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

Pronounced on: 04.03.2024

+ **ARB.P. 347/2019**

(1) M/S GREEN EDGE INFRASTRUCTURE PVT. LTD.Petitioner
Through: Mr. Ashish Dholakia, Sr. Adv.
alongwith Mr. Vikas Mishra, Mr.
Subhankar Sen Gupta, Mr. Aarush
Bhatia and Mr. Arpit Kumar, Advs.
versus

MAGIC EYE DEVELOPERS PRIVATE LIMITED & ORS.

..... Respondents
Through: Mr. Preetesh Kapur, Sr. Adv. along
with Mr. Shaunak Kashyap, Ms.
Nistha Gupta and Mr. Prateek Singh,
Advs. for R-1.

+ **O.M.P.(I) (COMM.) 26/2019**

(2) M/S GREEN EDGE INFRASTRUCTURE PVT. LTD.Petitioner
Through: Mr. Ashish Dholakia, Sr. Adv.
alongwith Mr. Vikas Mishra, Mr.
Subhankar Sen Gupta, Mr. Aarush
Bhatia and Mr. Arpit Kumar, Advs.
versus

MAGIC EYE DEVELOPERS PRIVATE LIMITED & ORS.

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Through: Mr. Preetesh Kapur, Sr. Adv. along
with Mr. Shaunak Kashyap, Ms.
Nistha Gupta and Mr. Prateek Singh,
Advs. for R-1.

+ **ARB.P. 753/2020**

(3) MAGIC EYE DEVELOPERS PVT. LTD Petitioner
Through: Mr. Preetesh Kapur, Sr. Adv. along
with Mr. Shaunak Kashyap, Ms.



Nistha Gupta and Mr. Prateek Singh,
Adv.

versus

GREEN EDGE INFRASTRUCTURE PVT. LTD. & ORS.

..... Respondents

Through: Mr. Ashish Dholakia, Sr. Adv.
alongwith Mr. Vikas Mishra, Mr.
Subhankar Sen Gupta, Mr. Aarush
Bhatia and Mr. Arpit Kumar, Adv.
for R-1.

+ **O.M.P.(I) (COMM.) 114/2020 and IA Nos.22137/2022,
22138/2022, 10382/2023, 10401/2023**

(4) **MAGIC EYE DEVELOPERS PVT LTD.** Petitioner

Through: Mr. Preetesh Kapur, Sr. Adv. along
with Mr. Shaunak Kashyap, Ms.
Nistha Gupta and Mr. Prateek Singh,
Adv.

versus

GREEN EDGE INFRA PVT. LTD & ORS. Respondents

Through: Mr. Ashish Dholakia, Sr. Adv.
alongwith Mr. Vikas Mishra, Mr.
Subhankar Sen Gupta, Mr. Aarush
Bhatia and Mr. Arpit Kumar, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. ARB.P. 347/2019 has been filed by Green Edge Infrastructure Pvt. Ltd (“**Green Edge**”) seeking appointment of a sole arbitrator to adjudicate the disputes between itself and Magic Eye Developers Pvt Ltd. (“**Magic Eye**”), R.K.S. Buildtech Pvt. Ltd (“**RKS**”) and Spire Techpark Private Limited (“**Spire**”) arising out of Shareholders’ Agreement dated 04.07.2012



(“SHA”) read with Memorandum of Understanding dated 07.06.2013 (“draft MOU”), Share Purchase Agreement dated 24.07.2013 (“SPA”), Memorandum of Understanding dated 24.07.2013 (“MOU-1”) and Memorandum of Understanding dated 09.08.2013 (“MOU-2”).

2. ARB.P. 753/2020 has been filed by Magic Eye seeking appointment of a sole arbitrator to adjudicate the disputes between itself and Green Edge, Vera Edu Infra Pvt. Ltd. (“Vera Edu”) and Vega Schools arising out of SPA dated 24.07.2013.

3. O.M.P.(I) (COMM.) 26/2019 and O.M.P.(I) (COMM.) 114/2020 are the petitions under Section 9 of the A&C Act, filed by Green Edge and Magic Eye respectively.

Factual Background

4. Briefly stated, the facts necessary for disposal of present petitions are that Magic Eye is owner of 11.291 acres of contiguous freehold land situated at Sector 106, Gurgaon. On 22.05.2012, Magic Eye had entered into a development agreement with Spire Developers Private Limited (the said company was amalgamated in Magic Eye in 2014), whereby Magic Eye granted development rights to Spire Developers Private Limited in respect of 8 acres of the said land. Green Edge, a company *inter alia* engaged in development of infrastructure projects and providing consultancy services on real estate issues, which had previously purchased 20% shareholding of Magic Eye, entered into a Shareholders’ Agreement/SHA dated 04.07.2012 with Magic Eye, RKS (a shareholder holding 80% equity shares in Magic Eye) and Spire (a group company of Magic Eye) to define their business relationship and also to stipulate their *inter-se* rights and obligations, with respect to the said land.



5. The SHA *inter alia* provides as under:
- 11.291 acres of the aforesaid land was bifurcated in 7.228 acres of 'Licensed Land' on which Project/commercial colony was to be developed, and 4.062 acres of 'Balance Land'.
 - Green Edge on one hand and RKS and Spire on other hand were to hold the issued and allotted shares of the Magic Eye in 20:80 ratio. Further all expenses/ abilities/ rights/ obligation in respect of the land were to meet by the said parties in the said ratio.
 - Green Edge was to lead the process for obtaining the requisite licence/NOC etc. to be issued by various nodal authorities in respect of the Licensed Land. In lieu of providing the said services, Green Edge was entitled to Built-up Area comprising 10 flats equivalent to 7600 sq. ft. of super area in the Project.
 - After obtaining requisite approvals, Green Edge was entitled to seek its Built-up Area and Magic Eye was to then demarcate and allot the same to the Green Edge. For the said purpose, the parties agreed to execute any document, agreement, deeds as may be required.
 - The arbitration clause in the said agreement states that "any dispute arising out of or in connection with this agreement" is to be referred to arbitration.
6. On 07.06.2013, Magic Eye is stated have sent an email to Green Edge along with a draft MOU containing a disinvestment scheme. The said draft



MOU dated 07.06.2013 was for the “exit of Green Edge (which holds 20% of Magic Eye’s shares) from Magic Eye, which has 12.076 acres of land in Sector 106, Gurgaon”. This draft MOU contemplates sale of Green Edge’s entire shareholding in Magic Eye; repayment of unsecured loan taken by Green Edge from Magic Eye; allocation of 36,762 sq ft saleable area (free of cost) by Magic Eye to Green Edge in Sector 106, Gurgaon Project; and entitlement of Green Edge to 20% of the returns against the unlicensed land.

