

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

WPO/1445/2021

Twamev Construction and Infrastructure Limited

-Versus-

The Kolkata Municipal Corporation and Ors.

Present :

The Hon'ble Justice Shampa Dutt (Paul)

For the Petitioner : Mr. Satarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Sk. Sariful Haque, Adv.
Mr. Ankush Majumdar, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.

Hearing concluded on : 22.07.2025

Judgment on : 12.08.2025

SHAMPA DUTT (PAUL), J. :-

1. The writ application has been preferred praying for a direction upon the Kolkata Environmental Improvement Investment Program (KEIPP) being the respondent No.2 herein to refund/reimburse the extra amount of Rs.11,38,19,308/- withheld by the respondent no.2 along with interest accrued thereof to the petitioner.

- 2.** The petitioner's case is that by a tender dated 16th August, 2016, Kolkata Environmental Improvement Investment Program by a publication in a local newspaper invited bid for a project for sewerage and drainage network in Rania Box Catchment (Part of ward 111, 112, & 113) in Borough XI, Contract Package No.KEIIP/NCB/TR-2/SD11/2016-17, for an amount of Rs.1,08,69,05,970.90. The petitioner being eligible for such projects and adhering to the guidelines of the said tender, submitted its financial proposal on 16th November, 2016.
- 3.** The respondent no.2 being the project director, by letter dated 16th November, 2016 accepted the bid and/or financial proposal dated 16th August, 2016 for execution of the sewerage and drainage network in Vivekananda Road Catchment (Part of ward 113, & 114) and Construction of a Pumping Station in Borough XI, including operation and maintenance of the Pumping Station, Contract Package No.KEIIP/NCB/TR-2/SD11/2016-17 thereafter requested the petitioner to provide performance security in accordance of the clause 42.1 of Instruction of Bidders (ITB).
- 4.** Thereafter as per the course of action to start the project the petitioner engaged its team at the project site initiating the project as soon as possible after receiving the notice to proceed dated 14th February, 2017 and infused an amount of Rs.23,55,824/- for mobilization of the project, moreover the petitioner deposited an amount of Rs.6,54,396/- as retention money with the respondent no.2 and also furnished a Bank

Guarantee dated 4th January, 2017 valid till 2nd January, 2021 for an amount of Rs.10,53,37,101/- to the respondent no.2.

- 5.** The petitioner's further case is that during a joint inspection conducted on 27th December, 2017 the respondents were satisfied with the quality of work, but subsequently there was some delay in implementation of the project and, as such, several letters were exchanged between the petitioner and the respondent no.2 in regard to the progress of the work, quality of work and delay in execution the work. In the meantime, an application under Insolvency and Bankruptcy Code, 2016 was filed before the National Company Law Tribunal (NCLT) Kolkata Bench by State Bank of India and others for initiation of corporate insolvency resolution process in the year 2018. Subsequently, by an order date 13th March, 2019 the NCLT, Kolkata was pleased to admit the corporate debtor i.e., the petitioner herein in the corporate insolvency resolution process and accordingly an interim resolution professional was appointed, thereafter the company's new committee of creditors was formed and subsequently, on 24th February, 2020, EDCL Infrastructure Limited and US Constructions Pvt. Ltd. was confirmed as successful resolution applicant.
- 6.** Without any notice to the petitioner, the respondent no.2 illegally invoked the Bank Guarantee provided by the petitioner of Rs.10,53,37,101/- on 21st August, 2018.
- 7.** It is submitted that at the time of termination, an amount of Rs.1,26,17,259.60 was due and payable by the respondent in regard to

the work done till the purported termination of the contract by the respondent no.2 being bill no.RA-3 amounting to Rs.1,26,17,259.60.

8. Being aggrieved and dissatisfied with the action of the respondent authorities, the petitioner approached the High Court for unjust and unfair act.
9. On hearing the learned counsels for the parties and on perusal of the materials on record, the petitioner was granted leave to file a supplementary affidavit annexing documents which were relevant for adjudication in the present case.
10. It appears that **admittedly there is a document of contract between the parties for execution of the work which was given to the petitioner and conditions of contract has been clearly laid down in the said contract. Clause 20 of the Procedural Rules of the Contract relates to claims, disputes and arbitration.** Clause 20.1 lays down the provision for contractor's claim. Clause 20.2 provides for appointment of Dispute Board. **Clause 20.6 provides 'any dispute between the parties arising out of or in connection with the contract not settled amicably in accordance with sub-clause 20.5 and in respect of which the DB's decision (if any) has not become final and binding, shall be finally settled by arbitration.**
11. Admittedly, the parties in this case have neither approached for appointment of Dispute Board nor proceeded for arbitration.
12. Both parties have filed their written notes along with judgments relied upon.

