. The learned commercial court also referred to the judgment of the Hon'ble Supreme Court in ***Vidya Drolia v. Durga Trading Corporation***[5], observing that courts, while exercising jurisdiction under Sections 8 and 11 of the Act, are empowered to undertake a *prima facie* review of the existence and validity of an arbitration agreement. It further noted that, as explained in ***Vidya Drolia*** *(supra)*, a reference to arbitration to be refused only in clear cases of "deadwood" or where there is a *prima facie* non-existence of a valid arbitration clause.

21. The impugned order further observed that the decision of the Supreme Court in ***Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act, 1899***[6], had no application to the facts of the case. It noted that the said decision dealt with the issue of insufficient stamping of agreements and held that such defects are curable at later stages, falling within the domain of the arbitral tribunal once the *prima facie* existence of an arbitration agreement is established. The learned Commercial Court further observed that, in the present matter, no issue of insufficient stamping had arisen and that the dispute pertained instead to an allegation of forgery, which, the Court held, stood on a different footing.

[5] **(2021) 2 SCC 1.**
[6] **2023 SCC OnLine SC 1666**

22. On the basis of the aforesaid judgments, the learned Commercial Court in the impugned order held that, while deciding an application under Section 8 of the Act, the Court is empowered to form a *prima facie* view on the existence and validity of the arbitration agreement/clause. It further held that where the agreement/clause is found to be non-existent, or where serious allegations of forgery are raised, the dispute becomes non-arbitrable and the Civil Court becomes the competent forum to adjudicate such issues, as they required detailed evidence.

23. In light of the material placed on record and the submissions made before the learned Commercial Court and upon noting the aforesaid judgments, the learned Commercial Court was of the *prima facie* view that the MOU dated 22.06.2022 had never been executed by the plaintiff. The reasons recorded in the impugned order for arriving at such finding is reproduced below:-

> *"a) Firstly, the MOU dated 22.06.2022 has been entered into between Sh.Sanjay Sharma, Sh.Arun Gupta and plaintiff company through its Chairman Jaspal Singh Chadha and Sh.Jaspal Singh Chadha has filed on record an affidavit denying his signatures on the MOU dated 22.06.2022.*
>
> *b) Secondly, MOU dated 22.06.2022 does not have any stamp of the plaintiff company under the signatures of its Chairman Sh.Jaspal Singh Chadha, whereas in the earlier partnership agreement dated 28.06.2021 between Sh.Sanjay Sharma, Sh.Arun Gupta and plaintiff, forming partnership under the name and style of "Vatika Grand", which has been filed on record by plaintiff, the signatures of Sh.Jaspal Singh Chadha have been made under the plaintiff company's seal.*
>
> *c) Thirdly, plaintiff has also filed on record the Franchise agreement dated 11.12.2018 entered into with M/s.Khushi Enterprises and in*

the said agreement also, Sh.Jaspal Singh Chadha has signed alongwith the stamp of the plaintiff company.

d) Fourthly, after the exit of plaintiff company from the partnership firm "Vatika Grand", the said firm was reconstituted vide partnership deed dated 18.08.2022 between Sh.Sanjay Sharma and Sh.Arnn Gupta and in the said re-constituted partnership deed, there was no reference made of the MOU dated 22.06.2022, entered into between plaintiff, Sh.Arun Gupta and Sh.Sanjay Sharma.

e) Fifthly, in the alleged MOU dated 22.06.2022, the date of retirement of plaintiff from the partnership firm "Vatika Grand" is the day of execution of MOU dated 22.06.2022, whereas in the partnership deed dated 18.08.2022 between Sh.Sanjay Sharma and Sh.Arun Gupta, date of retirement of the plaintiff company has been mentioned as 31.07.2022.

f) Sixthly, the defendant has also filed on record a partnership deed dated 12.12.2022 creating partnership firm by the name of "Tri om Hospitality" to run a restaurant under the name and style of "Pind Balluchi" but even in the said document, there is no reference of the alleged MOU dated 22.06.2022, which allegedly grants right to Sh.Sanjay Sharma, one of the partners of Triom Hospitality, to run a restaurant by the name of "Pind Balluchi" in Dwarka, New Delhi.

g) Seventhly, the plaintiff has also initiated criminal proceedings against defendant by filing a police complaint dated 24.08.2024 with the SHO, PS Sector-9, Dwarka, New Delhi with regard to cheating and forgery of MOU dated 22.06.2022 against Sh.Sanjay Shanna, one of the partners of Triom Hospitality, Sh.Arun Gupta and Sh.Dhannender Kumar, which shows that plaintiff has made serious allegations of forgery.

h) Eighthly, the defendant has not produced the original MOU dated 22.06.2022 as per the mandate of Section 8(2) of the Arbitration and Conciliation Act, 1996 nor has filed any application as per the proviso to Section 8(2) of the Arbitration and Conciliation Act, 1996 calling upon the plaintiff to produce the original agreement dated ~2.06.2022, which prima facie shows about the nonexistence of the MOU dated 22.06.2022.

i) Lastly, defendant has relied upon clause 12 of the said MOU to show that it was kept by the plaintiff for submitting with the IPR Registry, whereas there was no such requirement of submitting MOU dated 22.06.2022 with the IPR Registry as this document was not affecting any right of the plaintiff regarding the ownership of tradename "Pind Balluchi".”

