IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP (COM) No.- 262 of 2025

INDRANI SARANGI

vs.

RELIANCE PROJECTS AND
PROPERTY MANAGEMENT SERVICE LIMITED AND ANR.

For the Petitioner	:	Mr. Diptomoy Talukder. Adv., Mr. Siddharth Shroff, Adv.
For the Respondents	:	Mr. Aniruddha Chatterjee, Adv. Mr. V.V.V Sastry, Adv. Ms. Khushi Gupta, Adv.
Judgment Reserved on	:	29.01.2026
Judgment Delivered on	:	10.02.2026
Judgment Uploaded on	:	10.02.2026

Shampa Sarkar, J.

1. The petitioner prays for appointment of an arbitral tribunal, for settlement of disputes which arose between the petitioner and the respondent as also the predecessor in interest of the respondent, in respect of a lease agreement dated July 17, 2003. The petitioner contends that the lease agreement was executed with Reliance Infocomm Ltd. Subsequently, the said lease deed was amended on November 10, 2014. Reliance Infratel

Ltd., (formerly known as Reliance Telecom Infrastructure Ltd.) which demerged from Reliance Communications Ltd., (formerly Reliance Infocomm Ltd.) and Reliance Telecom Ltd., (formerly Reliable Internet Services Ltd.), was incorporated as the lessee in place of Reliance Infocomm Ltd.

2. M/s Reliance Infratel Ltd. (RITL) was admitted into insolvency under the provisions of the Insolvency and Bankruptcy Code 2016, (in short IBC). The National Company Law Tribunal, Mumbai, approved the resolution plan submitted by the respondent No.1 and consequently, the respondent No. 1 had successfully taken over RITL with effect from December 22, 2022. Pursuant to another scheme of arrangement approved by the Company Law Tribunal, dated May, 11, 2023, the respondent No.1 transferred its passive infrastructure business in favour of respondent No. 2. According to the petitioner, the respondent No. 2 became the owner of the tower on the leasehold land, which had been originally leased in favour of Reliance Infocomm Ltd. The petitioner submitted that the expression lessee in the original agreement dated July 17, 2003, namely, Reliance Infocomm Ltd. included its successors and assigns. Thus, the agreement and the arbitration clause were binding on the respondents.

3. Upon execution of the agreement dated July 17, 2003, Reliance Infocomm Ltd. had taken on lease an open area of 1500 sq. ft. at Anwarpur, pertaining to RS Dag No.305, Mouza -Bishnupur, J.L. No. 106 under Police Station- Barasat, District No. 24 Parganas. The said premises was leased out for creation of a tower and installation of various equipments. The parties had agreed to certain terms and conditions. The agreement also

contained an arbitration clause for settlement of disputes through arbitration. Each party was to appoint an arbitrator and the third arbitrator was to be appointed by the two appointed arbitrators.

4. The petitioner invoked the arbitration clause, for resolution of various disputes which arose when certain terms and conditions of the lease agreement were allegedly violated by the erstwhile lessee and its successors i.e., the respondents.

5. The petitioner alleged that the deed stipulated that the lease rent would be enhanced at a rate of 20% every three years. The lease stood determined on July 31, 2023. Several rounds of discussions had taken place between the petitioner and the respondent No. 1. Emails were exchanged with multiple drafts of the newly proposed lease deed. The petitioner made her best effort to renew the said agreement of 2003, but the respondent No.1 did not come up with any positive response. Consequently, by a letter dated June 26, 2024, the respondent No. 1 was called upon to vacate the demised premises. The petitioner sought reimbursement of the expenses incurred on account of maintaining full-time security personnel and towards payment of enhanced municipal taxes. By another letter dated July 2, 2024, the petitioner informed the respondent No. 1 that, as the lease had expired on July 31, 2023, the respondent No.1 was liable to pay Rs. 78,000/- per month as rent for continued occupation of the property even after expiry of the lease. The petitioner also communicated that the arrears were payable from August 1, 2023, till such time the property was not vacated. The petitioner's husband sent an email on July 16, 2024, to the respondent No.