13. The petitioner has relied on the following judgments:-

a. (2011) 5 SCC 697 (Union of India & Ors. vs. Tania Construction Pvt. Ltd.);

b. (2021) 6 SCC 15 (Uttar Pradesh Power Transmission Corporation Ltd. vs. CG Power and Industrial Solution Ltd. & Anr.); and

c. (2022) 8 SCC 384 (New Delhi Municipal Council vs. Minosha India Ltd.).

14. Mr. Alok Kumar Ghosh, learned senior counsel appearing for the Kolkata Municipal Corporation (KMC) submitted that the writ petition has been presented solely for monetary relief. The prayer for monetary claim has been made in the grab of refund/reimbursement of the extra amount of Rs.11,38,19,308/- allegedly held by KEIP.

15. It is further submitted on behalf of the respondents that the petitioner has not challenged any actions or decisions of the authority concerned. The contract as granted in favour of the petitioner was terminated by a letter dated 21.08.2018 (termination effected from 04.09.2018). Undisputedly the termination of contract was not challenged rather accepted. **The monetary claim as raised in the writ petition is not a consequential/incidental relief. Hence, the writ petition cannot be maintained solely for monetary relief.**

16. **It is further stated that the monetary claim had become time barred by efflux of time and as such the petitioner cannot avail of the writ jurisdiction to revive the barred remedy. Since the contract**

agreement provided for a clause for redressal of any dispute by way of arbitration, the petitioner cannot invoke the writ jurisdiction for redressal of such alleged dispute.

17. It is further submitted that the respondents have acted as per the terms and conditions in the contract and there has been no violation of the terms and conditions therein.

18. In support of his submission, Mr. Ghosh has relied upon the following judgments:-

- i. (2011) 2 SCC 439 (Godavari Sugar Mills Ltd. vs. State of Maharashtra & Ors.);*
- ii. (1989) 2 SCC 116 (Bareilly Development Authority & Anr. vs. Ajay Paul Singh);*
- iii. (1996) 6 SCC 22 (State of U.P. & Ors. vs. Bridge & Roof Co. & Ors.);*
- iv. (1981) 3 SCC 238 (Divisional Forest Officer vs. Biswanath Tea & Co. Ltd.);*
- v. (2008) 8 SCC 172 (Pimpri Chinchwad Municipal Corporation & Ors. vs. Gayatri Construction Co. & Anr.);*
- vi. AIR 1961 SC 1506 (A.V. Venkateswaram vs. Ramchand Sobhraj);*
- vii. (2011) 1 CHN 182 (Cal. Electric Supply Corpn. Ltd. & Anr. vs. Kalavanti Doshi Trust & Ors.);*

viii. Judgment of the Hon'ble Single Bench dated 22nd December, 2022 passed in APO/155/2023 (Heritage Infra Solution Pvt. Ltd. & Anr. vs. KMC & Anr.)

19. In A. Ayyasamy Vs A. Paramasivam & Ors., AIR 2016 SC 4675, decided on 4th October, 2016, the Supreme Court held:-

“The two courts below have preferred to adopt the dicta laid down in N. Radhakrishnan while dismissing the application of the appellant under Section 8 of the Act holding that as there are serious allegations as to fraud and malpractices committed by the appellant in respect of the finances of the partnership firm and the case does not warrant to be tried and decided by the arbitrator and a civil court would be more competent which has the requisite means to decide such complicated matter. In this backdrop, it would be appropriate to revisit the law on this aspect before adverting to the question as to whether the approach of the High Court was correct in following the judgment in N. Radhakrishnan in the instant case.

