**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION APPLICATION NO. 608 OF 2025**

Shabnam Arif Memon ]
Ex-Director of Hydrocarbon ]
Development Co. Pvt. Ltd. (Company ]
in liquidation), a company incorporated ]
under the provisions of the Companies ]
Act, 1956 having its registered office at ]
1423-D, Oberoi Garden Estates, Off Said ]
Vihar Road, Chandivali, Andheri (E), ]
Mumbai 400 072 ]
Currently having her address at ]
4, Prabhu ParkSociety, near NID, ]
Rajnagar Paldi, Ahmedabad-380007 ] ….Applicant.

V/s

1. Oil & Natural Gas Corporation Ltd., ]
Mumbai Region: Western Offshore Basin, ]
2B, 2nd Floor, RCF Building, Priyadarshini, ]
Mumbai – 400 022 ]
]
2. The Official Liquidator ]
Bombay High Court, 5th Floor, ]
Bank of India, Fort, Mumbai-400001. ] ….Respondents.

Mr. Pranav Nair with Ms. Ankita Rathod, Mr. Vaibhav Bane, advocates for the Applicant.

None for the Respondents.

**CORAM : GAUTAM A. ANKHAD, J.**

**DATE : 15th December 2025.**

**P.C. :**

1. An Agreement, namely, Service Contract for Development of Onshore Marginal Field Bantumilli Onshore Marginal Oil Field, Rajahmundry Asset, bearing No.MR /WOB/ NMFD /68/2005/ EB-2128 dated 16th July 2007 was executed between Respondent no.1 and a consortium comprising of (i) Hydrocarbon Resources Development Company Private Limited ("Hydrocarbon"); (ii) Gwalior Tanks and Vessels Limited; and (iii) B.G. Shirke Construction Technology Private Limited. This Agreement contains an arbitration clause for disputes between the consortium and Respondent no.1, which is article 34 at page 125 of the paper-book.

2. The Applicant is the erstwhile Director of Hydrocarbon. The Official Liquidator who has been arraigned as Respondent No.2 in this application was appointed by an order dated 14th November 2014 of this Court in Company Petition No.550 of 2013. The winding up of Hydrocarbon has been confirmed by the order of Division Bench of this Court dated 3rd September 2018 in Appeal No.187 of 2015. Review Petition no. 27 of 2018 was dismissed on 31st January 2019 and thereafter Special Leave

Petition (D) No.8974 of 2019 is also dismissed. The Applicant is unaware of the present status of liquation and whether Hydrocarbon has already been liquidated by Respondent no.2.

3. This Section 11 Application is filed by the Applicant in his capacity as a former Director of Hydrocarbon, seeking appointment of a sole arbitrator for disputes that have arisen between the Consortium and Respondent no.1 under the aforesaid Agreement. Mr. Pranav Nair, the learned counsel for the Applicant submits that although Respondent no.1 terminated the Agreement on 15th May 2015 and even though the same is not challenged by other two consortium partners, the Applicant can maintain the present application since the arbitration clause provides that any dispute that arises between the parties or their "representatives" shall be decided by a Tribunal consisting of three arbitrators. He submits that the word "representatives" is wide enough to include former Director and hence the application is maintainable.

4. I am unable to accept this submission. In my view, the present application is not maintainable at the instance of a former Director of a company which is in liquidation or has already been liquidated. The Applicant is admittedly not a party to the

arbitration agreement. A former director cannot be regarded as a "representative" under an arbitration agreement entered into between Respondent No.1 and a consortium comprising three corporate entities. Significantly, none of the consortium members, who are signatories to the Agreement, have challenged the termination thereof by Respondent No.1. It is not permissible even for the company in liquidation (if already not liquidated) to now agitate any grievance arising from the termination, much less a former Director. There is no privity of contract between the Applicant and Respondent No.1 It is also relevant to note that the Applicant had earlier filed Writ Petition No.2311 of 2019 challenging the termination by Respondent No.1, which petition came to be withdrawn on 5th December 2024.

