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

Date of decision: 28<sup>th</sup> JULY, 2025

IN THE MATTER OF:

+ **ARB.P. 853/2023 & I.A. 20643/2023**

VEDANTA LIMITED

.....Petitioner

Through: Mr Jayant Mehta, Sr. Advocate with  
Mr. Sulabh Rewari, Ms. Vasudha  
Sharma, Ms. Tina Aneja and Mr.  
Shubhansh Thakur, Advs.

versus

GUJARAT STATE PETROLEUM CORPORATION LTD.

.....Respondent

Through: Mr. Ramji Srinivasan, Sr. Advocate  
with Mr. Piyush Joshi, Ms. Sumiti  
Yadava, Ms. Meghna Sengupta, Ms.  
Vatsla Bhatia and Mr. Yagya Sharma,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner seeking appointment of the Respondent's nominee Arbitrator to adjudicate upon the disputes that have arisen between the Petitioner and the Respondent in relation to the Request for Proposal bearing No.RFP/RJ-ON-90/1/2023/1 dated 28.12.2022 ("RFP") and the Gas Sales Agreement ("GSA").

2. Shorn of unnecessary details, the facts leading to filing of the present petition are as follows:



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- a) It is stated that an Oil & Gas Block in Barmer, Rajasthan i.e., RJ-ON-90/1 Block ("Gas Block"), was awarded by the Government of India to a Joint Venture comprising of various entities namely Cairn Energy Hydrocarbons Limited and, Oil and Natural Gas Corporation Limited and the Petitioner herein (collectively referred to as Contractors).
- b) Thereafter, the Government of India entered into a Production Sharing Contract ("PSC") with the Joint Venture for the Oil & Gas Block. It is stated that the Petitioner is the Operator of the Gas Block and is authorised to act on behalf of the Joint Venture.
- c) On 28.12.2022, the Petitioner issued a Notice Inviting Offers along with the Request for Proposal ("RFP") and a Gas Sales Agreement (GSA) inviting offers from companies interested to offtake all or portion of gas volumes available for sale from the Gas Block. It is stated that the Clause 18 of the GSA contains an Arbitration Clause.
- d) As per the requirement in the Bid Process on e-Tendering Portal i.e., Mjunction, the Respondent uploaded a signed copy of the GSA and the RFP on 12.01.2023. It is stated that in addition to the above documents, the Respondent also uploaded signed Forms C1 & C6. It is pertinent to mention that the stand of the Respondent is that the Respondent has only initialled the pages and has not signed the pages for a valid contract.
- e) On 18.01.2023 the bidding was closed, and the Respondent emerged as one of the successful bidders and was allocated the single highest quantity of gas. On the very same day the Respondent was sent an



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email by Mjunction on behalf of the Petitioner intimating the Respondent about the results of the Bidding Process and also informing the Respondents about the quantity of Gas allocated to the Respondent as determined in terms of Clause 4.2 of the RFP.

- f) Subsequently an email dated 19.01.2023 was sent by the Petitioner to the Respondent wherein a fresh copy of the filled up and signed GSA was attached for formal signing in terms of Clause 1.3.3 of the RFP. Several reminder emails dated 20.01.2023, 27.01.2023, 01.02.2023, 10.02.2023, 17.02.2023 and 22.02.2023 were also sent to the Respondents regarding the same. However, no response or objection was raised by the Respondent.
- g) On 27.02.2023, a Letter bearing No. COM/RJ/GSPC/2023/12 was sent by the Petitioner to the Respondent wherein it was stated that the Respondent has emerged as the largest buyer of Gas from the Gas Block in the Auction Process and has been allocated gas volume of 1,907,543 scm/day. It is further stated that both the parties reached an agreement regarding the terms and conditions as laid in the GSA post which the Petitioner had shared the signed copy of the Final GSA on 27.01.2023 and countersigned scanned GSA is awaited from the Respondent.
- h) Vide email dated 27.02.2023 sent by the Respondent, the Petitioner was informed that on account of unforeseeable and adverse material changes in the natural gas market due to continuous fall in gas prices, it is not feasible for the Respondent to market this gas to downstream customers at the current bid price. It was further stated that the



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Respondent is continuously making efforts to sell the gas to downstream customers and would revert to the Petitioner.

- i) On 28.02.2023, the Petitioner, in response to the aforementioned, sent an email stating that the contract between the parties stood concluded when the Petitioner accepted the Respondent's bid for allocation of gas and are now only waiting for the Respondent to countersign the final-signed GSA, which has been sent to the Respondent vide email dated 27.01.2023, as early as possible.
- j) Vide a letter dated 07.03.2023 bearing No. COM/RJ/DGH/2023/14, the Petitioner wrote to the Ministry of Petroleum & Natural Gas informing them about the whole Auction Process that has taken place for the Gas Block and further apprising them of the fact that the GSA has yet not been signed by the Respondent. The Petitioner through this letter requested the Ministry to ensure that Respondent signs the GSA expeditiously as possible.
- k) It is stated that it was only on 21.03.2023 that the Respondents vide letter bearing No. GSPCL/COMM/2023 stated that they are not in agreement with the Allocation as communicated by the Petitioner and also stated that there is no valid GSA and no binding agreement in existence between the Parties. The Petitioner replied to the aforesaid letter vide Letter dated 22.03.2023 bearing No. COM/RJ/GSPC/2023/19 denying all the allegations made by the Respondent.



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- l) *Vide* email dated 30.03.2023, the Respondent proposed an alternative interim arrangement which was accepted by the Petitioner on a without prejudice basis to avoid loss and it is stated that the parties also agreed to go by the standard terms of the GSA.
- m) The Petitioner *vide* Letter dated 07.07.2023, after going through settlement talks in terms of Clause 18.1 of the GSA, which failed, sent a notice invoking Arbitration in terms of Clause 18 of the GSA and appointed its nominee Arbitrator.
- n) The Petitioner had also filed a Section 9 Petition which was withdrawn *vide* Order dated 07.07.2023 as the Petitioner had already invoked Arbitration and denies any dispute in existence.
- o) The Respondents *vide* Letter dated 04.08.2023 replying to the notice invoking Arbitration stated that Arbitration cannot be invoked as there was never a valid arbitration agreement or any agreement between the Parties containing an Arbitration Clause.
- p) The present petition has been filed for appointment of an arbitrator on behalf of the Respondent so that the proceedings under the Arbitration & Conciliation Act can be convened for adjudication of the dispute.

