

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

IA No. GA-COM/2/2025

In

CS-COM/70/2025

TIRUPATI VANCOM PRIVATE LIMITED

VS

JAMES GLENDYE AND CO. PRIVATE LIMITED AND ORS.

For the plaintiff:

Mr. K. R. Thaker, Sr. Adv.

Ms. Sreenita Thaker, Adv.

Ms. Sneha Singhania, Adv.

For the defendant No.1:

Mr. Paritosh Sinha, Adv.

Mr. Mr. K.K. Pandey, Adv.

Mr. Zeeshan Haque, Adv.

Ms. Mallika Bothra, Adv.

For the defendant Nos. 2 & 3:

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Rudrajit Sarkar, Adv.

Mr. Debangshu Dinda, Adv.

Mr. Jai Kumar Surana, Adv.

Mr. Abhimonyu Roy, Adv.

Reserved on : 22.12.2025

Notes Filed on : 03.02.2026

Judgment on : 06.03.2026

ANIRUDDHA ROY, J.:

Facts:

- 1.** This is an application filed by the defendant Nos. 2 and 3 under
Section 8 of the Arbitration and Conciliation Act, 1996 (for short

Arbitration Act). The defendants/applicants have prayed for reference of the subject matter of the instant suit to arbitration.

2. The plaintiff and the defendants/applicants admit the existence of the arbitration clause embodied in the **memorandum of understanding dated June 21, 2012** (for short **MOU**), reached amongst the parties that the parties be referred to arbitration in the event of any disputes and differences amongst the parties to the arbitration agreement.
3. The plaint case, as pleaded in the plaint is briefly narrated hereunder:

3.1. Defendant no. 1 is a long term lessee in respect of premises no. 6, Jawaharlal Nehru Road, Kolkata – 700 013 (for short the property). Defendant nos. 8 to 19 were the shareholders of the defendant no. 1. Defendant nos. 4, 6 and 8 to 19 are ostensibly still the shareholders of the defendant no. 1.

3.2. Defendant nos. 2, 4 and 6 are companies within the meaning of the Companies Act, 2013. The defendant nos. 3, 5 and 7 are the principal officers Directors and/or persons in control and were responsible and liable for the transaction which forms the subject matter of the instant suit. The defendant no. 5 is also the Managing Director of the defendant no. 1 and is in control of the defendant no. 1.

3.3. Sometime in January, 2012 the defendant no 3 on behalf of the defendant no. 2, defendant nos. 5 and 7 approached one Rajib Agarwal, Director of the plaintiff. It was represented that the defendant no. 1 was the lessee of the property is entitled to construct and sub-lease the new constructed spaces under the lease deed dated December 21, 2000. Defendant no. 2 along with defendant no. 4 and 6 whose directors were the defendant nos. 3, 5 and 7 had entered into a Share Purchase Agreement dated March 24, 2011 (for short **SPA**) with defendant no. 8 to 19 to acquire all the shares of and in defendant no. 1 for a sum of Rs. 82

crores out of which Rs.20 crores was to be paid as consideration for the aggregate number of 36278 shares of and in the defendant no. 1 held by the defendant nos. 8 to 19 and the balance sum of Rs.62 crores (Rupees Sixty-Two crores only) was to be provided as loan to defendant no. 1. Apart from this, an additional sum of Rs.5,00,00,000/- (Rupees Five crores) would be paid as premium to the outgoing shareholders on the successful completion of transaction. Defendant nos. 2, 4 and 6 had entered into an understanding dated August 4, 2011 wherein it was agreed by the parties that the shares of the defendant no. 1 would be purchased in the ratio of 36% to be acquired by the defendant no. 2, 46% to be acquired by the defendant no. 4 and the remaining 18% by the defendant no. 6. The purpose of acquiring shares of the defendant no. 1 was to exploit the lease hold right of the defendant no. 1 by constructing a new building at the said premises and subletting the same. The defendant no. 2 did not have the funds to make of his portion of the consideration under the SPA for acquiring 36% shares of and in the defendant no. 1. Defendant no. 2 would sell and transfer 18% of the shares of and in the defendant no. 1 to the plaintiff out of the said 36% which would be allotted to it under the SPA.

- 3.4.** Relying on the representations made by the defendant nos. 3, 5 and 7 on behalf of the defendant nos.2, 4 and 6 to the plaintiff's Director, the plaintiff agreed to purchase and/or acquire 18% of the total issued, subscribed and paid up equity shares of the defendant no. 1 for the consideration of Rs.14.72 crores and on the terms and conditions mutually agreed between the parties sometime in January 2012. It was further agreed that the agreement arrived at by and between the parties would be recorded in a memorandum of understanding.

