

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

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP- 256 of 2021

BIMLA DEVI JAISWAL
VS.
M/s. INDUS TOWERS LIMITED

For the Petitioner	:	Mr. Shaunak Ghosh, adv. Mr. Rajib Mullick, adv. Ms. Ayantika Saha, adv.
For the Respondent	:	Mr. Surojit Nath Mitra, Sr. Adv. Mr. Arindam Chandra, Adv. Mr. Atish Ghosh, Adv. Ms. Susmita Das, Adv.
Hearing concluded on	:	10.06.2025
Judgment on	:	30.06.2025

Shampa Sarkar, J.

1. This is an application for appointment of an arbitrator.
2. The facts pleaded by the petitioner are that, the petitioner is the owner of a roof in respect of premises No. 243/2M Acharya Prafulla Chandra Road, Kolkata-700006. The property was earlier known as premises No. 243/2, Upper Circular Road, Kolkata. The said property was divided into various

holdings, including holding no. 243/2C. By a deed of conveyance dated 21st May, 1975, the erstwhile owners sold a portion of the property being premises no. 243/2C, Acharya Prafulla Chandra Road, Kolkata – 700006, to Smt. Duija Devi Shaw, who was the predecessor in interest of the petitioner. By another deed of conveyance dated February, 20, 1976, the erstwhile owners sold the balance portion of the premises to Shri. Jamuna Prasad Shaw, husband of Smt. Duija Devi Shaw. Jamuna Prasad Shaw died on April 4, 1991, leaving behind his last will and testament dated December, 21, 1990, whereby he bequeathed his entire estate including the portion of the premises being no. 243/2C, Acharya Prafulla Chandra Road, Kolkata to his wife Smt. Duija Devi Shaw. Probate was duly granted by the High Court at Calcutta. The two premises were later amalgamated and numbered as premises no. 243/2M, Acharya Prafulla Chandra Road Kolkata. Duija Devi Shaw obtained a sanction from the Kolkata Municipal Corporation in the year 1992 and raised a five-storied building on the said premises. Duija Devi Shaw left behind her last will and testament, bequeathing premises no. 243/2M to the petitioner. Probate in respect of the will was granted. Duija Devi Shaw had sold all the flats in the building, barring one, to third parties. One flat remained with the petitioner, which she had gifted to her daughter. The petitioner retained exclusive rights over the roof of the said building. Duija Devi Shaw had entered into an agreement on January 19, 2001, with Usha Martin Telekom Limited for installation of a mobile tower, on the roof of the premises. The agreement specifically mentioned that, the same was for a period of 20 years commencing

from January 1, 2001 and ending on December 31, 2020. A monthly licence fee of Rs. 18,000/- was payable by Usha Martin Telekom Limited. Security deposit of Rs. 64,000/- was additionally payable. The agreement for licence contained an arbitration clause. Clause 16.1 thereof provided that any difference or dispute arising out of the agreement shall be referred to arbitration. The parties agreed that the Courts at Calcutta would have jurisdiction. A supplementary agreement dated May 14, 2014, was entered into between the petitioner and the respondent, who were both successors in interest of the original signatories to the agreement dated January 19, 2001. It was contended by the petitioner that the supplementary agreement, although commenced from May 1, 2014, it was co-existing, co-extensive and co-terminus with the principal agreement dated January 19, 2001. Such fact was recorded in the supplementary agreement. The petitioner submitted that all the terms and conditions in the original agreement, including the arbitration agreement were agreed to be incorporated in the supplementary agreement. Thus, the arbitration clause was incorporated in the supplementary agreement by reference.

3. A dispute arose when the respondent did not pay the rent from April, 2018. The agreement dated January 19, 2002, came to an end on December 31, 2020, due to efflux of time. The petitioner alleged that the respondent continued to be in illegal possession of the roof. The petitioner invoked arbitration, by a letter dated February 10, 2021. The letter was withdrawn by a letter dated March 16, 2021. The petitioner once again invoked arbitration and proposed the name of a learned Advocate, who would act as an arbitrator. The

letter was received by the respondent on March 18, 2021. The respondent replied to the letter on April 5, 2021. It was contended that the arbitration clause did not survive as the principal agreement had already expired. As the respondent refused the proposal for reference of the dispute to arbitration, this application was filed.

