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

BEFORE :-
THE HON'BLE JUSTICE SHAMPA SARKAR

AP- COM 821 OF 2025

M/S PRIME PROJECTS
vs.
PRAJNANANANDA JANA
SEVA SANGHA AND ANOTHER.

For the Petitioner	:	Mr. Chayan Gupta, Adv. Mr. Souradeep Banerjee, Adv. Ms. Sanjana Sinha, Adv. Mr. AbhidiptoTarafder, Adv. Mr. Pourush Bandyopadhyay, Adv.
For the Respondent no. 1	:	Mr. Tanmoy Mukherjee, Adv. Mr. Souvik Das, Adv. Mr. RudranilDas, Adv.
For the Respondent no. 2	:	Mr. Surya Prasad Chattopadhyay, Adv. Mr. Ankit Chatterjee, Adv,
Judgment Reserved on	:	29.01.2026
Judgment Delivered on	:	10.02.2026
Judgment Uploaded on	:	10.02.2026

Shampa Sarkar, J.

1. This is an application for appointment of an arbitrator, for resolution of the dispute between the parties. The disputes arose out of a Joint Venture Agreement dated July 30, 2022. According to the petitioner, disputes or

differences in relation to or arising out of or touching the validity, interpretation, construction, performance, breach or enforceability of the agreement were to be referred to an arbitral tribunal. The arbitral tribunal would consist of one arbitrator who shall be an advocate to be jointly nominated by the legal advisors of the developer and the leaseholder. The place of arbitration shall be Kolkata.

2. The petitioner is a registered partnership firm and is engaged in the business of real estate development. The firm was constituted on July 1, 2022, pursuant to a partnership deed. The respondent no. 1 is a society registered under the West Bengal Societies Registration Act, 1961 and the respondent no. 2, claiming to be the President of the said society, had entered into the agreement with the petitioner for development of a property situated at Plot No. AD-263/C, Sector I, Salt Lake City, Kolkata - 700064. The petitioner approached this court by filing this application, when the respondents, despite repeated requests, failed to refer the dispute to arbitration in terms of the arbitration clause.

3. The case run by the petitioner in the application is as follows :-

a) By an indenture of lease dated January 22, 1981, the Government of West Bengal as lessor, demised unto and in favour of the respondent no.1, leasehold rights in respect of land measuring about 6.2719 kathas, situated at plot no. AD-263/C, Sector I, Salt Lake City, Kolkata - 700064. The lease was valid for 999 years commencing from the date of execution of the deed subject to payment of lease rent by the respondent no.1 to the state of West Bengal.

b) The respondent no.1 obtained possession in respect of the premises from the concerned authority on February 24, 1981, and constructed a single-storey building, upon obtaining requisite sanction from the municipal authorities.

c) Respondent no.1 had been making payments of the lease rent to the Government of West Bengal.

d) As the respondent no.1 was facing paucity of funds and could not effectively perform its day-to-day activities, the members of the society decided to develop the premises by constructing a multi-storeyed building. The petitioner was requested to undertake the project.

e) Upon negotiations between the parties, the joint venture agreement dated July 30, 2022 was entered into. The respondent no.2 represented the respondent no.1 as its President and executed the said joint venture agreement on behalf of the society.

f) The society had granted exclusive rights to the petitioner to construct a new building on the premises in question. All expenses for such construction of the proposed multi-storied building were to be borne by the petitioner. The petitioner was to make payment of a sum of Rs. 3,41,00,000/- subject to deduction of TDS as non-refundable and non-adjustable advance, in the manner provided under clause 8.4 of the said agreement. In the said agreement, the respondent no.1 society, was described as the leaseholder and the petitioner was described as the developer. The respondent no. 1 was further entitled

to allocation of the entire first floor together with one covered car parking space measuring about 150 square feet.

g) The petitioner was entitled to the remaining of the area in the said building and car parking spaces along with common facilities and amenities.

h) Further, the petitioner was entitled to 75% of the roof area and the balance 25% was the entitlement of the respondent no.1. The petitioner had the authority to deal with the property in terms of the agreement and negotiate with persons or enter into any agreement or contract or borrow money or take any advance against its allocation or acquired right.

i) The petitioner complied with its obligations under the agreement and transferred a sum of Rs. 20,79,000/- after deduction of TDS to the account of the respondent no.1. The sum was accepted by the respondents without any objection or demur. Receipts with regard to the payment were also granted in favour of the petitioner.

j) The respondent no.1 was under an obligation to hand over vacant possession of the premises to the petitioner for development purpose.

k) The petitioner requested the respondents to make over such possession.

l) Despite such request, the respondents, on one pretext or the other, delayed handing over of the possession of the premises and the time for performance of the agreement had been extended by mutual consent.

m) Later, the petitioner came to learn that one Meghnath Mondal, representing himself as the Secretary of the respondent no.1, had filed a suit before the learned Civil Judge (Senior Division) 2nd Court at Barasat being Title Suit no. 550 of 2023, and prayed for various reliefs. First of such reliefs being, a declaration that the society was a duly registered society under the Society's Registration Act 1961 and was represented by the committee which was in charge of the affairs of the society at the time of filing of the suit. The names of the committee members were duly entered in the Office of the Registrar of Firms, Societies and Non-Trading Corporations, West Bengal.

