

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.59 OF 2022**

D.K.Infrastructure Pvt. Ltd.,
a Private Limited Company registered
under the Indian Companies Act, 1956,
through its Director
Mr. Sandip Hirani,
having their registered office address at
321, Solitaire Corporate Park,
Building No.3, 2nd Floor,
Andheri Kurla Road, Chakala,
Andheri (East), Mumbai - 400 093

... Petitioner

Versus

1. Kishore Agarwal
An Adult, Indian Inhabitant,
having its residential address at :
B - 110, Western Edge II,
Western Express Highway,
Borivali (East), Mumbai - 400 066

2. Yogita Kishore Agarwal,
An Adult, Indian Inhabitant,
having its residential address at :
B - 110, Western Edge II,
Western Express Highway,
Borivali (East), Mumbai - 400 066

... Respondents

Mr. Ammanullah Khan with Mr. Jehangir Khan, for Applicant.
Mr. Naushad Engineer with Mr. Devendra Tiwari, Mr. Aman Anand,
Mr. Harish Agarwal i/by Law Chamber of Siddharth Murarka, for
Respondents.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 28th MARCH, 2022
PRONOUNCED ON : 2nd MAY, 2022**

JUDGMENT :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 ('the Act) to appoint an Arbitrator to arbitrate the disputes between the Petitioner and the Respondents which purportedly have arisen out of the Share Purchase Agreement dated 29th June, 2017.

2. The background facts leading to this Application can be stated as under :

The Petitioner is a Company registered under the Companies Act, 1956. Jalore Jaswantpura BOT Project Private Limited (the 'JJBP' Company) is a private limited company. The 'JJBP' is engaged in, inter alia, the business of construction of highways and roads. The Petitioner, Mr. Sandip Hirani and Mr. Suresh Hirani are the 100% shareholders of the JJBP Company. The Petitioner holds 5100 shares of the face value of Rs.10/- each. Mr. Sandeep Hirani holds 3,675/- shares. Mr. Suresh Hirani holds 1,275/- shares. Mr. Sandeep Hirani and Mr. Suresh Hirani are also the directors of JJBP Company. The Respondent No.2 is the wife of Respondent No.1.

3. The Respondents had entered into a Share Purchase Agreement with the Petitioner and Mr. Sandeep Hirani and Mr.

Suresh Hirani (the Sellers), to purchase the entire shareholding i.e. 10,000 equity shares of JJBP Company. The agreement dated 29th June, 2017 interalia provided that the Respondents would purchase 10000 shares of the Sellers for an amount of Rs.43,00,000/- calculated at Rs.430/- per equity share. The Respondent No.1 had, in turn, agreed to purchase 51000 equity shares from the Petitioner Company (the first seller) and the Respondent No.2 had agreed to purchase 3675 equity shares from Shri Sandip Hirani (the second seller) and 1225 equity shares from Shri Suresh Hirani (the third seller). In addition, the purchasers had agreed to discharge the liabilities of the JJBP Company to the lenders of the JJBP Company as enumerated in Schedule III under the title 'Outstanding Creditors', to the tune of Rs.55,63,00,000/-. The rest of the outstanding payments were to be made by the JJBP Company and sellers. For which, the purchasers had already made a payment of Rs.1,00,00,000/- to the Petitioner Company to enable them to pay all the liabilities other than those mentioned in the Schedule III.

4. The Share Purchase Agreement further provided that in case the Sellers failed to obtain an extension of the Concession Agreement dated 9th February, 2012 between the Governor of Rajasthan and the JJBP Company upto 30th January, 2029 within six

months of the execution of the Share Purchase Agreement or the extended time as may be mutually decided between the parties, the Petitioner Company (first Seller) shall issue a credit note for the sum of Rs.5,00,00,000/- to the JJBP Company, and reduce its outstanding by the said sum of Rs.5,00,00,000/- and also pay the Respondent No.1 - Purchaser No.1 a sum of Rs.1,80,00,000/-. For the said purpose, the first Seller had handed over the post dated cheque payable on 23rd December, 2017 in favour of the Purchaser No.1. The Share Purchase Agreement contained a mechanism for resolution of the disputes through arbitration.