4. Mr. Shaunak Ghosh, learned Advocate for the petitioner submitted that, the disputes were required to be settled by arbitration, in terms of clause 16 of the agreement dated January 19, 2001. The clause provided that in the event of any dispute or difference arising out of the contract the same shall, unless settled, be referred to three arbitrators. Each party was to appoint one arbitrator and the two appointed arbitrators were to appoint the third arbitrator, who would be the presiding arbitrator. The jurisdiction clause provided that, if any dispute or difference arose between the parties during the pendency of the agreement or after its termination, as to its meaning and construction or in respect of any other matter or thing arising directly or indirectly under the agreement, the same shall be subject to the jurisdiction of the Courts at Calcutta. It was further contended that, in the Agreement dated January 19, 2001, the expression “licensor” i.e. Duija Devi Shaw deemed to include her heirs, executors, administrators and assigns. Similarly, the expression “Licensee” i.e. Usha Martin Telekom Limited included its successors, administrators, liquidators, representatives and assigns. Thus, the said agreement was binding upon the petitioner and the respondent, as successors of the erstwhile signatories to the agreement dated January 19,

2021. The petitioner became the owner of the roof by virtue of the probate granted in respect of the will of Duija Devi Shaw. Similarly, the respondent also stepped into the shoes of Usha Martin Telekom Limited. The name of Usha Martin Telekom Limited had also been struck off from the register of the Registrar of Companies. Mr. Ghosh referred to the affidavit-in-opposition filed by the respondent and submitted that the respondent admitted the fact that, it had continued as the licensee of the premises in place and instead of Usha Martin Telekom Limited. Mr. Ghosh submitted that another agreement was entered into between the parties to this proceeding on May 14, 2014, which was only a supplementary agreement. The agreement recorded that the petitioner had become the sole owner of the premises which was occupied by the respondent and the parties agreed to continue the license of the demised premises in terms of the principal agreement under the same terms and conditions. The supplementary agreement which was executed on and from May 1, 2014, was agreed to be co-existing, co-extensive and co-terminus with the principal agreement dated January 19, 2001.

5. Under such circumstances, the arbitration clause also became binding upon the parties as the same had been incorporated by reference in the supplementary agreement. Moreover, as the principal agreement provided that the expression “licensor” and “licensee” would include their heirs, representatives, successors and assigns, both the parties were claiming through and under the original signatories. The arbitration clause became binding on the respondent, who had admitted to have occupied the property.

The respondent was the successor of Usha Martin Telekom Limited. In the affidavit-in-opposition, the details of how the respondent had come into occupation of the said premises, had been pleaded. Reliance was placed on the decision of ***M/s. Avinash Hitech City 2 Society and others v. Boddu Manikya Malini and another Etc.*** reported in ***AIR 2019 SC 4142***.

6. Mr. S. N. Mitra, learned senior Advocate for the respondent submitted that the supplementary agreement did not contain an arbitration clause. The principal agreement which contained the clause had been executed between Duija Devi Shaw and Usha Martin Telekom Limited. Neither the petitioner nor the respondent were signatories. The respondent was not bound by the arbitration clause. An arbitration agreement was a separate agreement. Even if the same was contained in the principal agreement, it was not incorporated by reference in the supplementary agreement. The later document should have specified that the parties agreed to be specifically bound by the arbitration clause contained in the principal agreement as well. A mere reference to the document which contained the arbitration agreement, could not be taken to be incorporation of the arbitration clause by reference. The provision of section 7(5) of the Arbitration and Conciliation Act, 1996 would not be applicable in the present case. Admittedly, the supplementary agreement did not specifically provide that the arbitration clause had also been incorporated. Reliance was placed on the following decisions:-

(a) M.R. Engineers and Contractors Pvt. Ltd. Vs. Som Datt Builders Ltd.

reported in ***(2009) 7 SCC 696***.