24. On a cumulative consideration of the above circumstances, the learned Commercial Court in the impugned order concluded that the plaintiff had *prima facie* established the non-existence of a valid arbitration agreement/clause in the form of the MOU dated 22.06.2022. The learned Commercial Court further observed that the allegations of forgery are serious in nature and as such the *lis* could be adjudicated only after examining detailed evidence, including forensic examination of signatures.

25. As the execution of the disputed MOU had been denied, the learned Commercial Court in the impugned order held that the controversy involved issues of forgery and fabrication which would require examination by handwriting or forensic experts. It further held that issues of such nature fall outside the scope of arbitral proceedings and lie within the jurisdiction of the civil court.

26. The impugned order further held that, even assuming the MOU dated 22.06.2022 to be genuine, the parties could not be referred to arbitration, as the defendant partnership firm was not a party to the said MOU. It noted that, under Section 8 of the Act, only the parties to an arbitration agreement can be referred to arbitration in respect of disputes arising from the terms of such agreement. Since the defendant partnership firm was not a signatory to the MOU dated 22.06.2022, the dispute relating to the alleged infringement of the plaintiff's trademark by the defendant firm could not be referred to arbitration. The defendant's application under Section 8 of the Act, therefore, came to be rejected.

SUBMISSIONS BEFORE THIS COURT

27. Dr. Amit George, learned Counsel appearing on behalf of the defendant submitted under Section 8(1) of the Act, the Court must refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists. It was argued that the provision only uses the expression *prima facie*, and therefore, where the facts are complex or the issues are triable, the matter must be referred to arbitration.

28. Learned Counsel for the appellant/defendant placed reliance on ***Pravin Electricals Pvt. Ltd. v. Galaxy Infra and Engineering Pvt. Ltd***[7], ***Cox and Kings Ltd. v. SAP India Pvt. Ltd***[8].,and on ***K. Mangayarkarasi v. N.J. Sundaresan***[9], to contend that once the court finds the existence of an arbitration agreement, it is under a positive mandate to refer the parties to arbitration, and that mere allegations of fraud, complexity of transactions, or disputed facts do not by themselves divest the arbitral tribunal of its jurisdiction.

29. It was further submitted that the present case involves triable issues that require a detailed examination of facts and evidence, and hence falls squarely within the scope of disputes that must be referred to arbitration under Section 8(1) of the Arbitration and Conciliation Act, 1996.

30. Per contra, Mr. J. Sai Deepak, learned Senior Counsel for the respondent/plaintiff submitted that there are serious allegations of

[7] **(2021) 5 SCC 671**
[8] **(2024) 4 SCC 1**
[9] **2024 SCC OnLine SC 1475**

forgery and fraud in the present case, and that the document containing the arbitration clause was never signed by the petitioner.

31. It was submitted that the Commercial Court is not divested of its jurisdiction under Section 8 of the Act; rather, the provision confers a limited discretion upon the Court to examine whether, *prima facie*, a valid arbitration agreement exists. Reliance in this regard was placed on paragraph 22 of ***Pravin Electricals*** *(supra)* wherein the Supreme Court observed that Parliament, while enacting the 2015 amendment, deliberately inserted the words "*unless it finds that prima facie no valid arbitration agreement exists".* It was therefore argued that the Commercial Court is competent to exercise this discretion and decline a reference to arbitration.

32. Reliance was also placed on ***Cox and Kings Ltd. v. SAP India Pvt. Ltd. on para 159,163,164,166*** to argue that the *prima facie* existence and validity of an arbitration agreement can be examined by the Trial Court. It was submitted that the learned Commercial Court had not exceeded the scope of its jurisdiction under Section 8 of the Act and had only undertaken a prima facie examination of the alleged arbitration agreement, as mandated by law.

33. It was submitted that when the plaintiff/respondent disputes the very existence of the alleged contract, such a dispute necessarily permeates the entire agreement, including the arbitration clause, thereby rendering it void and unenforceable. Reliance was

placed on ***Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties*** [10] and ***Rashid Raza*** *(supra)*.

34. It was submitted that in the present case, the alleged MOU dated 22.06.2022 does not find mention in any contemporaneous document, correspondence, or communication exchanged between the defendant, his partner Mr. Sanjay Sharma, and the plaintiff. According to the plaintiff, the absence of any contemporaneous reference clearly establishes that the defendant's claim regarding the existence of the said MOU is wholly baseless, and the *prima facie* view formed by the learned Trial Court is well-founded.

35. It was further submitted that the defendant has not complied with Section 8(2) of the Act. The said provision mandates that a party seeking reference to arbitration must file the original arbitration agreement or a duly certified copy thereof along with its application. In the present case, the defendant has failed to produce either the original alleged MOU dated 22.06.2022 or a certified copy of it, thereby violating the express statutory requirement of Section 8(2) of the Act.

36. Learned Senior Counsel for the plaintiff submitted that Section 8(1) of the Act clearly mandates that the Court shall refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists. It was contended that, unlike Section 11, which limits the Court's inquiry to the mere existence of an arbitration agreement, Section 8 expressly empowers the Court to form a *prima facie* view on its validity.

[10] **(2021) 4 SCC 786**

Therefore, where, as in the present case, the very document containing the alleged arbitration clause is itself denied, there is no requirement for the Court to refer the parties to arbitration.

37. The learned Senior Counsel for the plaintiff submitted that even if there is a *prima facie* absence of validity of arbitration agreement, such absence is, by itself, sufficient to render the dispute non arbitrable.