n) In the suit, the President of the Respondent no. 1, Mr. Golok Ranjan Bose and the petitioner were impleaded as defendants. The allegations in the suit were that the erstwhile committee mismanaged the Society, and excluded the participation of its members. Accordingly, the registration of the Society was cancelled. Thereafter, such registration was revived and a new committee was formed. That Golok Ranjan Bose i.e., the respondent no. 2 herein, had misappropriated the assets of the Society.

o) Prior to filing of the suit, an advertisement was published in two local dailies by the society, requesting the public at large to return the documents that had been misplaced by the Society. In response to the advertisement, an objection was raised by the petitioner by asserting the execution of the Joint Venture Agreement between the respondents and the petitioner. When the alleged newly formed

committee came to learn about the Joint Venture Agreement, the suit was filed with the relief as prayed for. It was alleged that the respondent no. 2 was never the President of the Society and he had entered into a conspiracy with the petitioner, by forging and manufacturing documents in order to cheat the Society.

p) The plaintiff prayed for a decree for declaration that the joint venture agreement dated July 30, 2022, entered into between the respondent No.2, in the capacity of the President of the Society, and the petitioner was void, fraudulent and non-binding;

q) Further prayer was for a decree for permanent injunction restraining the respondent No. 2 from claiming himself to be the President of the society; from acting in the capacity of the President of the Society; from interfering with the day-to-day working of the executive body; from continuing with the construction on the basis of the development agreement; from interfering with the peaceful enjoyment of the premises by the society and its tenants and from changing the nature and character, thereof, and from operating the bank account number 424910100001778 maintained with the Bank of India, Salt Lake Branch having address as DD-2, Sector-I, Salt Lake, Kolkata - 700064. Ad-interim prayers in terms of the above prayers were also made.

r) The prayer for ad interim order of injunction was refused by the landed Civil Judge (Senior Division), 2nd Court, Barasat.

s) Aggrieved and dissatisfied with the order dated May 15, 2023, the plaintiffs preferred an appeal before the court of the Learned District

Judge at Barasat being Misc. Appeal No. 67 of 2023.The Learned appellate court also refused the ad interim order of the injunction.

t) The petitioner confronted the respondent no. 2 about the institution of the suit and the respondent no.2 assured the petitioner that the issue would be resolved.

u) The society filed an application for withdrawal of the suit and by order dated December 11, 2024, Title Suit No. 550 of 2023, was dismissed for non-prosecution without any liberty to file afresh on the self same cause of action. The dispute between the society and its members had been resolved and no cloud was cast over the validity and enforceability of the joint venture agreement dated July 30, 2022.

v) Despite repeated requests, no steps were taken by the respondents to honour their obligations under the said agreement. The respondent no.1 had committed material breach of the agreement. Several letters were issued to the respondents to perform their obligations under the agreement, but their requests went unheeded.

w) Suddenly, the respondent No. 2 refunded the money advanced by the petitioner. The respondent no.2 transferred Rs. 2,50,000/- to the petitioner through bank transfer. The petitioner requested the respondent no.1 through the respondent no.2 to share the bank details so that the sum of Rs.2,50,000/- could be returned. However, the respondent failed to adhere to that request. Despite being aware of the stand of the petitioner, the respondent no.2 again issued a cheque for a sum of Rs.2,50,000/-. The petitioner returned the cheque and

issued a further cheque dated June 11, 2025, thereby returning the sum of Rs. 2,50,000/- which was sent by bank transfer.

x) The respondents showed inclination to create third-party rights in respect of the said premises by transferring, encumbering and or alienating the same. The respondents also contacted several buyers and brokers in this regard. Although the petitioner had been ready and willing to comply with the obligations under the agreement, the respondents failed to comply with their terms and conditions and acted in breach thereof. The petitioner apprehended that the respondents were taking steps to terminate and revoke the joint venture agreement dated July 30, 2022.The negotiations had reached an advanced stage. Under such circumstances, an application under Section 9 of the Arbitration and Confinement Act, 1996, (hereinafter referred to as the 'said act') was filed before the learned Commercial Court at Rajarhat and the learned Commercial Court at Rajarhat had passed an order of injunction restraining the respondents and their men, agents, office bearers and servants from selling, transferring, encumbering, alienating and or otherwise creating any third-party rights in respect of the premises till August 4, 2025. Thereafter, the order of injunction passed on July 4, 2025 was vacated by an order dated August 4, 2025.Dissatisfied with the aforementioned order of August 4, 2025, the petitioner filed an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. The appeal is still pending adjudication. The petitioner invoked arbitration by a letter dated July

14, 2025. In reply to the same, the respondent no.1 contended that the respondent no.2 did not have any authority to execute the joint-venture agreement and that there was no privity of contract between the respondent no.1 and the petitioner. Hence disputes arose between the parties.