*In this behalf, we have to begin our discussion with the pertinent observation that **insofar as the Arbitration and Conciliation Act, 1996 is concerned, it does not make any specific provision excluding any category of disputes terming them to be non-arbitrable. Number of pronouncements have been rendered laying down the scope of judicial intervention, in cases where there is an arbitration clause, with clear and unambiguous message that in such an event judicial intervention would be very limited and minimal.** However, the Act contains provisions for challenging the arbitral awards. These provisions are Section 34 and Section 48 of the Act. Section 34(2)(b) and Section 48(2) of the Act, inter alia, provide that an arbitral award may be set aside if the Court finds that the 'subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.' Even when such a provision is interpreted, what is to be shown*

is that there is a law which makes subject matter of a dispute incapable of settlement by arbitration. The aforesaid position in law has been culled out from the combined readings of Sections 5, 16 and 34 of the Act. When arbitration proceedings are triggered by one of the parties because of the existence of an arbitration agreement between them, Section 5 of the Act, by a non-obstante clause, provides a clear message that there should not be any judicial intervention at that stage scuttling the arbitration proceedings. Even if the other party has objection to initiation of such arbitration proceedings on the ground that there is no arbitration agreement or validity of the arbitration clause or the competence of the Arbitral Tribunal is challenged, Section 16, in clear terms, stipulates that such objections are to be raised **before the Arbitral Tribunal itself which is to decide**, in the first instance, whether there is any substance in questioning the validity of the arbitration proceedings on any of the aforesaid grounds. **It follows that the party is not allowed to rush to the Court for an adjudication.** Even after the Arbitral Tribunal rules on its jurisdiction and decides that arbitration clause is valid or the Arbitral Tribunal is legally constituted, the aggrieved party has to wait till the final award is pronounced and only at that stage the aggrieved party is allowed to raise such objection before the Court in proceedings under Section 34 of the Act while challenging the arbitral award. The aforesaid scheme of the Act is succinctly brought out in the following discussion by this Court in *Kvaerner Cementation India Ltd. v. Bajranglal Agarwal & Anr.*[3]:

“3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the

civil court cannot have jurisdiction to go into that question.

4. A bare reading of Section 16 makes it explicitly clear that the Arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with respect to existence or validity of the arbitration agreement is raised, and a conjoint reading of sub-sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act.

5. In this view of the matter, we see no infirmity in the impugned order so as to be interfered with by this Court. The petitioner, who is a party to the arbitral proceedings may raise the question of jurisdiction of the arbitrator as well as the objection on the ground of non-existence of any arbitration agreement in the so-called dispute in question, and on such an objection being raised, the arbitrator would do well in disposing of the same as a preliminary issue so that it may not be necessary to go into the entire gamut of arbitration proceedings.” Aforesaid is the position when Arbitral Tribunal is constituted at the instance of one of the parties and other party takes up the position that such proceedings are not valid in law.

What would be the position in case a suit is filed by the plaintiff and in the said suit the defendant files an application under Section 8 of the Act questioning the maintainability of the suit on the ground that parties had agreed to settle the disputes through the means of arbitration having regard to the existence of an arbitration agreement between them?

Obviously, in such a case, the Court is to pronounce upon arbitrability or non-arbitrability of the disputes.

In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above,

the Courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The Courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. Following categories of disputes are generally treated as non-arbitrable[4]:

- (i) patent, trademarks and copyright;*
- (ii) anti-trust/competition laws;*
- (iii) insolvency/winding up;*
- (iv) bribery/corruption;*
- (v) fraud;*
- (vi) criminal matters.*

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable.

'Fraud' is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment. Fraud can be of different forms and hues. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. The Black's Law Dictionary defines 'fraud' as a concealment or false representation through a statement or conduct that injures another who relies on it[5]. However, the moot question here which has to be addressed would be as to whether mere allegation of fraud by one party against the other would be sufficient to exclude the subject matter of dispute from arbitration and decision thereof necessary by the civil court.

In Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak[6], serious allegations of fraud were held by the Court to be a sufficient ground for not making a reference to arbitration. Reliance in that regard was placed by the Court on a decision of the Chancery Division in Russell v. Russell[7]. That was

a case where a notice for the dissolution of a partnership was issued by one of the partners, upon which the other partner brought an action alleging various charges of fraud, and sought a declaration that the notice of dissolution was void. The partner who was charged with fraud sought reference of the disputes to arbitration. The Court held that in a case where fraud is charged, the Court will in general refuse to send the dispute to arbitration. But where the objection to arbitration is by a party charging the fraud, the Court will not necessarily accede to it and would never do so unless a prima facie case of fraud is proved.

The aforesaid judgment was followed by this Court in N. Radhakrishnan while considering the matter under the present Act. In that case, the respondent had instituted a suit against the appellant, upon which the appellant filed an application under Section 8 of the Act. The applicant made serious allegations against the respondents of having committed malpractices in the account books, and manipulation of the finances of the partnership firm. This Court held that such a case cannot be properly dealt with by the arbitrator, and ought to be settled by the Court, through detailed evidence led by both parties.