- 3.5.** Pursuant to the agreement between the plaintiff and the defendant nos. 2, 4 and 6, the plaintiff remitted a sum of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakh Only) to defendant no.1 and Rs.80,00,000/-(Rupees Eighty Lakhs Only) to defendant no. 2 on January 17, 2012 through RTGS.
- 3.6.** The plaintiff paid Rs.18,00,000 (Rupees Eighteen Crores Only) by cheque to defendant no. 1 on June 7, 2012.
- 3.7.** Between January 17, 2012 to May 30, 2012, the plaintiff paid an aggregate amount of RS. 4,66,88,582.94 (Rupees Four Crores Sixty-Six Lacs Eighty-Eight Thousand Five Hundred and Eight-Two only) to defendant no. 2.
- 3.8.** Pursuant to the agreement of January. 2012 the plaintiff and the defendant nos. 2, 4 and 6 executed a Memorandum, of understanding dated June, 21, 2012 (hereinafter referred to as the said **MOU**) in terms whereof, the defendant no. 2 agreed to assign and/or sell and transfer 18% of the total issued, subscribed and paid up shares capital of the defendant no. 1 being 50% of the total equity shares of and in the defendant no. 1 to be acquired by the defendant no.2. The mode of payment was mentioned in the MOU.
- 3.9.** Payments made prior to execution of the said MOU were treated as payments made in terms of the said MOU and were recorded in the MOU, save and except payment of Rs.1,88,582.94 (Rupees One Crore Eighty-Eight Lakhs Five Hundred and Eighty-Two Only) which was paid to the defendant no. 2 by cheque dated April 24, 2012.
- 3.10** Subsequently, the defendant no. 2 represented to the plaintiff that it had duly remitted monies received from the plaintiff prior to the execution of the said MOU to the defendant no. 1. The defendant no. 2 requested the plaintiff to henceforth make payments directly to the defendant no.

1 and the outgoing shareholders, whose shares would be acquired.

- 3.11** Between November 2012 and March 31, 2014, the plaintiff paid a total sum of Rs. 1,08,00,000/- (One Crore Eight Lakhs Only) to defendant no. 1, particulars are mentioned in "Annexure- E" to the plaint. On May 2, 2014 and March 31, 2015, the plaintiff paid a further amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) on account of loan to the defendant no. 1 through RTGS.
- 3.12** Sometime after March, 2014, defendant nos. 3, 5 and 7 informed the plaintiff's Director that although the original plan was that the new building would be constructed by the defendant no.1, they had decided to engage a developer to carry out the construction. The plaintiff was informed that the defendant nos. 3, 5 and 7 representing defendant nos. 2, 4 and 6 had negotiated with one Siddha Real Estate Development Private Limited (for short SIDDHA) for development of the said premises in terms of which, defendant no. 1 would be entitled to 7 nos. of floors along with corresponding car parking spaces and Siddha would receive the rest 9 nos. of floors along with corresponding car parking spaces. It was further represented to the plaintiff that induction of Siddha, the liability of the defendant nos. 2, 4 and 6 under the SPA would be reduced to enure to the benefit of the plaintiff. It was further made clear that on the induction of Siddha, the entitlement of plaintiff and the defendant nos. 2, 4 and 6 to the share of profits of the defendant no. 1 would be limited to the revenue generated from 7 number of floors and the corresponding car parking spaces. The plaintiff agreed with the proposal mooted by the defendant nos. 2, 4 and 6.
- 3.13** Subsequently, the plaintiff was informed by defendant nos. 3, 5 and 7 that the defendant no. 5 had executed a

development agreement as director of defendant no. 1, on September, 8 2014 with Siddha (for short agreement with Siddha). Accordingly, the revised consideration payable under the SPA) reduced to Rs. 10,24,85,350/- as lump sum consideration for purchase of shares instead of Rs. 20,00,00,000/- crores and a sum of Rs. 37,39,89,152 as loan instead of Rs. 62,00,00,000/- crores.