The prayers in the present petition read as under:-

*“In the aforesaid premise, the Petitioner most humbly prays that this Hon'ble Court be pleased to pass an order:*

*(a) Appointing the Respondent's nominee arbitrator in exercise of its power under Section 11(6) of the Arbitration and Conciliation Act, 1996 and pursuant to*



*Clause 18 of the GSA read with the RFP dated 28.12.2022;*

*(b) Award all costs and legal fees for the present proceedings to the Petitioner and*

*(c) Pass any other or further orders that this Hon'ble Court deems fit in the facts and circumstances of the present case.”*

3. Pleadings have been completed.

4. Learned Counsel Senior appearing for the Petitioner contends that the facts of the case indicate that after the auction was conducted, the Respondent was informed that it was successful in the auction and that only a Gas Sales Agreement (GSA) to be entered into. The Petitioner had emailed a fresh copy of the filled up Gas Sales Agreement (GSA) to the Respondent and was only awaiting the formal signing of GSA in terms of Clauses 1.3.3 and 1.3.4 of the RFP. It is stated that reminders were also sent by the Petitioner to the Respondent. It is stated that there was no letter from the Respondent stating that they do not want to proceed ahead with the Gas Sales Agreement (GSA) and on the contrary, an email had been sent by the Respondent stating that it was taking steps under the Gas Sales Agreement (GSA) to sell the gas to the downstream customers.

5. Learned Senior Counsel for the Petitioner draws attention of this Court to an email dated 27.02.2023 communicated by the Respondent to the Petitioner stating the reason for its formal non-signing of GSA wherein the Respondent had categorically stated as under:

*"On account of unforeseeable and adverse material changes in the natural gas market due to continuous*



*fall in gas prices, it is not feasible to market this gas to downstream customers at current bid prices"*

*However, we are continuously making efforts to sell the gas to downstream customers and would revert to you appropriately."*

6. Learned Senior Counsel for the Petitioner further contents that the Respondent could begin negotiation with downstream customers only on the basis of the fact that it was successful in the auction. He, therefore, states that the fact that mere formal GSA had not been signed cannot mean that there was no formal arbitration clause which could not be invoked. He states that there was all intention on the part of both sides to go ahead with the GSA. For this purpose, the learned Senior Counsel for the Petitioner places reliance upon a judgment passed by the Apex Court in UNISSI (India) (P) Ltd. v. Post Graduate Institute of Medical Education and Research, (2009) 1 SCC 107. He states that in the said judgment, the Apex Court has held that even if no formal agreement is executed, the Courts can still infer the existence of an arbitration clause.

7. Learned Senior Counsel for the Petitioner also places reliance upon a judgment passed by the Apex Court in Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1. He states that in the said judgment, the Apex Court has held that in the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of telecommunication, the existence of arbitration clause.



8. Learned Senior Counsel for the Petitioner contends that the present dispute pertains to the failure on the part of the Respondent to off take the quantity of gas agreed in the auction. He states that the Respondent cannot be permitted to take the advantage of its not signing the formal GSA containing the arbitration clause. He states that as part of the bidding process, the Respondent had signed the GSA and returned a scanned copy to the Petitioner. He states that the version signed by the Petitioner after the conclusion of the auction process contained no variation to the version signed by the Respondent, except for filling in price, quantity and the effective date which was fixed on the basis of bid submitted by the Respondent. He states that the Respondent had agreed in principle to be bound by the terms of the GSA which is evident from various clauses of RFP. He states that this is further demonstrated by the fact that the Respondent had agreed to be bound by the terms and conditions of GSA when it signed Forms C-1 and C-6 which are part of the RFP. He states that once having agreed to be bound by the GSA which contained arbitration clause, the mere formal non-signing of GSA by the Respondent cannot deny the Petitioner for the option to invoke arbitration as the parties had agreed to submit themselves to settle their disputes by arbitration.

9. Learned Senior Counsel for the Petitioner states that the Petitioner has spent over three months and has incurred significant amount in the conduct of e-auction and, therefore, the entire exercise cannot be denied by the Respondent as they have refused to take the gas at the price to which they were bound.



10. *Per contra*, learned Senior Counsel for the Respondent contends that mere acceptance of the Respondent's bid did not result in conclusion of the GSA and this would not be considered as an Arbitration Agreement in terms of Section 7 of the Arbitration and Conciliation Act, 1996. It is further stated that the uploading of the signed/attested GSA by the Respondent and by the other bidders was only for technical evaluation and qualification only and was a mandatory requirement under the RFP to participate in the Auction Process. It is also stated that the GSA was never executed and submission of a signed GSA at the time of technical evaluation is not sufficient to form a contract between the parties because as per the terms of the RFP, the final execution of the GSA was not a mere formality but a mandatory requirement which had sanctions and repercussions if not done such as forfeiture of the security deposit.

11. It is further stated that the RFP itself does not contain any arbitration clause and the Arbitration Clause as referred to is only present in the draft GSA which was never finalised and is not binding on the Parties. It is stated that no arbitration agreement ever existed between the Parties. It is also contended that the Bid Process was based on the various Notification released by the Ministry of Petroleum and Natural Gas which explicitly required that any sale of gas would be by way of a signed and executed GSA.