When the case involves serious allegations of fraud, the dicta contained in the aforesaid judgments would be understandable. However, at the same time, mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court. The allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence, they are also complex in nature and the decision on these issues demand extensive evidence for which civil court should appear to be more appropriate forum than the Arbitral Tribunal. Otherwise, it may become a convenient mode of avoiding the process of arbitration by simply using the device of making allegations of fraud and pleading that issue of fraud needs to be decided by the civil court. The judgment in N. Radhakrishnan does not touch upon this aspect

and said decision is rendered after finding that allegations of fraud were of serious nature.

As noted above, in *Swiss Timing Ltd.* case, single Judge of this Court while dealing with the same issue in an application under Section 11 of the Act treated the judgment in *N. Radhakrishnan* as per incuriam by referring to the other judgments in the case of *P. Anand Gajapathi Raju v. P.V.G. Raju*[8] and *Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums*[9]. Two reasons were given in support which can be found in para 21 of the judgment which makes the following reading:

“21. This judgment was not even brought to the note of the Court in *N. Radhakrishnan's* case. In my opinion, judgment in *N. Radhakrishnan's* case is per incuriam on two grounds; Firstly, the judgment in *Hindustan Petroleum Corpn. Ltd.*, though referred has not been distinguished but at the same time is not followed also. The judgment in *P. Anand Gajapathi Raju & Ors.* Was not even brought to the notice of this Court. Therefore, the same has neither been followed nor considered. Secondly, the provision contained in Section 16 of the Arbitration Act, 1996 were also not brought to the notice by this Court. Therefore, in my opinion, the judgment in *N. Radhakrishnan* does not lay down the correct law and cannot be relied upon.” We shall revert to the question of per incuriam at a later stage. At this juncture, we may point out that the issue has been revisited by another Division Bench of this Court in *Booz Allen & Hamilton Inc. v. SBI Home Finance Limited and others*[10]. In this case, one of the questions that had arisen for determination was, in the context of Section 8 of the Act, as to whether the subject matter of the suit was 'arbitrable' i.e. capable of being adjudicated by a private forum (Arbitral Tribunal). In this context, the Court carried out detailed discussion on the term 'arbitrability' by pointing out three facets thereof, viz.:

1) whether the disputes are capable of adjudication and settlement by arbitration?

2) whether the disputes are covered by the arbitration agreement?

3) *whether the parties have referred the disputes to arbitration?*

As we are concerned with the first facet of the arbitrability of dispute, on this aspect the Court pointed out that in those cases where the subject matter falls exclusively within the domain of public fora, viz. the Courts, such disputes would be non-arbitrable and cannot be decided by the Arbitral Tribunal but by the Courts alone. The justification and rationale given for adjudicating such disputes through the process of Courts, i.e. public fora, and not by Arbitral Tribunals, which is a private forum, is given by the court in the following manner:

“35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. **Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy.** Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration

and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary.)

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable." The Law Commission has taken note of the fact that there is divergence of views between the different High Courts where two views have been expressed, one is in favor of the civil court having jurisdiction in cases of serious fraud and the other view encompasses that even in cases of serious fraud, the Arbitral Tribunal will rule on its own jurisdiction. It may be pertinent here to reproduce the observations of the Law Commission as contained in paragraphs 50 & 51 of the 246th Law Commission Report, which are as under:

“50. The issue of arbitrability of fraud has arisen on numerous occasions and there exist conflicting decisions of the Apex Court on this issue. While it has been held in *Bharat Rasiklal v. Gautam Rasiklal*, (2012) 2 SCC 144 that when fraud is of such a nature that it vitiates the arbitration agreement, it is for the Court to decide on the validity of the arbitration agreement by determining the issue of fraud, there exists two parallel lines of judgments on the issue of whether an issue of fraud is arbitrable.

In this context, a 2 judge bench of the Supreme Court, while adjudicating on an application under section 8 of the Act, in *Radhakrishnan v. Maestro Engineers*, 2010 1 SCC 72 held that an issue of fraud is not arbitrable. This decision was ostensibly based on the decision of the three judge bench of the Supreme Court in *Abdul Qadir v. Madhav Prabhakar*, AIR 1962 SC 406. However, the said 3 judge bench decision (which was based on the finding in *Russel v. Russel* [1880 14 Ch.D 471]) is only an authority for the proposition that a party against whom an allegation of fraud is made in a public forum, has a right to defend himself in that public forum. Yet, following *Radhakrishnan*, it appears that issues of fraud are not arbitrable.