- 3.14** The plaintiff was required by defendant nos. 3, 5 and 7 to make and duly made payment of Rs. 1,84,47,250/- (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand two hundred and fifty Only) on account of consideration for purchase of 18% shares of and in the defendant no. 1. The sum of Rs.1,84,47,250/- (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand two hundred and fifty Only) was made by the plaintiff to the defendant nos.8 to 19 of the defendant no. 1 and particulars is available at annexure 'F' to the plaint.
- 3.15** From time to time, defendant nos. 3, 5 and 7 required the plaintiff to make further payments on account of its share of payment of loan to defendant no. 1. In good faith and trust, the plaintiff has made payment of an aggregate sum of Rs. 4, 73, 43,000/- (Rupees Four Crore Seventy Lakhs Forty-Three Thousand Only) to the defendant no. 1 on account of loan. Defendant no. 1 has acknowledged the same in its audited balance-sheet as on March 31, 2017.
- 3.16** Upon making payment of total sum of Rs.11,24,78,832.94, (Rupees Eleven Crore Twenty-Four Lakhs Seventy-Eight Thousand Eighty Hundred and Thirty-Two Only) it was represented to the plaintiff by defendant nos. 3, 5 and 7 on behalf of the defendant nos. 2, 4 and 6 that it was not required to make any further payment to the defendant no. 1 or its outgoing shareholders being defendant nos. 8 to 19.

- 3.17** Accordingly, the plaintiff did not make any further payment nor was it called upon to do so at any time by the defendant nos. 3, 5 and 7, the defendant no. 1 or the outgoing shareholders being defendant no. 8 to 19. In fact, on taking accounts, it now transpires that the plaintiff paid of sum of Rs. 2, 39, 88, 582.94/- (Rupees Two Crore Thirty -Nine Lakhs Eighty-Eight Thousand Five Hundred Eighty-Two Only) in excess of its share of payment of loan of Rs. 7, 00, 43, 000/- (Rupees Seven Crore and Forty-Three thousand only).
- 3.18** The plaintiff enquired of the defendant nos. 1, 3, 5 and 7 about the issuance of shares of and in the defendant no. 1 in its favour and the distribution of profits on account of construction of the new building which was nearing completion. The defendant nos. 1, 3, 5 and 7 assured the plaintiff that the shares would be allotted to it in terms of the said MOU and it would receive share of profits in the form of dividend proportionate with its shareholder of 18% in the defendant once sub lease of all units had been completed. The plaintiff bona fide believed and relied on such assurance.
- 3.19** Sometime in July, 2024, the plaintiff was surprised to receive a notice from the Ld. Mediation Centre for mediation of a commercial dispute filed by defendant nos. 1, 8 and 9 against the plaintiff and the defendant nos. 2, 4 and 6.
- 3.20** On receipt of the notice from the Mediation Centre, the plaintiff was represented in the Mediation Centre but none appeared for the defendants.
- 3.21** As no further notice was received from the Mediation Centre, the plaintiff instructed its Advocates to update its status and whether any suit has been filed against the plaintiff. Upon inquires, the plaintiff was made aware of an order dated August 4, 2024 passed in AP no. 388 of 2024

and A.P. 389 of 2024 filed by the defendants for setting aside an arbitral award made in connection with the said SPA.

- 3.22** On perusal of the order dated August 4, 2024, the plaintiff came to know for the first time of the arbitral proceedings were initiated by the defendants in connection with the SPA. No notice was served though parties to the award know that 18% of the total shares in the defendant no. 1 were assigned to the plaintiff. The plaintiff addressed an e-mail dated September 11, 2024 to the defendant nos. 2, 4 and 6.
- 3.23** The defendant no. 4 by its letter dated September 18, 2024 replied to the plaintiffs e-mail dated September 11, 2024 and forwarded a copy of an applications being AP(COM) 764 of 2024. Copy of the award dated June 29, 2023 was annexed to the arbitration petition.
- 3.24** From the cause papers in CS (COM) 764 of 2024 & AP (COM) 388 of 2024, the plaintiff had not paid the full payment of the consideration for 18% shares of and in the defendant no. 1.
- 3.25** The plaintiff contends although the payment made by the plaintiff and the defendant no. 2 have been admitted by the defendants, it is falsely alleged that only defendant nos. 4 and 6 have paid the full consideration under the SPA. The defendants and each of them derived benefit from the payment made by the plaintiff. The defendants and each of them owe a duty and obligation to transfer 18% of the shares of and in the defendant no. 1 to the plaintiff. The defendants and each of them have acted in breach of such duty and obligation.
- 3.26** The plaintiff has also pleaded fraud with particulars, as stated in paragraph 28 to the plaint.

3.27 The plaintiff in the plaint specifically stated that defendant no. 1 was the alter ego of defendant no. 8 to 19. Defendant nos. 8 to 19 are the mastermind behind the fraud practiced by the defendant no. 1 and/or defendants against the plaintiff. It is further stated in the plaint that defendant no. 2 is the alter ego of defendant no. 3. The defendant no. 3 is the mastermind to practice fraud behind defendant no. 2. The defendant no. 4 is the alter ego of defendant no. 5. The defendant no. 6 is the alter ego of defendant no. 7.