7. Subsequently, SPA and MOU-1 both dated 24.07.2013 were executed between Green Edge, Magic Eye and RKS.

8. SPA *inter alia* provides as under:

- a. Green Edge will sell its 20% shareholding in Magic Eye to RKS for the specified consideration.
- b. The condition precedent for the said transaction was that Green Edge shall repay to Magic Eye the unsecured loan of Rs.5.20 Cr. advanced by Magic Eye to Green Edge.

9. MOU-1 *inter alia* provides as under:

- a. The parties through this MOU agreed for the business arrangement of the balance unlicensed land.
- b. Green Edge was to make efforts for obtaining requisite licence/NOC etc. for the unlicensed land within 5 years from date of this agreement.
- c. 20% of the profitability from the proposed project to be constructed on the said land was to be to the benefit of Green Edge.

10. Thereafter, Green Edge and Magic Eye entered into another MOU-2 dated 09.08.2013, which *inter alia* provides as under:



- a. Magic Eye agreed to provide 36,762 sq ft of saleable area to Green Edge from its project in Sector 106, Gurgaon free of cost as per draft MOU dated 07.06.2013.
- b. 8,400 sq ft out of the 36,762 sq ft of the saleable area was to be provided for certain consideration which was to be later refunded by Magic Eye as facilitation charges.
- c. Balance 28,372 sq ft of the saleable area was to be provided by Magic Eye to Green Edge as 2X i.e. 56,724 sq ft on the condition that Green Edge in turn agrees to sell the said area to Magic Eye for selling in open market. 50% of the net revenue earned after selling the said area was to be paid to Green Edge.

Disputes between the parties

11. Green Edge is aggrieved on account of purported failure of Magic Eye, RKS and Spire to fulfil their obligations arising out of and in terms of the SHA, SPA, MOU-1, MOU-2. This *inter alia* involves non-allotment of 56,724 sq ft of saleable area by Magic Eye and non-refund of amount paid against the allotment of 8,400 sq.ft of saleable area by Magic Eye.

12. Magic Eye is aggrieved on account of purported failure of Green Edge to pay outstanding unsecured loan taken by Green Edge from Magic Eye, as recorded in Clause 4.1 of the SPA.

Prior Litigation

13. Magic Eye with a view to seek recovery of purported unsecured loan of Rs. 5.20/- crores owed by the Green Edge, approached this Court by way of a suit being CS(COMM) No. 1290/2018 against Green Edge, Vera Edu and Vega Schools. Vera Edu and Vega Schools were stated to be the group companies of the Green Edge. In the said suit, an application under Section



8 of the A&C came to be filed by Green Edge on the basis of the arbitration agreement between the parties; the said application was allowed vide judgment/order dated 21.05.2020 and the said parties were referred to arbitration. This court *inter alia* directed as under:

“26. Considering the fact that there are valid agreements between the plaintiff and defendant No. 1 containing clauses for reference of disputes to arbitration and defendant Nos.2 and 3 being group companies of defendant No.1, from the intent of the parties as noticed from the agreements as also the averments in the plaint it is evident that not only would defendant No. 1 but also the defendant Nos. 2 and 3 companies be amenable to the jurisdiction of the arbitrator as per the arbitration clauses is the SHA, SPA and MOU. Consequently, the present application is disposed of holding that the present suit is not maintainable and the disputes between the parties are required to be referred to the arbitration”

14. It may be noted that in the said suit it was Magic Eye’s own case that the transactions between Magic Eye and Green Edge were part of a series of “composite transactions”. It was *inter alia* stated in the plaint as under:

“23. That the entire business relationship entered into between the Plaintiff company and the Defendant No.1 company was based on a series of composite transaction and documents with each other which is clearly borne out of the act that the said parties executed multiple documents including Shareholders Agreement (‘SHA’ hereinafter), Share Purchase Agreement (‘SPA’), Memorandum of Understanding (‘MoU’ hereinafter) etc. It is submitted that a conjoint reading of the SHA dated 04.07.2012, SPA dated 24.07.2013 and the MoU (executed on stamp paper dated 24.07.2013) executed between the parties clearly lays down the rights and obligations incurred by both the said parties.”

15. Thereafter, the present petitions came to be filed by respective parties.

16. Vide common order dated 25.03.2021, the petitions [ARB.P. 347/2019 and ARB.P. 753/2020] under Section 11 of the A&C Act were allowed and a common arbitrator was appointed. The petitions [O.M.P.(I) (COMM.) 114/2020 and O.M.P.(I) (COMM.) 26/2019] under Section 9 of



the A&C Act were directed to be treated as applications under Section 17 of the A&C Act to be decided by the arbitrator. The interim orders dated 30.01.2019 passed in O.M.P.(I) (COMM.) 26/2019 and 01.06.2020 passed in O.M.P.(I) (COMM.) 114/2020 were continued by the court.

