In the High Court at Calcutta
Commercial Appellate division
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

A.P.O.T. No.338 of 2024
Arising out of
GA (COM) 4 of 2024
In CS (COM) 544 of 2024
(Old No. CS 194 of 2023)
with
GA (COM) 1 of 2024, GA (COM) 2 of 2024

M/s Exchange and Others
Vs.
Pradip Kumar Ganeriwala and Another

For the appellants	:	Mr. Surajit Nath Mitra, Sr. Adv., Mr. Bratin Kumar Dey, Adv., Mrs. Anjana Banerjee, Adv.
For the respondent no.1	:	Mr. Rajeev Kumar Jain, Adv., Mr. Saunak Sengupta, Adv., Mr. Kunal Shaw, Adv., Ms. Yamini Mahawar, Adv.
For the respondent no.2	:	Mr. Sanjib Kr. Mal, Adv., Mr. Bimalendu Das, Adv., Ms. Shomrita Das, Adv.
Heard on	:	12.02.2025, 19.02.2025
Hearing concluded on	:	05.03.2025
Judgment on	:	19.03.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") arises out of an order passed in CS (COM) 544 of 2024 dismissing the application filed by the defendant nos.1 to 4 (present appellant nos.1 to 4) under Section 8 of the 1996 Act, bearing GA (COM) 4 of 2024, for referring the matter to arbitration.

2. The appellants rely on Clause 12 of a deed of partnership dated August 23, 1994 entered into between defendant/appellant no.2 and plaintiff/respondent no.1, thereby forming M/s Exchange, the defendant/appellant no.1-partnership firm. Clause 12 is an arbitration clause, providing that in case of any dispute arising between the partners or their representatives, the same shall be referred for decision of the Chief Divisional Manager of Bharat Petroleum Corporation Limited (BPCL), the defendant no.5/respondent no.2, under whose jurisdiction the subject retail outlet is situated, for arbitration either by him or his nominee and that the decision of the said Arbitrator shall be conclusive and binding on all the partners. The partnership firm was formed for the purpose of running a petrol pump business from a retail outlet under licence from the BPCL.

3. The dispute in the suit, as per the appellants, arises out of the said partnership deed of 1994 and hence, being covered by the arbitration clause therein, the matter ought to be referred to arbitration.

4. The learned Single Judge dismissed the application under Section 8 of the 1996 Act primarily on the premise that defendant nos.3 to 5 in the suit, against whom claims have been made in the plaint, were not parties to the arbitration agreement and as such, there cannot be any reference under Section 8.

5. Learned senior counsel for the appellants argues that BPCL is not a necessary party to the suit, since it has already deleted the name of the plaintiff/respondent no.1 from its records as a partner of the appellant no.1-firm, which is the main relief sought against BPCL. As to the deletion of the name of respondent no.1 from the records of other departments, statutory authorities, bodies and/or institutions, it is submitted that those authorities have not been impleaded in the suit and the BPCL is not empowered to effect such deletion, even if required.

6. It is submitted that defendant nos. 3 and 4, also appellants herein, the subsequently added partners after re-constitution of the partnership firm on the retirement of respondent no.1, have given their express consent to be subject to arbitration and, thus, the matter ought to have been referred to arbitration. The deed by which the partnership was reconstituted also contains an arbitration clause.

7. It is submitted that the name of the respondent no.1 as partner has already been removed from all departments, statutory authorities, bodies and, or institutions, although there was a slight delay in issuing new selling license by the Department of Food and Supplies, Government of West Bengal. In any event, the said Government

department having not been impleaded as a party to the suit, such delay cannot have a material bearing on the present *lis*.

8. The cause of action in the suit is primarily against the defendant/appellant no.1-firm and its partners, and defendant no.5/respondent no.2, the BPCL, was impleaded in the suit merely to avoid the applicability of Section 8 of the 1996 Act.

9. It is further submitted by the appellants that the respondent no.2-BPCL had already taken steps and deleted the name of the plaintiff from its records much prior to the institution of the present suit, as borne out by the trail-mail annexed to the application under Section 8 of the 1996 Act.

10. It is argued that BPCL was never a necessary party and in a previous order passed in the present appeal, a co-ordinate Bench had granted liberty to file an application for deletion of respondent no.2 as a party.