12. It is also contended by the learned Senior Counsel appearing for the Respondent that even if the draft GSA is taken to be as binding upon the Parties, even then the Arbitration Agreement does not exist as the definition of "**Effective Date**" in draft GSA states that the date of "**Execution**" would



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be the "**Effective Date**" of the GSA. Learned Senior Counsel for the Respondent also contends that the RFP itself required execution of a definitive GSA as the closing step of the RFP process. He states that the Respondent has not executed the said Agreement and, therefore, the last step in the entire process has not been completed and it cannot be said that the parties have entered into an Arbitration Agreement.

13. He further states that the case of the Petitioner that the GSA, which contains Arbitration Clause, came into existence immediately after the Respondent's bid has been accepted, cannot be accepted. He states that signing of the draft GSA was not a mere formality. He further states that the RFP is governed by the notifications dated 15.10.2020 & 03.12.2020 issued by the Ministry of Petroleum and Natural Gas, which mandates execution of a draft GSA for submission of the same to the Regulator before inviting RFPs. He further states that the Respondent has not signed each page of the agreement and since there is absence of signatures of the Respondent on each page of the Agreement, it cannot be said that the formal GSA had not been entered into between the parties. Several contentions have been raised by the learned Counsel for the Respondent stating that without the fixed price and allocated quantity of the gas being specifically mentioned in the GSA, the GSA is not complete. He states that any interim arrangement entered into between the parties which shows in-principle agreement would not give rise to a definitive GSA unless the same is signed by both the parties. Learned Counsel for the Respondent also contends that the RFP does not bind the Respondent to supply gas and even after the execution of the RFP, it was always open for the Petitioner to back-out from the



Agreement and order for a re-bid. He further states that the argument of the Petitioner that the moment the auction was concluded, the Respondent became bound by the terms of the auction, is not tenable in law.

14. It is the contention of the learned Senior Counsel for the Respondent that the effective date, price and volume of gas were left blank in the draft agreement. He further states that since the GSA has not been entered into, at best the Bank Guarantee can be forfeited but the parties cannot be sent to Arbitration. Learned Counsel for the Respondent also contends that even the effective date is not filled in the draft GSA which means that the GSA does not exist. He draws the attention of this Court to clause 21.5 of the GSA to state that unless and until both the parties do not sign the Agreement, the Agreement does not exist. Clause 21.5 of the GSA reads as under:

*“21.5 Entire Agreement*

*This Agreement, together with the Annexures hereto, (i) embodies the final, complete and exclusive understanding between the Parties with respect to its subject matter; (ii) replaces and supersedes all previous oral or written agreements, understandings or arrangements between the Parties; (iii) may be signed in counterparts, each of which will be an original and all of which will constitute one and the same document; and (iv) may only be amended in a writing signed by an authorized officer of both Buyer and the Sellers hereto.”*

15. Heard the learned Counsels for the parties and perused the material on record.



16. Before proceeding ahead, it is necessary to extract the relevant clauses of the RFP and the same reads as under:

*“1.3.1*

*Phase 1-Pre-qualification*

*1. Publishing of bidding documents: To apprise potential Bidders of the auction process and key terms of the agreement, the bid documents such as the RFP, GSA etc., is made available on landing page of the e-portal. The Bidders will be able to download these documents without registering on the platform. Additionally, the NIO (Notice Inviting Offer) capturing the URL of the e-portal would be published by the Sellers in the Newspapers.*

*2. Submission of Bidders' queries: Bidders would be able to send their queries to the designated email address (cairngasbidding@mjunction.in) before registering on the portal. While sending the pre-bid queries, Bidder shall be required to mention the reference number of this RFP. However, post registration on the portal, the bidders would also be able to upload their queries on the portal. The Sellers would issue clarification to all the queries received and the same would be hosted on the e-portal.*

*3. Pre-bid meeting: The Sellers may organize a pre-bid meeting on a date specified in Clause 1.3.4 of this*

*RFP. The pre-bid meeting would an interactive session and provide Bidder's opportunity to seek further clarifications and understand the process better. The Pre-bid meeting would be open to all the interested Bidders. The Bidders willing to participate in the pre-*



*bid meeting would be required to nominate a maximum of two representatives from their organization to take part in the meeting. Bidders would be required to use their official email address to share the name, email address and phone number of the nominated person(s) to the designated email address (caimoasbidding@mjunction.in).*

*4. Registration and DSC mapping: The portal will be available for registration from the date of Publishing of*

*the NIO as specified in Clause 1.3.4 of this RFP. Every Bidder would be required to fill a small registration form and will have to enter his/her name, designation, contact number, organization name, gas consumption facility name & address, and other required details. Then they will attach a valid Class III Digital Signature Certificate (DSC) issued in the name of authorized person of the bidding organization. The DSC should be Issued on the email address of the authorized person and same should be used for registering on the platform*

*5. Document for Technical Evaluation: Each Bidder shall be required to upload duly signed/attested scanned copies of the following documents on the e-Tendering Portal before date specified in Clause 1.3.4 of this RFP including*

*A. Registration/ incorporation certificate for companies, LLPs and Co-operative societies or Partnership Deed duly registered with relevant authorities in case of partnership firms*



*B. Standalone Financial statements of past 3 years (Latest audited financial statement should not be older than 12 months from the bid closing/un-priced bid opening date) In case the bidding entity is a newly formed company, I can submit financial statements for the periods for which audit has been concluded or of its parent company subject to an undertaking from the parent company to the effect that it supports the bid and authorizes the bidder to use its financials*

*C. PAN and VAT/CST, GST certificate D. Security Deposit (Please refer Section C Form C4) along with the delivery report of the SFMS Confirmation*

*E. Certified copy of Power of Attorney/ Board Resolution in the name of the authorized representative of the Bidder highlighting power for signing the GSA*

*F. Signed GSA & RFP and any addendums/ corrigendum thereto*

*G. Sell-declaration from aggregators*

*H. Signed declaration Section C-Form C1, C2 and/or C3, C5 (if required) and CS Register of directors, shareholders of the company .....*

....