1, clarifying that, in the event the respondent No. 1 did not agree to an enhanced rent, the petitioner would be left with no other option, but to disconnect the supply of electricity from the property. The respondent No. 1 also filed an application under Section 144 of the Code of Criminal Procedure 1973, against the petitioner. However, no official copy of the said application was received either by the petitioner or by the petitioner's agent. By several letters, the petitioner sought clarification from the respondent No. 1 with regard to the fate of the proposal for renewal and payment of the outstanding. However, the respondent No. 1 did not send any answer to such queries. Therefore, the parties sought to resolve the dispute amicably and a settlement document was executed on July 24, 2024. Both the parties agreed to withdraw their respective allegations and counter-allegations.

6. It was agreed that the petitioner would restore the electric supply to the property, and the respondent No. 1 would clear all dues relating to the security personnel, etc. By email dated August 8, 2024, the respondent No.1 informed the petitioner of its willingness to withdraw the application under Section 144 of the Code of Criminal Procedures. The email also provided some assurances to the petitioner. On September 2, 2024, the respondent No.1 issued a letter to the petitioner, thereby, agreeing to vacate the property and remove all telecom equipments. The respondent No. 1 also requested refund of Rs 90,000/-, being the security deposit made in terms of the lease agreement. Even after a series of communications and exchange of letters between the parties, the dispute allegedly remained unresolved. According to the petitioner, the dispute was with regard to unpaid rents,

additional expenses incurred by the petitioner, occupational charges for overstay by the respondents, amongst others. In the above-mentioned circumstances, a sum of Rs 1,75,13,720/- was due and payable by the respondent No. 1 to the petitioner, subject to final adjudication by the competent authority. The petitioner also claimed interest at the rate of 18% per annum till actual realization of the amount due. As the respondent No. 1 and its agency did not perform its obligations under the lease agreement, by a notice dated October 1, 2024, the petitioner invoked the arbitration clause for reference of the dispute to arbitration. Mr. Debashis Bose, a retired IAS officer, was appointed as an arbitrator. The notice appointing the arbitrator was duly forwarded to the respondent No. 1.

7. When the respondent tried to remove the telecommunication materials from the property without settling the dues of the petitioner, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the said Act) before the learned Additional District Judge, 8th Court at Barasat for interim relief. An interim protection was granted by the learned Civil court, restraining the respondent No.1 from removing any machinery installed at the property until the dues were cleared. The respondent No. 1 preferred an appeal against the said order.

8. The nominated arbitrator accepted his appointment and scheduled a hearing on October 30, 2024. The hearing was adjourned on that date as the respondent failed to appear. Thereafter, the respondent No.1, vide a letter dated October 25, 2024, objected to the unilateral appointment of the arbitrator. The respondent No. 1 also filed an application under Section 14

of the said Act, challenging the appointment of the arbitrator. The said application was registered as AP COM 1050 of 2024. The said application came up for hearing before this court on December 16, 2024, and by an order dated December 16, 2024, the AP COM 1050 of 2024 was allowed, thereby terminating the mandate of the unilaterally appointed arbitrator. AP COM 1103 of 2024 was filed by the petitioner, seeking appointment of an arbitrator soon after the respondent No.1 had approached this court for termination of the mandate of arbitrator. AP COM 1103 of 2024, that is, the application for appointment of an arbitrator filed by the petitioner was dismissed by this court on the ground that the notice invoking arbitration was not proper. Consequent thereupon, the petitioner issued a notice on February 13, 2025, calling upon the respondent to concur to the appointment of an arbitral tribunal for adjudication of the dispute between the parties.

9. By letter dated 12 March, 2025, the learned advocates for each of the respondents denied the claims of the petitioner and submitted that the claims were not arbitrable. No arbitration agreement existed between the petitioner and either of the respondents.

10. It was submitted by Mr. Diptomoy Talukder, learned advocate for the petitioner, that this was a fit case for appointment of an arbitral tribunal in terms of the dispute resolution clause contained in the lease agreement dated July 17, 2003.