11. It is argued that since the claims in the suit arise in respect of disputes regarding the respective liabilities of the partners of the partnership firm as it stood prior to re-constitution and induction of defendant nos.3 and 4, there cannot be any claim against the said defendants. The plaint claims are on the basis of the position as it was on the date of the retirement of the plaintiff/respondent no.1 and flows from the partnership deed of 1994. Thus, the arbitration clause of the original partnership deed of 1994 is the relevant clause which is to be looked into.

12. The appellants have, by way of a supplementary affidavit, also filed a deed of dissolution dated April 1, 2022 of the erstwhile firm which was not disclosed by the plaintiff.

13. The plaint prayer of a decree for a sum of Rs.7,97,187.76p is against the defendants/appellant no.1-firm towards the plaintiff's capital balance, which is also argued by the appellants to be a dispute arising out of the original partnership deed dated August 23, 1994.

14. Learned senior counsel appearing for the appellants places reliance on *Lindsay International Private Limited and others v. Laxmi Niwas Mittal and others*, reported at *2022 SCC OnLine Cal 170*, a judgment of a learned Single Judge of this Court, where it was observed that the principle laid down by the Supreme court in *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya and another*, reported at *(2003) 5 SCC 531*, was rendered prior to the 2015 amendment to the 1996 Act and the position has been reversed by *N.N. Global Mercantile Private Limited v. Indo Unique Flame Limited and others*, reported at *(2021) 4 SCC 379*, where it was clarified that if there is a valid arbitration agreement, the matter is to be referred to arbitration irrespective of any court order.

15. Learned senior counsel also relies on *Ajay Madhusudan Patel and others v. Jyotrindra S. Patel and others*, reported at *2024 SCC OnLine SC 2597*, in support of the proposition that even non-signatories to the arbitration agreement can be bound by the arbitration agreement if they consent to do so and if there is a defined legal relationship between the signatory and non-signatory parties. The conduct of the

non-signatory parties could be an indicator of their consent, which in the present case has been given by the defendant/appellant nos.3 and 4, the incoming partners of the re-constituted firm.

16. Learned counsel for the plaintiff/respondent no. 1 controverts such submissions and argues that the judgment of the learned Single Judge in *Lindsay International Private Limited (supra)* ought to be treated as *per incuriam* since *Sukanya Holdings (P) Ltd. (supra)* is still good law insofar as there cannot be any bifurcation of the suit into two parts, one to be decided by the Arbitral Tribunal and the other by the Civil Court, which would inevitably delay the proceedings and defeat the whole purpose of speedy disposal of dispute and decreasing the cost of litigation, which would be frustrated by such procedure.

17. Learned counsel for respondent no. 1 cites a three-Judge Bench decision of the Supreme Court in *Thomas Cook (India) Ltd. v. Beach Ark Hotels Pvt. Ltd. and Another*, reported at *2025 SCC OnLine SC 140*, wherein the proposition laid down in *Sukanya Holdings (P) Ltd. (supra)* was relied on and applied.

18. It is argued that there is no illegality or perversity in the impugned judgment dated August 9, 2024. It is next argued by the respondent no.1 that Order I Rule 10(2) of the Code of Civil Procedure applies only at the juncture of the filing of the suit and subsequent action taken by the BPCL/respondent no.5 cannot be an occasion for the court to *suo motu* delete the name of the said defendant. Since reliefs have been claimed against the defendant no.5 as well as defendant nos.3 and 4 in

the suit, none of whom were parties to the arbitral proceedings, there is no scope of reference to arbitration.

19. Learned counsel for the respondent no.1 further contends that unless a "party", as defined in the 1996 Act, is a party to the arbitration agreement, there cannot be a reference under Section 8 of the 1996 Act. It is argued that there continues to be a cause of action against defendant no.5/respondent no.2 and in any event, the said question has to be decided on a full-fledged trial and not at this premature stage.

20. Learned counsel next contends that the judgment in *N.N. Global Mercantile Private Limited (supra)* relied on in *Lindsay International Private Limited (supra)*, has been reversed in a subsequent Constitution Bench decision of a seven-Judge Bench of the Supreme Court in the matter of *Interplay Between Arbitration Agreement Under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*, reported at *(2024) 6 SCC 1*.