*1.3.3*



*After the end of the e-auction process, Sale Gas will be allocated to the identified Bidders ("Buyers") based on the allocation criteria and method outlined in Clause 4. The Buyers will be accordingly notified over their registered email IDs. Subsequent to this, each Buyer shall:*

*Execute GSA with the Sellers as per Section D for the gas volumes, duration and price allocated to the Buyer. (If any changes are made to the draft GSA, a modified draft of GSA will be published on e-portal before the start of Phase 2. The latest GSA published will be deemed agreed in its entirety by all Bidders and will be used for final signoffs)*

*Make necessary transportation arrangements for offtake of Sales Gas from the Delivery Point to Buyer's facilities before the Start Date as indicated in the executed GSA*

*1.3.4 The schedule for e-auction process has been given below:*

S. No.	Activity	Date
1.	Publishing NIO, RFP, GSA	28 <sup>th</sup> December'22
2.	Last date for submission of technical queries	04 <sup>th</sup> January'23
3.	Pre-bid meeting	05 <sup>th</sup> January'23
4.	Last date for submission of documents under pre-qualification process (Technical Bid Due Date)	10 <sup>th</sup> January'23 (by 17:00 hours (IST))
5.	Last date for submission of original BG	12 <sup>th</sup> January'23
6.	Notification to technically qualified Bidders	13 <sup>th</sup> January'23
7.	E-Auction training sessions	14 <sup>th</sup> , 16 <sup>th</sup> & 17 <sup>th</sup> January'23
8.	E-Auction date and time	18 <sup>th</sup> January'23 (10:30 hours (IST))
9.	Signing of Gas Sales Agreement	Within 10 days from date of e-auction.

#### *4. Evaluation Process and Volume Allocation*



#### *4.1 Technical Evaluation Process*

*The e-auction agency shall electronically access the documents submitted by Bidders as specified in Clause 1.3.1 of this RFP. Each Bidder will be evaluated based on the following criteria*

- i. All the responses and declarations required for Technical Evaluation should be complete and should conform to the terms and conditions of the gas supply indicated in the RFP and GSA, duly supported with documents wherever required. In case of incomplete and non-conforming documents, Sellers reserve the right to disqualify such Bidder.*
  
- ii. Bidder as either consumer of gas or as reseller, need to submit documentary proof-being certified copy of the Firm's Memorandum of Association (for a registered company), Partnership deed(for partnership firm) or declaration from Proprietor in case of a proprietary firm (as applicable depending on type of firm) detailing the nature of business the firm is engaged in*
  
- iii. Bidder to submit Standalone Financial statements of past 3 years (Latest audited financial statement should not be older than 12 months from the bid closing/un-priced bid opening date). In case the bidding entity is a newly formed company, it can submit financial statements for the periods for which audit has been concluded or of its parent company subject to an undertaking from the parent company to the effect that it supports the bid and authorizes the bidder to use its financials*



*Further, it should be noted that*

- i. To facilitate its evaluation, the e-auction agency may, at its sole discretion, seek clarifications from any Bidder regarding the documents provided. Such clarification(s) shall be provided within the time specified by the e-auction agency. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. In case a Bidder does not provide the clarifications sought by the e-auction agency within the timeframes specified by the e-auction agency, its bid shall be deemed invalid and shall not be evaluated.*
- ii. The e-auction agency reserves the right to reject any bid based on the evaluation of the documents. Subsequently, the e-auction agency shall have the right not to entertain any request for alteration, modification or substitution of any one or all of the documents with respect to the technical evaluation, provided that the e-auction agency may, at its sole discretion, allow a Bidder to rectify any infirmities or omissions if doing so does not constitute a material modification of the documents provided initially.*
- iii. The e-auction agency reserves the right not to proceed with the technical evaluation at any time without notice or liability to any Bidder and to reject any or all technical bids received without assigning any reasons.*



- iv. *The Sellers reserve the right to seek additional documents in future which it may deem fit to ascertain Buyer's capability to offtake gas as per the terms of GSA*

#### *4.2 Determination of Provisional Quantity and Final Quantity Allocation*

*Step 1: The Gas Price Bid shall be arranged in descending order.*

*Step 2: The Provisional Quantity shall be determined in as follows:*

*(i) The Provisional Quantity shall be determined for the highest Bidder (for Price Bid) for the full volume which it has quoted, followed by the next highest Bidder (for Price bid) for its quoted volume or remaining available volume, whichever is lower, and so on until the total available volume is fully allocated*

*(ii) If there is a tie in the Gas Price Bid and if the aggregate volume of gas quoted by these Bidders is less than the available gas volume, the Bidders will get volume allocated as per their quoted volume. In case of a tie in both the Gas Price bid, if the aggregate volume of gas quoted in the tied bids is more than the available gas volume, the available gas volume shall be pro-rated amongst the tied Bidders.*

*Step 3: Steps 1 and 2 shall continue throughout the e-Bidding Process and the Provisional Quantity shall continue to be determined by the E-Portal dynamically,*



*until the conditions for the closing of the e-Bidding Process as specified in Clause 3.3.(v) are met.*

***Step 4: Upon the closing of the e-Bidding Process, the Provisional Quantity determined based on the last bids received shall be considered as the Final Quantity for each Bidder.***

***At the end of the e-bidding process, the e-auction agency will notify all the successful Bidders regarding their respective allocated volume rounded up to nearest higher integer. The minimum Quantity allocated to each successful Bidder shall be 0.01 MMSCMD. The agency will share the list of successful Bidder and evaluation report with the Sellers basis which Sellers can proceed with the execution of GSA with successful buyers.***

#### *5. General Guidelines*

- i. Bidders are expected to thoroughly understand, evaluate and examine all instructions, forms, requirements, and terms and conditions of the GSA provided in this RFP Each Bidder is required to submit its bid based on the terms and conditions of this RFP and the GSA, without any deviations or conditionality*
- ii. Failure to furnish any/all information/documents required under this RFP shall lead to disqualification of the Bidder.*
- iii. Bidders are requested to submit all documents in the formats provided under Section C of this RFP.*