4. In the above background and with the above narration, this application has been filed for reference of the dispute to arbitration.

5. Mr. Chayan Gupta, learned advocate for the petitioner, submitted that the Joint Venture Agreement contains an arbitration clause. Whether the respondent no.2 had the authority to execute the agreement on behalf of respondent no.1, i.e., the society, was a triable issue. Such issue should be decided by the learned arbitrator. The referral court should not probe deeper into the contentions of the respondents with regard to the legality and validity of the said agreement. He further submitted that the agreement was a joint venture agreement and as such the dispute was commercial in nature. The subject matter of the agreement was also a commercial transaction as it involved construction for the purpose of sale to third parties. There was an element of profit for both the parties in the said transaction. Moreover, the developer was engaged in the business of development of real estate which was a commercial enterprise. He referred to the following decisions:-

(i) Ashok Saraf and Ors., vs. Asansol Durgapur Development Authority, passed in ***FMA No. 1484 of 2025,***

(ii) ***Legend Estates Private Limited vs Poulomi Estate Pvt. Ltd.*** reported in ***2024 SCC Online TS 690,***

(iii) ***Raj Kumar Gupta and Anr. vs Jagan Nath Bajaj and Ors.*** reported in ***2022 SCC Online Del 2995,***

(iv) ***Blue Nile Developers Private Limited vs. Movva Chandra Sekhar and Ors.*** reported in ***2021 SCC Online AP 3964***

(v) ***M/s Kiran Builders vs. M Surya Babu*** decided in ***Writ Petition No. 3873 of 2023.***

6. Mr. Tanmoy Mukherjee, learned advocate, appeared on behalf of the respondent no.1 and submitted that the dispute should not be referred to arbitration. The respondent no.2 was neither the President nor an active member of the society. The execution of the agreement by the respondent no.2, as the President of the society was *nonest* in the eye of law in view of the lack of authority. He referred to the list of executive committee members of the Society for the year 2022-2023, as available from the annual return filed by the Society for the financial year 2021-2022 and submitted that the records would reveal that the respondent no.2 had never been elected as the President of the society. Thus, the arbitration clause could not be invoked against the society. The respondent no.1/society, was a non-signatory. If the petitioner had any dispute with the respondent No. 2, the party could have resolved the dispute in whatever possible manner they deemed fit and proper. Reference should not be made for resolution of any dispute between the petitioner and the respondent no. 1. The respondent no. 1 was not represented during the execution of the said of Joint Venture Agreement. He

submitted that, a third party could not enter into an agreement with regard to the premises belonging to the society and if the representation of the respondent no. 2, as the President of the society was accepted, in that event, any person could enter into any kind of an agreement on behalf of a party, irrespective of whether the person entering into such agreement had the authority or the locus to do so. It would be as if a passer-by could sign an agreement with another, thereby transferring Victoria Memorial or the Calcutta High Court, just by claiming to have a position of authority. Such kind of transactions could never be taken as valid transactions. Thus, the respondent no. 1, not being a party to the agreement, could not be dragged into any dispute between the petitioner and the respondent no. 2. He relied on the decisions of ***Cox & Kings Ltd. v. SAP India (P) Ltd.*** reported in ***(2024) 4 SCC 1*** and ***ASF Building Private Limited v Shapoorji Pallonji and Company Private Limited*** reported in ***2025 INSC 616,*** in support of such a contention. He submitted that the non-signatory did not have any role to play either in the execution of the agreement or in the performance of the underlying obligations arising out of the agreement. The society was not getting any benefit under the agreement. The nexus between a signatory and a non-signatory must be direct and the parties should be interconnected and interlinked. In this case, the respondent no. 2 was neither interconnected nor interlinked with the society. The respondent no. 2, by creating forged and fabricated documents represented himself as the President of the society to the petitioner. The entire action was collusive and to the detriment of the society. Neither the society, nor its executive

committee members were aware of the underhand dealings between the respondent no. 2 and the petitioner. The agreement was void *abinitio* and non-existent in the eye of law. The alleged arbitration clause could not be invoked against the respondent no. 1. There was nothing on record which would indicate that the respondent no. 2 was, in any way, connected to the respondent no. 1.

7. As the society denied the validity of the said agreement, there could neither be any commonality of interest nor commonality of subject matter nor commonality in the performance of the contract by the society. Thus, the learned Advocate prayed for dismissal of the application against the respondent no. 1. Mr. Mukherjee further submitted that the dispute was not commercial in nature and that the application should be rejected, on the ground that the Commercial Division of the High Court lacked the jurisdiction to entertain this application.

8. Mr. Chattopadhyay learned Advocate for the respondent No.2 submitted that the property was not being used for commercial purpose. The subject agreement, although named and styled as a joint venture agreement, was in effect, a development agreement. It was neither a construction and infrastructure agreement, nor was the agreement entered into between the parties after completion of a tender process. Thus, the dispute being non-commercial, the application must be rejected for having been filed in the wrong forum.