3.28 The defendants instituted arbitral proceeding behind the back of the plaintiff although each of them knew that 18% of the total share-holding of and in the defendant no. 1 had already been assigned in favour of the plaintiff and the plaintiff had duly paid for the same. The plaintiff claims an independent right in respect of said 18% shares of and in the defendant no. 1.

4. In the premises above, the plaintiff has filed the instant suit with the following reliefs:

The plaintiff prays for leave under Clause 12 of the Letters patent, 1865, dispensation with compliance of Section 12A of the Commercial Courts Act, 2015 and leave under Order II Rule 2 of the Code of Civil Procedure, 1908 and claims

- a) *Declaration that the Award dated 29th June, 2023 made in the arbitral reference between the defendants is not binding on and does not affect the right, title and interest of the plaintiff in respect of 18% shares of and in the Defendant no. 1;"*
- b) *Decree for Rs. 26,92,84,668/- (Rupees Twenty six Crores Ninety-Two lakhs Eighty four thousand six hundred and sixty-eight only) as stated in paragraph 32 above against the defendants and each of them jointly and severally;*
- c) *Decree for Rs. 25,05,00,000/- (Rupees Twenty-Five Crore and Five Lakhs only) as stated in paragraph 32 above against the defendants and each of them jointly and severally;*
- d) *Alternatively, enquiry into damages and decree for such sum as may be found upon enquiry;*

- e) *Perpetual injunction restraining the defendants from withdrawing any amount deposited with the Registrar Original Side of this Hon'ble Court pursuant to the orders made in AP no. 664 of 2024 without making payment of the plaintiff's claims as stated in paragraph 32 and 34 above;*
- f) *The amount deposited with the Registrar Original Side of this Hon'ble Court pursuant to orders made in AP no. 664 of 2024 be made over to the plaintiff in pro tanto satisfaction of its claims;*
- g) *Pendente lite interest and interest on judgment at 12% pa till realization;*
- h) *Receiver;*
- i) *Injunction;*
- j) *Attachment;*
- k) *Cost;*
- l) *Further of other reliefs.*

5. In the above facts and circumstance the defendant nos. 2 and 3/applicants have filed the instant application.
6. Parties have filed and exchanged their affidavits.
7. Parties have also filed their respective written notes.

Submissions :

8. Mr. Ratnanko Banerji, learned Senior Advocate appearing for the applicants submits that the plaintiff had filed the present suit solely based on the MOU which contains a clear and valid Arbitration Clause. The entire suit has been craftily drafted to surpass the Arbitration Clause to which the plaintiff and the applicants had agreed upon. The Arbitration Clause is in-existence. The reliefs claimed in the plaint are principally money claim as against the defendant no. 2.
9. Referring to various paragraphs averred in the plaint, learned senior advocate, Mr. Ratnanko Banerjee appearing for the applicants submits that sometime on May 24, 2011, the defendant nos. 2, 4 and 6 had

entered into the said SPA with the defendant nos. 8 to 18. For the purpose of acquiring share of and in the defendant no. 1 with the idea of development of the leasehold suit property by the defendant no.1.

10. Learned Senior Advocate Mr. Banerjee then submits that subsequent to the said SPA having been executed, the plaintiff approached the defendant no. 3 that they were interested to join in the said development venture in respect of the property and they were willing to invest in the project. Accordingly, the MOU was executed which is in the nature of an agreement to assign under which it was agreed that the defendant no. 2 shall transfer 50% of its 36% shares of and in the defendant no. 1, as and when the shares are transferred to defendant no. 2 by the defendant nos. 8 to 18. Referring to the contract, learned senior advocate submits that the defendant no. 2 had agreed to assign and transfer its rights and benefits of its contract with the present shareholder i.e. defendant nos. 8 to 18 under the SPA to the plaintiff to the extent and to the effect that the plaintiff shall acquire out of the proposed allocated shareholding of the defendant nos. 2 being 18% of the total equity shares of defendant no.1 held by defendant nos. 8 to 18 and the plaintiff had agreed to acquire the same at and for a consideration of Rs.14.76 crores.