11. Mr. Aniruddha Chatterjee. learned senior advocate appeared on behalf of respondent No.1 and submitted that the petitioner did not enter into any

agreement with the respondent No. 1. The dispute emanated from the lease agreement dated July 17, 2003. The respondent No. 1 was a non-signatory. The arbitration clause in the said lease agreement was not incorporated by reference in the amendment agreement. The amendment agreement was also not signed by respondent No. 1. Under the amendment, the entire character of the lease agreement dated July 17, 2003 underwent a substantial change. Two new entities were introduced by the amendment agreement. Reliance Infratel Ltd. was added as a lessee and it was agreed between the parties that in case Reliance Infratel Ltd. provided passive telecom infrastructure services through Reliance Jio Infocomm Ltd, the lessor would be entitled for additional rent and compensation. Therefore, the respondent No. 1 was not connected with either the lease agreement or with the amended lease agreement. Moreover, on May 15, 2018, Reliance Infratel Ltd. was admitted into a Corporate Insolvency Resolution Process under Section 7 of the IBC. On May 8, 2019, the Interim Resolution Professional issued a public announcement inviting claims from creditors of the corporate debtor. During the Corporate Insolvency Resolution Process, the respondent No. 1 submitted a resolution plan which was subsequently approved by the NCLT, Mumbai Bench on December 3, 2020.Pursuant to the implementation of the Resolution Plan, on and from December 22, 2022, the respondent No. 1 acquired 100% control and ownership of Reliance Infratel Ltd. Between May 15, 2018 and December 22, 2022, the Resolution Professionals ensured payment of the monthly rents to the petitioner. The petitioner did not submit any claims before the Resolution Professional

either towards arrear rent or outstanding dues towards maintenance of the property, security personnel and municipal taxes. As the tenure of the lease was to come to an end on and from July 31, 2023, the petitioner and the respondent No. 1 had been in constant dialogue for renewal of the agreement. However, the renewal did not take place. Even after the expiry of the agreement, the respondent No. 1 had continued to pay the rentals on a month-to-month basis and had paid the rent up to September 2024. It was further submitted that the premises were vacated thereafter.

12. The claim of the petitioner seeking clearance of the arrear dues from August 2003 would not in any event be recoverable from respondent No. 1. The respondent No.1 had taken on the property pursuant to the order of the NCLT, Mumbai, on a clean slate basis. Some of the clauses of the Resolution Plan were relied upon, which are extracted below: -

> "(a) Any stakeholder of the Corporate Debtor, including any Creditor whether Financial Creditors, Employees, Workmen, Government and/or Statutory Authorities, Other Operational Creditors, shareholders or any other stakeholder and all claims and liabilities of any nature whatsoever (whether claimed or unclaimed, admitted or not, due-or-contingent- asserted or um-asserted, crystallised or uncrystallised, known or unknown, disputed or undisputed) of the Corporate Debtor for any period up to the Effective Date towards the Creditors and other Stakeholders of the Corporate Debtor shall be extinguished and settled, upon payment of the Total Resolution Amount on the Effective Date, on and with effect from the NCLT Approval Date; and
> (b) Reliance Communications Limited, Reliance Telecom Limited or any of their respective Affiliates or shareholders, employees, workmen, promoters, financial creditors, operational creditors, contracting counter-parties, Government and/or Statutory Authorities or any other stakeholders (collectively "Group Stakeholders") (in each case whether past, existing or future) and all liabilities of any nature whatsoever (whether claimed or unclaimed, admitted or not, due or contingent, asserted or un-asserted, crystallised or uncrystallised, known or unknown,

> disputed or undisputed) of the Corporate Debtor for any period up to the Effective Date towards such Group Stakeholders (or any person claims through or on behalf of them) shall be extinguished and settled, upon payment of the Total Resolution Amount on the Effective Date, on and with effect from the NCLT Approval Date."