(b) Delhi Iron and Steel Company Limited vs U.P. Electricity Board & Another reported in **2002 (61) DRJ 280**

(c) NBCC (INDIA) Ltd. Vs Zillion Infra Projects Private Limited reported in **(2024) 7SCC 174**

(d) Vishranti CHSL vs Tattva Mittal Corporation Pvt. Ltd. reported in 2020 SCC Online Bom 7618

7. Mr. Mitra urged that this application was not maintainable and the prayer for reference should be refused. Learned senior Advocate submitted that, the notice invoking arbitration had been issued on the misconception that the supplementary agreement also contained the arbitration clause by reference. The invocation was bad in law.

8. Considered the submissions of the learned Advocates for the respective parties. The agreement dated January 19, 2001 was entered into between the Duija Devi Shaw and Usha Martin, for installation of a cellular cite. The agreement clearly described the expressions 'licensor' and 'licensee'. The relevant portions are quote below :-

"THIS AGREEMENT made at Calcutta on the Nineteenth day of January in the year Two Thousand One between Smt. Duija Devi wife of Shri Jamuna Prasad Shaw residing at 243/2M, A. P.C. Road, Calcutta – 700006, under police station Bot Tala, in the town of Calcutta, by caste Hindu, by occupation house-wife hereinafter referred to as the 'Licensor' (which expression shall unless excluded by or made repugnant to the context shall be deemed to include her heirs, executors, administrators and assigns) of the ONE PART.

Messers USHA MARTIN TEEKOM LTD a company incorporated under the Companies Act, 1956, having its registered office at 11, Dr. U.N. Brahmachari Street, Constantia Office Complex, 2nd & 4th floor, Calcutta

– 700017 hereinafter referred to as the “Licensee” (which expression shall, unless excluded by or repugnant to the context include its successor, Administrators, Liquidators, representatives and assigns) acting through Mr. Himadri Sankar Bhattacharjee (Dy. General Manager – Commercial) authorized representative of the OTHER PART)”

9. The parties to the original agreement clearly understood that the agreement would be binding upon the heirs, executors, administrators and assigns of the licensor and the successors, administrators, liquidators, representatives and assigns of the licensee. The arbitration clause is quoted below:-

“ARBITRATION

16.1. In the event of any dispute or difference arising from this contract, the same shall, unless settled, be first referred to three arbitrators, each party shall appoint one arbitrator and two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. The decision of the three arbitrators shall be final and binding between the parties.

16.2. This is an agreement for arbitration within the meaning of The Arbitration and Conciliation Act, 1996 including any statutory modification thereof.”

10. The jurisdiction clause indicates that the parties subjected themselves to the jurisdiction of the Courts at Calcutta. The jurisdiction clause is quoted below :-

“17.0. JURISDICTION

In case any dispute or difference shall arise between the parties during the pendency of this agreement or after its termination or earlier determination as to its meaning and construction or to any other matter or thing arising directly or indirectly under this agreement then and in

such an event the same shall be subject to the jurisdiction of courts at Calcutta.”

11. Admittedly, disputes arose. The license expired due to efflux of time on December 31, 2020, but the respondent did not vacate. The petitioner alleged that rent/licence fee, was not being paid and the respondent was in possession of the property illegally and as a trespasser.

12. According to the petitioner, at the time of invocation of arbitration, Rs. 13,32,322.56/- was due and payable on account of the licence fee from May, 2018 to December, 2020, along with further sum of Rs. 1,66,540.30/- for January and February 2021. Although, a notice to vacate the premises was issued by letter dated January 28, 2021, Indus Tower refused to vacate the premises and continued to be in occupation of the same. The arbitration clause was invoked. The supplementary agreement clearly indicates that the license of the demised premises continued with the petitioner as the licensor and the respondent as the licensee, on the basis of the principal agreement dated January 19, 2001. Each and every term and condition of the said licence was made applicable by the parties, in respect of the supplementary agreement. The parties consciously adopted the principal agreement. The supplementary agreement was deemed to have commenced from May 1, 2014 and was co-existing, co-extensive and co-terminus with the principal Agreement dated January 19, 2001. Thus, the fact that the respondent was continuing the premises under the same terms and conditions as those contained in the original agreement, is not in dispute.