21. In *Ajay Madhusudan Patel*'s case the Supreme was considering a case where the doctrine of group of companies was being considered, as opposed to the present case.

22. Lastly, it is contended that the appellants are seeking to avoid the consequences of failure to file their written statement in the suit in time and having forfeited their defence within the contemplation of the Commercial Courts Act, 2015, by having a reference to arbitration.

23. Learned counsel for the BPCL contends that the name of the BPCL be expunged, since even before the filing of the suit, the BPCL had deleted the name of the plaintiff/respondent no.1 from its records and there is

no subsisting cause of action against the said party. Learned counsel also highlights the liberty given for seeking deletion of its name in the Order dated November 20, 2024, passed in the present appeal by a co-ordinate Bench.

24. It is submitted that the defendant no.5-BPCL also entered into an agreement independently with the partnership firm which carries an arbitration clause as well.

25. Heard learned counsel for the parties.

26. The issues involved in the case have various facets which are discussed below.

Scope of Section 8 of the 1996 Act

27. In order to fully appreciate the nuances of the present case, the scope of Section 8 of the 1996 Act is required to be understood. The only comparable provision in the 1996 Act is Section 11 of the said Act, where a reference to arbitration is also contemplated. However, there is a difference in scope between the two Sections which, though subtle, cannot be overlooked.

28. In a Section 11 scenario, the scope of enquiry of the High Court is limited to whether there is a valid arbitration agreement and the dispute is covered by the same. Of course, in *ex facie* deadwood claims, the court might stay its hands in referring the matter since it would be a futile exercise.

29. On the other hand, in a Section 8 consideration, the court is not merely an instrumentality under the 1996 Act, akin to the role of the High Court under Section 11. There is already a pending civil suit in an otherwise competent Civil Court which is already in seisin of the suit when the application under Section 8 is filed. The court, while dealing with an application under Section 8, apart from considering the validity of the agreement, also has to read the plaint and the pleadings of the parties, including the written statement, if filed, and/or the application under Section 8 itself, in a holistic and meaningful manner to arrive at the conclusion whether the reliefs claimed in the suit come within the ambit of the arbitration agreement/clause. It is also to be kept in mind that Section 8 does not create an absolute legal bar to the court in taking up and deciding the suit, in the sense that the right to have a reference under Section 8 can be waived by the defendant simply by not filing a proper application under Section 8. In such a case, the suit would proceed, despite the existence of the arbitration clause, in its normal course.

30. Thus, while exercising its jurisdiction under Section 8 of the 1996 Act, the Civil Court acts in a dual capacity, as a Civil Court taking up the suit as well as an authority under the 1996 Act, although if there is a valid arbitration agreement and the dispute involved in the suit and the reliefs claimed therein come within the ambit of the arbitration clause, there is no option of the court to refuse reference to arbitration, if the

defendant chooses to file an application under Section 8 in proper format.

<u>Whether the reliefs claimed against defendant nos.3 and 4 come within the ambit of Section 8 of the 1996 Act</u>

31. Section 7 of the 1996 Act is wide in its scope. Whereas the term "party" has been defined in Section 2 (1) (h) of the said Act to be a party to an arbitration agreement, Section 7(1) provides that "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*.

32. Again, Section 8 provides that a reference to arbitration shall be made if a party to the arbitration agreement or any party claiming through or under him applies under the said provision.

33. The key word in Section 7(1) is "defined legal relationship" which broadens the definition of "arbitration agreement" itself beyond the contract entered into between the parties. The dispute between the parties need not be confined to disputes arising of the contract alone but may also arise out of a defined jural relationship between them.

34. In the present case, although the dispute springs up from the partition deed dated August 23, 1994, it also pertains to the jural relationship between the plaintiff/respondent no.1 and the defendants/appellant

nos. 2, 3 and 4, all of whom are partners of the defendant/appellant no.1-partnership firm.

35. Hence, read in the context of Section 7(1), the dispute involved in the suit relates to a dispute between the plaintiff on the strength of his previous status as a partner of the defendant no.1-firm and the relief sought is against the partnership firm as well as its present partners after the re-constitution, out of whom defendant nos.3 and 4 were subsequently inducted and defendant no.2 has continued as a partner from the pre-reconstitution period. Thus, the expression "a party to the arbitration agreement or any person claiming through or under him" as used in Section 8, read in conjunction with Section 7 of the 1996 Act, takes within its ambit defendant nos.1 to 4, all of whom are either the partnership firm or parties coming within the defined legal relationship of partners within the contemplation of the arbitration clause in 1994 the deed.