17. The said common order dated 25.03.2021 was assailed before the Supreme Court by Magic Eye. Vide judgment dated 12.05.2023 passed in Civil Appeal No. 3634-3637 of 2023 reported as (2023) 8 SCC 50, the order dated 25.03.2021 was set aside and it was *inter alia* directed as under:

“...The matter is remitted back to the High Court/ referral Court to decide the respective arbitration petitions afresh and in light of the observations made hereinabove and to decide the issue conclusively and finally with respect to the existence and validity of the arbitration agreement. The aforesaid exercise to be completed within a period of three months from the date of receipt of the present order. However, it is observed that we have not expressed anything on merits on the existence and validity of the arbitration agreement and on the four agreements being interconnected/interlinked. It is ultimately for the High Court/referral court to take an appropriate decision in accordance with law and on its own merits....”

18. Consequently, only the arbitration petitions are required to be decided afresh and the issue of existence and validity of the arbitration agreement is to be decided by this court. Therefore, the submissions made by the parties on the petitions filed under Section 9 of the A&C Act, are not being considered by this court hereinbelow.

Contentions of the Parties

19. Learned senior counsel for the Green Edge submitted that existence of an arbitration agreement between the parties is not in doubt. It is submitted that even though MOU-2 does not contain an arbitration clause, disputes arising therefrom are to be referred to arbitration in view of a broad arbitration clause contained in SHA. It is submitted that all the aforesaid



four agreements i.e. SHA, SPA, MOU-1 and MOU-2 as well as the draft MOU are intrinsically interconnected, interlinked, intertwined and interdependent and have to be read together to ascertain the entire transactions contemplated between the parties. Out of the said four agreements, the mother/principal agreement is the SHA-1 whereas the SPA, MOU-1 & MOU-2 are the supplementary agreements inasmuch as they give effect to the exit of the Green Edge from the affairs of the Magic Eye after duly obtaining necessary licenses for the combined land area. Reference is made to a chart appended along with the written submissions filed by Green Edge, detailing the parties, brief purpose of each agreement and clause-wise interlinking of the said agreements. It is further submitted that Magic Eye in its previous suit, acknowledged the need to read all agreements together to define parties' rights and obligations, further emphasizing that their entire business relationship constituted a composite transaction.

20. It is submitted that due to the inter-linkage of the concerned agreements, all disputes should be settled through a single, composite arbitration. The absence of a dedicated arbitration clause in MOU-2, it is again submitted, does not render disputes arising under it non-arbitrable. It is submitted that that the broadly-worded arbitration clause in the SHA mandates referring all disputes "in connection" with the SHA to a single arbitrator. In this regard, reliance is placed on ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.***, (2013) 1 SCC 641; ***Ananda Bharathi Fertilizers (India) Private Limited vs. Nagarjuna Fertilisers and Chemicals Limited*** MANU/TL/0212/2023; ***B.M. Mohan Rao and Ors. Vs. Mohitsham Complexes (P) Ltd.*** MANU/KA/9802/2019 and ***Sanjay Mehra v. Sharad Mehra***, 2023 SCC OnLine Del 2205.



21. *Per contra*, learned senior counsel for the Magic Eye submitted that the disputes under MOU-2 cannot be referred to arbitration, since it does not contain an arbitration clause, and the only remedy is for Green Edge is to file a suit. It is submitted that MOU-2 is not interlinked with the other agreements and is a standalone agreement, capable of being enforced by itself and it is incumbent upon Green Edge to seek specific performance of the same. It is submitted that MOU-2 does not even refer to the SHA, SPA or MOU-1. Although it refers to a draft MOU, but even the draft MOU does not have an arbitration clause. Given that MOU-2 is later in time, the principle of party autonomy should be upheld, respecting the parties' conscious decision to exclude arbitration in respect of this agreement. Consequently, due to the absence of an arbitration clause and the independent nature of MOU-2, it is submitted that the arbitration petition filed by Green Edge should be dismissed since the disputes raised by Green Edge, *inter-alia*, arises out of MOU-2.

22. It is further submitted that even if some level of interconnection exists between MOU-2 and the other agreements, the absence of a specifically incorporated arbitration clause within MOU-2 precludes arbitration in respect of disputes arising thereunder. It is submitted that Section 7 of the A&C Act, mandates that an arbitration agreement must be "contained in" the main agreement. The only exception, outlined in sub-section (5), allows the incorporation of an arbitration clause into the main agreement if, and only if, there is a specific incorporation by reference of the arbitration clause, and the reference is such that there is intention to incorporate the arbitration clause. No such reference is stated to be found in MOU-2, regarding either the earlier agreements or an arbitration clause, and as such,



the fundamental prerequisite for referring disputes under this particular agreement to arbitration is not met. In this regard, reliance has been placed on *M.R. Engineers & Contractors (P) Ltd. vs. SomDatt Builders Ltd.*, (2009) 7 SCC 696 and *Duro Felguera, S.A. vs. Gangavaram Port Ltd.*, (2017) 9 SCC 729.

23. It further submitted that in the arbitration petition filed by Magic Eye, apart from Green Edge who is signatory to the SPA, Vera Edu and Vega Schools, being group companies of the Green Edge, are also liable to be referred to arbitration in view of the judgment/order dated 21.05.2020 passed in CS(COMM) No. 1290/2018. It is submitted that in the said suit, the application filed by Green Edge under Section 8 of the A&C Act was allowed, and the said parties were referred to arbitration. It is submitted that the said issue is res judicata between the parties and the principles of issue estoppel will preclude Vera Edu and Vega Schools from invoking separate corporate personality for any purpose in these proceedings.

24. Notably, in the arbitration petition filed by Magic Eye no reply has been filed by either Green Edge or Vera Edu or Vega Schools opposing the said petition.

Analysis and Finding

25. On the contentions raised, issues arise for consideration are (i) Whether there exists an arbitration agreement between the parties?, (ii) Whether MOU-2 is interlinked/inter-twined with SHA, SPA, MOU-1?, (iii) Whether in absence of an arbitration clause in MOU-2, disputes arising thereunder can be referred to arbitration? and (iv) Who all are the parties to the arbitration agreement and/ or bound by the same?