13. The principal agreement clearly provided that expressions 'licensor' and 'licensee' would include the representatives, heirs, successors, administrators or assigns of the signatories to the principal agreement.

14. In the affidavit-in-opposition, the respondent had pleaded that it was a Company within the meaning of the Companies Act, 2013. It was engaged in the business of providing telecom infrastructure. Pursuant to a scheme of amalgamation and arrangement approved by the National Company Law Tribunal, Chandigarh, the respondent merged with Bharti Infratel. The name of Bharti Infratel had been changed to Indus Towers Limited with effect from December 10, 2020. The merged entity was known as Indus Towers Limited. It has been admitted in the affidavit that, on and from May, 2013, the respondent continued to make payments to the person entitled to receive payments in terms of the agreement dated January 19, 2001. The fact that the respondent sought to be bound by the principal agreement is, prima facie, available from the records. The respondent admits to have acted in terms of the original agreement entered into with Usha Martin Telekom Limited. The respondent stepped into the shoes of Usha Martin. Bharti Infratel was subsequently renamed as Indus Tower Ltd. The relevant portions of the averments are quoted below:-

“a) The respondent is a company within the meaning and provisions of the Companies Act, 2013 and is, inter alia, engaged in the business of providing passive telecom infrastructure, i.e., the establishment, maintenance and provision of telecommunication infrastructure and assets including mobile tower.

b) That, pursuant to a scheme of amalgamation and arrangement ("the Scheme") approved by the Hon'ble National Company Law w Tribunal (NCLT) at Chandigarh vide its order dated 31.05.2019 read with order dated 22.10.2020, the respondent, Indus Towers Limited having CIN NO. U92100HR2007PLC073822 merged with Bharti Infratel Limited CIN No. L64201HR2006PLC073821 having its registered office address at Park Centra, 9th floor, Sector 30 NH-8, Gurugram 122001 Haryana, along with all its properties including mobile towers rights, claims, title, benefits, Liabilities, obligations and interest therein.

c) Further, the name of the Company Bharti Infratel Limited' has been changed to Indus Towers Limited (having CIN No. 164201HR2006PLC073821) with effect from 10.12.2020. Therefore, the merged entity is now known as Indus Towers Limited. However, petitioner chose not to disclose this aspect to this Hon'ble Court for reason best known to it.

d) Indus Towers Ltd. (respondent company) formerly known as Bharti Infratel Ltd., is a duly registered Passive Infrastructure Provider (IP-1) Company with the Department of Telecommunications, Ministry of Communications, Government of India. The respondent company is the largest Telecom Tower Passive Infrastructure Provider (IP-1) Company in India-and-is one of the largest in the world and is also listed on National Stock Exchange as well as Bombay Stock Exchange since 2012. The respondent company provides Telecom Passive Infrastructure services to the telecom service providers having license under Section 4 of the Indian Telegraph Act, 1885 viz, Airtel, Vodafone Idea Ltd., RJIO and BSNE etc. The respondent company utilizes and avails, services of various service providers for the operation and maintenance of its telecom towers.

e) In the instant case, by virtue of the aforesaid the respondent thus continued to act in terms of the agreement dated 19th January, 2001 which was originally entered into by one Usha Martin Telecom Limited for installation of cellular site until fresh agreement dated 14 May, 2014 was executed by the respondent.

f) On and from May 2013 the respondent continued to make payment to the person entitled to receive payment in terms of the agreement dated 19th January, 2001.

g) On 14th May 2014 a fresh agreement was entered into by the petitioner with the respondent in terms of which it was, inter alia, agreed that the respondent would with effect from 1 May, 2014 make payment of monthly rent exclusively in favour of the petitioner herein namely, Bimla Devi Jaiswal. Though the agreement was entered into by and between the parties on the same consideration, terms and conditions of the principal agreement dated 19th January, 2001 and the agreement was referred as supplementary agreement which deemed to have commenced on and from 14th May, 2014 and shall be coexisting, coextensive and coterminous with the principal agreement dated 19 January, 2001, but the said agreement dated 14th May, 2014 does not contain any arbitration clause or arbitration agreement nor does the same referred to any arbitration clause or agreement so as to bind the parties to any arbitration as would be evident from the copy of the said agreement.”