5. The Petitioner asserts that the Respondents entered into a financial arrangement with Reliance Commercial Finance Limited (RCFL) and executed a letter of continuing guarantee with RCFL to grant to the said JJBP Company a rupee term loan to the extent of Rs.45,00,00,000/- for the acquisition of BOT toll project. The Respondents have, however, not cleared the entire liability in terms of the Share Purchase Agreement. The Petitioner Company has received only a sum of Rs.32,93,52,150/- towards the agreed amount. Since the Petitioner Company could not obtain the extension in terms of the sub-clause (b) and (c) of Clause 3 of the Share Purchase Agreement, even if a sum of Rs.6,80,00,000/- is

withheld on the said count, the Respondents owe a sum of Rs.17,32,47,850/- to the Petitioner. Hence, the Petitioner initially addressed Notices dated 24th May, 2019 and 16th July, 2019 calling upon the Respondents to pay the balance consideration in terms of the Share Purchase Agreement. As the Notices did not elicit the desired response, the Petitioner invoked the arbitration by a Notice dated 1st November, 2019. The Petitioner suggested names of the three Arbitrators. The Respondents refused to accept the service of the Notice. Hence, the Petitioner is constrained to approach this Court under Section 11(6) of the Act to appoint an Arbitrator to arbitrate the disputes which have arisen between the parties.

6. The Respondents have resisted the above Application by filing an Affidavit in Reply. At the outset, it is contended that the Application is not properly instituted as Shri Sandeep Hirani ceased to be a director of the Petitioner Company. The thrust of the response putforth by the Respondents is that there is no arbitrable dispute between the parties. Without disputing the fact that the Share Purchase Agreement was executed between the sellers and the Respondents, the Respondents contend that the Respondent No.1 has duly paid a sum of Rs.21,93,000/-, the agreed share purchase of 5100 shares of the Petitioner (the first seller) @ Rs.43

per share vide cheque dated 15th July, 2017. Thus, the transaction between the Petitioner and the Respondent No.1 is complete and concluded and this concluded transaction does not give rise to any arbitrable dispute. Conversely, the Respondent No.2 contended that she had not purchased any shares from the Petitioner. There is no scope for any dispute between the Petitioner and the Respondent No.2. The impleadment of Respondent No.2 is a clear case of mis-joinder of the parties.

7. The Respondents further assert that in accordance with sub-clause (c) of Clause (3) of the Share Purchase Agreement Addendum dated 30th June, 2017, it was agreed between the parties that in the event of the failure of the sellers to obtain an extension of the Concession Agreement dated 9th February, 2012 between the Government of Rajasthan and the JJBP Company upto 30th January, 2029 within a period of six months, the sellers shall not only issue a credit note of Rs.5,00,00,000/-, but the Petitioner Company (the first seller) shall also pay the Respondent No.1 a sum of Rs.1,80,00,000/- as the penal charges. On account of default on the part of the sellers to perform this part of the agreement, the Respondent No.1 presented the cheque drawn for Rs.1,80,00,000/- for encashment and, upon its dishonour, filed a complaint under Section 138 of the

Negotiable Instruments Act, 1881.

8. In any event, according to the Respondents, if at all there is a dispute, it is between the Petitioner and the JJBP Company, and the Respondents – share holders, cannot be called upon to discharge the liability in their individual capacity. The said JJBP Company is not a party to this proceeding. The liability of the share holders is limited and the claim even if assumed to exist against the JJBP Company, cannot be adjudicated in an arbitration between the Petitioner and the Respondents. The instant Application, according to the Respondent, is instituted as a counter blast to the complaint lodged by the Respondent No.1 against the Petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Thus, the Application deserves to be dismissed.

9. In the light of the aforesaid pleadings, I have heard Mr. Ammanullah Khan, learned Counsel for the Petitioner and Mr. Naushad Engineer, learned Counsel for the Respondents at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

10. Mr. Khan, learned Counsel for the Petitioner submitted that all the conditions requisite for appointing an Arbitrator are fulfilled. Inviting the attention of the Court to the Share Purchase

Agreement, especially Clause 9 thereof, which provides for the disputes resolution mechanism through an arbitration, Mr. Khan would urge that in view of the limited scope of inquiry in an Application under Section 11 of the Act, it would be necessary to appoint an Arbitrator to adjudicate all the disputes which have arisen between the parties.