36. Again, Section 7(4) provides that an arbitration agreement has to be in writing, which can be in a rainbow of situations. The expression "a document signed by the parties", in Clause (a) of sub-section (4) of Section 7 can also include the application under Section 8 itself as well as the memorandum of the present appeal and the connected stay application where, by impleading themselves as parties and seeking a reference to arbitration on the strength of the arbitration clause contained in the 1994 document, as well as challenging as co-

appellants the refusal to so refer, the defendant nos.3 and 4 have also subjected themselves to such proposed arbitration.

37. Clause (c) of sub-section (4) of Section 7 includes an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other, which can also include the plaint, read with the application under Section 8 and/or the proposed written statement (which was not permitted to be filed by the defendants but which refusal has been assailed in an appeal which is now pending).

38. Hence, the defendant nos.3 and 4 have unequivocally consented to being subject to the arbitration sought in the Section 8 application.

39. Even after the reconstitution of the partnership firm, the defined legal relationship of partnership continues *inter se* the defendant nos. 2, 3 and 4 and the claims made in the suit by the plaintiff, who himself was an erstwhile partner, are based on disputes arising out of such legal relationship among the parties.

40. The ratio laid down in *Ajay Madhusudan Patel (supra)*, relying on *Cox & Kings Limited v. SAP India Private Limited and another*, reported at *(2024) 4 SCC 1*, has to be read in the above backdrop. In the said judgment, the Supreme Court, in unequivocal terms, observed that the courts and tribunals should not adopt a conservative approach to exclude all person or entities who intended to be bound by the underlying contract containing the arbitration clause through their conduct and relationship with the signatory parties. The mutual intent

of the parties, relationship of the non-signatory to a signatory, the commonality of the subject-matter, composite nature of the transactions and performance of the contract, it was held, are all factors that signify the intention of the non-signatory to be bound by the arbitration agreement.

41. It was further highlighted in the said judgment that the important determination for courts in case of non-signatory parties is whether such persons or entities intended or consented to be bound by the arbitration agreement or the underlying contract and it was held that the requirement of a written arbitration agreement does not exclude possibilities of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties.

42. The Supreme Court further highlighted, by relying on *Cox & Kings Limited (supra)* that 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, and secondly, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading to the other party to legitimately believe that the non-signatory was a veritable party to the contract.

43. We may further add to such ratio that in a Section 8 scenario, the nature of the reliefs claimed in the plaint are to be looked into and where the relief sought in the suit against non-signatories to the arbitration agreement is in harmony with the reliefs sought against the

signatories, particularly when the legal relationship between the signatories and the non-signatories are on the same platform vis-à-vis the cause of action of the suit and the reliefs claimed, the non-signatories may very well be brought within the purview of the arbitration agreement. Thus, there cannot be any manner of doubt that the defendants/appellant nos.3 and 4, although incoming partners after the re-constitution of the firm, come within the ambit of the arbitration agreement.

44. The principal relief claimed in the suit, relief (a), is a decree for declaration that the plaintiff/respondent no. 1 is not a partner of the defendant/appellant no.1-firm on and from April 1, 2022. April 1, 2022 is chosen as the cut-off date, since the partnership firm created by the partnership deed dated August 23, 1994 was allegedly dissolved on that date and subsequently re-constituted. The claim of the plaintiff in the suit is entirely based on his capacity as a partner during the period prior to his retirement, thus, solely on the strength of the partnership deed dated August 23, 1994 and the jural relationship flowing therefrom.

45. The other ancillary relief sought against the firm and defendant nos.3 and 4 are in the context of the defendant nos.3 and 4 having inherited the liabilities of the defendant no.1-firm, which is not an independent liability of the defendant nos.3 and 4 but a carry-over from the liabilities of defendant no.1-firm and defendant no.2 under the original partnership deed dated August 23, 1994.