5. It is well settled that at the stage of reference, the Court must be prima facie satisfied as to the existence of an arbitration agreement and whether a non-signatory can be regarded as a veritable party thereto. The Hon'ble Supreme Court, in *Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises (P) Ltd.*, 2025 SCC OnLine SC 2746, while referring to the decision in *Cox & Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1, has held as

under:

*"24. The scope of jurisdiction of the referral court hearing a Section 11-Petition when faced with an issue of joinder of a non-signatory to the arbitration agreement has been lucidly set out by the five-judge Bench of this Court in Cox and Kings Limited v. Sap India Private Limited. Though said in the context of considering the Group of Companies doctrine, the said judgment has a great bearing for the present case. This Court, speaking through Chief Justice D.Y. Chandrachud, held as under:—*

*"84. It is presumed that the formal signatories to an arbitration agreement are parties who will be bound by it. However, in exceptional cases persons or entities who have not signed or formally assented to a written arbitration agreement or the underlying contract containing the arbitration agreement may be held to be bound by such agreement. As mentioned in the preceding paragraphs, the doctrine of privity limits the imposition of rights and liabilities on third parties to a contract. Generally, only the parties to an arbitration agreement can be subject to the full effects of the agreement in terms of the reliefs and remedies because they consented to be bound by the arbitration agreement. Therefore, the decisive question before the Courts or tribunals is whether a non-signatory consented to be bound by the arbitration agreement. To determine whether a non-signatory is bound by an arbitration agreement, the Courts and tribunals apply typical principles of contract law and corporate law. The legal doctrines provide a framework for evaluating the specific contractual language and the factual settings to determine the intentions of the parties to be bound by the arbitration agreement. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1531.]*

*101. A formalistic construction of an arbitration agreement would suggest that the decision of a party to not sign an arbitration agreement should be construed to mean that the mutual intention of the parties was to exclude that party from the ambit of the arbitration agreement. Indeed, corporate entities have the commercial and contractual* *freedom to structure their businesses in a manner to limit their liability. However, there have been situations where a corporate entity deliberately made an effort to be not bound by the underlying contract containing the arbitration agreement, but was actively involved in the negotiation and performance of the contract. The level of the non-signatory party's involvement was to the extent of making the other party believe that it was a veritable party to the contract, and the arbitration agreement contained under it. Therefore, the Group of Companies doctrine is applied to ascertain the intentions of the parties by analysing the factual circumstances surrounding the contractual arrangements. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1568.]*

*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.*

*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.*

*170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement."*

*(Emphasis supplied)*

*25. A careful reading of the above passage reveals that the referral court should be prima facie satisfied that there exists an arbitration agreement and as to whether the non-signatory is a veritable party. It further holds that even if the referral court prima facie arrives at the satisfaction that the non-signatory is a veritable party, the Arbitral Tribunal is not denuded of its jurisdiction to decide whether the non-signatory is indeed a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine. The Court further reinforces this proposition by holding that as to whether the non-signatory is bound would be for the Arbitral Tribunal to decide.*

*26. <u>But what is primordial is that it should be demonstrated prima facie before the referral court that the non-signatory is a veritable party.</u> According to the "Illustrated Oxford Dictionary (Revised Edition 2003)"the word:*

*"veritable" means "real; rightly so called (a veritable feast)",*

*In substance, it means truly, genuinely or for all intended purposes. The referral court under Section 11 is not deprived of its jurisdiction from examining whether the non-signatory is in the real sense a party to the arbitration agreement. The answer thereof will depend on the facts and circumstances of each case after examining the documents pertaining thereto.*

6. In my view, since the Applicant is not a party to the arbitration contract and the Applicant has failed to establish even prima facie, that it was a veritable party to the contract between the consortium and Respondent no.1, there is no privity of contract between the Applicant and Respondent no.1. Accordingly, Commercial Arbitration Application No.608 of 2025 is dismissed with no order as to costs.

**[ GAUTAM A. ANKHAD, J. ]**

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