Whether there exists an arbitration agreement between the parties?

26. Admittedly, SHA, SPA and MOU-1 contain an arbitration clause. The issue that arises for consideration is whether in absence of an arbitration clause in MOU-2, disputes arising thereunder can be referred to arbitration. Determination of the said issue will be dependent upon whether MOU-2 is interconnected and interlinked with prior agreements executed between the parties, which admittedly contain an arbitration clause.

Whether MOU-2 is interlinked/inter-twined with SHA, SPA, MOU-1?

27. The assertion by learned senior counsel appearing for Magic Eye that MOU-2 is independent of SHA, SPA, and MOU-1, *ex-facie* lacks merit. Mere non-reference of the said agreements in the MOU-2 cannot lead to conclusion that the agreements are not interlinked. In fact, in the suit filed by the Magic Eye, it was the Magic Eye's own case that the entire business relationship entered into between Magic Eye and the Green Edge was based on a series of "composite transactions". It is not open for Magic Eye to contend otherwise. Regardless, there is no manner of doubt that the SHA, SPA, draft MOU, MOU-1, MOU-2 are interconnected, interlinked and intertwined, and form part of a composite transaction. The said agreements have to be read together to ascertain the entire transaction between the parties.

28. A bare reading of MOU-2 shows that the same has been executed in furtherance of and for the purpose of achieving the objectives of the SHA. Under the SHA, the rights of Green Edge in respect of the land/development in question, was expressly recognised. In terms thereof, Green Edge was entitled to certain built-up area in the Project in exchange for providing its services. MOU-2 cannot be construed in isolation of the



previous agreements. It is undoubtedly in furtherance of the understanding effectuated through previous agreements, and prescribes the mechanism through which the saleable area was to be allocated to the Green Edge by Magic Eye. The figure of 36,762 sq. ft. of saleable area to be allocated to Green Edge, as mentioned in the MOU-2, is evidently not an arbitrary figure, but is in furtherance of the understanding arrived at vide previous agreement/s, taking into account the mutual rights and obligations created thereunder. This calculation is detailed in the draft MOU as under:

“This area allocation has been worked as per details below:

Total Land owned by MEDPL in Sector 106, Gurgaon-12.076 Acres, out of which 5.51 Lac sq ft of FSI generated from the project on 7.7285 Acres, which has been valued @ Rs.2,200/Sq ft amounting to 121.23 Cr.

<i>121.23 Cr.</i>	<i>(Agreed value of 5.51 Lac Sq ft of FSI)</i>
<i><u>-33.476 Cr.</u></i>	<i>(Less expenses of CLU)</i>
<i>87.754 Cr.</i>	<i>(Total Return in MEDPL)</i>
<i>17.55 Cr.</i>	<i>(GEI's Share, ie 20%)</i>
<i><u>-8.00 Cr.</u></i>	<i>(Less already paid to GEI)</i>
<i>9.55 Cr.</i>	<i>(Net payable)</i>

Agreed Cost a Sq ft of Saleable Area= Rs3,920/ Sqft

<i>Area to be allotted (9.55 Cr./3920)</i>	<i>= 24,362 sq ft</i>
<i>Additional Area against Facilitation Charges</i>	<i>= 12,400 sq ft</i>
<i>Total FOC Area to be allotted</i>	<i>= 36,762 sq ft”</i>

29. It is also pertinent to note that in response to communication dated 29.10.2018 addressed by Green Edge to Magic Eye seeking allotment of saleable area as mentioned in the MOU-2, it was stated by Magic Eye, vide communication dated 21.11.2018 that “you [Green Edge] have failed to provide proof of services having been provided along with relevant documentary proof and costs incurred”. This clearly suggests that the



saleable area/units [referred to in MOU-2] were to be allotted to Green Edge in lieu of providing license facilitation services, as contemplated under Clause 7 of SHA dated 04.07.2012. Thus, the stand taken by Magic Eye itself, is demonstrative of the inter-connection of the concerned agreements.

30. Clearly also, the SHA has to be construed in light of the stipulations contained in the other agreements, namely SPA, MOU-1 and MOU-2. The said agreements were evidently executed in furtherance of the understanding and to fulfil the overarching objectives of SHA. All these agreements together form inseparable part/s of the composite transaction between the parties.

Whether in absence of an arbitration clause in MOU-2, disputes arising thereunder can be referred to arbitration?

31. The argument advanced by learned senior counsel appearing for Magic Eye that arbitration should be precluded in respect of disputes arising under MOU-2 due to non-inclusion of an arbitration clause therein, even in the face of the said MOU-2 being inextricably interlinked with previous agreements, holds no merit.

32. The SHA is the principal agreement between the parties, it contains a broad arbitration clause, which provides that “any disputes arising out of or in connection with this agreement” are to be referred to arbitration. The phrase “in connection with this agreement” is broad enough to extend coverage in respect of disputes arising from supplementary agreements executed in furtherance of the principal agreement i.e. the SHA. Evidently, MOU-2 is one such supplementary agreement that has been executed in furtherance of SHA. Therefore, disputes arising from MOU-2 can be referred to arbitration even in absence of a separate arbitration clause in



MOU-2. Even assuming there is a controversy as to whether MOU-2 has been executed in furtherance of the SHA or not, the same can be resolved by taking recourse to the arbitration clause in the SHA.

33. In *Chloro Controls* (supra), three out of the six agreements did not contain any arbitration clause. The Supreme Court found the said agreements to be intrinsically interconnected and observed that the arbitration clause contained in the principal agreement is widely worded and comprehensive enough to encompass disputes that had raised under the agreements; in reaching this conclusion the Supreme Court took note of the overarching width of the arbitration clause in the principal agreement, which subsumed all disputes “under and in connection with” the said agreement.

