

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

**THE HON'BLE MR. JUSTICE SABYASACHI BHATTACHARYYA
AND
THE HON'BLE MR. JUSTICE BISWAROOP CHOWDHURY**

**APOT/60/2026
WITH CS-COM/70/2025
IA NO. GA-COM/1/2026**

**JAGRATI TRADE SERVICES PRIVATE LIMITED AND ANOTHER
Vs
TIRUPATI VANCOM PRIVATE LIMITED AND OTHERS**

For the appellants :Mr. Rudrajit Sarkar, Adv.
Mr. Debangshu Dinda, Adv.
Mr. Jai Kumar Surana, Adv.
Mr. Abhimonyu Roy, Adv.

For the respondent No. 1 : Mr. K. Thakker, Sr. Adv.
Ms. Sneha Singhania, Adv.
Ms. Sreenita Ghosh, Adv.

For the respondent No. 2 : Mr. Zeeshan Haque, Adv.
Mr. Paritosh Singha, Adv.
Mr. K. K. Pandey, Adv.
Ms. Mallika Bothra, Adv.

Heard on : May 13, 2026

Judgment on : May 13, 2026

SABYASACHI BHATTACHARYYA, J.:

1. The present appeal has been preferred by the second defendant in a suit for declaration and monetary claims, the particulars of which will be gone into later in this judgment, against a judgment whereby the application filed by the defendant No. 2/appellant under Section 8 of the Arbitration and Conciliation Act, 1996 (for short “the 1996 Act”) was dismissed.
2. The primary ground taken before the learned Single Judge, by way of objection to the Section 8 application, was that there are several other defendants in the suit apart from defendant No. 2, who were not parties to the arbitration agreement.
3. The learned Single Judge observed, *inter alia*, that since the different components of the bundle of facts comprising the cause of action are intertwined and interlinked with each other, the reliefs and the causes of action against different defendants could not be segregated and, as such, proceeded to reject the application under Section 8 of the 1996 Act.
4. Learned Counsel appearing for the appellant argues that the other defendants than defendant no. 2 have beenimpleaded in the suit merely to take the dispute outside the pale of arbitration.
5. Learned Counsel further submits that defendant nos. 4 and 6, in any event, were confirming parties to the agreement containing the arbitration clause, entered into between the defendant No. 2/appellant and the plaintiff/respondent No. 1.

6. As to the other defendants, primarily defendant nos. 14 to 19, it is submitted that all of them are either individual companies having no connection with the defendant No. 2 or directors thereof.
7. Thus, the plinth of the argument of the appellant is that the impleadment of parties extraneous to the arbitration agreement in the suit was artificial, designed to avoid reference to arbitration.
8. Learned Counsel also submits that the premise of the agreement containing the arbitration clause was that the shares, as and when purchased by the defendant no. 2/ appellant, shall be transferred to the plaintiff/respondent no. 1.
9. However, since the preceding transactions, whereby the defendant No. 2 would become the owner of the said shares, did not go through, the matter led to an arbitral proceeding, culminating in an award.
10. The award was unsuccessfully challenged under Section 34 of the 1996 Act and thereafter, under Section 37 of the said Act. Thereafter, a Special Leave Petition was preferred before the Hon'ble Supreme Court, which is now pending. In connection with the same, it is submitted that the Hon'ble Supreme Court restricted the scope of the said dispute to the interest component, allegedly accrued to the defendant no. 2, and directed the principal amount to be disbursed in terms of the award.

- 11.** It is submitted further by the appellant that the defendant no. 1 (the company whose shares are in contention) has also taken out an independent suit seeking a declaration that the arbitration award is binding on the parties and that the defendant no. 1 has no liability in respect of the obligations, if any, of the defendant no. 2 with regard to the plaintiff/respondent no. 1.
- 12.** Thus, it is submitted that the learned Single Judge erred in law in turning down the application under Section 8 of the 1996 Act.
- 13.** Learned Senior Counsel appearing for the plaintiff/respondent no. 1 contains that in view of the nature of allegations made in the plaint, the facts leading to the cause of action cannot be segregated from each other. By taking the Court through the relevant paragraphs of the plaint, it is argued that serious allegations of fraud have been made against the other defendants than the defendant no. 2 as well. Moreover, it is categorically pleaded in the plaint that the defendant nos. 3, 5 and 7, who were not parties to the arbitration agreement, made over a copy of the Share Purchase Agreement dated March 24, 2011, to the plaintiff and, relying on the representations made by the said defendants on behalf of the defendant nos. 2, 4 and 6 to the plaintiff's director, the plaintiff/respondent no. 1 agreed to purchase and to acquire 18% of the total issued, subscribed and paid-up equity shares of the defendant no. 1.