13. Mr Chatterjee urged that, the dues for the pre-CIRP period could not be claimed from the respondent No.1. The resolution professional had paid all the arrear rents to the petitioner. The claims were not arbitrable as the debt stood discharged. Even assuming that there were arrear dues, those stood extinguished after the Resolution Process had been successfully admitted and effected. The status of the petitioner, was that of a debtor. In the event the petitioner had any claims for the pre-CIRP period, the same should have been raised before the Resolution Professional. The petitioner's claim could not be revived through arbitration.

14. It was further contended that, the dues between January 2023 to July 2023, were misconceived and not sustainable in law. The respondent No.1 continued to pay rent on a month-to-month basis till September 2024. The petitioner relied upon a settlement between the parties, which did not contain any arbitration clause. Moreover, the settlement amounted to novation of the lease deed and the terms and conditions thereof. The petitioner was trying to extort money from the respondent No. 1.

15. Mr. V.V.V Shastri, learned Advocate appeared on behalf of the respondent No. 2. He submitted that the respondent No.2 was neither a party to the lease agreement nor a party to the amended lease agreement. The petitioner and respondent No.2 neither had any interaction nor any business dealing in the entire process. The lease agreement had expired

when the respondent No.2 had taken over the passive infrastructure business. The claims of the petitioner were denied on the grounds that they were based on a settlement agreement which did not contain any arbitration clause. Moreover, the settlement agreement resulted in the novation of the lease agreement, which was executed between the petitioner and Reliance Infocomm Limited, as also novation of the amended lease agreement by which Reliance Infratel Ltd. was incorporated as a lessee. He prays that in the absence of any agreement between the petitioner and the respondents and especially in view of the fact that there was no arbitration agreement between the parties, the application must be dismissed.

16. Considered the submissions of the learned Advocates for the respective parties.

17. The issue before this Court is whether the dispute should be referred to an arbitral tribunal in terms of the arbitration clause contained in lease agreement dated July 17, 2003, which was entered into between the petitioner as a lessor and Reliance Infocomm Ltd. as the lessee. The clause is quoted below :-

> "(g) It is hereby expressly agreed that if at any time there shall arise any dispute,. doubt or difference or question with regard to registration of this agreement or in respect of the rights, duties & liabilities of the parties hereto assigns ..... present then every dispute doubt difference or question shall be referred to arbitration as per the provisions of the Arbitration & Conciliation Act 1996 and title unless framed hereunder Two arbitrators to be appointed, one by each of the parties and third to be appointed by the said two arbitrators. The decision of the Arbitrators shall be final and binding on the parties to this Deed."

18. In the said agreement, Reliance Infocomm Ltd. was the lessee and the expression included its successors and assigns. The relevant portion is quoted below:-

> "THIS LEASE AGREEMENT is made and entered into at Kolkata on this 17th day of July, 2003 BETWEEN MRS. INDRANI SARANGI, wife of Mr. Kalyan Sarangi, residing at BE-246, Sector - I, Salt Lake City, Kolkata - 700064, hereinafter called the "LESSOR" (which expression shall unless it be repugnant to the contract or meaning thereof shall include the successor in Title and assigns) of the FIRST PART and RELIANCE INFOCOM LTD., a Company incorporated under the provisions of the Indian Companies Act, 1956 and having their Registered Office at Avadeah Home, 3rd Floor, Preetam Nagar, Elite Bridge, Ahmed - 380 006 and Circle Office at Reliance House, 34, Chowringhee Road, Kolkata - 700071, hereinafter called "LESSEE" which expression shall include their successor and assigns] of the SECOND PART represented by Gandhi Sircar as its Constituted Attorney."

19. The lease was for a period of 20 years, with a 20% increase in the lease rental every three years. The renewal clause is quoted below:-

> "8 (f) It is hereby agreed occupier and tenants that the term of the lease shall be 20 years with a 20% escalation in lease rental adhoc every 3 years period."