*Bid documents that are not properly filled in, or are damaged, or have any page(s) missing or with incorrect, inaccurate details or generally not complying with the bid conditions shall be disqualified*

- iv. *Each Bidder shall participate in the e-Bidding Process at its own expense and none of the expenses incurred during the participation in e-auction can be claimed from the Sellers, regardless of the outcome of the e auction*
  
- v. ***A bid, once submitted shall be binding on the Bidder who has submitted such bid. Each Bidder undertakes to offtake the Gas volume allocated (as per Clause 4.2 of this RFP) at the end of the E-auction, at the Gas Price computed based on the bid submission as per Clause 3. 1 of this RFP***
  
- vi. *In addition to the Gas Price each Bidder acknowledges and agrees that it shall be liable to pay: (a) all taxes, duties and levies on the purchase of gas as per the terms of GSA and (b) all transportation tariffs and charges and any taxes, duties, and levies thereon as applicable to the relevant transporters or any Government entity.*
  
- vii. *Each Bidder acknowledges and agrees that that this RFP by the Sellers does not constitute any commitment to supply or sell gas The obligation to supply on sell gas to a Buyer shall become*



*effective only upon the execution of the n of the GSA by all the parties!*

- viii. *A company which owns multiple gas consuming facilities (except aggregators or marketers or CGD companies) can participate in the E-Auction by a single registration for all facilities per Clause 1.3.1. of this RFP*
- ix. *Any attempt by a Bidder to influence the E-Auction process or other Bidders, bid evaluation or the allocation process shall immediately result in disqualification of its bid*
- x. *The outcome of E-auction and the allocations made thereafter, based on the criteria and process indicated in Clause 4 of this RFP, shall be final and binding on all Bidders*
- xi. *In case of any conflict between the provisions of this RFP and the GSA, the provisions of the GSA shall prevail.*
- xii. *All the notices, future amendments if any, to this RFP and the GSA during the E-Auction process shall be published on the e-portal <https://eps.buyjunction.in/gas bidding/>*
- xiii. *All the documents to be submitted online or in hard copy through the course of the E-Auction Process shall be duly signed by its Authorized Representative on all pages*



xiv. *After the registration, a unique login ID will be created for each bidding entity. It shall be the responsibility of every Bidder to ensure that it bids only through one login ID*

xv. *Rights of Sellers:*

a) *The Sellers reserve the right to withhold or withdraw the E-Auction process at any stage or cancel or modify the process or change/modify/amend any or all provisions of this RFP, at any time, without assigning any reason whatsoever by notifying on e-portal.*

b) *The Sellers have sole discretion and reserve the right, without any obligation or liability, to accept or reject any or all of the bids at any stage of the E-auction process*

c) *The Sellers, at their own discretion, can seek additional documents from Bidders that they may deem required to ascertain the capability of Bidders to offtake gas as per the terms of GSA”*

(emphasis supplied)

17. It is the case of the Petitioner that the referral Court under Section 11 of the Arbitration & Conciliation Act has to only examine the prima facie existence of an Arbitration Agreement and the determination of the substantive rights should be left to the Arbitral Tribunal. Learned Counsel for the Petitioner has relied on several judgments of the Apex Court and



more particularly on the judgment of the Apex Court in Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 & SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754.

18. It is the contention of the learned Counsel for the Petitioner that the notice inviting offer and the RFP issued by the Petitioner was followed by an offer in the form of a bid by the Respondent. The offer was accepted by the Petitioner *vide* an e-mail dated 18.01.2023, which leads to an enforceable contract. The enforceable contract was only to be reduced into writing under the GSA and this was only a formality and, therefore, the parties had agreed to refer the disputes to the Arbitrator. Reliance has also been placed by the learned Counsel for the Petitioner on form C1 & C6 wherein the Respondent has stated that it has confirmed, read and understood all the terms of the GSA.

19. A perusal of Clause 4.2 of the RFP shows the Determination of Provisional Quantity and Final Quantity Allocation and Step 4 categorically states that upon the closing of the e-Bidding Process, the Provisional Quantity determined based on the last bids received shall be considered as the Final Quantity for each Bidder. A perusal of the RFP indicates that the price and the quantity were finally determined and were not available for any variation. The RFP also indicates that the Respondent herein bid 46 times and out of total 15 bidders, 5 bidders, including the Respondent herein emerged as successful bidders and the Respondent herein was allocated the single highest quantity of gas. On the conclusion of the bidding, an e-mail was sent on the very same day, i.e. 18.01.2023, by the Petitioner to the



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Respondent informing them that they were successful in the bidding. An email containing the bid volume and the allocated volume was sent on 18.03.2023 and the same is extracted below:

*“From: Cairngas Bidding*

*Sent: 18 January 2023 23:13*

*To: devendra@gspc.in; amritadoctor@gspc.in; chintan.s@gspc.in*

*Cc: Ankit Kumar <Ankit.Kumar@mjunction.in>; Rimi Ghosh <rimi.ghosh@mjunction.in>; Rinku Ghosh <rinku.ghosh@mjunction.in>; Souvik Ghosh <souvik.ghosh@mjunction.in>*

*Subject: Winner Intimation Mail- Vedanta Request For Proposal (No. RFP/RJ-ON-90/1/2023/1) e-Auction for sale of Natural Gas from RJ BLOCK (RJ-ON-90/1) dtd. 18th Jan 2023*

*Company Name : M/s Gujarat State Petroleum Corporation Limited*

*e-Bidding Date : 18th January 2023*

*Dear Sir/Madam,*

*This is to inform you that, e-Bidding : Vedanta Request For Proposal (No. RFP/RJ-ON-90/1/2023/1) e-Auction for sale of Natural Gas from RJ BLOCK (RJ-ON-90/1) dtd. 18th Jan 2023 has closed.*