38. On the issue of non- compliance under Section 8(2) of the Act, it was submitted that no application was placed to call upon the plaintiff to produce the alleged MOU.

39. In rejoinder, the learned Counsel for the defendant referred to ***In re Interplay*** *(supra)* to submit that, under Sections 8 and 11 of the Act, the Court acts as a referral court and is required to undertake merely a *prima facie* determination so as not to trench on the tribunal's power under Section 16 of the Act. It was argued that since Section 8 of the Act mandates only a *prima facie* examination of the existence of a valid arbitration agreement, and since the objective of both Sections 8 and 11 of the Act is to uphold the parties' choice of arbitration, the matter must be referred to an arbitration and all deeper issues ought to be left to the arbitral tribunal if the existence of such agreement cannot be ruled out at first glance. It was further argued that the validity of an arbitration agreement, in view of Section 7, is restricted to the requirement of formal validity and the issues relating to the substantive existence or validity of an arbitration agreement should be left to be decided by the arbitral tribunal under Section 16 of the Act.

40. Learned Counsel for the defendant also placed reliance on ***Cox and kings*** *(supra)* to submit that an arbitration agreement under Section 7 of the Act need not necessarily be a formally signed document if the conduct of the parties demonstrates an intention to be bound by it. It was argued that Section 7(3) of the Act requires only that the arbitration agreement be "in writing" and does not mandate that it must be "signed".

41. It was submitted that the impugned order suffers from a fundamental flaw inasmuch as no comparison of signatures was undertaken, even at a *prima facie* level, despite forgery being specifically alleged and as such the finding regarding the existence of a *prima facie* valid arbitration agreement is unsustainable.

42. With respect to the objection concerning non-compliance of Section 8(2) of the Act, it was submitted that the same is wholly misplaced, as that provision pertains only to *formal* requirements i.e. production of the original or certified copy of the arbitration agreement and does not extend to *substantive* issues such as execution or authenticity. Issues of this nature strike at the very validity of the document and can be adjudicated only after the taking of evidence and expert comparison, not in a summary manner at the referral stage.

43. Lastly, it was submitted that the *Lakshman Rekha* governing judicial interference at the referral stage under Section 8 of the Act mandates that issues pertaining to substantive validity of the arbitration agreement be left for determination by the arbitral tribunal. In support

of this submission, reliance was placed on para 27 of ***Pravin Electricals*** *(supra).*

ANALYSIS

44. We have heard the learned Counsels on behalf of both sides, perused the material on record as well as the relevant judgments.

45. The core issue that requires our consideration in the present case is whether the learned Commercial Court was justified in rendering the matter to be non-arbitrable in view of the allegation of forgery of the arbitration agreement, has also been rightly framed by the learned Commercial Court.

46. Before delving into the legal intricacies and the complexities of the present case, we feel it appropriate to first scrutinize Section 37 which governs appeal and scope of interference of referral courts under section 8 of the Act. The sections are re-produced below, for the sake of convenience:

> *37. Appealable orders. — (1) 2[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely: —*
> *[(a) **refusing to refer the parties to arbitration under section 8;***
> *(b) granting or refusing to grant any measure under section 9;*
> *(c) setting aside or refusing to set aside an arbitral award under section 34.]*
> *(2) Appeal shall also lie to a court from an order of the arbitral tribunal—*
> *(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*

(b) granting or refusing to grant an interim measure under section 17.
(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court

8. ***Power to refer parties to arbitration where there is an arbitration agreement-*** *A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court,* ***refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.***
(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:
2[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]
(3) Notwithstanding that an application has been made under sub-section (1) an that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

47. Section 37 provides for a very limited scope, wherein it has been prescribed in no uncertain terms as to when an appeal lies against certain specified orders under the Act, ensuring that judicial intervention remains minimal.

48. Section 8 of the Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015. The amendment implemented several recommendations of the 246th Law Commission Report (2014), with the objective of limiting judicial intervention, and the same

understanding is also reflected in ***In Re: Interplay*** *(supra)*. The relevant paragraph, which makes for an erudite reading, is reproduced below:

> *"200. SMS Tea Estates (supra) allowed the courts to impound the document under Section 33 of the Stamp Act at the Section 11 stage. Thus, the courts were mandated to intervene at the pre-arbitral stage before the arbitral tribunal could assume jurisdiction. SMS Tea Estates (supra) was decided in 2011. At that time, Patel Engineering (supra) and Boghara Polyfab (supra) held the field, which held that the referral courts had wide powers to decide a large number of preliminary issues, including the existence and validity of arbitration agreements.* ***As discussed in the segments above, the Law Commission of India recommended amendments to Sections 8 and 11 with a view to restrict the scope of the judicial intervention "to situations where the Court/Judicial Authority finds that the arbitration agreement does not exist or is null and void****."*
>
> (emphasis added)

49. The scope of interference at the stage of Section 8 of the Act has been crystallised by the Apex Court in a catena of judgments, and the issue no longer remains r*es integra*. The Supreme Court, in ***Vidya Drolia*** *(supra)*, examined the extent of scope of interference permissible after the 2015 amendment. It was held that, while deciding an application under Section 8 of the Act, the power of the referral court is limited to a *prima facie* judicial review. The power of *prima facie* review was held to be related and connected to an adjudication on the *prima facie* validity of the arbitration agreement. It was further held that the referral court, while acting under Section 8, must examine the question of the *existence* of an arbitration agreement in conjunction with the question of its "validity". The purpose of this endeavour is to filter out meritless and frivolous litigation to ensure expeditious and efficient disposal. This interpretation can be traced to the case of ***SBI***

