

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM AN ORDER PASSED IN
ITS ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**APOT/213/2025
IA No. GA/1/2025**

**ASIAN TEA AND EXPORTS LIMITED
-Vs-
PRIYANKA GUPTA AND ORS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Zeeshan Haque, Adv.
Mr. Aishwarya Kr. Awasthi, Adv.

For the Respondent Nos. 5 & 6 : Ms. Sulagna Mukherjee, Adv.
Mr. Yash Vardhan Deora, Adv.

For the Respondent Nos. 7 & 8 : Ms. Bhawna Tekriwal, Adv.

HEARD ON : 17.12.2025

DELIVERED ON : 17.12.2025

DEBANGSU BASAK, J.:-

1. Appeal is by defendant no.3 in Old CS/153/2020 (New CS/89/2024).
2. Appeal is directed against the judgment and order dated April 23, 2025.

3. The appellant is aggrieved by refusal of the learned Single Judge in referring the disputes in the plaint, to arbitration.
4. Learned advocate appearing for the appellant draws the attention of the Court to the plaint filed by the respondent nos.1 to 4 in the appeal. He submits that, there was a share purchase agreement dated September 12, 2014 entered into between the parties to the suit. In terms of the share purchase agreement, a sum of Rs.30 lakhs was to be kept in escrow as contingent security for events enumerated. He draws the attention of the Court to the share transfer agreement dated September 12, 2014, and in particular, clause 6.10 containing arbitration clause. He also draws the attention of the Court to clause 6.4.3 of the share transfer agreement dated September 12, 2014. He further submits that, clauses 6.4.3 to 6.4.7 of the share transfer agreement dated September 12, 2014 contemplated an escrow, though it also contemplated that an escrow agreement be executed.
5. Pursuant to and in terms of the share transfer agreement dated September 12, 2014, parties to such share transfer agreement entered into an escrow agreement which was also executed on September 12, 2014. He draws the attention of the Court to clause 6 of the escrow agreement and contends that, the same also contained mechanism for settlement of the disputes between the parties.
6. Learned advocate appearing for the appellant relies upon **(2018) 15 SCC 678 (Ameet Lalchand Shah And Others -vs- Rishabh Enterprises And Another)** for the proposition that, an arbitration

agreement can be incorporated by reference. According to him, in the facts and circumstances of the present case, both the share transfer agreement and the escrow agreement are inseparable and intrinsically intertwined.

7. Learned advocate appearing for the appellant relies upon **(2024) 7 SCC 174 (NBCC (India) Limited -vs- Zillion Infraprojects Pvt. Ltd.)** and contends that, incorporation of arbitration agreement from another document is permissible. Again, he contends that the same was done in the facts and circumstances of the present case.
8. Learned advocate appearing for the respondent nos.5 and 6 adopts the argument advanced on behalf of the appellant. She submits that there is an arbitration agreement between the parties and that, the parties to the suit should be referred to arbitration.
9. None appears for the respondent nos. 1 to 4 in the appeal in the second call.
10. Genesis of the disputes involved in the civil suit filed by the respondent nos. 1 to 4 is the share transfer agreement dated September 12, 2014. Such share transfer agreement contemplated and provided a mechanism for the respondent nos. 1 to 4 to sell their shares that they held of and in the defendant no.5 at an agreed consideration. The share transfer agreement also contemplated and provided for eventualities and the manner in which such eventualities enumerated would be compensated. In order to provide adequate security for parties to discharge their reciprocal obligations under the

share transfer agreement dated September 12, 2014, the parties thereto agreed to escrow.

- 11.** Relevant provision for escrow was made in the share transfer agreement dated September 12, 2014 in clauses 6.4.3 to 6.4.7 which are as follows:

“6.4.3 Escrow: In the event of any unclaimed gratuity liability as per Annexure A hereto is claimed and further statutory liability is found pertaining to period prior to 31st March, 2014, the same shall also be borne and paid out of the sum of Rs.30,00,000/- (Rupees thirty lac only) that shall be kept by the Buyers in Escrow simultaneously with the execution of this document, to be held jointly with Mr. Anil Choudhury, Advocate and Mr. Sandip Agarwal, Advocate (Escrow Holders). The payment of Rs.15/- Lac towards unclaimed gratuity liability pertaining to period prior to 31st March, 2014 will be made directly to the verified claimant on or before 31st March, 2016. The balance 15/-Lac can only be utilized till 30th September, 2016 if needed, for payment of statutory liabilities pertaining to period prior to 31st March, 2014.