20. It is an admitted position that Reliance Infratel Limited stepped into the shoes of the lessee. Reliance Infratel Ltd., (formerly known as Reliance Telecom Infrastructure Ltd.) had demerged from Reliance Communications Ltd., (formerly Reliance Infocomm Ltd.) and Reliance Telecom Ltd., (formerly Reliable Internet Services Ltd.). In the amendment agreement, it was stated that the lessee i.e., Reliance Infocomm Limited, intended to share its active telecommunication infrastructure installed at the demised premise with Reliance Jio Infocomm Limited or RJIL, who will be the customer of the lessee and who in turn may have to set up additional antennas and other equipments and the lessor had agreed to such clause on the terms and

conditions set forth in the amendment agreement. The relevant portion thereof is quoted below:-

> "B. The Lessee intends to share its passive Telecommunication Infrastructure installed at the said Demised Premises with Reliance Jio Infocomm Limited or RJIL (who will be the Customer of Lessee) who in turn may have to set up additional Antennas and other equipment's ("Customer Telecom Equipments") and the LESSOR has agreed for the same on the terms and conditions set forth herein below.
> C) In the above premises, parties agree to amend principal agreement by executing this 1st Amendment to record the amended terms and conditions in the Principal Agreement."

21. The parties agreed that the terms and conditions in the amendment, would become an integral part of the principal agreement with effect from the date of execution of the amendment agreement dated November 10, 2014. It also provided that the amendment agreement and the principal agreement shall be read and construed as one and the same document and the first amendment shall be considered to be a part of the principal agreement. The terms and conditions of the principal agreement would remain unchanged and shall be in full force and effect, except as amended by the amended agreement dated November 10, 2014. The parties also agreed that the clauses of the principal agreement which were not in conflict with any of the clauses of the amendment shall continue to apply with full effect. Therefore, prima facie, the amendment agreement cannot be said to be a separate agreement, distinct and severable from the lease agreement of 2003. By the amendment agreement, certain clauses were incorporated in the existing agreement and a new entity was incorporated as the lessee. The relevant portions are quoted below:-

> "RELIANCE INFRATEL LIMITED formerly known as Reliance Telecom Infrastructure Limited, demerged from Reliance Communications Limited (formerly Reliance Infocomm Limited) and Reliance Telecom Limited (formerly Reliable Internet Services Limited respectively) a company incorporated and registered under the Companies Act, 1955 and having its registered office at H Block, First Floor. Dhirubhai Ambani Knowledge City. Navi Mumbai- 400 710 and Circle office at Reliance House, 3rd Floor, 34, Chowringhee Road, Kolkata - 700071 (hereinafter referred to as LESSEE: which expression shall include its permitted successors and assigns)"

22. Reliance Infratel Ltd., (formerly known as Reliance Telecom Infrastructure Ltd.) which demerged from Reliance Communications Ltd., (formerly Reliance Infocomm Ltd.) and Reliance Telecom Ltd., (formerly Reliable Internet Services Ltd.) became the lessee. Reliance Infratel Limited was admitted into the CIRP under the provisions of the IBC and the respondent No.1 as the successful resolution applicant, had taken over Reliance Infratel Limited.

23. It is an admitted position that the respondent No.1 was running the business from the demised premises and paying the rent. The resolution professional was also paying the rent to the petitioner. It is also an admitted position that the respondent No.1 had transferred its passive infrastructure business in favour of the respondent No.2 and the respondent No.2 was running the tower which was installed in the lease hold premises. The possibility of RJIL operating the tower is also mentioned in the amendment agreement. Therefore, the fact that the respondents had entered into the property, and used the same to operate the tower and equipments as a part of their telecom business, is, prima facie, available from the records. Moreover, the series of correspondence between the petitioner and the respondent No.1 further indicate that the issue of renewal of the lease deed