- 14.** Learned Senior Counsel further argues that the primary relief in the suit is not restricted to a declaration that the award dated June 29, 2023 is not binding on the plaintiff but also includes claims of damages/compensation on the ground of fraud, collusively practised by the other defendants against the plaintiff.
- 15.** Learned Senior Counsel points out that it will be evident from the arbitration clause, on the strength of which Section 8 application was filed, that despite defendant Nos. 4 and 6 being confirming parties to the parent agreement containing such clause, the arbitration clause itself was confined to disputes arising only between the transferor and transferee (respectively the defendant No. 2 and the plaintiff).
- 16.** Learned Senior Counsel also places reliance on *Gujarat Composite Limited vs. A. Infrastructure Limited and Others*, reported at (2023) 7 SCC 193, in support of the proposition that bifurcation of reliefs in a plaint, where cause of action has been pleaded connecting all the defendants of which some are parties to an arbitration agreement and some are not, is not possible and not permissible in law as well. In such situation, it was held that the subject matter of the suit cannot be referred to arbitration.
- 17.** In order to assess the tenability of the arguments advanced by the parties, the Court peruses the relevant paragraphs of the plaint. On a composite and meaningful reading of the plaint as a whole, it transpires that the learned Single Judge was justified in

coming to the conclusion that the bundle of facts comprising the cause of action of the suit are interlinked as between the defendants.

- 18.** For example, in the last sub-paragraph of paragraph 3 of the plaint, it has been pleaded that defendant nos. 3, 5 and 7 made over a copy of the Share Purchase Agreement dated March 24, 2011 (which preceded the right of the plaintiff to have the agreement with the defendant No. 2 implemented).
- 19.** In paragraph 4 of the plaint, it is averred that relying on the representation made by defendant nos. 3, 5 and 7 on behalf of the defendant nos. 2, 4 and 6 to the plaintiff's director, the plaintiff agreed to purchase and/or acquire 18% of the total issued, subscribed and paid-up equity shares of defendant no. 1.
- 20.** Again, in paragraph 27 of the plaint, it is alleged that although the payments made by the plaintiff and the defendant no. 2 have been admitted by the defendants, it is falsely alleged that only defendant nos. 4 and 6 have paid the full consideration in terms of the Share Purchase Agreement.
- 21.** It is also alleged that the defendants and each of them have derived benefit from the payments made by the plaintiff and owe a duty and obligation to transfer 18% share of and in the defendant no. 1 to the plaintiff.

- 22.** In paragraph 28 of the plaint and its various sub-paragraphs, categorical allegations of fraud have been levelled against all the defendants.
- 23.** In paragraph 29, it is clearly alleged that the defendant no. 1 was the alter ego of the defendant nos. 8 to 19 and the latter functioned through the instrumentality of the defendant no. 1.
- 24.** It is further alleged that the defendant nos. 8 to 19 are the main decision makers of the defendant No. 1 and if the corporate veil of the defendant no. 1 is lifted, it would be evident that the defendant nos. 8 to 19 are the mind behind the acts of fraud allegedly perpetrated by the defendant no. 1 on the plaintiff.
- 25.** Similar allegations have been made vis-a-vis defendant nos. 2 and 3 (in paragraph 30 of the plaint) and defendant nos. 6 and 7 (in paragraph 31 of the plaint).
- 26.** In paragraph 32 of the plaint, it is alleged that as the defendants (collectively) have failed and refused to transfer 18% share of and in the defendant no. 1 to the plaintiff, the plaintiff is entitled to and claims payment of Rs.11,24,78,832.94p., being the aggregate amount paid by it as consideration, and also interest at the rate of 12% per annum from the respective dates of payment.
- 27.** In paragraph 34 of the plaint, it has been categorically alleged that the purpose of acquiring shares of defendant no. 1 was to exploit the leasehold right of the defendant no. 1 in the said premises by constructing a new building thereat which will be

used for commercial purpose. Other allegations are also made in the said paragraph, culminating in the claim that the plaintiff would have received at least Rs.25,05,00,000/- being its share of 18% of the revenue earned by the defendant no. 1 and claims decree for such sum.