*Your Provisional Allocation is mentioned below.*

e-Bidding ID : 39735		e-Bidding : Vedanta Request For Proposal (No. RFP/RJ-ON-90/1/2023/1) e-Auction for sale of Natural Gas from RJ BLOCK (RJ-ON-90/1) dated 18th Jan 2023		
e-Bidding Start Date & Time : 2023-01-18 10:30:00		e-Bidding End Date & Time : 2023-01-18 18:27:30		
SL No	Bid Price (Slope of Average Brent Price)	Bid Volume (in SCMD)	Contract Date(YYYY-MM-DD)	Provisional Allocation Quantity (in SCMD)
1	5.30	2800000	2023-04-01	1907543.00



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*Thanks and Regards,  
Cairn Gas Bidding”*

20. The date by which the GSA was to be signed is also given in Clause 1.3.4 of the RFP. The said clause categorically states that the GSA is to be signed within ten days from the date of the e-auction. The auction was conducted on 18.01.2023. The Petitioner informed the Respondent that it has emerged as a successful bidder. The quantity allocated to the Respondent and the price at which the gas was allocated to it was already fixed as per the price formula given in the RFP was also intimated to the Respondent. The Petitioner emailed a fresh copy of the filled-up and signed GSA to the Respondent on 19.01.2023, i.e. the very next date of the e-auction. The Petitioner herein sent reminders on 20.01.2023, 27.01.2023, 01.02.2023, 10.02.2023, 17.02.2023 & 22.02.2023. However, the Respondent herein did not sign the GSA. On 27.02.2023, the Respondent herein sent an email to the Petitioner herein giving reasons as to why the GSA has not yet been signed. The said email is being reproduced in its entirety and the same reads as under:

*“Subject: RE: Winner Intimation Mail- Vedanta Request For Proposal (No. RFP/RJ-ON-90/1/2023/1) e-Auction for sale of Natural Gas from RJ BLOCK (RJ-ON-90/1) dtd. 18th Jan 2023*

*Date: Monday, 27 February 2023 at 6:09:52 PM India Standard Time*

*From: Chintan Shah*

*To: Suneet Kr. Choraria*



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CC: Avi Bhansali, devendra, amritadoctor@gspc.in,  
Sourcing Commercial

Dear Sir,

*This is reference with to trail emails on the subject.*

*On account of unforeseeable and adverse material changes in the natural gas market due to continuous fall in gas prices, it is not feasible to market this gas to downstream customers at current bid prices.*

*As you are aware Gas prices in international market have dropped ~18% from mid-January 2023 on account of, inter alia, demand destruction due to high energy prices as well as warmer winter in parts Europe. Further, reports suggest gas prices to remain under pressure owing to events including, demand from China taking longer than expected to come back and high inventories in Japan and South Korea on account of warmer weather.*

*Contrary, Brent prices have fairly remained stable since the auction concluded on 18 Jan 2023, resulting into RJ's field Gas Cost remaining almost unchanged in spite of reduction in market prices. You would agree that there is significant disparity in prices linked to Oil benchmarks and Spot gas prices in current volatile market.*

*Further, gas prices in the domestic markets have also corrected significantly and it is understood that price discovered in recently conducted domestic gas tender was more competitive. Customer's expectations are now aligned to such change in market conditions and there is a requirement of more competitive pricing / prices.*

***However, we are continuously making efforts to sell the gas to downstream customer and would revert to you appropriately.***



*Thanks and regards,  
Chintan Shah”*

21. The short question which arises for consideration before this Court is as to whether the fact that the Respondent has been declared as a successful bidder by the acceptance of the RFP, crystallising of the price and quantity of gas allocated, is sufficient for this Court to infer as to whether there exists an arbitration agreement between the parties or whether only the signatures on the GSA would lead to existence of an Arbitration Agreement.

22. Section 2(1)(b) of the Arbitration and Conciliation Act, 1996 states that “arbitration agreement” means an agreement referred to in Section 7 of the Act. Section 7 of the Arbitration and Conciliation Act, 1996 reads as under:

*“Section 7. Arbitration agreement.*

*(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

*(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

*(3) An arbitration agreement shall be in writing.*

*(4) An arbitration agreement is in writing if it is contained in*

*(a) a document signed by the parties;*



*(b) an exchange of letters, telex, telegrams or other means of telecommunication 1[including communication through electronic means] which provide a record of the agreement; or*

*(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*

*(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”*

23. A perusal of Section 7(2) of the Arbitration Act shows that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement which has to be in writing. Section 7 further states that an Arbitration Agreement is in writing if it is contained in a document signed by the parties or if it can be inferred from the exchange of letters, telex, telegrams or other means of telecommunication, including communication through electronic means which provide a record of the agreement or from exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

24. The Apex Court in Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1, has observed as under:

*“75. Section 7(3) requires an arbitration agreement to be in writing. Section 7(4) lays down three circumstances to elaborate when an arbitration agreement can be said to be in writing. According to the first circumstance laid down under Section 7(4)(a), an arbitration agreement is in writing if it is signed by*



*the parties. This circumstance refers to a situation where the parties have formally executed and expressly assumed the status of parties by attesting their signatures to the arbitration agreement or the underlying contract containing the arbitration agreement. In such situations, the Courts or tribunals only need to refer to the signature page or the recitals to figure out the parties to the arbitration agreement.*

**76. Section 7(4)(b) provides the second circumstance, according to which an arbitration agreement is in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement. According to this provision, the existence of an arbitration agreement can be inferred from various documents duly approved by the parties. [Shakti Bhog Foods Ltd. v. Kola Shipping Ltd., (2009) 2 SCC 134 : (2009) 1 SCC (Civ) 411; Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1 : (2010) 1 SCC (Civ) 570] Section 7(4)(b) dispenses with the conventional sense of an agreement as a document with signatories. Rather, it emphasises on the manifestation of the consent of persons or entities through their actions of exchanging documents. However, the important aspect of the said provision lies in the fact that the parties should be able to record their agreement through a documentary record of evidence. In Great Offshore Ltd. v. Iranian Offshore Engg. & Construction Co. [Great Offshore Ltd. v. Iranian Offshore Engg. & Construction Co., (2008) 14 SCC 240] , this Court observed that Section 7(4)(b) requires the Court to ask whether a record of agreement is found in the exchange of letters, telex, telegrams, or other means of telecommunication. Thus, the act of agreeing by the persons or entities has to be**