was being contemplated and deliberated upon by the parties, but the parties did not come to an agreement. It is also alleged by the petitioner that the respondent No. 2 continued to enjoy the property and occupied the same after the expiry of the lease deed, on account of which the petitioner was entitled to enhanced rent as per the terms of the deed of 2003 and the renewal clause. The petitioner also claims occupational charges as the property was being occupied by the respondents even after the lease had expired. Further claims were in respect of payments made to security personnel, torwards property tax etc. The respondent No.1 also claimed return of the security deposit which was originally paid to the lessor. The question of return of security money to the respondent No.1 would only arise, if the respondent No. 1 considered itself to be entitled to the money deposited by the original lessee. The resolution plan was approved in December 2022, but records reveal that the respondent No.1 occupied the premises and the lease was determined upon expiry of its term in July 2023. The respondent No.2 took over the passive infrastructure business in May 2023 but the premises were occupied upto September 2024. Thus, whether all debts were extinguished when the Respondent No.1 came into the picture or not, is a triable issue.

24. Moreover, such issues touch the question of jurisdiction of the arbitral tribunal and arbitrability of the dispute. They must be raised before the learned tribual. Further, whether the arbitration clause could be invoked against the respondents who are non-signatories to the lease deed is also an issue to be decided by the learned tribunal. Prima facie, it appears that the

respondents had also acted on the basis of the lease deed and came in possession of the demised premises on the basis of the same.

25. The law as to whether non-signatories can be bound by an arbitration agreement has been developed by the Hon'ble Apex Court. Some of the decisions are discussed below.

26. In ***Ajay Madhusudan Patel v. Jyotrindra S. Patel,*** reported in ***(2025) 2 SCC 147,*** the Hon'ble Apex Court held as follows:-

> "123. … The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The Unidroit Principle of International Commercial Contract, 2016 [Unidroit Principles of International Commercial Contracts, 2016, Article 4.3.] provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances:
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> (a) preliminary negotiations between the parties;
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> (b) practices which the parties have established between themselves;
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> (c) the conduct of the parties subsequent to the conclusion of the contract;
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> (d) the nature and purpose of the contract;
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> (e) the meaning commonly given to terms and expressions in the trade concerned; and
>
> (f) usages.
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> ***

126. Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.

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127. … The nature or standard of involvement of the non-signatory in the performance of the contract should be such that the non-signatory has actively assumed obligations or performance upon itself under the contract. In other words, the test is to determine whether the non-signatory has a positive, direct, and substantial involvement in the negotiation, performance, or termination of the contract. Mere incidental involvement in the negotiation or performance of the contract is not sufficient to infer the consent of the non-signatory to be bound by the underlying contract or its arbitration agreement. The burden is on the party seeking joinder of the non-signatory to the arbitration agreement to prove a conscious and deliberate conduct of involvement of the non-signatory based on objective evidence."

27. In the matter of ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.,*** reported in***(2013) 1 SCC 641,*** the Hon'ble Apex Court held as follows:-

> "70. Normally, arbitration takes place between the persons who have, from the outset, been parties to both the arbitration agreement as well as the substantive contract underlining (*sic* underlying) that agreement. But, it does occasionally happen that the claim is made against or by someone who is not originally named as a party. These may create some difficult situations, but certainly, they are not absolute obstructions to law/the arbitration agreement. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Of course, heavy onus lies on that party to show that, in fact and in law, it is claiming "through" or "under" the signatory party as contemplated under Section 45 of the 1996 Act. Just to deal with such situations illustratively, reference can be made to the following examples in *Law and Practice of Commercial Arbitration in England* (2nd Edn.) by Sir Michael J. Mustill:
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> '1. The claimant was in reality always a party to the contract, although not named in it.
>
> 2. The claimant has succeeded by operation of law to the rights of the named party.
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> 3. The claimant has become a party to the contract in substitution for the named party by virtue of a statutory or consensual novation.
>
> 4. The original party has assigned to the claimant either the underlying contract, together with the agreement to arbitrate

which it incorporates, or the benefit of a claim which has already come into existence."

28. In the matter of ***Cox & Kings Ltd. v. SAP (India) (P) Ltd.,***reported in ***(2025) 1 SCC 611,*** the Hon'ble Apex Court held as follows:-

"31.

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169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16."

