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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 381/2023 & I.A. 18128/2023

PAHARPUR COOLING TOWERS LTD

.....Petitioner

Through: Mr. Aayush Agarwala , Mr. Sourav
Dutta, Advs.

versus

NTPC-BHEL POWER PROJECTS PVT LTD & ORS.

.....Respondents

Through: Mr Sarojanand Jha, Mr Suraj Malik,
Ms Rajreeta Ghosh, Mr Rahul Kumar,
Ms Muskan Saxena, Advocates for
R-2
Mr. Anish Gupta, Mr. Kapil Paliwal,
Ms. Deeksha Jha, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

23.07.2025

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1. Though this petition has been filed as one under Section 34 of the Arbitration & Conciliation Act, 1996 challenging an Order dated 04.06.2023 passed by the Arbitral Tribunal, however, *vide* Order dated 25.04.2025, this petition has been converted into an appeal under Section 37(2) of the Arbitration & Conciliation Act.

2. The challenge emanates from an order passed by the Arbitral Tribunal under Order I Rule 10 CPC filed by the Petitioner herein seeking impleadment of National Thermal Power Corporation Limited (NTPC) and Bharat Heavy Electricals Limited (BHEL) on the ground that the Respondent/NTPC -BHEL Power Projects Private Limited is a joint venture of NTPC and BHEL, each having 50% equity shares and presence of both the parties would be necessary for effective adjudication of the matter.



3. The application has been dismissed by the Arbitral Tribunal only on the ground that the Arbitrator does not have the power to consider an application under Order I Rule 10 CPC and implead a non-signatory to the arbitration proceedings. Paragraph 18 of the said Order reads as under:-

“18. But no further discussion on merits is required because this Tribunal finds merit in the submission of the respondents that this Tribunal does not have any power to implead a non-signatory in the light of judgment of Hon’ble Madras High Court in the case of Abhibus Services India Pvt Ltd (supra). On that ground the application for impleadment is rejected as not maintainable in law.”

4. The issue as to whether the Arbitrator has the power to consider application under Order I Rule 10 CPC is no longer *res integra* and the same has been adjudicated by the Apex Court in Adavya Projects Private Limited v. Vishal Structurals Private Limited & Ors., **2025 SCC OnLine SC 806** and ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited, **2025 SCC OnLine SC 1016**.

5. The Apex Court in Adavya Projects Private Limited v. Vishal Structurals Private Limited & Ors., **2025 SCC OnLine SC 806**, has observed 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.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.

25. This view finds support in the jurisprudence and practice of international commercial arbitration. It is notable that while most national legislations do not expressly provide for joinder of parties by the arbitral tribunal, this must be done with the consent of all the parties.²⁴ Gary Born has taken the view that the arbitral tribunal can direct the joinder of parties when the arbitration agreement expressly provides for the same. However, he states that in reality, most arbitration agreements, whether ad hoc or providing for institutional arbitration, neither expressly preclude nor expressly permit the arbitral tribunal to join parties. In such cases, the power must be implied,²⁵ particularly when there is a multi-party arbitration clause in the same underlying contract that does not expressly address the joinder of parties in the arbitral proceedings. He states that: "In these circumstances, there is a substantial argument that the parties have impliedly accepted the possibility of consolidating arbitrations under their multi-party arbitration agreement and/or the joinder or intervention of other contracting parties into such arbitrations... the parties' joint acceptance of a single dispute resolution mechanism, to deal with disputes under a single contractual relationship, reflects their agreement on the possibility of a unified proceeding to resolve their disputes, rather than necessarily requiring fragmented proceedings in all cases." Further, in jurisdictions where there is no provision in the national arbitration statute authorising the courts to consolidate arbitrations or to join parties, it is left to the arbitral tribunal to determine this issue at the first instance.²⁶



26. Therefore, as per the legal principles under the ACA as well as in international commercial arbitration, it is a foundational tenet that the arbitral tribunal's jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, which must be recorded in an arbitration agreement. The proper judicial inquiry to decide a jurisdictional issue under Section 16 as to whether a person/entity can be made a party to the arbitral proceedings will therefore entail an examination of the arbitration agreement and whether such person is a party to it. If the answer is in the affirmative, such person can be made party to the arbitral proceedings and the arbitral tribunal can exercise jurisdiction over him as he has consented to the same.

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39. Therefore, in view of the fact that respondent nos. 2 and 3 have, through their conduct, consented to perform contractual obligations under the LLP Agreement, it is clear that they have also agreed to be bound by the arbitration agreement contained in Clause 40 therein. Since they are parties to the underlying contract and the arbitration agreement, the arbitral tribunal has the power to implead them as parties to the arbitration proceedings while exercising its jurisdiction under Section 16 of the ACA and as per the kompetenz-kompetenz principle.

40. Summary of Conclusions : Our legal analysis of the issues that we set out above, as well as our findings in the facts of the given appeal, can be stated as follows:

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II. The purpose of an application under Section 11 is for the court to appoint an arbitrator, so as to enable dispute resolution through arbitration when the



appointment procedure in the agreement fails. The court only undertakes a limited and prima facie examination into the existence of the arbitration agreement and its parties at this stage. Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue.

III. The relevant consideration to determine whether a person can be made a party before the arbitral tribunal is if such a person is a party to the arbitration agreement. The arbitral tribunal must determine this jurisdictional issue in an application under Section 16 by examining whether a non signatory is a party to the arbitration agreement as per Section 7 of the ACA.”

6. In view of the law laid down by the Apex Court, the impugned Order is set aside.
7. The Arbitrator is directed to re-hear the application filed under Order I Rule 10 CPC and decide the same on the merits of the case.
8. Needless to state that this Court has not made any expression on the fact as to whether BHEL and NTPC are necessary parties to the proceedings or not.
9. It is always open for all the parties to take all contentions/objections available to them under law.
10. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 23, 2025

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