General Insurance V/s Krish Spinning*[11]*, wherein the Hon'ble Supreme Court interpreted ***Vidya Drolia*** *(supra)*, in the following terms, the relevant portion of which is reproduced below:

> *"82. Thereafter, a three-Judge Bench of this Court in Vidya Drolia & Ors v. Durga Trading Corporation reported in (2021) 2 SCC 1 extensively dealt with the scope of powers of the referral court under Section 8 and 11 respectively of the Act, 1996. It held, inter alia, that Sections 8 and 11 of the Act, 1996 are complementary to each other and thus the aspect of 'existence' of the arbitration agreement, as specified under Section 11 should be seen along with its 'validity' as specified under Section 8. This Court also held that the exercise of power of prima facie judicial review to examine the existence of arbitration agreement also includes going into the validity of the arbitration agreement and this does not go against the principles of competence-competence and the presumption of separability. It further held that the prima facie review of the aspects related to non-arbitrability may also be undertaken. The relevant observations are extracted hereinbelow:*
>
> "*147.4. Most jurisdictions accept and require prima facie review by the court on non-arbitrability aspects at the referral stage.*
>
> *147.5. Sections 8 and 11 of the Arbitration Act are complementary provisions as was held in Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] The object and purpose behind the two provisions is identical to compel and force parties to abide by their contractual understanding. This being so, the two provisions should be read as laying down similar standard and not as laying down different and separate parameters. Section 11 does not prescribe any standard of judicial review by the court for determining whether an arbitration agreement is in existence. Section 8 states that the judicial review at the stage of reference is prima facie and not final. Prima facie standard equally applies when the power of judicial review is exercised by the court under Section 11 of the Arbitration Act. Therefore, we can read the mandate of valid arbitration agreement in Section 8 into mandate of Section 11, that is, "existence of an arbitration agreement".*
>
> *147.6. Exercise of power of prima facie judicial review of existence as including validity is justified as a court is the first forum that examines and decides the request for the referral. Absolute "hands off" approach would be counterproductive and harm arbitration, as an alternative dispute resolution mechanism. Limited, yet effective*

[11] **2024 SCC OnLine SC 1754**

intervention is acceptable as it does not obstruct but effectuates arbitration.

147.7. Exercise of the limited prima facie review does not in any way interfere with the principle of competence and separation as to obstruct arbitration proceedings but ensures that vexatious and frivolous matters get over at the initial stage.

147.8. Exercise of prima facie power of judicial review as to the validity of the arbitration agreement would save costs and check harassment of objecting parties when there is clearly no justification and a good reason not to accept plea of non arbitrability.
[…]

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147.11. The interpretation appropriately balances the allocation of the decision-making authority between the court at the referral stage and the arbitrators' primary jurisdiction to decide disputes on merits. The court as the judicial forum of the first instance can exercise prima facie test jurisdiction to screen and knock down ex facie meritless, frivolous and dishonest litigation. Limited jurisdiction of the courts ensures expeditious, alacritous and efficient disposal when required at the referral stage."

(Emphasis supplied)

83. *This Court further held that the referral court, while exercising its powers under Sections 8 and 11 respectively of the Act, 1996 could exercise its powers to screen and knock down ex facie meritless, frivolous and dishonest litigation so as to ensure expeditious and efficient disposal at the referral stage.*

"148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)] , it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would

require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen."

(Emphasis supplied)''

85. ***As is clear from the aforesaid extract, Vidya Drolia (supra) held that although the arbitral tribunal is the preferred first authority to determine the questions pertaining to non-arbitrability, yet the referral court may exercise its limited jurisdiction to refuse reference to arbitration in cases which are ex-facie frivolous and where it is certain that the disputes are non-arbitrable****."*

(Emphasis supplied)

50. Thus, it is clear from the above that the referral court, while exercising jurisdiction under Section 8 of the Act, has the authority to determine the *prima facie* existence of an arbitration agreement and its validity. However, such authority of the Court is accompanied by a caveat that the jurisdiction of the Court is limited to cases where a reference to arbitration is *ex-facie* frivolous and where it is certain that the disputes are non-arbitrable.

51. At this juncture, we consider it essential to analyse the limits of judicial scrutiny and the degree of power exercisable at the stage of *prima facie* examination/review under Section 8 of the Act. The Supreme Court in ***Vidya Drolia*** *(supra)* held that the Referral Court, by default, refer the parties to arbitration when the matter is plainly arguable, the facts are contested, or a summary consideration would be insufficient, and that the court should not conduct a mini-trial or detailed review at this stage. The relevant paragraph is reproduced as follows:

"154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the

arbitration agreement is non-existent, invalid or the disputes are non -arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "nonarbitrable" and to cut off the deadwood. ***The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable****;* ***when consideration in summary proceedings would be insufficient and inconclusive****; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings.* ***This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism****."*

(emphasis supplied)

52. The Supreme Court in ***Cox and Kings*** *(supra)***.** examined the standard to be applied by Courts at the referral stage under Section 8 and 11 of the Act. The Apex Court in the aforesaid judgment, after discussing ***SBP & Co. V. Patel Engg. Ltd***[12] , ***Vidya Drolia*** *(supra)* and ***Pravin Electricals (P) Ltd.****(supra)*, held that the role of referral court is limited to determining the *prima facie* existence of an arbitration agreement. The relevant portion is reproduced below:

"166. The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the referral court cannot decide the issue, it should leave it to be decided by the arbitration Tribunal. The referral court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. In Shin-Etsu Chemical Co. Ltd. V. Aksh Optifibre Ltd., this Court observed that there are distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the Tribunal: (Shin-Etsu Chemical Co. d case,, SCC p. 267, para 74)

"74. ... Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not valid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the

[12] (2005) 8 SCC 618

arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator Q finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration."