46. The two major components of the cause of action of the suit, as per the plaint, are that the entire reliefs sought are on the basis of the plaintiff having been a partner of the defendant no. l-firm at the relevant period on the basis of and during subsistence of the partnership deed dated August 23, 1994 and the liabilities of the partnership firm arising out of the said agreement, all of which happened prior to the retirement of the plaintiff from the said firm.

47. Thus, the pseudo-liabilities of the defendant nos.3 and 4, insofar as the frame of the suit and its cause of action are concerned, are not new liabilities springing from any independent contract but are all based on the rights of the plaintiff as claimed on the strength of the partnership deed dated August 23, 1994 and during its subsistence and the liabilities flowing from such deed. The defendant nos. 3 and 4 have been embroiled in the suit only in the capacity of partners of the firm, because they have inherited the legacy of alleged liabilities of the defendant no. 1-firm and the defendant no.2, its continuing partner, left over from the pre-dissolution era of the partnership firm, which liabilities and the proclaimed rights of the plaintiff all flow from the deed of 1994, containing the arbitration clause. Hence, the reliefs claimed even against the defendant nos.3 and 4 are relatable to the deed of 1994 and not independent claims arising after the dissolution of the erstwhile firm or the retirement of the plaintiff therefrom.

48. Hence, defendant nos.3 and 4 squarely come within the ambit of the dispute covered by the arbitration clause of the 1994 partnership deed.

49. In addition, since the re-constitution deed also contains an arbitration clause, the parties thereto (including the newly inducted defendant nos. 3 and 4) have agreed to submit to arbitration in case of disputes arising in respect of the defined legal relationship of partners of the defendant no. 1-firm, without any distinction being drawn in regard to liabilities of the firm either in its previous form or its reconstituted *avatar*.

50. Hence, this issue is held in favour of the defendants/appellants. The defendant nos.3 and 4 are very much amenable to reference to arbitration under Section 8 of the 1996 Act as well.

Whether the reliefs claimed against defendant no.5/respondent no.2 come within the ambit of Section 8 of the 1996 Act

51. The respondent no.2-BPCL, impleaded as defendant no.5 in the suit, has sought the expunging of its name from the array of parties on the ground that it had deleted the name of the plaintiff/respondent no.1 from its records even prior to the institution of the suit, as evinced by a trail-mail which is prior to the suit and annexed to the supplementary affidavit filed by the appellants herein.

52. The matter can be approached from two different perspectives, which are discussed below:

First perspective:

53. *Vide* Order dated September 18, 2023 passed in the suit from which the present appeal arises, the learned Single Judge recorded a

submission of defendant no.5/respondent no.2-BPCL that the dispute is *inter se* between the partnership and its partners and that BPCL has nothing to do with the license issued by the Department of Food and Supplies, Government of West Bengal. BPCL only issues licence for the products which are supplied by it or being sold by the defendant no.1 at the petrol pump. The learned Single Judge observed, considering the said submissions, that the parties with the assistance of their respective advocates can, in the meantime, sit and decide on the modalities by which the plaintiff's name can be expunged from the licence issued by the Department of Food and Supplies so that the plaintiff is not hauled up for any untoward incident despite having ceased to be a partner of the defendant no.1.

54. In an order dated December 4, 2023 passed in the suit, it was recorded that the defendant nos.1 to 4 submitted that a fresh licence in the name of the defendant nos.2 to 4 had been issued by eliminating the name of the plaintiff who had retired from the partnership and a copy of the licence issued by the Director, Consumer Goods, Food and Supplies Department, Government of West Bengal on December 1, 2023 was also placed on record before the court.

55. Even in the present appeal, a co-ordinate Bench, *vide* order dated November 20, 2024, had recorded the submission of learned counsel for BPCL that the name of the plaintiff had been deleted from all records and the respondent no.2 had approved the re-constituted partnership firm pursuant to the request made and, as such, the

presence of the respondent no.2 was not at all necessary. The co-ordinate Bench, on the basis of such submission, observed that it would be open for the said respondent to file an application for deletion of its name in the proceeding.

56. Thus, even without any bifurcation of the cause of action in the suit, the learned Single Judge had an option to expunge the name of the defendant no.5/ present respondent no.2 as a defendant in the suit. Learned counsel for the plaintiff/respondent no.1 argues that the power of the court under Order I Rule 10(2) has to be exercised on the basis of the position as it stood on the date of filing of the suit. Even from such viewpoint, the BPCL has produced documents and claims that it had already deleted the name of the plaintiff from its records before institution of the suit and issued a fresh licence subsequently in the favour of the re-constituted firm.