11. He further submits that the plaintiff out of the said sum had paid a sum of Rs.11,24,78,832.94/- (Rupees Eleven Crore Twenty-Four Lakhs Seventy-Eight Thousand Eight Hundred and Thirty Two Only) either to defendant no. 2 or directly to the defendant nos. 1 and 8 to 18 for and on behalf of defendant no. 2 in terms of clause 3.3 of MOU. He then

submits that in case due to any reason the said SPA is cancelled or terminated, the plaintiff shall be entitled to refund of the entire money until then paid by the plaintiff to the defendant no. 2 immediately upon the transfer as receiving the same from the existing shareholders and/or defendant no. 1, as the case may be.

12. Mr. Ratnanko Banerji, learned Senior Advocate for the applicants then refers to Clause 11 from the MOU being the existing arbitration clause and submits that all disputes arising out of or in connection with the MOU between the transferor with the transferee shall be referred for arbitration. He then submits that on a plain and meaningful reading of the statements made in the plain, it would be evident that, the subject matter of the suit is actually the disputes raised by the plaintiff against the defendant no. 2 for which the plaintiff purported to have claimed refund of money allegedly paid by plaintiff along with other consequential relief. The real cause of action, as submitted by the learned senior advocate, Mr. Banerjee in the plaint, is in relation to the return of money paid to defendant no. 2 or to defendant no. 1 and defendant nos. 8 to 18 for and on behalf of the defendant no. 2 in terms of the MOU dated June 21, 2012. The said MOU being covered by an arbitration clause, this cause of action can only be decided in Arbitration.

13. Mr. Ratnanko Banerjee, learned Senior Advocate then submits that despite defendant no. 2 having made payment in terms of the said SPA dated March 24, 2011, the shares were not transferred by defendant nos. 8 to 18 from the escrow who was holding the shares in terms of the

escrow agreement. As there were disputes between the parties, defendant no. 2 initiated arbitration proceeding which ultimately culminated into an award dated June 29, 2023 where by the Arbitration Tribunal directed return of all sum received by defendant nos. 1, 8 to 18 in favour of the defendant no. 2, at page 136 to the plaint.

- 14.** Mr. Banerjee, learned Senior Advocate submits that the instant suit has been filed by the plaintiff suppressing the facts that though the plaintiff was not a party to the SPA and the arbitration proceeding in which the award was passed on June 29, 2023 (for short the award) but was well aware of the entire proceeding that defendant nos. 1 and 8 to 18 had challenged the award. The challenge went before the Hon'ble Supreme Court, after challenges to the award were dismissed by the High Court. The Hon'ble Supreme Court by its order dated May 9, 2025 had limited the scope of appeal and remitted by directing the return of interest only on the principal sum of Rs.19,92,30,500/- (Rupees Nineteen Crore Ninety-Two Lakhs Thirty Thousand and Five Hundred only) paid to the defendant no. 2.
- 15.** It is further submitted that the plaintiff has deliberately made false, frivolous and vexatious claim by misjoinder of parties and cause of action.
- 16.** Mr. Ratnanko Banerjee, learned Senior Advocate appearing for the applicants submits that when a Section 8 application is under consideration, the Court must keep a hands off as opposed to a face-off with the arbitration process and give a decisive push to the arbitration process once the Court is satisfied, prima facie, that a valid Arbitration

agreement exists in a matter which is arbitrable. The Court's enquiry should be limited only to this and no more. In support, reliance has been placed ***In the matter of: Lindsay International Private Limited and Others vs. Laxmi Niwas Mittal and Others reported at (2022) 1 High court Cases (Cal) 23: 2022 SCC OnLine Cal 170.***

17. He then submits that an arbitration agreement means an agreement which is enforceable in law and the jurisdiction of the arbitration is on the basis of an Arbitration Clause contained therein. Mere allegation of fraud is not a ground to nullify the effect of Arbitration Agreement. The parties can be relegated to arbitration where merely simple allegation of fraud touched upon internal affairs of parties is levelled. Reliance has been placed ***In the matter of: Ameet Lalchand Shah and Others vs. Rishabh Enterprises and Another reported in (2018) 15 Supreme Court Cases 678.***

18. Mr. Ratnanko Banerjee, learned Senior Advocate appearing for the applicants further submits that the law is well settled that when an application filed under Section 8 of the Arbitration Act, is taken for consideration, the primary consideration of the Court is to read the averments in the plaint as true and correct and to be taken the same as sacrosanct. If a plain reading of the averments in the plaint clearly demonstrate that the subject-matter of the plaint is governed under an arbitration agreement and the defendant applies for reference to arbitration, then it is mandatory for the Court to refer the parties to arbitration. Reliance has been placed on a judgment of this Court dated **November 20, 2025, In the matter of: Flint Group India Private**

Limited vs. Sujay Lodha rendered in GA-COM/4/2024 in CS-COM/652/2024.