51. A distinction has also been made by certain High Courts between a serious issue of fraud and a mere allegation of fraud and the former has been held to be not arbitrable (*See Ivory Properties and Hotels Private Ltd v. Nusli Neville Wadia*, 2011 (2) Arb LR 479 (Bom); *CS Ravishankar v. CK Ravishankar*, 2011 (6) Kar LJ 417). The Supreme Court in *Meguin GMBH v. Nandan Petrochem Ltd.*, 2007 (5) R.A.J 239 (SC), in the context of an application filed under section 11 has gone ahead and appointed an arbitrator even though issues of fraud were involved. Recently, the Supreme Court in its judgment in *Swiss Timing Ltd v. Organising Committee*, Arb. Pet. No. 34/2013 dated 28.05.2014, in a similar case of exercising jurisdiction under section 11, held that the judgment in *Radhakrishnan* is per incuriam and, therefore, not good law.” A perusal of the aforesaid two paragraphs brings into fore that the Law Commission has recognized that in cases of serious

fraud, courts have entertained civil suits. Secondly, it has tried to make a distinction in cases where there are allegations of serious fraud and fraud simplicitor. It, thus, follows that those cases where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal.

Before we apply the aforesaid test to the facts of the present case, a word on the observations in Swiss Timing Ltd.'s case to the effect that judgment of N. Radhakrishnan was per incuriam, is warranted. In fact, we do not have to labour on this aspect as this task is already undertaken by this Court in State of West Bengal & Ors. v. Associated Contractors[11]. It has been clarified in the aforesaid case that Swiss Timings Ltd. was a judgment rendered while dealing with Section 11(6) of the Act and Section 11 essentially confers power on the Chief Judge of India or the Chief Justice of the High Court as a designate to appoint an arbitrator, which power has been exercised by another Hon'ble Judge as a delegate of the Chief Justice. This power of appointment of an arbitrator under Section 11 by the Court, notwithstanding the fact that it has been held in SBP & Co. v. Patel Engineering Ltd. & Anr.[12] as a judicial power, cannot be deemed to have precedential value and, therefore, it cannot be deemed to have overruled the proposition of law laid down in N.Radhakrishnan.

In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence

that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public for a, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating

the parties to arbitration, then alone such an application under Section 8 should be rejected.

When we apply the aforesaid principles to the facts of this case, we find that the only allegation of fraud that is levelled is that the appellant had signed and issued a cheque of Rs. 10,00,050/- dated 17.06.2010 of 'Hotel Arunagiri' in favour of his son without the knowledge and consent of the other partners i.e. the respondents. It is a mere matter of accounts which can be looked into and found out even by the arbitrator. It does not involve any complex issue. If such a cheque is issued from the hotel account by the appellant in favour of his son, it is easy to prove the same and then the onus is upon the appellant to show as to what was the reason for giving that amount from the partnership firm to his son and he will have to account for the same. Likewise, the allegation of the respondents that daily collections are not deposited in the bank accounts is to be proved by the respondents which is again a matter of accounts."

20. In the present case as there is a valid contract/agreement with a clear and unambiguous arbitration clause, judicial intervention is to be very limited **(A. Ayyasamy Vs A. Paramasivam & Ors., (Supra))**.
21. When parties have agreed to an arbitration clause in a contract, they are bound to resolve their disputes through arbitration and not through courts.
22. **Courts encourage minimal judicial intervention in matters where arbitration is agreed upon. The Supreme Court of India and various High Courts have repeatedly held that if a valid arbitration clause exists, parties must honor it. This principle ensures party autonomy and promotes alternative dispute resolution in accordance with the Arbitration and Conciliation Act, 1996.**

- 23.** The dispute herein is **not incapable** of settlement through arbitration, but is 'arbitrable' as:-
- i. The dispute is in respect of payment against a contract and as such is capable of adjudication and settled by arbitration.
 - ii. The dispute herein is covered by the arbitration agreement (contract) with a valid arbitration clause.
- 24.** As such the parties herein should be relegated to arbitration, when they themselves have voluntarily agreed to arbitration in the contract (clause 20).
- 25. The writ petition is accordingly disposed of** with liberty granted to the parties herein, to invoke clause 20 of the contract (agreement) for the reliefs prayed for herein.
- 26.** It is made clear that this Court has not gone into the merits of the case while disposing the writ application.
- 27.** All connected applications, if any, stand disposed of.
- 28.** Interim order, if any, stands vacated.
- 29.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)