53. Further, the scope of the power of referral court was also examined in ***Re: Interplay*** *(supra)* where the Supreme Court clarified the law laid down in ***Vidya Drolia*** *(supra)* and held that Section 5 of the Act limits the referral court from deciding substantive objections pertaining to the existence and validity of an arbitration agreement **at the referral stage.** The relevant portion is reproduced below:

"81. One of the main objectives behind the enactment of the Arbitration Act was to minimize the supervisory role of courts in the arbitral process by confining it only to the circumstances stipulated by the legislature. For instance, Section 16 of the Arbitration Act provides that the arbitral tribunal may rule on its own jurisdiction "including ruling on any objection with respect to the existence or validity of the arbitration agreement." The effect of Section 16, bearing in view the principle of minimum judicial interference, is that judicial authorities cannot intervene in matters dealing with the jurisdiction of the arbitral tribunal. ***Although Sections 8 and 11 allow courts to refer parties to arbitration or appoint arbitrators, Section 5 limits the courts from dealing with substantive objections pertaining to the existence and validity of arbitration agreements at the referral or appointment stage****. A referral court at Section 8 or Section 11 stage can only enter into a prima facie determination. The legislative mandate of prima facie determination ensures that the referral courts do not trammel the arbitral tribunal's authority to rule on its own jurisdiction"*

"154. The legislature confined the scope of reference under Section 11(6A) 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 (supra), 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(6A) 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 (supra) in the context of Section 8 and Section 11 of the Arbitration Act****".*
>
> (emphasis supplied)

54. The power of the referral court in context of Section 8 and 11 of the Act was also examined in ***SBI General Insurance*** *(supra)*, where the Supreme Court clarified that the standard of scrutiny under Section 8 of the Act is limited to a *prima facie* examination of the validity and existence of an arbitration agreement. The relevant paragraph is reproduced for perusal:

> *"109. The difference between Sections 8 and 11 respectively of the Act, 1996 is also evident from the scope of these provisions. Some of these differences are:*
>
> *i. While Section 8 empowers any 'judicial authority' to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.*
>
> *ii. Under Section 37, an appeal lies against the refusal of the judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.*
>
> *iii.* ***The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement****. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.*
>
> *iv. During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and an application is preferred, no arbitration proceedings can commence or continue".*
>
> (emphasis supplied)

55. Further, the Supreme Court in ***K. Mangayarkarasi*** *(supra)*, drawing force from the decisions in ***Mayavati Trading Private Limited v. Pradyut Deb Burman*** [13] **and** ***In Re: Interplay*** *(supra)*, held that even cases pertaining to allegations of fraud or forgery or any wrongdoing arising out of civil or contractual relationships are arbitrable. It was held that, while deciding an application under Section 8 of the Act, the approach for a Civil Court is not to determine whether it possesses jurisdiction, but only whether its jurisdiction has been expressly or impliedly ousted by the arbitration agreement. The relevant para is reproduced below:

> **"15.** ***The law is well settled that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the arbitral tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement****.*
>
> ***16. Once an application in due compliance with Section 8 of the Act of 1996 is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches.*** *Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law — generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court"*
>
> (emphasis supplied)

[13] **(2019) 8 SCC 714**

56. In ***Pravin Electricals*** *(supra)*, the Apex Court dealt with facts similar to the case at hand, wherein the signature on the arbitration agreement was disputed and the agreement was alleged to be forged and fabricated. The Supreme Court held that alleged agreement and signatures were disputed, and in such circumstances, the issue of whether a valid arbitration agreement existed should be left to the arbitral tribunal for detailed examination after considering the evidence and cross-examination of witnesses. It was held as follows:

> *"27. The facts of this case remind one of Alice in Wonderland. In Chapter II of Lewis Caroll's classic, after little Alice had gone down the Rabbit hole, she exclaims "Curiouser and curiouser!" and Lewis Caroll states "(she was so much surprised, that for the moment she quite forgot how to speak good English)". This is a case which eminently cries for the truth to out between the parties through documentary evidence and cross-examination. Large pieces of the jigsaw puzzle that forms the documentary evidence between the parties in this case remained unfilled. The emails dated 22nd July, 2014 and 25th July, 2014 produced here for the first time as well as certain correspondence between SBPDCL and the Respondent do show that there is some dealing between the Appellant and the Respondent qua a tender floated by SBPDCL, but that is not sufficient to conclude that there is a concluded contract between the parties, which contains an arbitration clause. Given the inconclusive nature of the finding by CFSL together with the signing of the agreement in Haryana by parties whose registered offices are at Bombay and Bihar qua works to be executed in Bihar; given the fact that the Notary who signed the agreement was not authorised to do so and various other conundrums that arise on the facts of this case, it is unsafe to conclude, one way or the other, that an arbitration agreement exists between the parties. The prima facie review spoken of in Vidya Dhrolia (supra) can lead to only one conclusion on the facts of this case - **that a deeper consideration of whether an arbitration agreement exists between the parties must be left to an Arbitrator who is to examine the documentary evidence produced before him in detail after witnesses are cross-examined on the same**. For all these reasons, we set aside the impugned judgment of the Delhi High Court in so far as it conclusively finds that there is an Arbitration Agreement between the parties. However, we uphold the ultimate order appointing Justice G.S. Sistani, a retired Delhi High Court Judge as a Sole Arbitrator. The learned Judge will first determine as a preliminary*

issue as to whether an Arbitration Agreement exists between the parties, and go on to decide the merits of the case only if it is first found that such an agreement exists. It is clarified that all issues will be decided without being influenced by the observations made by this court which are only prima facie in nature. The appeal is allowed in the aforesaid terms."