9. He relied on the decision of ***Faqir Chand Gulati vs Uppal Agencies Private Limited and Anr. reported in (2008) 10 SCC 345,*** in support of

his contention that, the subject agreement could never be termed as a joint venture agreement, only because the caption of the agreement described the same as one. The agreement read as a whole would clearly indicate that it was essentially a development agreement, for construction of a G+4 storeyed building, to be used for residential purpose.

10. Mr. Chattopadhyay submitted that the leaseholder did not have any control or role in the management of the activities arising out of the said agreement. There was no sharing of profits and losses. In the legal sense, for the document to be a joint venture agreement, control should have been also vested upon the leaseholders, and there should have been sharing of profits and losses. Mere use of the word joint venture', or 'collaboration' in the title of the agreement, would not make the agreement a joint venture agreement. Reliance was further placed on the decision of the Telangana High Court passed in ***Smt. Sharada Devi Kedia vs Kisna Avenues Pvt. Ltd.*** decided in ***Civil Revision No. 1622 of 2024***. He distinguished the decision of ***Ashok Saraf (supra)***, on the ground that the level of construction which was the subject matter of the said appeal, was of much greater impact and an overall infrastructural development was being contemplated. Moreover, the agreement between Ashok Saraf and Asansol Durgapur Development Authority, emerged from a tender process. Under such circumstances, and in view of such distinguishing factors, the Division Bench of the High Court had observed that the dispute was a commercial dispute. He further distinguished the decision of the Andhra Pradesh High Court in ***Blue Nile Developers (supra)*** on the ground that, the extent of construction, and the

nature of construction envisaged in the project, were way beyond the one envisaged under the subject agreement. The decision of the Telangana High Court in ***Smt. Sharada Devi Kedia (supra)*** was relied upon to substantiate that the gateway to the Act of 2015 was not necessarily a free-for-all entry, where all kinds of disputes could find easy seating within the arena of Section 2(1)(c) of the Act of 2015. Each of the 22 sub-clauses under Section 2(1)(c) must be strictly construed, and given a purposive meaning. The agreement in question must underscore an inclination to commerce and commercial activity for a sizable section of persons.

11. It was urged that, a G+4 storeyed building was to come up, out of which the society was entitled to one floor, and the remaining area to be constructed would be the developer's allocation. Thus, the nature of transaction did not involve construction of such magnitude, which affected a larger section of the society. Construction of the said building would also not create any extension of infrastructural facilities in and around the area, which would benefit the people at large. Under such circumstances, such kind of commercial endeavours would neither fall within the definition of a commercial transaction, nor could the dispute be classified as a commercial dispute under clause 2(1)(c) of the Commercial Courts Act, 2015. Mr. Chattopadhyay referred to ***Blue Nile Developers*** (supra) to submit that the transaction reflected development of a residential project in a phased manner within a gated community, including setting up of clubs, common areas. The project involved deep-rooted infrastructural changes. The nature of construction was such that, not only was the project beneficial for the

people who would book the same and reside within the premises, but the upcoming project and proper completion thereof with the overall infrastructural development of the surrounding areas, would also positively affect the locality. Under such circumstance, the agreement was considered to be a commercial agreement.

12. Heard the learned advocates for the respective parties. A dispute arising out of a joint venture agreement falls within the definition of a commercial dispute under the 2015 Act. The expression 'joint venture' not only appears as the caption or the heading of the said agreement, but also in several parts of the said agreement. As the element of control in the management, sharing of profits and losses etc. were absent, it was urged that the agreement must be classified as a development agreement. The question now is whether the development agreement and the dispute arising therefrom can be termed as a commercial dispute. The petitioner is a partnership firm which is engaged in the business of real estate development. The case of the petitioner is that the respondents approached the petitioner to develop the property as the petitioner was well known for its development business. The Division Bench in ***Ashok Saraf (supra)*** held that :-

> "63. As held by the Hon"ble Apex Court in Ambalal Sarabhai (supra)14, a purposive interpretation in consonance with the object and purpose of the CC Act has to be given to the Sections thereof, thus implying a strict construction. Going by the said yardstick, sub-clause (vi) refers to "construction and infrastructure contracts, including tenders". Hence, the interpretation of the said provision, to be in consonance with the object and purpose of the CC Act, has to be through the focal lens of "commercial dispute". <u>The yardstick to be applied is not whether an agreement is a pure construction agreement</u>