*inferred or derived by the Courts or tribunals from the relevant documents and communication, neither of which can be equated with a conventional contract.*

*77. The third circumstance is provided under Section 7(4)(c), according to which an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. A two-Judge Bench of this Court clarified in *S.N. Prasad v. Monnet Finance Ltd.* [*S.N. Prasad v. Monnet Finance Ltd.*, (2011) 1 SCC 320 : (2011) 1 SCC (Civ) 141] that there will be an “exchange of statements of claim and defence” for the purposes of Section 7(4)(c) if there is an assertion of the existence of an arbitration agreement in any suit, petition or application filed before any court or tribunal, and if there is no denial of it in the defence, counter, or written statement. Thus, in the third circumstance the Court proceeds on the assumption that the conduct of the person or entity in not denying the existence of an arbitration agreement leads to the conclusive proof of its existence.*

*78. All the three circumstances contained in Section 7(4) are geared towards determining the mutual intention of the parties to be bound by the arbitration agreement.*

*79. Section 7 of the Arbitration Act contains two aspects : a substantive aspect and a formal aspect. The substantive aspect is contained in Section 7(1) which allows parties to submit disputes arising between them in respect of a defined legal relationship to arbitration. The legal relationships*



*between and among parties could either be contractual or non-contractual. For legal relations to be contractual in nature, they ought to meet the requirements of the Indian contract law as contained in the Contract Act. It has been shown in the preceding paragraphs that a contract can either be express or implied, which is inferred on the basis of action or conduct of the parties. Thus, it is not necessary for the persons or entities to be signatories to a contract to enter into a legal relationship — the only important aspect to be determined is whether they intended or consented to enter into the legal relationship by the dint of their action or conduct.*

*80. The second aspect is contained in Section 7(3) which stipulates the requirement of a written arbitration agreement. A written arbitration agreement need not be signed by the parties if there is a record of agreement. [Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd., (2015) 13 SCC 477 : (2016) 1 SCC (Civ) 733] The mandatory requirement of a written arbitration agreement is merely to ensure that there is a clearly established record of the consent of the parties to refer their disputes to arbitration to the exclusion of the domestic courts.”*

(emphasis supplied)

25. The Apex Court in Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1, on the facts of that case, observed as under:

*“53. In the present case, where the commercial offer carries no clause making the conclusion of the contract incumbent upon the purchase order, it is clear that the basic and essential terms have been*



***accepted by the respondent, without any option but to treat the same as a concluded contract.***

\*\*\*\*\*

***57. Both in the counter-affidavit as well as at the time of arguments Mr C.A. Sundaram, learned Senior Counsel for the respondent has pointed out various differences between the version of the respondent and the petitioner. However, a close scrutiny of the same shows that there were only minor differences that would not affect the intention of the parties. It is essential that the intention of the parties be considered in order to conclude whether the parties were ad idem as far as adopting arbitration as a method of dispute resolution was concerned. In those circumstances, the stand of the respondent that in the absence of signed contract, the arbitration clause cannot be relied upon is liable to be rejected.***

***58. Smita Conductors Ltd. v. Euro Alloys Ltd. [(2001) 7 SCC 728] was a case where a contract containing an arbitration clause was between the parties but no agreement was signed between the parties. The Bombay High Court held that the arbitration clause in the agreement was binding. Finally, this Court upholding the judgment of the Bombay High Court held that the arbitration clause in the agreement that was exchanged between the parties was binding.***

***59. In Shakti Bhog Foods Ltd. v. Kola Shipping Ltd. [(2009) 2 SCC 134] , this Court held that from the provisions made under Section 7 of the Arbitration and Conciliation Act, 1996 that***



*“the existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the agreement” (SCC p. 142, para 14).*

***60. It is clear that in the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of telecommunication.”*** (emphasis supplied)

26. Applying the said law to the facts of this case, the signed and duly filled copy of the GSA was supplied to the Respondent mentioning the effective date, the price of the gas and the volume of the gas. The price, volume and the effective date was virtually agreed upon by the parties while accepting the RFP, as is clear from the e-mail dated 18.01.2023. Immediately after conclusion of the contract. The signed and filled copy of the GSA sent by the Petitioner to the Respondent was only to be formally signed by the Respondent. The GSA had already been read, understood and confirmed by the Respondent. The fact that the Respondent herein submitted Forms C1 & C6 would mean that it agreed to the various terms and conditions of the GSA, which also contained Arbitration clause. Form C1 & C6 reads as under:-



“

**FORM C1**

**Initial Declaration by the Bidder  
(Bidder details and Checklist for Bid Submission)**

To,  
Chief Marketing Officer  
Vedanta Limited (Cairn Oil & Gas),  
ASF Tower A, 362-363, Jwala Mill Rd,  
Phase IV, Udyog Vihar,  
Sector 18, Gurugram – 122016.

**Subject: Initial Declaration for RFP No. RFP/RJ-ON-90/1/2023/1**

Dear Sir,

We, Gujarat State Petroleum Corporation Limited, having our registered office at GSPC Bhavan, Behind Udyog Bhavan, Sector – 11, Gandhinagar – 382010, India and our principal place of business at Gandhinagar, Gujarat do hereby express our interest to participate in the e-auction process for sale and purchase of Natural Gas from **RJ-ON-90/1** Contract Area (RFP No. **RFP/RJ-ON-90/1/2023/1**)

We, hereby, confirm that we seek to participate in this E-Auction in the capacity of Gas Aggregator (gas aggregator/ gas end user /CGD).