57. Adverting to the present *lis*, the learned Commercial Court, drawing support from ***A. Ayyasamy*** *(supra)* and ***Vidya Drolia****(supra)*, held that at the stage of deciding the application under Section 8 of the Act, the referral courts can exercise *prima facie* judicial review. Pursuant thereto, the learned Commercial Court concluded that decision in ***Re: Interplay*** *(supra)* was in applicable to the present case, as that decision pertained specifically to the issue of insufficient stamping, whereas the present facts concern allegations of forgery.

58. Thereafter, while exercising its *prima facie* review, the learned Commercial Court held that since the plaintiff had denied his signature on the MOU dated 22.06.2022 and asserted that the document was never entered into by him, the parties cannot be referred to arbitration. However, according to this Court, the said analogy drawn by the learned Trial Court is fallacious. Section 7 of the Act requires only that an arbitration agreement be in writing and does not mandate that such agreement be signed or stamped by the parties. Further, in a recent judgment of far-reaching significance, showcasing the judicial preference for referring parties to arbitration, the Supreme Court ***in Glencore International AG vs. Shree Ganesh Metals & Anr***[14]. has clarified that the mere absence of a signature on an arbitration clause does not, by itself, invalidate the agreement. What is material is the

[14] **2025 SCC OnLine SC 1815**

clear intention of the parties to submit disputes to arbitration to be established through written communication, surrounding conduct, or other documentary evidences. By emphasising consent over technical formalities, the Supreme Court has reinforced the principle that arbitration is rooted in party autonomy and cannot be defeated by technical objections, including denial of signature or absence of stamping, when the underlying intention to arbitrate is otherwise evident. It was held as follows:

> *"In the light of the aforestated settled legal position and given the admitted facts, which unequivocally demonstrate that respondent No.1 signified its consent to the terms spelt out in the appellant's email dated 10.03.2016 that finally found place in Contract No. 061-16-12115-S which, in turn, was accepted and acted upon by respondent No.1, we are of the considered opinion that the arbitration agreement in clause 32.2 thereof was very much available to the appellant and invocation thereof under Section 45 of the Act of 1996, by way of I.A. No.4550 of 2017 in CS (Comm) No. 154 of 2017, was fully justified and required to be accepted and acted upon by the referral Court. The refusal by the referral Court of the learned Judge and the confirmation of such refusal by the Division Bench are, therefore, unsustainable on facts and in law."*

59. Admittedly, it is apparent from the record, as well as from the reasoning adopted by the learned Trial Court, that a jural relationship did exist between the plaintiff and the defendant. This is apparent from various documents placed on records, including the MOU dated 22.06.2022, earlier partnership Agreement dated 28.06.2021 and the reconstituted partnership dated 18.08.2022. Thus, an interpretation of these documents is *sine qua non* for determining the rights and repercussions flowing from these agreements. Such an exercise cannot be decided at a *prima-facie* stage, as is sought to be done by the learned Trial Court. In view of this Court, the proper forum for such an

examination would surely fall within the hemisphere of adjudication by the arbitral authority under Section 16 of the Act.

60. Further, this Court finds that the fulcrum of the reasoning adopted by the learned Commercial Court, in refusing to refer the parties to arbitration, has been noted in the impugned order, as follows:

> *"Further, since the plaintiff has denied his signatures on the alleged forged MOU dated 22.06.2022, therefore, for proving the said fact, extensive evidence of the parties would be required including the examination of document by a handwriting expert/forensic expert. Therefore, in the light of serious allegations of forgery having been levelled by the plaintiff, with regard to MOU dated 22.06.2022, which has been prima facie established, dispute has become non-arbitrable. Hence, parties cannot be referred to arbitration, on the basis of MOU dated 22.06.2022, existence of which is clouded on the allegations of forgery".*

61. Thus, exercising *prima facie* judicial review, the learned Commercial Court held that "*extensive evidence would be required by the parties"*. It is pertinent to note that this finding has not been challenged by either party. However, this Court finds that the need of extensive evidence by the parties cannot, by itself, constitute a ground for declining reference to arbitration. Treating such a requirement as a basis to refuse reference is a misnomer, given the statutory framework of the Act. Section 24(1) of the Act empowers an Arbitral Tribunal to determine whether oral hearings are necessary for the presentation of oral evidence or for oral argument or whether the proceedings should be conducted on the basis of documents and other material. Furthermore, Section 26 of the Act provides for appointment of expert by the Arbitral Tribunal and Section 27 of the Act empowers the said Tribunal to seek the assistance of the Court in taking evidence. Time

and again the superior courts have held that the Arbitration & Conciliation Act is a complete Act in itself and have ample power and competence to take extensive evidence and decide complex matters of commercial, contractual and civil alike.