> or a development agreement but whether it comprises of a commercial transaction.
> 64. It is not necessary for a transaction to involve equal controlling interest or profit-earning on the part of both parties, to be labelled as "commercial", it would suffice if the transaction is „commercial" from the perspective of even one of the parties, such as regular business transactions by traders. In sub-clause (xx) of Section 2(1)(c), even insurance and re-insurance contracts have been included, in which only one of the parties, being the insurer, looks at the contract from the perspective of commerce whereas the insured has no commercial benefit or profit therefrom. Thus, it is fairly indicated in the different sub-clauses of Clause (c) of Section 2(1) that for an agreement to be a commercial one, it is not necessary that both parties have to have a commercial interest or share in profit and loss. It would suffice if the transaction is a commercial one even from the viewpoint of one of the parties.
> 65. Applying such yardstick, what has to be looked into is whether an agreement is for construction, be it in the form of a development agreement or a construction agreement simpliciter. If it is a development agreement, it is all the more a commercial transaction, since a developer would definitely enter into the same with commercial motive. Thus, the distinction between pure construction agreements and development agreements, as highlighted in the cited judgments in the context of other statutes, would be an erroneous yardstick under the CC Act and juxtaposing the rationale of the said decisions to the present case would be a comparison between disparate concepts, somewhat like the adage "apples and oranges".
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> * * *
> 67. Thus, the dispute raised in the suit is specifically covered by Section 2(1)(c)(vi) of the CC Act and is a "commercial dispute" of more than the specified value as enumerated in the said Act. Hence, the learned Trial Judge, being an ordinary civil court and not a designated commercial court under the CC Act, did not have jurisdiction to entertain the suit or pass any orders therein."

13. For a development agreement to be a commercial one, it is not mandatory that both the parties would have to have equal control in the management of the project or equal distribution to profit and loss. It will suffice if the transaction is a commercial venture from the viewpoint of the parties. The said principle can be applied in respect of an agreement for

construction, on the rationale that the developer definitely entered into such agreement with a commercial motive. Real estate business was the forte of the petitioner. A distinction must be drawn between a pure construction agreement and a development agreement. The developer has a commercial interest in the entire transaction. He can also sell the units developed and earn therefrom.

14. In ***Blue Nile Developers (supra)***, the Hon'ble Division Bench of the Andhra Pradesh High Court held that when it came to the issue of clause (vi) of section 2(1)(c) of the Act, which read as 'construction and infrastructure contracts, including tenders' it would mean construction contracts, tenders relating to construction, infrastructure contracts and tenders relating to construction and infrastructure contracts.

15. A meaningful expansion of the definition was also given in the same report, upon discussing the dictionary meaning of the words 'construction' and 'infrastructure'. Relevant portions of the said decision are quoted below:-

> **"19.** For the purpose of the present case on hand it is necessary to look into the scope and meaning of some of the clauses of Section 2(1)(c) of the Act before going into the scope and meaning of Section 2(1)(c)(vi) of the Act.
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> (i) Clause(i) of Section 2(1)(c) of the Act reads as 'ordinary transactions of merchants, bankers, financiers, and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents'.
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> That means it covers ordinary transactions of merchants in relation to the mercantile documents and either enforcement of such documents or interpretation of such documents, ordinary transactions of bankers in relation to mercantile documents and either enforcement of such documents or interpretation of such documents, ordinary transactions of financiers in relation to their mercantile documents and either enforcement of such documents or

interpretation of such documents and ordinary transactions of traders in relation to their mercantile documents and either enforcement of such documents or interpretations of such documents.

(ii) Similarly clause (iv) of Section 2(1)(c) reads as 'transactions relating to aircraft, air craft engines, air craft equipment and helicopters, including sales, leasing and financing of the same'.

That means it covers the transactions relating to the aircraft and it's sales, it's leasing and it's financing, the transactions of air craft engines and it's sales, it's leasing and it's financing, the transactions of aircraft equipment and it's sales, it's leasing and its financing and the transactions of helicopters and it's sales, it's leasing and it's financing.

iii) Similarly when it comes to the issue involved that is clause (vi) of the Section 2(1)(c) of the Act, which reads as, "construction and infrastructure contracts, including tenders", means and covers that construction contracts, tenders relating to construction, infrastructure contracts, tenders relating to infrastructure and construction, and infrastructure contracts and tenders of construction and infrastructure contracts.

20. To understand better the meaningful expansion of the above said clause, the dictionary meaning of the words "construction" and "infrastructure" can also be seen as hereunder:

OXFORD LEARNERS DICTIONARIES:

• Construction-

(1) The process or method of building or making something, especially roads, buildings, bridges, etc.

(2) The people and activities involved in making buildings

(3) The way that something has been built or made

(4) A thing that has been built or made.

• Infrastructure-the basic systems and services that are necessary for a country or an organisation to run smoothly, for example buildings, transport and water and power supplies.

LEXICO:

• Infrastructure - the basic physical and organisational structures and facilities (e.g. buildings, roads, power supplies) needed for the operation of a society or enterprise.

• Construction-

(1) The action of building something, typically a large structure

(2) The industry of constructing buildings, roads, etc.

(3) The style or method used in the building of something

(4) A building or other structure

Construction is an activity while infrastructure is the outcome of that activity.

Merriam Webster Dictionary:

• Construction-

(1) The process, art, or manner of constructing something

(2) The construction industry

(3) A sculpture that is put together out of separate pieces of often disparate materials

• Infrastructure-

(1) The system of public works of a country, state or region

(2) The underlying foundation or basic framework (as of a system or organisation)

(3) The permanent installations required for military purposes.

21. Since the above said two "words" also carry different meanings in contrast the above said expansion of the said clause is necessitated.