57. Even otherwise, a plain reading of Rule 10(2) of Order I of the Code of Civil Procedure shows that the court may *suo motu* pass an order striking out the name of a plaintiff or defendant *at any stage of the proceedings.* The parameter for invoking such jurisdiction is that the said party must be "improperly joined". The "impropriety" has not been fixed to the date of institution of the suit, particularly read in conjunction with the expression "may at any stage of the proceedings" used in the earlier part of the said sub-rule. Hence, if the court is of the opinion that a party has been improperly joined and the joinder has

been rendered improper even subsequently after filing of the suit, it has *suo motu* jurisdiction to strike out the name of the party.

58. Importantly, as opposed to Section 11 of the 1996 Act, where the High Court acts merely as a functionary under the said Act and not as an independent civil court, in a Section 8 situation there is already a civil suit pending before a competent civil court and it is such civil court, in its dual capacity as such and as a functionary under the 1996 Act, refers the matter to arbitration. Thus, nothing prevented the learned Single Judge from expunging the name of BPCL by taking on record the materials before it, simultaneously with adjudication of the application under Section 8, which would have eliminated BPCL from the suit altogether.

59. If we carefully consider the reliefs (a), (b), (d), (e), (f) and (g) of the plaint, neither of those are against the defendant no.5/respondent no.2 but against the appellant no.1-firm and its partners. Relief (c) is the only claim against the defendant no.5-BPCL which is for perpetual injunction restraining the defendant no.5 from supply or re-sell petroleum products and/or licensed essential commodities to the defendant no.1-firm *till the time the name of the Plaintiff is removed and/or deleted from each and every Determent and/or authority and/or body and/or establishment where the name of the Plaintiff appears as the partner of the Defendant No.1.*

60. Insofar as the other departments and/or authorities and/or bodies and/or establishments are concerned, no other authority has been

impleaded in the suit apart from defendant no.5. Defendant no.5 has no authority or jurisdiction, and consequentially any liability, to delete the name of the plaintiff from the records of other authorities. It can at best take steps in that regard which it has pleaded to have already taken. Thus, the relief against defendant no.5, as framed in prayer (c) of the plaint, is a sham relief merely to embroil the defendant no.5 and avoid arbitration. Notably, the said relief does not claim the deletion of the name of the plaintiff from the record of the defendant no.5/respondent no.2 itself but from other departments and authorities and/or bodies or establishments, which is entirely beyond the authority of the BPCL. The other such authorities having not been impleaded, such relief, *ex facie*, is bad for non-joinder of necessary parties and cannot be granted. Hence, no cause of action has been shown against the BPCL in the suit and as such, the BPCL/defendant no.5 ought to have been expunged/deleted from the array of parties by the learned Single Judge by exercise of its *suo motu* powers under Order I Rule 10(2) of the Civil Procedure Code.

Second Perspective:

61. The second viewpoint from which the present issue can be looked at is that the BPCL agreement with the original partnership, formed by the deed of 1994, also contains an arbitration clause, being Clause 19 of the said agreement dated July 30, 2020. Clause 19 provides that any dispute or difference "whatsoever" arising out or in connection with the

said agreement, including any question regarding its existence, validity, construction, interpretation, application, meaning, scope, operation or effect of the contract or termination thereof shall be referred to and finally resolved through arbitration as per the procedure mentioned thereinbelow.

62. The expressions "application", "operation", "effect" and "termination" are all inextricably linked with the partnership deed by which the defendant/appellant no.1 was formed on August 23, 1994.

63. The BPCL agreement with the original partnership firm is replete with references to the partnership deed dated August 23, 1994.

64. For example, Clause 10(s) of the BPCL agreement prevents the change of constitution of the licensee firm (defendant no.1-firm) or to dissolve the partnership or admit any new member as partner or allow any member to withdraw from the partnership without obtaining the previous consent from the company.

65. Again, Clause 13(b) of the BPCL agreement provides *inter alia* that on the retirement of any partner of the said partnership firm, the BPCL may at its option at once determine the agreement and if the option shall not be exercised, *the agreement shall continue as between the company and the surviving or continuing partners of the licensees*.