15. Under such circumstances, the fact that Indus Towers had by conduct sought to bound by the principal agreement as a successor or assign of Usha Martin and continued to act in accordance with the terms and conditions of the principal agreement is, prima facie, available from the averments. Moreover, the law permits the arbitral tribunal to rule on its own jurisdiction. The issue of jurisdiction covers all questions, including the validity of the arbitration agreement, joinder of parties, scope of the disputes referable etc.

16. The referral court is to satisfy itself, prima facie, as to the existence of an arbitration agreement and/or whether the parties chose to be bound by the same, thereby agreeing to refer all disputes between them to an independent and impartial private Tribunal.

17. The law with regard to non-joinder or mis-joinder of parties and whether non-signatories can be bound by an arbitration agreement has been developed by the Hon'ble Apex Court. Some of the decisions are discussed below:-

In ***Ajay Madhusudan Patel v. Jyotrindra S. Patel***, reported in **(2025) 2 SCC 147**, the Hon'ble Apex Court held as follows:-

“(2024) 251 Comp Case 680] as follows : (SCC pp. 75-77, paras 123 & 126-27)

“123. ... The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The Unidroit Principle of International Commercial Contract, 2016 [Unidroit Principles of International Commercial Contracts, 2016, Article 4.3.] provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances:

- (a) preliminary negotiations between the parties;
- (b) practices which the parties have established between themselves;
- (c) the conduct of the parties subsequent to the conclusion of the contract;
- (d) the nature and purpose of the contract;
- (e) the meaning commonly given to terms and expressions in the trade concerned; and
- (f) usages.

126. Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the

performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.

127. ... The nature or standard of involvement of the non-signatory in the performance of the contract should be such that the non-signatory has actively assumed obligations or performance upon itself under the contract. In other words, the test is to determine whether the non-signatory has a positive, direct, and substantial involvement in the negotiation, performance, or termination of the contract. Mere incidental involvement in the negotiation or performance of the contract is not sufficient to infer the consent of the non-signatory to be bound by the underlying contract or its arbitration agreement. The burden is on the party seeking joinder of the non-signatory to the arbitration agreement to prove a conscious and deliberate conduct of involvement of the non-signatory based on objective evidence.”

18. In the matter of ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.***, reported in **(2013) 1 SCC 641**, the Hon’ble Apex Court held as follows:-

“70. Normally, arbitration takes place between the persons who have, from the outset, been parties to both the arbitration agreement as well as the substantive contract underlining (sic underlying) that agreement. But, it does occasionally happen that the claim is made against or by someone who is not originally named as a party. These may create some difficult situations, but certainly, they are not absolute obstructions to

law/the arbitration agreement. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Of course, heavy onus lies on that party to show that, in fact and in law, it is claiming “through” or “under” the signatory party as contemplated under Section 45 of the 1996 Act. Just to deal with such situations illustratively, reference can be made to the following examples in *Law and Practice of Commercial Arbitration in England* (2ndEdn.) by Sir Michael J. Mustill:

- ‘1. The claimant was in reality always a party to the contract, although not named in it.
2. The claimant has succeeded by operation of law to the rights of the named party.
3. The claimant has become a party to the contract in substitution for the named party by virtue of a statutory or consensual novation.
4. The original party has assigned to the claimant either the underlying contract, together with the agreement to arbitrate which it incorporates, or the benefit of a claim which has already come into existence.”

19. In the matter of ***Cox & Kings Ltd. v. SAP (India) (P) Ltd.***, reported in ***(2025) 1 SCC 611***, the Hon’ble Apex Court held as follows:-

“31.

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of

such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.”

20. Reference is also made to the decisions of ***Adavya Projects Pvt. Ltd. vs M/s Vishal Structurals Pvt. Ltd. & Ors.*** reported in **2025 INSC 507** and ***ASF Building Private Limited v Shapoorji Pallonji and Company Private Limited*** reported in **2025 INSC 616**.