22. Hence from the above, it is clear that the "legislature" has included the various types of commercial transactions to bring under the fold of "commercial dispute" in case of any dispute arises from any of those transactions. On a careful reading of the above said provision of the Act, it is obvious that the legislature has taken due care while incorporating the above said clauses from (i) to (xxii) in Section 2(1)(c) of the Act by avoiding the repetition of words and sentences without effecting the full fledged meaning of the same even on expansion of the said each clause. Therefore, either giving any restrictive meaning or reading of a clause in isolation and expansion of one word only in the said clause would hamper and frustrate the meaningful definition of the said clause on it's expansion by abrogating certain category of transactions from the purview of the benefit of the above said Act which is not otherwise the intendment of the legislature in bringing out the said enactment.

23. For the sake of illustration, if we confine the definition of clause (vi) of the above said provision of the Act to the infrastructure contracts only, then it would exclude the category of construction contracts and construction and infrastructure contracts from it's purview.

24. Suppose, if it is read as "construction and infrastructure contracts" as one word/one sentence, then it would exclude the category of the construction contracts and infrastructure contracts separately from its purview.

25. But that is not the intendment of the above said central enactment, as it is clear from the scope and object of the Act. All the types of "commercial transactions" are saved in the Section 2(1)(c) of the Act subject to the condition that it satisfies the "specified value" stipulated under the Act for the purpose of assumption of the

> jurisdiction by the Special Court/the Commercial Court. Except that no category of commercial transaction is excluded from the purview of the above said Act which is evident from the reading of the above said section and its clauses."

16. The decision in ***Blue Nile Developers (supra)*** was followed by the Karnataka High Court in ***M/s Kiran Builders (supra)***. The decision in ***Smt. Sarada Kedia*** was in respect of bifurcating farm lands. Thus, in my view, construction and infrastructure cannot be read as a part of a single transaction, but as two identical activities arising out of the same agreement, that is, construction and infrastructure, or both. The expression construction must be construed as a separate and distinct activity from infrastructure. The subject agreement definitely has a commercial angle to it, at least in respect of the party whose services are being accepted for such construction work. The dispute is a commercial one. The true purport and meaning of the expression 'construction' appearing in clause (vi) of Section 2(1)(c) of the Commercial Courts Act, 2015 must be read into and applied to the context. Section 2(1)(c) begins with the expression "unless the context otherwise requires". Thus, the legislature was conscious of the fact that the definition could not be given a restrictive meaning, and could be expanded and given a more purposive meaning, if the context otherwise required.

17. A building which was to be used as a library, was sought to be handed over for development. Services of a developer was accepted. The developer had a share in the allocation of flats in the newly constructed area. The developer who invested in the construction work of the building,

could also deal with such area commercially, by selling it to others. For the developer, there is only a commercial angle in the business venture.

18. The developer was to render its business knowledge and expertise, as it was engaged in the business of real estate development. Employment of plant, machinery, workforce was essential to such work. In lieu of such services and investment, the developer was entitled to the developer's share. The relevant clauses of the said agreement are discussed below, as a reference to the venture to be undertaken by the developer in the project.

19. Clause 5.1.1 of the said agreement provides that, the building was to be erected on the plot by the leaseholder, upon the land being leased for 999 years. The lease was for construction of a library for higher studies. Thus, the lease was not granted by the Governor of the State of West Bengal to the leaseholder for any residential purpose. Secondly, the agreement further provides that, the leaseholder had expressed his desire to develop the land by constructing a multi-storeyed building, in accordance with the building sanction plan, to be sanctioned by the concerned Bidhannagar Municipal Corporation and the developer had accepted the proposal and the parties had decided to enter into a Joint Venture Agreement.

20. Clause 10.1 provides that the developer shall have the authority to deal with the property in terms of the agreement, negotiate with any person or persons for the purpose of entering into any contract or agreement or borrow money or take advance against their allocation on the acquired right under the agreement. Clause 7 provides that for smooth running of the project, the leaseholders had agreed to execute a power of attorney by which

the leaseholder had appointed and nominated Mr. Rabindranath Tandon and Mr. Ashrayy Tandon, partners of the petitioner, as their constituted attorneys to act on behalf of the leaseholder. Clause 10 deals with the developers/promoter's rights, which includes entering into bookings and agreements for transfer, and how and when the said developer would hand over the possession to the intended transferees. The profit and loss earned from the project would be borne entirely by the developer. Clause 13 deals with the procedure and powers, which indicates that, all the statutory compliances and permissions to be obtained by the landowner shall be obtained by the developer as the constituted attorney of the landowner. The management and maintenance of the premises, including the buildings to be constructed was also the duty of the developer.

21. Clause 14 deals with the proposed new building. The developer was to construct the building at its own cost, provide good and standard material as specified by the engineer of the developer. The construction of the pump, storage, overhead reservoir, electrification, installation of electricity, permanent electrical connection etc. were services which were also to be provided by the developer. The architects fees, the other taxes and liabilities, the repair, upkeep, and management etc. were to be provided by the developer. Clause 14 and Clause 15 deals with the procedure for delivery of possession to the leaseholder.