62. Moreover, this Court finds that, upon a reading of the law laid down by the Apex Court in plethora of judgments examined above, the issue at the centre of the controversy is squarely covered by the law laid down in ***Vidya Drolia*** *(supra)*, ***Pravin Electricals*** *(supra)*, ***SBI General Insurance*** *(supra)*, of ***K. Mangayarkarasi v. N.J. Sundaresan*** *(supra)*, ***Cox and Kings*** *(supra)* **and** ***Re: Interplay*** *(supra)***.**

63. In ***Vidya Drolia*** *(supra)*, as discussed above, the Supreme Court held that the referral court, by default, should refer the dispute to arbitration tribunal when the matter is "plainly arguable". It further held that Courts should refrain from conducting a mini-trial and undertake an elaborate examination of disputed facts at the stage of Section 8 of the Act. However, in the present case, the learned Commercial Court, in our considered view, has examined and analysed the evidence akin to a mini-trial, which travels beyond the permissible scope of powers vested in a referral court under Section 8 of the Act.

64. The aforementioned multiple points of determination in the impugned order, which are labelled as reasons to establish the *prima face* non-existence of the arbitration agreement, make it abundantly evident that the learned Commercial Court undertook a thorough and detailed analysis of the evidence. Such an approach runs contrary to both the letter & spirit of Section 16 of the Act as well as the principle

of *kompetenz-kompetenz*. Further, the learned Commercial Court itself held that the present matter required extensive evidence, including the examination of the disputed MOU by a handwriting or forensic expert. Relevant paragraph is reproduced for perusal below:

> *"39. Further, since the plaintiff has denied his signatures on the alleged forged MOU dated 22.06.2022, therefore, for proving the said fact,* ***extensive evidence of the parties would be required including the examination of document by a handwriting expert/forensic expert****. Therefore, in the light of serious allegations of forgery having been levelled by the plaintiff, with regard to MOU dated 22.06.2022, which has been prima facie established, dispute has become non-arbitrable. Hence, parties cannot be referred to arbitration, on the basis of MOU dated 22.06.2022, existence of which is clouded on the allegations of forgery*".

65. Hence, applying the law laid down in ***Vidya Drolia*** *(supra)* and ***Re: Interplay*** *(supra)*, we find that the learned Commercial Court, while holding that a deeper and extensive examination is required, has, instead of examining formal/*prima facie* validity of the arbitration agreement in the present case, incidentally ventured into determining its substantive validity, which is not permissible by law while deciding an application under Section 8 of the Act. We find that the practice of entering into the merits of the dispute at the referral stage defeats the purpose of the doctrine of *kompetenz kompetenz* and Section 16 of the Act.

66. Though we concur with the findings of the learned Commercial Court to the limited extent that present matter requires extensive evidence and deeper consideration, including the examination of signatures, we find that the power of *prima facie* examination under Section 8 of the Act is confined and limited to situations wherein the

case is *ex-facie* frivolous. Furthermore, while examining validity and existence of an arbitration agreement, the power of referral court is limited to determining formal validity at the *prima facie* stage. Hence, as per law laid down in ***Cox and Kings*** *(supra)* and ***Re: Interplay*** *(supra)*, the matters where the assessment of substantive validity is required, are to be adjudicated by an arbitral tribunal under Section 16 of the Act.

67. Additionally, the purpose of the *prima facie* judicial review, as discussed in ***SBI General Insurance*** *(supra)* while interpreting ***Vidya Drolia*** *(supra)*, is to filter out frivolous arbitration proceedings in cases where it is certain that the dispute is non-arbitrable. Applying the same in the present case, it is hereby noted that the plaintiff has a pre-existing commercial relationship with the defendant, which is not denied by the former. Further, no expert analysis of the signatures has yet been undertaken so far and the Arbitral Tribunal is competent to adjudicate on the said defence raised by the plaintiff . Hence, in the backdrop of pre-existing commercial relationship and an agreement in writing, we find it difficult to render the present case as *ex-facie* frivolous and certainly non-arbitrable. The present matter requires substantive consideration as to whether an arbitration agreement exists, which includes examination of signatures by an expert, as well as leading of evidence and cross-examination by both parties.

68. Thus, we are unable to agree with the contention of learned Senior Counsel on behalf of the plaintiff/respondent that, since allegations of forgery and fraud have been raised in the present case, and the contention that the document (MOU) containing the arbitration

clause was never signed by the petitioner, the very existence of the alleged contract stands disputed. Consequently, the further contention that the dispute permeates the entire agreement, rendering the arbitration clause void and unenforceable is also prima-facie not made out. The recent judgment of the Supreme Court in ***K. Mangayarkarasi*** *(supra)*, categorically held that allegations of fraud or criminal wrongdoing do not divest the arbitral tribunal of its jurisdiction to resolve a dispute arising out of a civil or contractual relationship. Accordingly, in the present case, the dispute undoubtedly arises out of contractual or civil relationship. Therefore, we find ourselves in a difficult position to accept the contention of learned Senior Counsel for the plaintiff.