29. Reference is also made to the decisions of ***Adavya Projects Pvt. Ltd. vs M/s Vishal StructuralsPvt. Ltd. &Ors.*** reported in ***2025 INSC 507*** and ***ASF Building Private Limited v ShapoorjiPallonji and Company Private Limited*** reported in ***2025 INSC 616.***

The relevant portions from ***Adavya Projects (supra)*** is quoted below:-

> **"24.** As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 of the ACA. Section 16 embodies the doctrine of kompetenz-kompetenz, i.e., that the arbitral tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement, and the scope of disputes referrable to arbitration under the agreement.23 Considering that the arbitral tribunal's power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal's jurisdiction must be determined against the touchstone of the arbitration agreement."

30. In the decision of the Hon'ble Supreme Court in ***ASF BuildtechPvt. Ltd. (supra)*** it was decided that the issues of joinder, non-joinder, mis-joinder etc. are also within the domain of the learned Arbitrator. The relevant portions are quoted below:-

"113. It is well within the jurisdiction of the Arbitral Tribunal to decide the issue of joinder and non-joinder of parties and to assess the applicability of the Group of Companies Doctrine. Neither in Cox and Kings (I) (supra) nor in Ajay Madhusudhan (supra), this Court has said that it is only the reference courts that are empowered to determine whether a non-signatory should be referred to arbitration. The law which has developed over a period of time is that both 'courts and tribunals' are fully empowered to decide the issues of impleadment of a non-signatory and Arbitral Tribunals have been held to be preferred forum for the adjudication of the same.

114. In the case of Ajay Madhusudhan (supra), this Court, placing reliance on Cox and Kings (I) (supra), has expressly held that Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the arbitral tribunal and the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the arbitral tribunal.

115. The case of Ajay Madhusudhan (supra) also recognizes that the legal relationship between the signatory and non-signatory assumes significance in determining whether the non-signatory can be taken to be bound by the Arbitration Agreement. This Court also issued a caveat that the 'courts and tribunals should not adopt a conservative approach to exclude all persons or entities who are otherwise bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties. The mutual intent of the parties, relationship of a non- signatory with a signatory, commonality of the subject matter, the composite nature of the transactions and performance of the contract are all factors that

signify the intention of the non-signatory to be bound by the arbitration agreement'.

116. Recently, a coordinate bench of this Court in Adavya Projects Pvt. Ltd. v. Vishal StrcturalsPvt. Ltd., 2025 INSC 507, also held that an arbitral tribunal under Section 16 of the Act, 1996 has the power to implead the parties to an arbitration agreement, irrespective of whether they are signatories or non-signatories, to the arbitration proceedings. This Court speaking through. P.S. Narasimha J. observed that since an arbitral tribunal's jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, any person or entity who is found to be a party to the arbitration agreement can be made a part of the arbitral proceedings, and the tribunal can exercise jurisdiction over him. Section 16 of the Act, 1996 which empowers the arbitral tribunal to determine its own jurisdiction, is an inclusive provision that covers all jurisdiction question including the determination of who is a party to the arbitration agreement, and thus, such a question would be one which falls within the domain of the arbitral tribunal. It further observed that, although most national legislations do not expressly provide for joinder of parties by the arbitral tribunal, yet an arbitral tribunal can direct the joinder of a person or entity, even if no such provision exists in the statute, as long as such person or entity is a party to the arbitration agreement. Accordingly, this Court held that since the respondents therein were parties to the underlying contract and the arbitration agreement, the arbitral tribunal would have the power to implead them as parties to the arbitration proceedings in exercise of its jurisdiction under Section 16 of the Act, 1996. The relevant observations read as under: -

> "24. As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 of the ACA. Section 16 embodies the doctrine of kompetenz-kompetenz, i.e., that the arbitral tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement. and the scope of disputes referrable to arbitration under the agreement. Considering that the arbitral tribunal's power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal's jurisdiction must be determined against the touchstone of the arbitration agreement."