- 28.** Paragraph 35 speaks of damages and the alleged involvement and breach by the defendants.
- 29.** In paragraphs 39 and 40, it has been alleged that the defendants and each of them are invading and/or threatening to invade the rights of the plaintiff and that the plaintiff has joined all the defendants in the suit as the reliefs claimed arise out of the same series of acts and transactions against all the defendants and if separate suits were brought, common questions of law and facts would arise.
- 30.** Relief (a) of the plaint seeks a declaration that the award dated June 29, 2023 made in the arbitral reference between the defendants is not binding on and does not affect the right, title and interest of the plaintiff, in respect of 18% shares of and in the defendant no. 1.
- 31.** Reliefs (b) and (c) are respectively claims for amounts jointly and severally claimed against all the defendants, on the strength of the averments made in paragraphs 32 and 34 of the plaint respectively.

- 32.** Even relief (e) of the plaint seeks perpetual injunction on all the defendants.
- 33.** At the juncture of considering an application under Section 8 of the 1996 Act, the Court cannot enter into the merits of the respective contentions of the parties but is only to look at the frame of the suit, as depicted in the plaint, on a meaningful reading of the same.
- 34.** In the present case, on such a composite reading, it is clear that the causes of action against each of the defendants, none of whom were parties to the arbitration clause apart from defendant no. 2, are interlinked and intertwined.
- 35.** We also take note of the fact that although the defendant nos. 4 and 6 in the suit were confirming parties in the agreement containing the arbitration clause, the arbitration clause categorically mentions that only the dispute arising out of or in connection with the said memorandum between the transferor and transferee(defendant No. 2 and plaintiff) shall be referred to and finally resolved by arbitration, by an arbitrator as may be mutually appointed by the transferor and the transferee.
- 36.** Thus, this is a unique case where although there were other parties than the plaintiff and defendant no. 2 to the agreement, the arbitration clause embedded therein only covers the plaintiff and defendant no. 2.

- 37.** Seen from such perspective as well, read in conjunction with the allegations made in the plaint and reliefs sought therein, there is no manner of doubt that the reliefs and/or the causes of action cannot be segregated into divisible components, since it would tantamount to extricating inextricable causes of action.
- 38.** Insofar as the “Group of Companies” doctrine, as enunciated in *Cox and Kings [(2025) 1 SCC 611]* is concerned, the said concept is not applicable to the present case, since the defendants, *interse*, are not sibling companies or subsidiaries of each other.
- 39.** Accordingly, the said principle also does not come to the aid of the defendant No. 2/appellant in order to refer the dispute to arbitration.
- 40.** Rather, as held in *Gujarat Composite Limited (supra)*, since bifurcation of the reliefs in the plaint, where cause of action has been pleaded connecting all the defendants of which some are not parties to the arbitration agreement, is not possible, the subject matter of the suit cannot be referred to arbitration. Doing so would give rise to the absurdity that a part of the reliefs, although interconnected, would be subject to arbitration and other would remain before the Civil Court.
- 41.** Such concept is also patently contrary to the underlying principle of Order II Rule 2 of the Code of Civil Procedure.
- 42.** In such view of the matter, this Court is of the opinion that the learned Single Judge was justified in dismissing the application of

the defendant No. 2/appellant under Section 8 of the 1996 Act. Moreover, given the restrictive scope of an intra-court appeal, although couched under Section 37 of the 1996 Act in the present case, since a legitimate and tenable view in law has been taken by the learned Single Judge, there is no occasion or necessity for this Court to interfere with the same.

- 43.** Accordingly, APOT/60/2026 is dismissed on contest, thereby confirming the judgment dated March 6, 2026 passed in GA-COM/2/2025 in CS-COM/70/2025.
- 44.** Consequentially, GA-COM/1/2026 stands disposed of.
- 45.** There will be no order as to costs.
- 46.** Urgent certified server copies of this judgment, if applied for, be issued to the parties upon compliance of due formalities.

(SABYASACHI BHATTACHARYYA, J.)

I agree.

(BISWAROOP CHOWDHURY, J.)