22. Thus, a holistic reading of the entire agreement clearly indicates that the developer, who in the usual course of its business of construction and sale of real estate had entered into the development/joint venture agreement

with the respondents and was responsible for developing the property upon obtaining all sanctions and permissions from the respective authorities on behalf of the leaseholder. The developer was to supply good quality materials, designs including civil, architectural, and electrical, complete the project, install the water pump, electrify the project, obtain electricity connection etc. The developer was entitled to obtain financial assistances from banks and other financial institutions or from any other source. Thus, the entire transaction included investment of the land by the lease holder, rendering of services by the developer and in lieu of such services, the developer was allocated a considerable portion of the proposed constructed area, along with equal rights in the common facilities, and major portion of the roof rights. The developer also had the right to enter into transactions with third party buyers and sell the flats to be constructed. The entire profit and loss was to be borne and/or enjoyed by the developer.

23. Under such circumstances, this agreement was not only restricted to construction alone, but the developer was required to provide materials, expertise, designs, and services towards the construction of the building. The respondents were desirous of developing the building by earning from such venture and also by acquiring a portion thereof. There is an element of profit on the part of the society too. As the society was not in a position to exploit the property from their own resources, they had entered into an agreement with the petitioner, who was to render all services and expertise, and not only develop the property, but make it habitable and sell it off to others after handing over the respondents' allocation and also upon making

a lumpsum payment to the respondents. Under such circumstances, the dispute cannot be said to be a non-commercial one. The application is maintainable in the Commercial Division of the High Court.

24. Under the agreement, the respondent No. 1 invested by supplying the land and the developer was to raise the construction at its own cost. Both parties agreed to exploit the property commercially. The developer got the right to sell the constructed flats to third parties. Both parties were contributors to this common commercial business enterprise. The cumulative effect of the agreement was that, the parties jointly agreed to put the property to commercial use, thereby, earning from the same. As the respondent denied to perform their obligations under the agreement, the developer sought to enforce their rights by raising a dispute and by invoking the dispute resolution clause. Both parties had a profit oriented motive.

25. Mr. Tanmay Mukherjee's contention that the respondent no. 1, being a non-signatory, could not be dragged into an arbitral proceeding, is not accepted at this stage. This is a matter of evidence. The respondent no. 2 signed the agreement on behalf of the society, and not in his personal capacity. Whether he had the authority to do so is a triable issue. Secondly, a suit was filed before the civil court, and the same was withdrawn. In the suit, a prayer had been made for cancellation of the joint venture agreement on the ground that the respondent no.2 did not have the authority to enter into such an agreement, and further that the agreement was a product of fraud and forgery. It also appears that cheques were issued by the petitioner

in the name of the respondent no. 1, and the money was deposited in the bank account. The prayers in the suit are quoted below:-

"The plaintiff, therefore prays:-

a. For decree for declaration that the plaintiff is a bonafide Society duly registered-under the Society Registration Act, 1961 and represented by its present committee duly entered in the records of the office the Registrar of Firm, Societies and Non Trading Corporation, West Bengal and the absolute owner of the property mentioned in the schedule below;
b. For a decree declaring that the joint venture agreement dated 30th July, 2022 entered into by the defendant No.l in the capacity of the President of Plaintiff Society and the defendant No.2 in respect of the A Schedule property are void, fraudulent and not binding on the plaintiff and the same be delivered up so that the same may not be used to cause any loss to the plaintiff society.
c. For a decree of permanent injunction restraining the defendant No.l from claiming himself to be the President of the plaintiff society and from acting in the capacity of the President and from interfering with the present executive body in discharging their duties and responsibilities within the framework of the Rules and. bye laws of the plaintiff Society and from making construction through the defendant No.2 in or over the suit property and from interfering with the peaceful enjoyment of the same by the Plaintiff Society and its tenants and from changing the nature and character of the same and also from operating the bank account being No. 424910100001778 with Bank of India, Salt Lake Branch having its address at DD-2 Sector-I, Salt Take, Kolkata- 700 064."

26. The order by which the suit was dismissed for non-prosecution is quoted below:-

> "The record is put-up today by petition submitted by representative, namely Mr. Meghnad Mondal, Secretary of the plaintiff, Prajnanananda Jana Seva Sangha.
> Mr. Meghnad Mondal, Secretary of the plaintiff is present and files hazira.
> Ld. Counsel for the plaintiff is also present.
> Mr. Meghnad Mondal, Secretary of the plaintiff files an application supported by an affidavit praying for dismiss the suit for non-prosecution.
> The petition is taken up for hearing. Mr. Meghnad Mondal, Secretary of the plaintiff deposed himself as PW-1 and discharged.
> Ld. Counsel for the plaintiff submitted before this court that the plaintiff filed an application praying for dismissal the suit for non-prosecution as the plaintiff do not intend to proceed case further.