21. The relevant portions from ***Adavya Projects (supra)*** is quoted below:-

“**24.** As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 of the ACA. Section 16 embodies the doctrine of kompetenz-kompetenz, i.e., that the arbitral tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement, and the scope of disputes referable to arbitration under the agreement.²³ Considering that the arbitral tribunal’s power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal’s jurisdiction

must be determined against the touchstone of the arbitration agreement.”

22. In the decision of the Hon’ble Supreme Court in ***ASF Buildtech Pvt. Ltd. (supra)*** it was decided that the issues of joinder, non-joinder, mis-joinder etc. are also within the domain of the learned Arbitrator. The relevant portions are quoted below:-

“113. It is well within the jurisdiction of the Arbitral Tribunal to decide the issue of joinder and non-joinder of parties and to assess the applicability of the Group of Companies Doctrine. Neither in Cox and Kings (I) (*supra*) nor in Ajay Madhusudhan (*supra*), this Court has said that it is only the reference courts that are empowered to determine whether a non-signatory should be referred to arbitration. The law which has developed over a period of time is that both 'courts and tribunals' are fully empowered to decide the issues of impleadment of a non-signatory and Arbitral Tribunals have been held to be preferred forum for the adjudication of the same.

114. In the case of Ajay Madhusudhan (*supra*), this Court, placing reliance on Cox and Kings (I) (*supra*), has expressly held that Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the arbitral tribunal and the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the arbitral tribunal.

115. The case of Ajay Madhusudhan (*supra*) also recognizes that the legal relationship between the signatory and non-signatory assumes significance in determining whether the non-signatory can be taken to be bound by the Arbitration Agreement. This Court also issued a caveat that the 'courts and tribunals should not adopt a conservative approach to exclude all persons or entities who are otherwise bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties. The mutual

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

116. Recently, a coordinate bench of this Court in *Adavya Projects Pvt. Ltd. v. Vishal Strcturals Pvt. Ltd.*, 2025 INSC 507, also held that an arbitral tribunal under Section 16 of the Act, 1996 has the power to implead the parties to an arbitration agreement, irrespective of whether they are signatories or non-signatories, to the arbitration proceedings. This Court speaking through. P.S. Narasimha J. observed that since an arbitral tribunal's jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, any person or entity who is found to be a party to the arbitration agreement can be made a part of the arbitral proceedings, and the tribunal can exercise jurisdiction over him. Section 16 of the Act, 1996 which empowers the arbitral tribunal to determine its own jurisdiction, is an inclusive provision that covers all jurisdiction question including the determination of who is a party to the arbitration agreement, and thus, such a question would be one which falls within the domain of the arbitral tribunal. It further observed that, although most national legislations do not expressly provide for joinder of parties by the arbitral tribunal, yet an arbitral tribunal can direct the joinder of a person or entity, even if no such provision exists in the statute, as long as such person or entity is a party to the arbitration agreement. Accordingly, this Court held that since the respondents therein were parties to the underlying contract and the arbitration agreement, the arbitral tribunal would have the power to implead them as parties to the arbitration proceedings in exercise of its jurisdiction under Section 16 of the Act, 1996. The relevant observations read as under: -

"24. As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 of the ACA. Section 16 embodies the doctrine of kompetenz-kompetenz, i.e., that the

arbitral tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement, and the scope of disputes referable to arbitration under the agreement. Considering that the arbitral tribunal's power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal's jurisdiction must be determined against the touchstone of the arbitration agreement.”

23. Whether non-signatories to the principal agreement is bound by the terms and conditions of the principal agreement shall be finally decided by the learned arbitral tribunal, but this court, prima facie, finds that both the parties are intrinsically connected with the principal agreement and chose to abide by the terms and conditions, in their entirety. They have acted in furtherance of the said agreement. Whether the supplementary agreement incorporated the arbitration agreement by reference, is also a matter to be decided by the learned arbitrator especially in the facts and circumstances of the case which have been narrated hereinabove. The matter has to be decided on evidence and as per the applicable legal principles. The tribunal must decide the issue, upon an interpretation of the clauses of both the agreements and how the parties understood the same.