11. Per contra, Mr. Engineer, the learned Counsel for the Respondents submitted that the instant case is one of those exceptional cases where this Court would be justified in declining to exercise the jurisdiction under Section 11 of the Act. Mr. Engineer canvassed three fold submission. Firstly, the dispute between the Petitioner and the Respondent No.1 does not arise out of the Share Purchase Agreement and, in fact, there is no subsisting dispute emanating from the contract to purchase the shares. Second, the Petitioner has no claim whatsoever against the Respondent No.2, who had agreed to purchase the shares from the second and third sellers and not the Petitioner. Third, if at all there is a dispute, it is between the Petitioner and JJBP Company. The Respondents who are the share holders of the said JJBP Company, cannot be made personally liable and, in any event, no case for lifting the corporate veil is pleaded, much less, made out.

12. In order to properly appreciate the aforesaid rival submissions, it may be apposite to note the relevant terms of Share Purchase Agreement. The nature of the agreement entered into between the parties is indicated in Clause H, which reads as under :

“H. The Parties are entering into this Agreement in order to set out the rights and obligations of the parties in relation to the acquisition of the Sale Shares by the Purchasers and other matters in connection therewith, which they agree will be interpreted, acted upon and governed solely in accordance with the terms and conditions of this Agreement.”

13. The “Equity shares”, “Sale Price” and “Sale Shares” were defined as under :

“g) “Equity Shares” shall mean the issued and fully paid up equity shares of the Company, having a face value of Rs.10/- each.

o) “Sale Price” shall mean the aggregate sum required to be paid by the Purchasers to the Sellers for the Sale of Shares as provided in clause 2(b).

p) “Sale Shares” shall mean 10,000 Equity Shares of the Company to be purchased by the Purchasers, representing as on the date of this Agreement, 100% of the total paid up share capital of the Company as also outlined in Schedule 1 to this Agreement.”

14. Clause 2 which provides for the mechanism for the purchase of the Sale Shares, reads as under :

“2. PURCHASE of SALE SHARES

a) Subject to and in accordance with the terms and conditions of this Agreement including the satisfaction of the Conditions Precedent or waiver thereof by the Purchasers, the Sellers agree to sell and the Purchasers agrees to purchase the Sale Shares on the Closing Date, Free of all Encumbrances, from the Sellers.

b) Sale Price : The aggregate consideration payable by the Purchasers for the purchase of the Sale Shares shall be Rs.43,00,000/- (Rupees Forty Three Lakhs only) calculated @ Rs.430/- per Equity Share.

c) The first Purchaser agrees to purchase from the First Seller 5,100 Equity Shares and the second Purchaser agrees to purchase 3,675 Equity Shares from the Second Seller and 1,225 Equity Shares from the Third Seller for the consideration as agreed in Clause 2.1.b.”

15. ‘Conditions Precedent’ under Clause 3 read as under :

“3. Conditions Precedent

The obligations of the Purchasers to consummate the transactions contemplated under the terms of this Agreement are subject to the fulfillment by the Sellers and the Company (as applicable,) to the satisfaction of the Purchasers of the following conditions (unless waived in writing by the Purchasers) on or prior to the Closing Date :

(a) The Company and the Sellers shall have furnished documentary evidence that all the creditors and outstanding payment reflected in the balance sheet as on 31st March, 2017, updated as on the date hereof have been paid and/or fully satisfied / discharged other than those listed out in Schedule III payable to the Lenders of the Company and the

First Seller and which are valued at Rs.55,63,00,000/- (Rupees Fifty Five Crores Sixty Three Lakhs only); including accrued interest thereon if any upto the Date hereof. The Purchasers have already made a payment of Rs.1,00,00,000/- (Rupees One Crore only) to the First Seller, which the Sellers confirm to enable them to pay all liabilities other than the ones mentioned in Schedule III and valued as hereinabove.

(b) Incase, the Sellers cannot within a period of six months from hereof, or such extended time as may be mutually decided obtain an extension of the Concession Agreement dated 9th February, 2012 between the Governor of Rajasthan and the Company upto 31st January, 2029, the Sellers No.1 shall issue a credit note for sum of Rs.5,00,00,000/- (Rupees Five Crores only) to the Company JJBOT and reduce its outstandings by the said sum of Rs.5,00,00,000/- (Rupees Five Crores only).