19. Learned Senior Advocate further submits that while analyzing a case under Section 8, the court may choose to identify the issues which require adjudication pertaining to the validity of the Arbitration Agreement. If the court cannot rule on the in validity of the Arbitration Agreement on a prima facie basis, then the Court should stop any further analysis and simply refer all the issue for arbitration. Reference has been placed ***In the matter of: Vidya Drolia and Others vs Durga Trading Corporation reported at (2021) 2 Supreme Court Cases 1.***
20. Thus, Mr. Ratnanko Banerjee learned Senior Advocate submits in the present facts of the case it is a fit case to refer the subject matter of the instant suit to arbitration.
21. Mr. Krishna Raj Thaker, learned Senior Advocate appearing for the plaintiff has placed various paragraphs and the reliefs claimed in the plaint and submits that the MOU provides for assignment and transfer of rights and benefits of the defendant no. 2 under the SPA to the plaintiff against a valuable consideration. The MOU was executed between the plaintiff and the defendant no. 2. Defendant nos. 4 and 6 were signatories as confirming parties and were not parties to the Arbitration Agreement. He, inter alia, has placed Clauses 1, 2, 5, 7, 8, 10, 12 and 13 from the MOU. He submits that even before execution of MOU a sum of Rs.1,38,00,000/- (Rupees one crore thirty-eight lakhs only) was paid by the plaintiff to the defendant no.1 which has been recorded in the MOU. The defendant no. 2 requested the plaintiff to

make payments directly to the defendant no. 1 and defendant nos. 8 to 19. The plaintiff stopped making payment to defendant no. 2 after signing the MOU and since after signing the MOU all payments were made to defendant no. 1 and defendant nos. 8 to 19 directly. In this regard, Mr. Thaker has placed reliance; inter alia, on paragraphs 5, 6, 7 and 9 from the plaint. Defendant no.1 and 8 to 19 are not parties to MOU and/or the Arbitration Agreement. The payments made by the plaintiff to defendant no.1 are reflected in the books on account of defendant no. 1. The defendant no. 1 has acknowledged the payment received by it as loan in its balance-sheet.

22. Refuting the contentions of the applicants that the payments were being made by the plaintiff on account of the defendant no.2 is baseless, as then in the books of the defendant no.1 the creditor would have been defendant no. 2 and not the plaintiff. Specific reliance has been made by Mr. Thaker, learned Senior Advocate on paragraphs 9 to 16 of the plaint.

23. While dealing with the primary contention of the defendant no. 2 that it is solely liable for the claims of the plaintiff and the other defendants are not interested in the same and have been impleaded by the plaintiff only to circumvent of the Arbitration Clause in the MOU, learned Senior Advocate Mr. Thaker appearing for the plaintiff submits that such contention of the applicants are not only illegal and baseless but frivolous and contrary to record. The instant application has been filed with an oblique motive and ulterior intent of delaying, if possible, the interlocutory application filed by the plaintiff for attachment before

judgment and other reliefs. He submits that on a meaningful reading of the plaint it would be evident that, a composite cause of action against of all the defendants most of whom were not parties to the MOU, who have received payments on behalf of the defendant no. 2. In the event, the instant suit stands for trial, then all such defendants who have received payments for the plaintiff would be required for witness again to depose that they have received payment from the plaintiff on behalf of the defendant no. 2 and/or the applicants. Therefore, the cause of action and the reliefs in the plaint cannot be dissected. The subject matter of the suit, pleaded in the plaint, has inter-linked between the plaintiff and all the defendants and the defendants other than applicants were not parties to Arbitration Agreement. Thus, the subject matter of the suit is not covered by the Arbitration Clause in the MOU. Apart from the defendant no. 2 none of the defendants including defendant no. 3 is a party to the Arbitration Agreement recorded in the MOU. The plaintiff has, *inter alia*, sought declaration that the arbitration award made in the reference, *inter se*, the defendants is not binding on it. This relief is essential as the award upheld the contentions of the other defendants that full payment of consideration was not made and therefore specific performance was declined.

- 24.** Mr. Thaker, learned Senior Advocate appearing for the plaintiff then submits that if the plaintiff is able to establish at the trial that the other defendants have received the full payment on account of 18% shares from the plaintiff, the plaintiff will be entitled to damages in lieu of the shares. This dispute is also not covered under the Arbitration

Agreement. Bifurcation of relief in a plaint, where cause of action has been pleaded connecting all the defendants of which some are parties to an Arbitration Agreement and some are not, not possible and also not permissible in law. In such situation, the subject matter of the suit cannot be referred for arbitration. In support, reliance has been placed

In the matter of: Gujrat Composite Limited vs. A Infrastructure Limited and others reported at (2023) 7 Supreme Court Cases 193.