Relevant extracts of the said decision are as under:

*“144. When we refer to all the six relevant agreements in relation to the arbitration clause, the shareholders' agreement, the financial and technical know-how licence agreement and the export sales agreement contained the arbitration clause while the other three agreements i.e. international distributor agreement, the Managing Directors' agreement and the trade mark registered user licence agreement did not contain any such arbitration clause. The arbitration clause contained in the principal agreement in Clause 30 has been reproduced above. It requires that any dispute or difference arising under or in connection with that agreement which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration conducted in accordance with the Rules of ICC. **This clause is widely worded. It is comprehensive enough to include the disputes arising “under and in connection with” the agreement. The word “connection” has been added by the parties to expand the scope of the disputes under the agreements. The intention to make it more comprehensive is writ large from the language of the agreement and particularly Clause 30 of the mother agreement.** It is useful to notice that the agreement has to be construed and interpreted in accordance with laws of the Union of India, as consented by the parties.*

145. The expression “connection” means a link or relationship between people or things or the people with whom one has contact [Concise Oxford Dictionary (Indian Edition)]. “Connection” means act of



uniting; state of being united; a relative; relation between things one of which is bound up with (Law Lexicon, 2nd Edn., 1997). Thus, even the dictionary meaning of this expression is liberally worded. It implies expansion in its operation and effect both. Connection can be direct or remote but it should not be fanciful or marginal. In other words, there should be relevant connection between the dispute and the agreement by specific words or by necessary implication like reference to all other agreements in one (principal) agreement. The expression appearing in Clause 30 has to be given a meaningful interpretation particularly when the principal agreement itself, by specific words or by necessary implication, refers to all other agreements. This would imply that the other agreements originate from the principal agreement and hence, its terms and conditions would be applicable to those agreements. There are three agreements, as already noticed, which do not contain any specific arbitration clause. Both the Managing Directors' agreement and the international distributor agreement directly relate to the principal agreement stating the manner in which the affairs would be managed and the Managing Directors be appointed. At the same time, the international distributor agreement is executed between Severn Trent Water Purification Inc., the erstwhile Capital Controls Co. Inc. and Capital Controls (India) (P) Ltd., the joint venture company. Firstly, the chances of dispute between the same group of companies were remote and secondly these were the companies which were held by the same management. The parties had also agreed to have relationship as that of seller and distributor to make the joint venture company a success. The interest of Capital Controls Co. Inc. and that of Capital Controls (India) (P) Ltd., to the extent of the former's share, were common. Furthermore, this being an integral part of the principal agreement would, in our opinion, be squarely covered by the arbitration clause contained in the mother/shareholders' agreement. This agreement has been specifically referred in Clause 7 of the mother/shareholders' agreement. Not only that is there incorporation by reference of international distributor agreement in the mother/shareholders' agreement but, in fact, it is an integral part thereof."

34. In *Olympus Superstructures (P) Ltd. vs. Meena Vijay Khetan*, (1999) 5 SCC 651, the arbitration clause in the main agreement provided that "any other matter in any way connected with, ...or in relation to the subject matter of this agreement" shall be referred to arbitration. The Supreme Court found that the supplementary agreement was integrally "connected with" the



disputes and differences arising from the main agreement and therefore the disputes arising under the supplementary agreement could be dealt by the arbitrator, appointed on the basis of the arbitration clause contained in the main agreement. Relevant extract of the said decision is as under:

*“25. It is true that there are two agreements in each of the three appeals before us. One is the main agreement relating to construction of flats and arbitration clause 39 is general and does not refer to any named arbitrator. It is also true that there is a separate arbitration clause 5 in the Interior Design Agreement which gives the names of specific arbitrators. **But it must be noticed that clause 39 permits reference to arbitration not only of issues arising under the main agreement but also those disputes or differences which are “connected” with disputes arising under the main agreement.** The following words in the main agreement are important:*

“Otherwise as to any other matter in any way connected with, arising out of or in relation to the subject-matter of this agreement.”

In other words, clause 39 refers to the “subject-matter” of the main agreement and also to “any other matters” and these “any other matters” if they are “connected” with or arise out of or are in relation to the subject-matter of the main agreement, the disputes and differences concerning those “other matters” can also be referred to arbitration under clause 39 of the main agreement. In other words, parties intended arbitration in respect of the main disputes and connected disputes before one arbitral tribunal.”

35. ***Chloro Controls*** (supra), also noticed the judgment of ***Olympus Superstructures*** (supra), as under:

*“80. Reference can also be made to the judgment of this Court in *Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan*, where the parties had entered into a purchase agreement for the purchase of flats. The main agreement contained the arbitration clause (Clause 39). The parties also entered into three different interior design agreements, which also contained arbitration clauses. The main agreement was terminated due to disputes about payment and non-grant of possession. These disputes were referred to arbitration. A sole arbitrator was appointed to make awards in this respect. Inter alia, the question was raised as to whether the disputes under the interior design agreements were subject to their independent arbitration clauses or whether one and the same reference was permissible under the main agreement. It was argued that the reference*



under Clause 39 of the main agreement could not permit the arbitrator to deal with the disputes relating to interior design agreements and the award was void. The Court, however, took the view that parties had entered into multiple agreements for a common object and the expression “other matters ... connected with” appearing in Clause 39 would permit such a reference.