24. It is well settled that the scope of the referral Court is very limited. In the matter of ***Aslam Ismail Khan Deshmukh v. Asap Fluids Pvt. Ltd. &Anr.*** reported in **(2025) 1 SCC 502**, the Hon'ble Apex Court held as follows:-

“51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through “accord and satisfaction”, or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.”

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

“94. A seven-Judge Bench of this Court, in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899 reported in 2023 INSC 1066, speaking eruditely through one of us, Dr Dhananjaya Y. Chandrachud, Chief Justice of India, undertook a comprehensive analysis of Sections 8 and 11 respectively of the Act, 1996 and, inter alia, made poignant observations about the nature of the power vested in the Courts insofar as the aspect of appointment of arbitrator is concerned. Some of the relevant observations made by this Court in In Re : Interplay (supra) are extracted hereinbelow:

“179. [...] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to

determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an arbitral tribunal does not necessarily mean that the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.

xxx xxx xxx

185. The corollary of the doctrine of competence-competence is that courts may only examine whether an arbitration agreement exists on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.

186. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the arbitral tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:

- a. If an application for interim measures is filed under Section 9 of the Arbitration Act; or
- b. If the award is challenged under Section 34.

Issues which concern the payment of stamp-duty fall within the remit of the arbitral tribunal. The discussion in the preceding segments also

make it evident that courts are not required to deal with the issue of stamping at the stage of granting interim measures under Section 9.

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117. By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the referral court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the arbitral tribunal doesn't in any way mean that the referral court is diluting the sanctity of "accord and satisfaction" or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always open for the defendant to raise the issue of "accord and satisfaction" before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.

135. The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the arbitral tribunal as a preliminary issue."

26. The non-signatories can also be bound by the terms and conditions of the agreement, by their conduct or participation in the transaction, to indicate that they have been acting pursuant to such terms or under the agreement. In the present case, the supplementary agreement indicated that the parties were intending to act on the terms of the agreement dated January 19, 2001 and the

respondent has admitted to have continued to occupy the premises, upon payment of rent to the petitioner.

27. In view of the above discussions, the decisions relied upon by Mr. Mitra do not lend any support to the respondent's case.

28. In ***M.R. Engineers and Contractors Pvt. Ltd.*** (supra) the Hon'ble Apex Court clarified the position that sub-section (5) of section 7 merely reiterated the well settled principles of construction of contracts. It made clear that, if reference to a document in a contract showed that the document was not intended to be incorporated in its entirety, then the reference would not make the arbitration clause in the document, a part of the contract, unless there was a special reference to the arbitration clause so as to make it applicable. A general reference to another contract would not be sufficient. In the present case, the parties to the proceeding accepted the entirety of the principal agreement and agreed that the supplementary agreement would be co-existing, co-extensive and co-terminus with the principal agreement dated January, 19, 2001. Here, in my prima facie view, the principal agreement was incorporated and adopted by the parties to the supplementary agreement in its entirety.

29. In ***Vishranti CHSL*** (supra) the ratio in ***M.R. Engineers (supra)*** was reiterated

30. In ***Delhi Iron and Steel Company Limited*** (supra), the issue decided was whether an arbitration clause contained in a contract was assignable or not.

31. In **NBCC (India) Ltd.** (supra) it was held that the contract should show the intention of the parties to incorporate the arbitration clause contained in another document.

32. Under such circumstances, the application is allowed. Mr. Debjit Mukherjee, learned Advocate Bar Association, will act as the petitioner's nominee. Mr. Rajarshi Datta, learned Advocate will act as the respondent's nominee and Mr. Saptansu Basu learned Senior Advocate will act as the presiding arbitrator. The appointment is subject to compliance of section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitral tribunal shall fix their remuneration in terms of the schedule of the Act. All points are left open to be decided by the learned Tribunal. Objections raised by Mr. Mitra can be raised before the learned Tribunal.

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

(Shampa Sarkar, J.)