25. On interpretation the provisions laid down under Section 8 of the Arbitration Act, Mr. Thaker has further placed reliance on a judgment of a Coordinate Bench dated March 6, 2019 ***In the matter of: Good Earth Minmet Pvt. Ltd. vs. Sri Chandra Mohan Gupta rendered in GA 137 of 2016 in CS 11 of 2016.***

26. Mr. Thaker then submits that if a plain reading of the averments in the plaint clearly demonstrates that the subject matter of the plaint is governed under an Arbitration Agreement and the defendants applies for reference to arbitration, then it is mandatory for the Court to refer the parties to arbitration. Therefore, at the outset the averments in the plaint are read by the Court. Whether the plaint case will succeed or not on the basis of the averments made in the plaint is not the lookout of the Court while adjudicating Section 8 application. The Court should consider the averments in the plaint and then to come to a finding whether the subject matter of the plaint is covered by any Arbitration Agreement between the parties. In support, reliance has been placed on a judgment dated November 20, 2025 delivered by this Court ***In the matter of: Flint Group India Private Limited (supra).***

27. While distinguishing the judgment *In the matter of: Lindsay International Private Limited and Others (supra)*, Mr. Thaker learned Senior Advocate appearing for the plaintiff, inter alia, submits:

- A. That suit involved two distinct causes of actions and the reliefs claimed are entirely distinct. The disputes arose out of two different agreements between two sets of parties and no common reliefs were sought against the same set of parties. **(Ref. Para 3, 20 and 23 Lindsay).** However, in the present case, the reliefs are convergent as the disputes cannot be adjudicated in the absence of either the SPA or the MOU and cannot be adjudicated without all the Defendants as reliefs are claimed jointly and severally.
- B. Prior arbitration proceedings were pending between the plaintiff and the defendants who invoked section 8. The disputes between the plaintiff and those defendants were pending adjudication in the arbitration. The suit for the self-same disputes was subsequently filed. **(Ref. Para 5 of Lindsay).**
- C. Since the reliefs claimed against two sets of defendants were distinct, separate and independent of each other the same could be bifurcated. **(Ref. Para 25 of Lindsay).** However, in the present case the reliefs are claimed jointly and severally against all defendants.
- D. The Hon'ble Court has decided the application in Lindsay on the particular facts of that case. The Plaint in that case itself contained an averment that the parties are distinct and separate. The Hon'ble Judge arrived at finding that the parties have no relation to each other and there were no allegation or particulars of fraud against all the defendants jointly in the plaint filed in that suit. **(Ref. Para 49 of Lindsay).** In the present case, there is specific

allegation of fraud being perpetrated by all the defendants jointly against the plaintiff with complete particulars in paragraph 28 of the plaint. Further, in the present case, the reliefs are claimed jointly and severally as a sequitur of the statements made in the plaint.

- 28.** In the light of the above, the plaintiff submits that the instant application filed under Section 8 of the Arbitration Act should be dismissed.

Decision :

- 29.** Upon hearing the rival contentions of the parties and on perusal of the materials-on-record, this Court is of the firm view and the law is also well-settled that when an application filed under Section 8 of the Arbitration Act, is taken for consideration the primary obligation of the Court is to read the statements made in the plaint as true and correct and to be taken the same as sacrosanct. If a plain reading of the statements in the plaint clearly demonstrates that the subject matter of the plaint is governed under an Arbitration Agreement and the defendant applies for reference to arbitration, then it is mandatory for the Court to refer the parties to arbitration. Therefore, at the threshold, the statements in the plaint are read by the court.
- 30.** The case made out in the instant plaint along with the reliefs have already been narrated hereinabove. The said narration shows existing of the MOU with its Arbitration Clause which was entered into by and between the plaintiff and the defendant no. 2/applicants herein. The Arbitration Agreement has been admitted by the plaintiff and the applicants. The specific plaint case is that for the purpose of acquiring

18% shares of and in defendant no. 1 from the defendant no. 2 plaintiff has paid money. It is also pleaded in the plaint that money was paid by the plaintiff to numerous defendants even other than the applicants herein, who were not parties to the MOU/Arbitration Agreement. Further plaint case is that defendant no. 2 failed to transfer the said 18% shares in favour of the plaintiff. Though consideration has been paid for the same by the plaintiff to defendant no. 1 and some other defendants who are not parties to the Arbitration Agreement but had received/accepted the sale consideration on behalf of the defendant no. 2. Amongst other relief the plaintiff claims return of money paid by it.