> I have heard the Ld. Counsel for the plaintiff.
> I have perused the petition of the plaintiff in this regard supported by an affidavit, deposition of the plaintiff and other materials on record. Considered.
> So, in view of the fact as well as evidence of PW-1, i.e. Mr. Meghnad Mondal, Secretary of the plaintiff and the facts and circumstances of the present position of the suit, it appears that the he made an application and put his signature on behalf of Prajnanananda Jana Seva Sangha voluntarily after a decision taken by the authority of plaintiff Seva Sangha for non-prosecution of the suit and accordingly, he has made this application. So, I am of view that the petition praying for dismissal the suit for non-prosecution is required to be allowed without giving liberty to file the suit afresh on the same cause of action.
> Hence it is
>
> O R D E R E D,
>
> that the petition praying for dismissal for non-prosecution of the plaintiff is allowed without giving liberty to file afresh on the same cause of action. Thus, this suit is disposed of without any order as to costs."

27. The allegation of forgery and misrepresentation by the respondent no. 2 has to be tried by the learned arbitrator. Moreover, the arbitration clause clearly provides that any dispute with regard to the very existence and validity of the agreement shall also be referred to arbitration. The objection of Mr. Mukherjee is entirely on the validity of the agreement as it is alleged that the same is a product of fraud, misrepresentation and forgery committed by the respondent no. 2.Thus, whether the agreement is a nullity, and *non est* in the eye of law, will have to be decided by the learned arbitrator. The purpose of enquiry by the referral court is limited to the, prima facie, satisfaction as to the existence of the arbitration agreement. Clause 23 of the agreement is quoted below:-

> "23. <u>DISPUTES:</u>
> Disputes or differences in relation to or as rising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (collectively

> Disputes) shall be referred to the Arbitral Tribunal and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996, with modifications made from time to time. In this regard, the Parties irrevocably agree that:
> Constitution of Arbitral Tribunal: The Arbitral Tribunal shall consist of one Arbitrator, who shall be an Advocate, to be nominated jointly by the Legal Advisors of the Developer and leaseholder.
> Place: The place of arbitration shall be Kolkata only.
> Binding Effect: The Arbitral Tribunal shall have summary powers and be entitled to give interim awards/directions regarding the Dispute and shall further be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law. The interim/final award of the Arbitral Tribunal shall be binding on the Parties."

28. Whether the respondent no. 2 could enter into an agreement on behalf of the respondent no. 1 or not, will have to be decided by the learned arbitrator upon weighing evidence. The relationship between the non-signatory and the signatory is of great significance which, again, will have to be decided by the learned arbitrator, especially in view of the withdrawal of the suit.

29. Whether the respondent no. 2, at any point of time was elected or nominated as the President of the respondent no. 1 and under what circumstances did the respondent no. 2 act on behalf of the respondent no. 1, are matters of evidence. Furthermore, what led to the withdrawal of the suit filed by the respondent no. 1 through its Secretary, is also a matter which requires a deeper probe and the referral court is not required to go into such detail. Thus, the objections taken by the respondents shall be adjudicated by the arbitrator. Question with regard to arbitrability and jurisdiction can be decided by the learned arbitrator. If the arbitrator finds that the respondents No.1 was unnecessarily dragged into the proceedings, the arbitrator can impose costs on the petitioner. If the arbitrator finds that

the respondent no. 1 was wrongly impleaded, the arbitration can expunge such party from the proceeding. Thus, this court must honour the doctrine of competence-competence, by giving effect to the arbitration clause and leaving the issue raised by Mr. Mukherjee of misjoinder, to be decided by the learned arbitrator.

30. In ***Adavya Projects Pvt. Ltd. Vs. M/s. Vishal Structurals Pvt. Ltd. & Ors.*** reported in ***2025 INSC 507***, it was observed that Section 16 of the 1996 Act was inclusive and covered all jurisdictional questions. Validity and existence of an arbitration agreement, issue of mis-joinder and non-joinder, whether a non-signatory can be bound by the arbitration clause, must be decided by the learned arbitrator. The arbitrator can either include a non-signatory or delete a non-signatory. The relevant portion 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. 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 arbitration clause. No deeper probe or mini trial is permissible at this stage. 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."

32. The referral court only gives legal meaning to the doctrine of competence-competence. The decision of ***SBI General Insurance Co. Ltd. vs Krish Spinning*** reported in ***2024 SCC Online SC 1754,*** the relevant paragraphs are quoted below:-

> "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, Dr Dhananjaya 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."

33. In the decision of the Hon'ble Apex Court in ***ASF Building (supra)*** it was decided that the issues of joinder, non-joinder, mis-joinder etc. were 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 Strcturals Pvt. 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."

34. In the decision of the Hon'ble Supreme Court in ***Cox & Kings (supra)*** the Hon'ble Apex Court held as follows:-

> **"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."

35. Thus, Section 16 of the said Act, empowers the learned arbitrator to decide all kinds of jurisdictional issues.

36. Under such circumstances, the Court appoints Mr. Sabyasachi Chowdhury, learned Senior Advocate, as the learned arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to

compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.

37. AP-COM 821 of 2025 is accordingly disposed of.

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

(**Shampa Sarkar, J.**)