66. Thus, as per the contemplation of the BPCL agreement with the partnership firm, the scope of operation, effect and perpetuation/termination of the said agreement was intertwined with and dependent on the dissolution of the partnership firm, admission of

new members thereto and even withdrawal of a partner from the said partnership, all of which are specifically the subject-matter of the present suit.

67. Also, as per Clause 13(b), the agreement is to continue between the company and the surviving or continuing partners of the licensee firm, which covers within its ambit the reconstituted firm and defendant no.2 (surviving partner) and defendant nos.3 and 4 ("continuing partners" in the sense of deriving liability, as per the plaint case, from the previous liabilities of the erstwhile firm created by the partnership deed dated August 23, 1994). Since all of those and the previous consent of the BPCL for such actions by the erstwhile partnership firm are the subject-matter of dispute coming within the ambit of Clause 19 of the BPCL agreement, which is further specified by the use of expressions such as "application, operation, effect and termination", the arbitration clause (Clause 19) of the BPCL agreement with the partnership firm (defendant no.1) clearly refers to the vital clauses of the partnership deed dated August 23, 1994, which includes the arbitration clause therein, and intends the same to be a part of the BPCL agreement as well. Thus, the provisions of Section 7(5) of the 1996 Act, which envisage the reference in a contract to a document containing an arbitration clause to constitute an arbitration agreement if the contract is in writing and the reference to it is such as to make such arbitration clause part of the contract, are attracted, thereby bringing the arbitration clause in the agreement dated July 30, 2020 between the

BPCL and the erstwhile firm within the ambit of the disputes of the suit. In such a case, separate references to arbitration between the plaintiff and the BPCL and the plaintiff and the defendant nos.1 to 4 would be an unnecessary, futile and dilatory exercise, specifically intended to be curbed by the 1996 Act as expressed in its Statement of Objects and Reasons. Speedy disposal by alternative dispute resolution is the spirit of the 1996 Act and as such, the said intention of the Legislature behind promulgating the statute has to be honoured while interpreting any of its provisions.

68. Thus, even if we accept the second perspective above, the reliefs sought in the suit are also covered by the arbitration clause of the BPCL agreement, thus, facilitating a reference to arbitration of the entire dispute involved in the suit, be it between the plaintiff and the defendant nos.1 to 4 or between the plaintiff and the defendant no.5, to a composite arbitration.

69. Since it is arguable as to whether the first or the second perspective is more acceptable in law, the only option before the civil court was to refer the matter to arbitration lock, stock and barrel and leave it to the arbitral tribunal to decide such questions.

70. Hence, this issue is also decided in the positive, holding that the reliefs sought against the defendant no. 5/ respondent no. 2 also come within the purview of Section 8 of the 1996 Act.

71. In view of the above findings, there cannot be any manner of doubt that the above aspects of the matter were not brought to the notice of the

learned Single Judge and were not adverted to at all in the impugned order. Thus, the impugned order is *de hors* the law and the facts of the case and as such cannot stand the scrutiny of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

72. In such view of the matter, A.P.O.T. No.338 of 2024 is allowed on contest, thereby setting aside the impugned judgment and order dated August 9, 2024 passed in respect of GA (COM) 4 of 2024 in CS (COM) 544 of 2024.

73. GA (COM) 4 of 2024 is, thus, allowed, directing the dispute raised in the suit being CS (COM) 544 of 2024 to be referred to arbitration.

74. The parties shall take necessary steps accordingly.

75. It is, however, made clear that the above observations have been rendered in the context of the limited consideration under Sections 8 and 37 of the Arbitration and Conciliation Act, 1996 and shall not be binding on the Arbitral Tribunal taking up the matter. All questions, including the question of jurisdiction of the Arbitral Tribunal applying the *kompetenz-kompetenz* principle, are kept open to be urged before and decided by the Tribunal independently on merits, without the Tribunal being unnecessarily influenced in any manner by the above observations so far as merits are concerned.

76. GA (COM) 1 of 2024 and GA (COM) 2 of 2024, filed in connection with the present appeal are consequentially disposed of as well.

77. There will be no order as costs.

78. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)