- 31.** The defense made out by the applicants against the claim of the plaintiff in the instant application is that the money was effectively paid by the plaintiff on account of the defendant no. 2 and if any breach has taken place on the part of the defendant no.2, it is the cause of action of the plaintiff for the instant suit against the defendant no. 2 only and not against any other defendants. The crafty drafting of plaint will not lose sight of the actual cause of action in the plaint, as contended on behalf of the applicants.
- 32.** The intention of the plaintiff concerned is to be gathered primarily from the tenor and terms of the averments taken as a whole from the plaint. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hairsplitting technicalities.
- 33.** The cause of action for filing a suit would consist of bundle of facts. The assertion in the instant plaint made by the plaintiff that the amount was paid by the plaintiff on account of defendant no. 2 to

various other defendants, who are not parties to the said Arbitration Agreement. The cause of action pleaded in the instant plaint is such that to prove its case at the trial, the plaintiff may require to prove the case made out by it in the plaint as against those defendants who are not parties to the Arbitration Agreement. The cause of action pleaded in the instant plaint cannot be bifurcated or segregated. The statements from the plaint would show that the cause of action pleaded are intertwined amongst the defendants who are not parties to the Arbitration Agreement.

- 34. In the matter of: Lindsay International Private Limited and Others (supra),** co-ordinate bench had specifically held that the cause of action pleaded in the relevant plaint was such that the reliefs could be bifurcated against defendants and were distinct, separate and independent of each other, which is not in the instant case as would be evident from the averments made in the plaint, as already stated above. Therefore, the ratio laid down by the Co-ordinate Bench **In the matter of: Lindsay International Private Limited and Others (supra),** would not apply in the facts and circumstances in the instant case and on the basis of averments made in the instant plaint.
- 35.** In the instant plaint, the allegation of fraud pleaded in the plaint is not restricted amongst the plaintiff and the applicants but it includes the other defendants who were not parties to the Arbitration Agreement. Therefore, the ratio laid down **In the matter of: Ameet Lalchand Shah and Others (supra)** would have no application in the facts and circumstances of the instant case.

36. In the matter of: Flint Group India Private Limited (supra) while rejecting Section 8 application, this court had held that there was no Arbitration Agreement between the parties within the meaning of Section 7 of the Arbitration Act. In the instant case, as already discussed above, the plaint case is such that the cause of action in the plaint against all those defendants are also pleaded, who are not parties to the Arbitration Agreement. Therefore, the finding **In the matter of: Flint Group India Private Limited (supra)** in support of rejection of Section 8 plea would apply in the facts of the case, to a limited extent, that there had been no Arbitration Agreement between the plaintiff and all the defendants. The Arbitration Agreement is restricted only between the plaintiff and the defendant no. 2 and/or the applicants. However, statements made in the plaint would show that the plaintiff has pleaded a case against all the defendants together, in such a fashion where neither the cause of action nor the reliefs can be bifurcated. The plaint case ultimately may succeed or may fail at the time of trial but the trial has to be proceeded with against all the defendants in the plaint on the basis of the statements made in the plaint, as the plaint stands in its present form.

37. The ratio laid down **In the matter of: Vidya Drolia and Others (supra)** would not apply in the facts of the instant case. The validity of the Arbitration Agreement in the instant case is not under challenge. This Court, on a meaningful reading of the plaint finds that the plaintiff has stated and raised its claim collectively against all the defendants and large number of defendants are not parties to the Arbitration

Agreement. At the time of trial the plaint in its present form may succeed or fail but that should not be the consideration while adjudicating the instant Section 8 application. At this stage, the Court should restrict itself as to whether the subject matter of the suit between the parties is such that it is governed by the Arbitration Agreement.

- 38.** The plaintiff when files a suit against several defendants and the cause of action and reliefs pleaded in the plaint show they are so interconnected and intertwined that neither the cause of action nor the reliefs can be bifurcated or segregated, for such a plaint even if there is an existing and valid arbitration clause between the plaintiff and some of the defendants or any defendant, the subject matter of the suit is not permitted to be and cannot be referred to for arbitration.
- 39.** In view of the foregoing discussions and reasons, this Court is of the firm and considered view that the subject matter of the instant suit cannot and should not be referred for arbitration in terms of the Arbitration Clause embodied in the said MOU.
- 40.** Resultantly, the instant application **I.A. No.GA-COM/2/2025** stands **dismissed** without any order as to costs.

(Aniruddha Roy, J.)