6.4.4 The Escrow Holders shall keep the above in escrow and shall release the same in favour of the parties in the manner hereinafter appearing. The parties shall enter into an Escrow Agreement with the Escrow Holders evidencing deposit of the above-mentioned payment to the Escrow Holders and the terms thereof.

6.4.5 In the event of its transpiring that there is any other statutory liability of the Company pertaining to the period up to 31st March, 2014 apart from those disclosed in Schedule III within a period till 30th September, 2016,

the Buyers shall approach the escrow holders with the details thereof, whereupon the escrow holders shall release payment to the Buyers out of the said escrow amount on account of such liability.

6.4.6 In the event of such statutory liability exceeding the escrow amount, in such event the excess of such statutory liability shall be on account of the Sellers who shall be solely liable to bear the same and shall to such extent keep the Buyers saved, indemnified and harmless thereof.

6.4.7 After expiry of the period of 30th September, 2016, any balance amount remaining in escrow after payment of genuine verified statutory claims will be refunded back to the Sellers by the escrow holders.”

- 12.** The share transfer agreement dated September 12, 2014 provides an arbitration clause which is as follows:

“6.10 Arbitration: In the event of any dispute or difference arising by and between the parties hereto either concerning or touching upon any of the terms and conditions of the contract, the same shall be referred to the Arbitral Tribunal (the “Tribunal”). The Tribunal shall consist of three arbitrators, Mr. Anil Choudhury, Advocate to be appointed as an Arbitrator by the Sellers and the Company on the one hand and Mr. Sandip Agarwal, Advocate to be appointed as an Arbitrator by the Buyers on the other. The third Arbitrator shall be appointed by the said two nominee arbitrators of the parties. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The decision of such Tribunal in the matter shall be final and

binding. The arbitration sittings shall be held at Kolkata and the Courts at Kolkata alone shall have jurisdiction.”

- 13.** The parties to the suit also entered into an escrow agreement dated September 12, 2014. The recital to the escrow agreement dated September 12, 2014 is as follows:

“WHEREAS

1. On the even date Gupta Group have sold and transferred their 100% shareholding in the Company in favour of Asian Group by the method of spot delivery contract at or for the consideration mentioned therein and the fact of such sale or transfer of shares by Gupta Group in favour of Asian Group along with certain other terms and conditions has been duly recorded in a Document made between Gupta Group and Sellers and the Company, therein also as Company and Asian Group as Buyers (In short, Document Recording Share Transfer).

2. The Document Recording Share Transfer provides for an escrow mechanism and it has been agreed that an Escrow holders shall be appointed for implementation of the escrow mechanism.

3. Anil Choudhury, Advocate and Sandip Agarwal, Advocate have agreed to act as the Escrow holders in terms of the Document Recording Share Transfer.”

- 14.** Escrow agreement dated September 12, 2014 also contains the following:

“6. In the event of any dispute or difference arising in implementation of this agreement, the decision of the Escrow holders shall be final and binding on the parties.

However, if any dispute is referred to any of the parties to Arbitration in accordance with the Arbitration Clause contained in the said Document Recording Share Transfer, in that event the Escrow holders shall keep the escrow amount with them till the disposal of the arbitration proceedings and shall abide by the result or decision of the arbitration.”

15. Apparently, in working out the share transfer agreement dated September 12, 2014, the issue cropped up as to whether, the sum of Rs.30 lakhs lying with the escrow agents, should be made over to the plaintiff in the suit or the defendants other than the escrow agents or not. According to the plaintiffs, they are entitled to the sum of Rs.30 lakhs, since, contingency enumerated in the share transfer agreement dated September 12, 2014 did not occur for them to be liable to pay for the liability of the company to be meted out of the sum of Rs.30 lakhs lying in escrow.
16. In the plaint filed by the respondent nos. 1 to 4, such respondents adverted to the share transfer agreement dated September 12, 2014 as also various clauses therein including escrow clauses being clauses 6.4.3 to 6.4.7. The respondent nos. 1 to 4 also referred to the escrow agreement dated September 12, 2014 in the plaint and sought relief with regard to the sum of Rs.30 lakhs lying with escrow.
17. **Ameet Lalchand Shah (Supra)** considers the issue as to whether, parties to four agreements, some of which are not containing any arbitration clause, can be sent to arbitration or not. It is of the view