69. Further, the submission of learned Senior Counsel for the plaintiff that the Commercial Court did not exceed its jurisdiction beyond the scope permissible under Section 8 of the Act and had merely carried out a *prima facie* examination of the alleged arbitration agreement, as mandated by law, is not sustainable. As per the law laid down by ***SBI General Insurance*** *(supra)*, the standard of scrutiny while exercising power under Section 8 is confined to a *prima facie* examination of the validity and existence of an arbitration agreement. The expression "validity" has been comprehensively dealt with in ***Re: Interplay*** *(supra)* and ***Cox and Kings (supra),*** wherein the Supreme Court held that the term "validity" should be read in the light of Section 7 of the Act and should be restricted to the requirement of formal validity. It was held that *prima facie* examination, "*should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing*". It was further clarified that the issues relating

to substantive validity fall under the purview of arbitral tribunal under Section 16 of the Act, which is also in accordance with the doctrine of *Kompetenz-Kompetenz.* In the present case, while it is true that examination of signatures and extensive evidence will be required, this Court is of the view that existence of formal validity is satisfied as the MOU is in writing and the parties undisputedly share a pre-existing contractual relationship of commercial nature. Hence, the threshold of formal validity is made out. However, the issue of substantive validity remains open and shall be decided by arbitral tribunal in accordance with law.

70. Further, another argument raised by the learned Senior Counsel for the plaintiff was that Section 8(2) of the Act had not been complied with by the defendant, since the defendant failed to produce the original disputed MOU dated 22.06.2022 or even a certified copy thereof, thereby violating the express requirement of Section 8(2) of the Act. The appellant, however, contending that the original agreement is not in their possession, but in the possession of plaintiff and exemption was also sought in that regard. We opine that such objections and contentions raised under Section 8(2) of the Act in the present matter are best left to be adjudicated by the Arbitral Tribunal, as it would require needful consideration of factual assertions and the surrounding circumstances. Procedural and technical objections of the above nature cannot defeat the pro-arbitration scheme of the Act, particularly in light of the doctrine of *Kompetenz-Kompetenz*. Accordingly, the objection under Section 8(2) of the Act is itself a triable issue and is therefore fit to be decided by the arbitral tribunal.

71. Lastly, the learned Commercial Court held that as per Section 8 of the Act, only parties to an agreement can be referred to arbitration in respect of disputes arising from the terms of agreement. Hence, the learned Commercial Court concluded that if the MOU dated 22.06.2022 were assumed to be genuine document, even then the parties cannot be referred to an Arbitral Tribunal, since the plaintiff herein was not the party in alleged MOU dated 22.06.2022. The learned Counsel for the defendant challenged this finding by placing reliance on ***Cox and Kings*** *(supra)*. In ***Cox and Kings*** *(supra)*, the Supreme Court ruled that it is not necessary for all parties to be signatories to a contract containing an arbitration clause; instead, the key issue in such cases is whether the parties intended or consented to a legal relationship, which has to be determined on the basis on their act or conduct. It was further held that where there is a record of the agreement between the parties, a signature is not mandatory. The Hon'ble Supreme Court propounded the group of company's theory to bind even non-signatories within a group to an Arbitration proceeding. We are in agreement with the submission of learned Counsel for the defendant and his reliance of his aforesaid decision in ***Cox and Kings*** *(supra)*. Therefore, the aspect of formal validity (*prima facie* level of examination) as mandated above, stands satisfied in the present case, since an arbitration agreement need not be signed to bind the parties. Therefore, it would be incorrect and a very hyper-technical view to hold that the present matter is non-arbitrable on the aforesaid ground, keeping in mind the object and spirit of the Arbitration & Conciliation Act, which gives prominence to party autonomy, equality, and enforceability in arbitration proceedings.

CONCLUSION

72. As discussed above, the Supreme Court in ***K. Mangayarkarasi*** *(supra)* examined the scope of interference permissible to referral courts while exercising *prima face* judicial review under Section 8 of the Act, and held that civil or commercial disputes arising out of contractual relationships are undoubtedly arbitrable. This position has been further solidified by the doctrine of *Kompetenz Kompetenz,* under Section 16 of the Act, and the intent of the legislature behind the Amendment Act of 2015, i.e., to minimise judicial interference at the referral stage by a Court and to ensure that the independent jurisdiction of the arbitral tribunal is not undermined. The role of the referral Courts are limited to *prima facie* existence and validity of the arbitration agreement, where the expression 'validity' particularly refers to formal validity. Therefore, disputes involving allegations of breach of contract, forgery or fabrication do not cease to be arbitrable merely such allegations have been raised.

73. In the present case, the allegation of forgery, by itself, is not sufficient for the referral Court to render the dispute non-arbitrable, especially in the backdrop of the pre-existing commercial relationship between the parties and the necessity of examining the signatures on the MOU. The present matter undeniably requires substantive consideration of evidence, which should be adjudicated upon by an Arbitral Tribunal. This ensures that the purpose, scheme and objective of the Act is followed. Therefore, the present dispute, arising out of a pre-existing contractual relationship of a commercial nature, squarely falls within the ambit of the arbitration tribunal, since it warrants an

examination of the validity and genuineness of the signatures on the MOU at a substantive level.

74. For all the aforesaid reasons, the impugned order dated 28.08.2024 is unsustainable in the eyes of law and as such is hereby set aside. The application filed by the defendant/appellant under Section 8 of the Arbitration & Conciliation Act is allowed and parties are hereby referred to Arbitration and the pending Civil Suit is dismissed as being not maintainable and barred by law. It is further directed that the parties may take appropriate steps for the appointment and/or constituting the Arbitral Tribunal in accordance with law as per the scheme of the Arbitration & Conciliation Act, 1996.

75. The present appeal is allowed in the aforesaid terms. There shall be no order as to cost.

OM PRAKASH SHUKLA, J

C.HARI SHANKAR, J

NOVEMBER 24, 2025/*rjd/gunn*