(c) Incase the Sellers are unable to obtain an extension of the Concession Agreement dated 9th February, 2012 between The Governor of Rajasthan and the Company upto 31st January, 2029 within a period of six months from hereof, the Sellers shall not only issue a Credit Note for a sum of Rs.5,00,00,000/- (Rupees Five Crores only) as mentioned hereinabove, the Seller Number One further agrees to pay the Purchaser Number One a sum of Rs.1,80,00,000/- (Rupees One Crore and eighty Lakhs only) as penal charges. The Seller Number One shall handover a post dated cheque dated 23rd December, 2017 in favour of the Purchaser No.1 on the Closing Date which will be deposited by the Purchaser No.1 in his Bank account on 23rd December, 2017 without any further notice incase the said Extension is not received.”

16. How the agreement was to be closed was provided by

the parties in Clause 6 captioned "CLOSING". Relevant part of Clause 6 reads thus :

6. CLOSING

6.1 Events prior to Closing

A A Board meeting shall be convened by the Company within 7 days from date hereof, to carry out the following :

a) To appoint the Purchasers as Additional Directors of the Company and to authorize the Purchasers as Directors and to affect the change in the Directorship of the Company and to file the necessary return in E-Form No.DIR-12 with the Registrar of Companies, Maharashtra and to take all such necessary steps as required in this regard.

b) To approve the audited financial statements of the Company for the year ended 31st March, 2017.

B a) The purchasers shall pay the liability of ICICI Bank Limited as mentioned in Schedule III hereto on or before the Closing Date."

17. Schedule III which enumerated the outstanding liabilities, which were to be cleared by the Purchasers, reads as under :

SCHEDULE III

OUTSTANDING CREDITORS

Sr.No.	Name	Amount in Rs.
1	Lender i.e. ICICI Bank Limited	32,50,00,000/- (Rupees Thirty Two Crores and Fifty Lakhs only)
2	D.K.Infrastructure Private Limited (First	23,13,00,000/- (Rupees Twenty

	Seller)	Three Crores and thirteen Lakhs only)
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18. Under the Share Purchase Agreement Addendum dated 30th June, 2017, the parties agreed to revise Schedule III. The liability was reduced to Rs.38,57,00,000/-. The revised Schedule III reads as under :

Revised

SCHEDULE III

OUTSTANDING CREDITORS

Sr.No.	Name	Amount in Rs.
1	Lender i.e. ICICI Bank Limited	32,50,00,000/- (Rupees Thirty Two Crores and Fifty Lakhs only)
2	D.K.Infrastructure Private Limited (First Seller)	6,07,00,000/- (Rupees Six Crores and Seven Lakhs only)

19. At this juncture, it would be necessary to note the arbitration clause so as to appreciate the contours of the dispute which the parties had agreed to be resolved through arbitration. Clause 9.1 reads thus :

9. ARBITRATION & JURISDICTION

9.1 If any dispute arises between the parties hereto

during the subsistence of this agreement or thereafter, in connection with the validity, interpretation, implementation or any alleged breach of any provision of this Agreement or relating to any question with reference to or in connection with this agreement, including the question as to whether any termination of this Agreement by either party hereto has been legitimate, the parties hereto shall endeavour to settle such dispute amicably within 30 days from raising of the dispute by either of the parties. If the parties fail to settle the disputes amicably, the parties shall refer the said disputes to a sole arbitrator to be appointed by the parties jointly and in the event of failure of marketability on the name then in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.”

20. In the backdrop of the aforesaid stipulations in the Share Purchase Agreement, as amended by the Addendum dated 30th June, 2017, the primary issue that warrants consideration is the scope of the Share Purchase Agreement. Mr. Engineer, learned Counsel for the Respondents, endeavoured to impress upon the Court that the moment the Respondent No.1 paid the sale price of 5100 equity shares, which has indubitably been paid, the transaction so far as the purchase of the shares stood concluded. Thus, there can be no subsisting dispute between the Petitioner and the Respondent No.1. Emphasis was laid on sub-clauses (a) to (c) of Clause 2 of the Share Purchase Agreement, extracted above. As

the aforesaid clauses provide that the Purchasers would purchase the shares on the Closing Date, free from all encumbrances, the Purchasers cannot be fastened with any further liability, urged Mr. Engineer