that, where, the agreement are such that it refers to one project and that there is an arbitration agreement between some of the parties then, such parties can be referred to arbitration. In the facts of that case there was a single commercial project and that there were four different agreements involving in several parties in respect of such project. In such factual background, the Court was of the view that, the disputes between the parties should be resolved only by referring all the parties in the four agreements to arbitration.

18. **NBCC (India) Limited (*Supra*)** relies upon an earlier decision of the Supreme Court reported in **(2009) 7 SCC 696 (M. R. Engineers & Contractors Pvt. Ltd. -vs- Som Datt Builders Ltd.)** and notices further authorities on this subject. It notes the view of the Supreme Court that, though the general reference to an earlier contract is not sufficient for incorporation of an arbitration clause, in the later contract, general reference to standard form would be enough for incorporation of the arbitration clause. It is of the view that, when there is a reference in the second contract to the terms and conditions of the first contract, an arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention which refers thereto. In the facts of that case, it was found that, the plaintiff case cannot be referred to arbitration since, there was a reference to the first agreement, in the second agreement and that, the first agreement was not incorporated in the second one.

19. M. R. Engineers & Contractors Pvt. Ltd. (*Supra*) while considering the scope and intent of Section 7(5) of the Arbitration and Conciliation Act, 1996 and the issue as to whether, an arbitration agreement can be incorporated or not is of the following view:

“24. The scope and intent of section 7(5) of the Act may therefore be summarized thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled: (i) The contract should contain a clear reference to the documents containing arbitration clause, (ii) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract, (iii) The arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred

contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent Trade or Professional Institution (as for example the Standard Terms & Conditions of a Trade Association or Architects Association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the Conditions of Contract of one of the parties to the contract shall form a part of their contract (as for example the General Conditions of Contract of the Government where Government is a party), the arbitration clause forming part of such General Conditions of contract will apply to the contract between the parties.”

20. We are, therefore, required to test the share transfer agreement and the escrow agreement both dated September 12, 2014 on the touchstone of the authorities noted above, particularly, **M. R. Engineers & Contractors (Supra)** . We noted two relevant clauses in the two agreements hereinabove.
21. We are therefore of the view that, the share transfer agreement contemplated escrow. The second agreement being the escrow agreement, is an integral part of the share transfer agreement. Escrow

agreement was created in order to give effect to the share transfer agreement. Arbitration agreement undoubtedly exists in the share transfer agreement and, therefore, in our view, share transfer agreement and the escrow agreement satisfied the parameters as enunciated in M. R. Engineers & Contractors (Supra) for us to hold, the arbitration agreement appearing in the share transfer agreement was incorporated in the escrow agreement.

- 22.** In any event, suit cannot be held to be premised solely on the escrow agreement. The share transfer agreement is also involved. Escrow agreement cannot be seen or read as a separate or stand alone document dissected from the share transfer agreement.
- 23.** One of the issues in the suit would be whether, the parties acted in terms of the share purchase agreement or not. In other words, whether there was any breach of the terms and conditions of the share purchase agreement or not. Another issue would be whether or not, the respondent nos. 1 to 4 as the plaintiffs are entitled to refund of the sum of Rs.30 lakhs kept in escrow in terms of the share purchase agreement.
- 24.** These issues are covered by the arbitration agreement between the parties.
- 25.** In such circumstances, in our view, learned Single Judge erred in not referring the disputes between the parties to arbitration in terms of the share purchase agreement. Impugned judgment and order is set aside.

- 26.** APOT/213/2025 along with connection application is disposed of by referring the parties in Old CS/153/2020 (New CS/89/2024) to arbitration in terms of the share transfer agreement dated September 12, 2014. Department will treat Old CS/153/2020 (New CS/89/2024) along with all pending applications to be disposed of.
- 27.** There will be no order as to costs.

[DEBANGSU BASAK, J.]

- 28.** I agree.

[MD. SHABBAR RASHIDI, J.]