31. The scope of the referral court is limited to the, prima facie, satisfaction as to the existence of an arbitration agreement or an arbitration clause. No deeper probe or mini trial is permissible at this stage. The facts relating to the dispute which arose between the parties, and the communication between the parties, prima facie, indicate that, even after expiry of the lease, the respondents were continuing to use the property, run their business from the property, and rents were also paid. Under such circumstances, the respondents appear to have derived some right of user of the property from the original lessee. The respondent No.2 also appears to be connected to the demised premises, through the original deed of 2003,

and was thus using the premises. The passive telecom infrastructure was shared by the respondent No. 2.

32. In the matter of ***Aslam Ismail Khan Deshmukh v. Asap Fluids Pvt. Ltd. &Anr.*** reported in ***(2025) 1 SCC 502,*** the Hon'ble Apex Court held as follows:-

> "51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc."

33. The referral court only gives legal meaning to the doctrine of competence-competence. In the decision of ***SBI General Insurance Co. Ltd. vs Krish Spinning*** reported in ***2024 SCC Online SC 1754,*** the Hon'ble Apex Court held as follows:-

> "94. A seven-Judge Bench of this Court, in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899 reported in 2023 INSC 1066, speaking eruditely through one of us,

DrDhananjaya Y. Chandrachud, Chief Justice of India, undertook a comprehensive analysis of Sections 8 and 11 respectively of the Act, 1996 and, inter alia, made poignant observations about the nature of the power vested in the Courts insofar as the aspect of appointment of arbitrator is concerned. Some of the relevant observations made by this Court in In Re : Interplay (supra) are extracted hereinbelow:

"179. [...] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an arbitral tribunal does not necessarily mean that the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.

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185. The corollary of the doctrine of competence-competence is that courts may only examine whether an arbitration agreement exists on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.

186. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the arbitral tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:

a. If an application for interim measures is filed under Section 9 of the Arbitration Act; or

b. If the award is challenged under Section 34.

Issues which concern the payment of stamp-duty fall within the remit of the arbitral tribunal. The discussion in the preceding segments also make it evident that courts are not required to deal with the issue of stamping at the stage of granting interim measures under Section 9.

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117. By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the referral court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the arbitral tribunal doesn't in any way mean that the referral court is diluting the sanctity of “accord and satisfaction” or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always

> open for the defendant to raise the issue of "accord and satisfaction" before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.
>
> 135. The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the arbitral tribunal as a preliminary issue."

34. In ***M.R. Engineers and Contractors Pvt. Ltd. Vs. Som Datt Builders Ltd.*** reported in ***(2009) 7 SCC 696***, it was held that if reference to a document in a contract showed that the document was not intended to be incorporated in its entirety, such reference would not make the arbitration clause in the document referred, as a part of the contract. There must be a special reference to the arbitration clause so as to make it applicable. A general reference to another contract would not be sufficient. Prima facie, in the present case, the parties to the proceeding accepted the entirety of the principal agreement and agreed that the amendment agreement would be co-existing, co-extensive and co-terminus with the principal agreement dated July 17, 2003. Here, in my prima facie view, some portions of the principal agreement were amended and the remaining portions were adopted by the parties to the amendment agreement. The emails/letters demonstrate, prima facie, connection of the respondents with the lessor. Lastly, the plea of novation, jurisdiction etc. will also be decided by the

learned arbitral tribunal. In view of the settled law laid down by the Hon'ble Supreme Court in ***Vidya Drolia v. Durga Trading Corporation*** reported in ***(2021) 2 SCC 1***, a plea of novation is a matter falling squarely within the jurisdiction of the arbitral tribunal under Section 16. The issue being triable, this Court cannot adjudicate the same at the reference stage.

35. Under such circumstances, the application is allowed. Mr. Chayan Gupta, learned Advocate, Bar Library Club will act as the petitioner's nominee. Mr. Anuj Singh, learned Advocate, Bar Library Club (M-9830202752) will act as the respondent's nominee and Mr. Anirban Ray, learned Advocate will act as the presiding arbitrator. The appointment is subject to compliance of section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitral tribunal shall fix the remuneration in terms of the schedule of the Act. All points are left open to be decided by the learned Tribunal.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)