21. The aforesaid submission, in my considered view, takes a very restricted view of the Share Purchase Agreement and loses sight of the nature of the bargain between the parties. It is trite that a document is required to be read as a whole to gather the real intention of the parties. All the clauses in the Contract are required to be considered in conjunction with each other and not in isolation. If submission of Mr. Engineer is to be acceded to, the stipulations in the Share Purchase Agreement under Clause 3 'Conditions Precedent' and Clause 6 'Closing' are required to be ignored completely. Sub-clause (a) of Clause 3 extracted above, provides that the JJBP Company and the Sellers shall discharge all the liabilities other than those listed out in Schedule III payable to the lender of the JJBP Company and the first Seller. If the said Clause is read in juxtaposition with sub-clauses (A) and (B) of Clause 6.1 under the caption 'Events prior to Closing', it becomes abundantly clear that the Purchasers had agreed to discharge the liability of ICICI Bank Limited as mentioned in Schedule III thereto on or before

the 'Closing Date'.

22. A conjoint reading of these clauses would lead to an inescapable inference that the Purchasers had in addition to the payment of the Sale Price of the shares, which, in a sense, constituted a minuscule part of consideration, agreed to discharge the outstanding liabilities of the named creditor of the JJBP Company and the first seller, as mentioned in Schedule III. Schedule III initially provided for the discharge of the liability by the Purchasers to the tune of Rs.53,63,00,000/-. Subsequently, by virtue of the Addendum, the liability was scaled down to Rs.38,57,00,000/- under the revised Schedule III. It is the claim of the Petitioner that the Respondents have not completely discharged the liability in terms of the said Schedule III. In the aforesaid view of the matter, I find it rather difficult to accede to the submission made on behalf of the Respondents that with the payment of the sale price of the shares, as stipulated in Clause 2 of the Share Purchase Agreement, the liability of the Respondents came to an end.

23. The second limb of the submission of the Respondents that in any event the Petitioner cannot seek to arbitrate a dispute with Respondent No.2 as the latter had not at all agreed to purchase the shares from the Petitioner and the Respondent No.2's

transaction was with the second and third sellers, also appears attractive at the first blush. However, the submission is again based on a constricted view of the transaction between the parties. As indicated above, the payment of the sale price was a part of the bargain. The Respondents who have acquired the entire and controlling stake in JJBP Company were not only required to pay the price of the shares, but also discharge the outstanding liability to the creditors which were mentioned in Schedule III. Clauses 3 and 6 adverted to above, do not make a distinction between the first purchaser and the second purchaser. It was a composite liability of the purchasers to discharge the outstanding debts of the creditors named in Schedule III. Thus, I am afraid to accede to the submission on behalf of the Respondents that there is no subsisting dispute between the Petitioner and the Respondent No.2, in the sense, that there was no privity of contract between the Petitioner and the Respondent No.2.

24. Mr. Engineer fairly submitted that, in view of the development of law post Arbitration and Conciliation Amendment Act, 2015, the scope of enquiry under Section 11 of the Act is extremely limited. However, according to Mr. Engineer, the Court still retains the jurisdiction to examine as to whether the dispute

arises out of, or co-relates with, the contract which incorporates the arbitration agreement. A strong reliance was placed on the observations of the Supreme Court in the case of **DLF Home Developers Limited V/s. Rajapura Homes Pvt. Ltd. And Anr.**¹

In paragraph 20 of the said Judgment, the Supreme Court observed thus :

“20. To say it differently, this Court or the High Court, as the case may be, are not expected to act mechanically mere to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.”

(emphasis supplied)

25. The aforesaid pronouncement, in my considered view, reiterates both postulates; firstly, the scope of enquiry under Section 11(6) of the Act, 1996 is extremely limited and the Court has to examine the existence of the arbitration agreement and,

¹ 2021 SCC Online SC 781

secondly, the Court can decline to make a reference to arbitration only when it is positively satisfied that though the arbitration agreement exists, yet the dispute is non-existent and has become a deadwood.

26. We have seen that the dispute raised by the Petitioner, has its genesis in the Share Purchase Agreement, especially the alleged failure of the Respondents to discharge the liability of the outstanding creditors of the JJBP Company. It would be naive to hold that the dispute raised by the Petitioner does not correlate with the contract between the parties.