81. The Court held as under: (Meena Vijay Khetan case, SCC pp. 667-68, para 30)

“30. If there is a situation where there are disputes and differences in connection with the main agreement and also disputes in regard to ‘other matters’ ‘connected’ with the subject-matter of the main agreement then in such a situation, in our view, we are governed by the general arbitration Clause 39 of the main agreement under which disputes under the main agreement and disputes connected therewith can be referred to the same Arbitral Tribunal. This Clause 39 no doubt does not refer to any named arbitrators. So far as Clause 5 of the Interior Design Agreement is concerned, it refers to disputes and differences arising from that agreement which can be referred to named arbitrators and the said Clause 5, in our opinion, comes into play only in a situation where there are no disputes and differences in relation to the main agreement and the disputes and differences are solely confined to the Interior Design Agreement. That, in our view, is the true intention of the parties and that is the only way by which the general arbitration provision in Clause 39 of the main agreement and the arbitration provision for a named arbitrator contained in Clause 5 of the Interior Design Agreement can be harmonised or reconciled. Therefore, in a case like the present where the disputes and differences cover the main agreement as well as the Interior Design Agreement,—(that there are disputes arising under the main agreement and the Interior Design Agreement is not in dispute)—it is the general arbitration Clause 39 in the main agreement that governs because the questions arise also in regard to disputes relating to the overlapping items in the schedule to the main agreement and the Interior Design Agreement, as detailed earlier. There cannot be conflicting awards in regard to items which overlap in the two agreements. Such a situation was never contemplated by the parties. The intention of the parties when they incorporated Clause 39 in the main agreement and Clause 5 in the Interior Design Agreement was that the former clause was to apply to situations when there were disputes arising under both agreements and the latter was to apply to a situation where there were no disputes or differences arising under the main contract but the disputes and differences were confined only to the Interior Design Agreement. A case containing two agreements with



arbitration clauses arose before this Court in Agarwal Engg. Co. v. Technoimpex Hungarian Machine Industries Foreign Trade Co. There were arbitration clauses in two contracts, one for sale of two machines to the appellant and the other appointing the appellant as sales representative. On the facts of the case, it was held that both the clauses operated separately and this conclusion was based on the specific clause in the sale contract that it was the 'sole repository' of the sale transaction of the two machines. Krishna Iyer, J. held that if that were so, then there was no jurisdiction for travelling beyond the sale contract. The language of the other agreement appointing the appellant as sales representative was prospective and related to a sales agency and 'later purchases', other than the purchases of these two machines. There was therefore no overlapping. The case before us and the above case exemplify contrary situations. In one case the disputes are connected and in the other they are distinct and not connected. Thus, in the present case, Clause 39 of the main agreement applies. Points 1 and 2 are decided accordingly in favour of the respondents."

36. A Constitution Bench of the Supreme Court in **Cox & Kings Ltd. v. SAP India (P) Ltd.**, 2023 SCC OnLine SC 1634, has held as under:

"122. The general position of law is that parties will be referred to arbitration under the principal agreement if there is a situation where there are disputes and differences "in connection with" the main agreement and also disputes "connected with" the subject-matter of the principal agreement....."

37. The judgement of **Duro Felguera** (supra) relied upon by the Magic Eye, is clearly distinguishable in as much as the said case is not a case of interlinked agreements and/or principal-supplementary agreements. The judgment of **Choro Controls** (supra) was distinguished in the said decision as under:

"42. The learned Senior Counsel for GPL relied upon Chloro Controls India (P) Ltd.² to contend that where various agreements constitute a composite transaction, court can refer disputes to arbitration if all ancillary agreements are relatable to principal agreement and performance of one agreement is so intrinsically interlinked with other agreements. Even though Chloro Controls has considered the doctrine of



“composite reference”, “composite performance”, etc., ratio of Chloro Controls may not be applicable to the case in hand. In Chloro Controls, the arbitration clause in the principal agreement i.e. Clause (30) required that any dispute or difference arising under or in connection with the principal (mother) agreement, which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration conducted in accordance with Rules of ICC. The words thereon “under and in connection with” in the principal agreement was very wide to make it more comprehensive. In that background, the performance of all other agreements by respective parties including third parties/non-signatories had to fall in line with the principal agreement. In such factual background, it was held that all agreements pertaining to the entire disputes are to be settled by a “composite reference”. The case in hand stands entirely on different footing. As discussed earlier, all five different packages as well as the Corporate Guarantee have separate arbitration clauses and they do not depend on the terms and conditions of the Original Package No. 4 TD nor on the MoU, which is intended to have clarity in execution of the work.”

38. Reliance placed on behalf of Magic Eye on the judgment of **M.R. Engineers** (supra), to contend that in absence of specific incorporation (by reference), of the arbitration clause in MOU-2, the disputes arising therefrom are non-arbitrable, is misconceived. The crux of Green Edge’s argument does not hinge upon a direct incorporation of the arbitration clause found within SHA into MOU-2, as would be contemplated under Section 7(5) of the A&C Act. Instead, Green Edge posits that the expansively worded arbitration clause in the SHA, coupled with the fact that MOU-2 was executed specifically to further the objectives of SHA, necessitates that any disputes arising from MOU-2 be adjudicated through the arbitration mechanism stipulated in the SHA. In essence, Green Edge asserts that the arbitration clause in SHA, due to its broad scope and the interconnected nature of the agreements, implicitly extends its reach to encompass disputes in respect of MOU-2, even in the absence of an explicit arbitration clause within MOU-2 itself. There is merit in this argument of the Green Edge.



39. In **Sanjay Mehra v. Sharad Mehra**, (supra) the plaintiff filed a suit alleging breach of terms of the Memorandum of Family Settlement (MOFS) and the covenants of the sale deed, executed between the parties. While the MOFS incorporated an arbitration clause, the sale deed notably lacked such a clause. In response to the suit, the defendants filed an application seeking a referral of the parties to arbitration, based upon the arbitration clause contained within the MOFS. The plaintiff objected to this application on the ground that the sale deed is a self-contained agreement, makes no reference to MOFS, superseded all prior agreements between the parties, and therefore the disputes arising therefrom cannot be referred to arbitration. However, the court rejected the plaintiff's objections, arriving at the conclusion that the sale deed had been executed in furtherance of and inextricably linked to the MOFS, and referred the parties to arbitration. The relevant extract of the said decision is as under:

*“55. Reliance was also placed on the judgment of the Supreme Court in **M.R Engineers & Contractors Pvt. Ltd. (supra)**, to argue that Section 7(5) of the 1996 Act stipulates that there has to be a conscious acceptance of the arbitration clause from another document, by the parties, as part of their contract, to bind the parties. Learned Senior Counsels for the Plaintiff further argued that as the Sale Deed does not make any reference to the MOFS and there has been no attempt made by the parties to incorporate the arbitration clause in the Sale Deed, the subject matter is within the jurisdiction of this Court and not arbitrable in nature. This argument, in my view, is liable to be rejected in view of the findings in the earlier part of the judgment that the Sale Deed was executed in furtherance of the MOFS and as envisioned in it and both being linked and inseparable, arbitration was the intended and consciously chosen forum for dispute resolution between the parties, pertaining to alleged breach of the covenants of MOFS.”*

40. The Kerela High Court in **B.M. Mohan Rao and Ors. v. Mohitsham Complexes (P) Ltd.** (supra), has held as under:



"36. In the facts of the instant case, while the JDA undisputedly contains an arbitration clause constituting an Arbitral Tribunal as a forum for adjudication of disputes, the GPAs do not contain a separate/specific arbitration clause. However, in the background of my findings on Point No. 1 wherein I have come to the conclusion that the JDA and GPAs executed between the Petitioners and the Respondent form part and parcel of one single, composite, substantive transaction/contract it is relevant to extract the Arbitration agreement contained in Clause No. 42 found in the JDA:

"42. In case of any dispute between the parties to this agreement regarding the interpretation of the terms and conditions of this agreement or its enforcement or compliance or noncompliance or anything arising out of this agreement or in relation thereto or on account of anything done pursuant thereto and any matter whatsoever touching this agreement between the parties to this deed or their legal representative etc., It shall be referred to and settled by arbitration as per the provisions of the Arbitration and Conciliation Act, 1996, and the decision of the Arbitrator shall be final and binding on both the parties. The MULI RIGHT HOLDER, and MULGENI RIGHT HOLDER and the PROMOTOR agree that the Arbitration committee of Kannara Builders Association shall be the sole Arbitrators to decide any dispute that may arise from this agreement."

37. A plain reading of the aforesaid arbitration clause No. 42 of the JDA clearly indicates that the same is of wide amplitude and takes into account all types of disputes between the parties.

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41. In view of the aforesaid discussion, I am of the considered opinion that the dispute between the parties in relation to the GPAs as contended by the Petitioners in the suit is clearly an arbitrable dispute covered by Clause No. 42 of the JDA entered into between the parties. Point No. 2 is accordingly answered against the Petitioners.

42. The next question that arises for consideration is whether Section 7(5) of the Arbitration and Conciliation Act, 1996 is applicable to one single composite substantive transaction/contract albeit contained in separate documents between the same parties and in relation to the same subject matter. As stated supra, learned counsel for the petitioner submitted that so long as the mandatory requirements/pre-conditions contained in Section 7(5) are not complied with/satisfied by the recitals contained in the JDA and the GPAs, the respondent was not entitled to take shelter under the arbitration agreement contained in Clause No. 42 of the JDA and seek reference of the dispute between the parties to



arbitration.

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45. A plain reading of the provisions contained in Section 7(5) and the decisions of the Apex Court *supra* will indicate that for the said provision to apply, the first and foremost primary requirement is that there should be separate, different and independent contracts. **In other words, if there is one single composite substantive transaction/contract albeit contained in separate documents between the same parties and in relation to the same subject matter, Section 7(5) will have no application. To reiterate, existence of separate, different and independent contracts or transactions which are mutually exclusive of one another is a sine-qua-non for applicability of Section 7(5) and the said provision will not apply to one single composite substantive transaction/contract albeit contained in separate documents between the same parties and in relation to the same subject matter.** It has to be clarified that I have not dealt with applicability of Section 7(5) to situations where the parties to two documents are different or where the subject matter of the two documents are different.

46. Coming to the facts of the case on hand, while dealing with points 1 and 2, I have already held that the JDA and GPAs can not be construed/treated as different/separate/independent contracts and that they form part and parcel of one single, composite, substantive transaction/contract and that the dispute between the parties in relation to the GPAs as contended by the Petitioners in the suit is an arbitrable dispute covered by Clause No. 42 of the JDA entered into between the parties. Under these circumstances, I am of the considered opinion that having regard to the facts of the instant case, the provisions contained in Section 7(5) will have no application to the transaction between the petitioners and the respondent as embodied in the JDA and GPAs executed between them. Accordingly, Point No. 3 is answered against petitioners.”

41. The Telangana High Court in **Ananda Bharathi Fertilizers (India) Private Limited v. Nagarjuna Fertilisers and Chemicals Limited** (*supra*), has held as under:

“15.... the absence of a separate arbitration clause in the Supply Agreement does not imply that the disputes arising thereunder are not arbitrable, as the Arbitration Clause in the 15 joint venture agreement would have to be read into the supply agreement. This view finds support



in the arbitration clause of the Joint Venture Agreement, which reads as under:

17.2.4 Any disputes and differences whatsoever arising under or in connection with this Agreement which could not be settled by Parties through negotiations, after the period of thirty (30) days from the service of the notice of Dispute, shall be finally settled by arbitration in accordance with the rules framed under the provisions of the Arbitration and Conciliation Act, 1966

The above clause makes it amply clear that the parties by including the words 'in connection with this agreement' had intended to give a comprehensive meaning to the word dispute. Therefore, the contention of the Respondent that disputes arising under the Supply Agreement dated 19.12.2014 in absence of a separate arbitration clause are not arbitrable cannot be accepted.

42. To summarise, *prima facie*, the broad and expansive arbitration agreement incorporated in the SHA, can be invoked to adjudicate disputes arising under MOU-2, which was evidently executed as part of the same composite transaction. In any event, the issue as to whether MOU-2 is in furtherance of the previous agreement/s between the parties, and consequent adjudication of disputes thereunder, is itself liable to be resolved by taking recourse to the arbitration clause contained in the SHA i.e. the parent agreement. In this regard reference may be made to decision of *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666, where a seven-judge bench of the Supreme Court has held as under:

“G. The doctrine of competence-competence

...

162. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since



the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In DuroFelguera (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and Section 11 of the Arbitration Act.

163. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute.

164. Section 11(6A) uses the expression “examination of the existence of an arbitration agreement.” The purport of using the word “examination” connotes that the legislature intends that the referral court has to inspect or scrutinize the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the arbitral tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the referral court is only required to examine the existence of arbitration agreements, whereas the arbitral tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and



validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. AkshOptifibre Ltd.

165...

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

Who all are the parties to the arbitration agreement and/ or bound by the same?

43. In ARB.P. 347/2019, Green Edge has invoked the arbitration clause contained in SHA; the signatories to SHA are Green Edge, Magic Eye, RKS and Spire. Therefore, these parties are liable to be referred to arbitration. Notably, the signatories to supplementary agreements are the same parties.

44. In ARB.P. 753/2020, Magic Eye has invoked the arbitration clause contained in SPA; the signatories to SPA are Green Edge, Magic Eye and RKS. Therefore, these parties are liable to be referred to arbitration. However, apart from these parties Vera Edu and Vega Schools are also liable to be referred to arbitration in view of the judgment/order dated 21.05.2020 passed in CS(COMM) No. 1290/2018. By the said judgment dated 21.05.2020, the application filed by Green Edge under Section 8 of the A&C Act seeking dismissal of the suit filed by Magic Eye against Green Edge, Vera Edu and Vega Schools, was allowed on the ground that there exists a valid arbitration agreement between the Magic Eye and Green Edge, and Vera Edu and Vega Schools, adjudged to be the group companies of the



Green Edge, had shown intent to be bound by the said arbitration agreement. Relevant extract of the said judgment dated 21.05.2020 is as under:

“26. Considering the fact that there are valid agreements between the plaintiff and defendant No. 1 containing clauses for reference of disputes to arbitration and defendant Nos.2 and 3 being group companies of defendant No.1, from the intent of the parties as noticed from the agreements as also the averments in the plaint it is evident that not only would defendant No. 1 but also the defendant Nos. 2 and 3 companies be amenable to the jurisdiction of the arbitrator as per the arbitration clauses is the SHA, SPA and MOU. Consequently, the present application is disposed of holding that the present suit is not maintainable and the disputes between the parties are required to be referred to the arbitration”

45. Notably, this judgment was not assailed by any party, rendering it final. Consequently, any attempt by Vera Edu and Vega Schools to resist impleadment in the proposed arbitration proceedings, claiming non-signatory status, is legally untenable. In any case, in terms of the judgement of Supreme Court in **Cox & Kings** (supra), the referral court should leave it for the arbitral tribunal to take a final view as to whether Vera Edu and Vega Schools can be brought within the fold of the proposed arbitration, and/or whether any relief/s can be claimed therefrom. For the purpose of the present proceedings, in view of the findings in the aforementioned judgment dated 21.05.2020, and in view of the *prima facie* findings rendered hereinabove, this Court is inclined to accept the plea of Magic Eye in ARB.P. 753/2020, seeking constitution of an arbitral tribunal qua disputes sought to be raised against Green Edge, Vera Edu and Vega Schools.

Conclusion

46. In view of the aforesaid, there is no impediment in constituting an arbitral tribunal to adjudicate the disputes between the parties which are subject of the ARB.P 347/2019 & ARB.P. 753/2020.



47. In the circumstances, both ARB.P. 347/2019 and ARB.P. 753/2020, are allowed. Mr. Justice (Retd.) D. K. Jain, former judge, Supreme Court of India, (Mob. No.: 9999922288) is appointed as the sole arbitrator to adjudicate the disputes set out thereunder.

48. It is clarified that reference to arbitration in both ARB. P. No. 347/2019 and ARB. P. 753/2020 shall be independent of each other, although the learned sole arbitrator shall be entitled to hold common hearings for sake of convenience.

49. It is clarified that this court has scrutinized the transaction/s between the parties only for the purpose of arriving at a conclusion as regards existence of an arbitration agreement for the purpose of these proceedings, as mandated in terms of the judgment dated 12.05.2023 passed by the Supreme Court in Civil Appeal No. 3634-3637 of 2023, whereby the petitions under Section 11 were remitted back to this court “*to decide the issue conclusively and finally with respect to the existence and validity of the arbitration agreement*”.

50. It is further clarified that in terms of the judgement of the Supreme Court in ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, (supra) the findings rendered herein shall not preclude the Arbitral Tribunal to conduct a further in depth examination and to decide jurisdictional objections in accordance with law; it has been specifically held in the said judgment as under :-

“166. When the referral court renders a prima facie opinion, neither the arbitral tribunal, nor the court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the referral court, it still allows the arbitral tribunal to examine the issue in-depth. Such a legal approach will



help the referral court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the arbitral tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.”

51. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.
52. The learned Sole Arbitrator shall fix his fee in consultation with the parties.
53. Parties shall share the arbitrator's fee and arbitral costs, equally.
54. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
55. O.M.P.(I) (COMM.) 26/2019 and O.M.P.(I) (COMM.) 114/2020 i.e. the petitions under Section 9 of the A&C Act filed by Green Edge and Magic Eye respectively, are directed to be treated as applications under Section 17 of the A&C Act to be decided by learned sole arbitrator, in accordance with law. The interim orders dated 30.01.2019 passed in O.M.P.(I) (COMM.) 26/2019 and 01.06.2020 passed in OMP (I) (COMM) 114/2020 shall continue to operate till the matter is first considered by the learned sole arbitrator.
56. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
57. The present petitions stand disposed of in the above terms.

MARCH 04, 2024/hg

SACHIN DATTA, J