In line with the requirements of the documents under pre-qualification process, we hereby furnish the following documents:

Sl. No.	Bid documents check list	Confirmation (✓)
1.	Registration/ incorporation certificate for companies, LLPs and Co-operative societies or Partnership Deed in case of partnership firms	✓
2.	Financial statements of past 3 years (refer clause 1.3.1.4)	✓
3.	PAN and VAT/CST/GST (as applicable) certificate	✓
4.	FORM C2 or FORM C3 (whichever is applicable)	✓
5.	Security Deposit as per FORM C4 (amount as indicated in 1.3.1)	✓



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6.	FORM C5, if applicable	√
7.	FORM C6	√
8.	Power of Attorney / Board Resolution in the name of the authorized representative of the Bidder	√
9.	Signed GSA & RFP	√
10.	Documents supporting Bidder's appointment as aggregators/ CGD	√
11.	Register of directors, shareholders of the company	√

Further, we confirm the following:

Sl. No.	Particulars	Confirmation (√)
1.	We hereby confirm that we have read and understood all the terms and conditions of the RFP and GSA.	√
2.	We hereby confirm that we have read and understood all the amendments and clarifications issued to RFP and GSA.	√
3.	We hereby confirm that we have read and understood the entire E-Auction Process and General Guidelines	√
4.	We hereby confirm that all the details provided by us in this form, all the declaration forms of this RFP and all the forms submitted online are true to the best of our knowledge. We understand that if any detail is found incorrect at a later stage, our bid may stand disqualified.	√
5.	We hereby confirm that we are in compliance with all the requirements of this E-Auction process including all the technical requirements.	√



**Devendra Agarwal**  
General Manager  
Gujarat State Petroleum Corporation Limited



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**FORM C6**

**Format for Declaration for confirmation of final offtake of Gas**

<On Bidder Company's Letterhead>

To,  
Chief Marketing Officer  
Vedanta Limited (Cairn Oil & Gas),  
ASF Tower A, 362-363, Jwala Mill Rd,  
Phase IV, Udyog Vihar,  
Sector 18, Gurugram – 122016.

**Subject: Declaration for confirming the timeframe for offtake of Gas.**

Dear Sir,

We, Gujarat State Petroleum Corporation Limited, having our registered office at GSPC Bhavan, Behind Udyog Bhavan, Sector – 11, Gandhinagar – 382010, India and our principal place of business at Gandhinagar, Gujarat and facility/plant as declared in Form-C2 / Form C3 of the RFP, hereby declare that we shall start offtake of natural gas volume allocated at the end of this e-auction as per the terms and conditions set out in the RFP and GSA.

**Devendra Agarwal**  
General Manager  
Gujarat State Petroleum Corporation Limited

27. Therefore, in the opinion of this Court, the necessary ingredients of Section 7 of the Arbitration Act are fulfilled.

28. Section 11(6A) of the Arbitration Act provides that the Court referring a dispute to the Arbitration is only to confine its examination to the existence of an arbitration agreement. Section 11(6A) of the Arbitration Act reads as under:-



*“11 (6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”*

29. This Court, therefore, has to only see as to whether the parties had in-principle agreed to refer the matter to Arbitration or not. The Apex Court in Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, has observed as under:-

*“163. We are of the opinion that the above premise of the Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is erroneous because the omission of Section 11(6-A) has not been notified and, therefore, the said provision continues to remain in full force. Since Section 11(6-A) continues to remain in force, pending the notification of the Central Government, it is incumbent upon this Court to give true effect to the legislative intent.*

*164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration*



*Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.*

***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]*

*168. In Shin-Etsu [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , this Court was called upon to determine the nature of adjudication contemplated by unamended Section 45 of the Arbitration Act when the objection with regards to the arbitration agreement being “null and void, inoperative or incapable of being performed” is raised before a judicial authority. Writing for the majority, B.N. Srikrishna, J. held that Section 45 does not require the judicial authority to give a final determination. The Court observed that : (SCC p. 267, para 74)*

*“74. There are distinct advantages in veering to the view that Section 45 does not require a final determinative finding by the Court. First, under the Rules of Arbitration of the International Chamber of Commerce (as in force with effect from 1-1-1998), as in the present case, invariably the Arbitral Tribunal is vested with the power to rule upon its own jurisdiction. Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not invalid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator 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. Since the arbitrator's finding would not be an enforceable award, there is no need to take recourse to the judicial intercession available under Section 48(1)(a) of the Act.”*

**169.** *When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.”*

30. The Apex Court in SBI General Insurance Co. Ltd. v. Krish Spinning, **2024 SCC OnLine SC 1754**, has observed as under:-

**“122.** *Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the arbitral tribunal. The arbitral tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then*



*the duty of appointing the arbitral tribunal falls upon the referral court under Section 11 of the Act, 1996. If the referral court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the arbitral tribunal alone and not by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the Act, 1996.*

\*\*\*\*\*

*125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”*

31. This Court is of the opinion that on the conclusion of the RFP, wherein the Respondent herein had made its bid 46 times after having read and understood the RFP and the GSA, and after giving a declaration in form C1 & C6 that they would start the offtake of the natural gas volume allocated at the end of the e-auction as per the terms and conditions set out in the RFP and the GSA, and after one party having signed the GSA and only a mere formality being left for the other party to sign the GSA, this Court is of the opinion that there is a prima facie existence of an Arbitration



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Agreement between the parties which is sufficient for this Court to refer the parties to Arbitration in terms of the GSA.

32. The Petitioner has already appointed Justice L. N. Rao, former Judge of the Supreme Court of India, as its nominee Arbitrator. This Court appoints Justice Ravinder P. Bhatt, former Judge of the Supreme Court of India, as the nominee Arbitrator of the Respondent. The nominee Arbitrators are requested to proceed further and appoint the Presiding Arbitrator.

33. The learned Arbitrators shall be entitled to fees as per the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

34. The learned Arbitrators are also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act, 1996 within a week of entering on reference.

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

36. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

37. With these directions and observations, the Petition is disposed of, along with the pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**JULY 28, 2025**

*Rahul*