27. At this stage, it would be necessary to note the amplitude of the disputes which the parties had agreed to resolve through arbitration under Clause 9 of the shares Purchase Agreement. The disputes which the parties agreed to refer were : in connection with the validity, interpretation, implementation or any alleged breach of any provisions to the said Agreement or relating to any question with reference to or in connection with the said Agreement including the question as to whether the termination, if any, of agreement by either party, was legitimate. Evidently, the arbitration agreement is worded in widest possible terms. It subsumes within its fold all the disputes which, the parties conceived, might arise in relation to the

Share Purchase Agreement.

28. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of **Renusagar Power Co. Ltd. V/s. General Electric Company and Anr.**² wherein import to be accorded to the words like, 'in connection with' and 'relating to' in the context of an arbitration agreement, was expounded. The relevant observations are extracted below :

"Expression such as 'arising out of' or 'in respect of' or in connection with' or in relation to' or in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

(emphasis supplied)

29. In the light of the aforesaid position in law, I am afraid to agree with the submission advanced on behalf of the Respondents that the dispute raised by the Petitioner does not arise out of, and relate to, the Share Purchase Agreement.

30. This propels me to the third challenge namely, liability, if at all is that of the JJBP Company and the Respondent Nos.1 and 2, being the share holders, not liable in their individual capacity. Mr. Engineer would urge that neither the case for lifting of corporate veil

² (1984) 4 SCC 679

is pleaded, nor made out by the documents placed on record and the attendant circumstances. Mr. Engineer placed reliance on the observations of this Court in the case of **Kimiya Shipping Inc. V/s. m.v. Western Light and Ors.**³ to bolster up the submission that the company is a separate juristic entity distinct from the share holders and unless the case of fraud is asserted, the question of lifting corporate veil does not arise. Attention of the Court was invited to the observations in paragraph No.19 which reads as under :

“19. It is trite law that a company is a separate juristic entity distinct from the shareholders; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly the creditors of the members have no right to the assets of the corporation and unless fraud is asserted or at least alleged in the plaint, as required under Order VI Rule 4 and in such a way that it will be sustained at the time of trial, the question of lifting a corporate veil does not arise. To accept the plaintiff’s submissions that there need not be any fraud or underlying element of dishonesty in formation of corporate entities would amount to violating and shaking these fundamental tenets of corporate law.”

3 Notice of Motion No.1597 of 2013 in ADMS 22 of 2022

31. There can be no qualm over the proposition enunciated above. However, the applicability of the aforesaid proposition to the facts of the case, is in issue. It would be suffice to note that JJBP, the company of which the shares were purchased by the Respondents under the Share Purchase Agreement, was a party thereto and yet under Clauses 3 and 6 of the said Agreement, extracted above, the liability to discharge the outstanding debts of the creditors was explicitly incurred by the Respondent Nos.1 and 2 in the capacity of the purchasers. Conversely, the company had not agreed to discharge its liabilities to the existing creditors as named in Schedule III, including the Petitioner herein. Therefore, there is no substance in the submission that the dispute is essentially between JJBP Company and the Petitioner and for the discharge of the liability of the JJBP Company, the Respondents share holders cannot be held individually liable.

32. The upshot of the aforesaid consideration is that there exists an arbitration agreement. Secondly, on a prima facie review of the Share Purchase Agreement and the material on record, this Court is satisfied that disputes have arisen between the parties in connection with the Share Purchase Agreement. Thirdly, those disputes, prima facie, are amenable to the arbitration. And fourthly,

as the law has now crystalised, the arbitrability of the disputes is also required to be determined by the Arbitral Tribunal. Thus, all the necessary elements to exercise the power under Section 11(6) of the Act, are adequately satisfied. The Application, therefore, deserves to be allowed.

33. Hence, the following order :

(I) The Application is allowed.

(ii) Justice R.M.Savant, Former Judge of this Court is appointed as a Sole Arbitrator to adjudicate upon the claims and counter claims, if any, and/or all the disputes which arise out of the Share Purchase Agreement dated 29th June, 2017.

(iii) The learned Arbitrator is requested to file his disclosure statement under Section 11(8) read with Section 12(1) of the Act, 1996 within two weeks with the Prothonotary and Senior Master and provide copies to the parties.

(iv) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.

(v) Fees payable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

(N.J.JAMADAR, J.)

34. At this stage, the learned Counsel for the Respondents seeks stay to the execution and operation of this order. In view of the issues raised in the Application and the fact that the Court is closing for vacations, the execution and operation of this order is stayed for a period of six weeks.

(N.J.JAMADAR, J.)