**OCD-4**

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

**AO-COM/1/2026**
**With CS/2/2015**

**GREAVES COTTON LIMITED**
**-Vs-**
**UNITED MACHINERY AND APPLIANCES**

**BEFORE:**
**The Hon'ble JUSTICE DEBANGSU BASAK**
**-AND-**
**The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

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| For the Appellant | : | Mr. Jishnu Saha, Sr. Adv.<br>Mr. Rajarshi Dutta, Adv.<br>Mr. Sayak Ranjan Ganguly, Adv.<br>Ms. Srijani Ghosh, Adv.<br>Mr. Kripa Karni, Adv.<br>Ms. Ankita Jha, Adv. |
| For the Respondent | : | Mr. Jishnu Chowdhury, Sr. Adv.<br>Mr. Aritra Basu, Adv.<br>Mr. Ratul Das, Adv.<br>Mr. Dwip Raj Basu, Adv.<br>Mr. Avijit Kar, Adv. |
| HEARD ON | : | 12.03.2026 |
| DELIVERED ON | : | 12.03.2026 |

## **DEBANGSU BASAK, J.:-**

**1.** Appeal is at the behest of a defendant in a suit.

**2.** Appeal is directed against judgment and order dated March 21, 2024 by which learned Single Judge, dismissed an application under Section 8 of the Arbitration and Conciliation Act, 1996.

**3.** Learned senior advocate appearing for the appellant submits that, the respondent filed a suit being CS/2/2015 on the basis that, there was an oral agreement between the parties. He draws the attention of the Court to the averments of the plaint of the suit.

**4.** Learned senior advocate appearing for the appellant submits that, the parties entered into an agreement dated January 2, 2007. The appellant terminated the agreement dated January 2, 2007 by a letter dated July 3, 2015. Respondent replied to the letter of termination on July 13, 2015. He points out that, respondent did not deny the existence of the written agreement dated January 2, 2007 in its reply dated July 13, 2015. He points out that a notice under Section 21 of the Act of 1996 was issued on July 8, 2015 to which, the respondent replied in the month of July 2015 itself.

**5.** Learned senior advocate appearing for the appellant submits that, the appellant filed an application under Section 11 of the Act of 1996 before the Bombay High Court, which was subsequently withdrawn with liberty to file afresh on the self same cause of action. He submits that, subsequently, appellant applied under Section 8 of the Act of 1996 for referring the dispute involved in the suit to arbitration. He draws the attention of the Court to the averments made in the application under Section 8 of the Act of

1996 and the affidavit-in-opposition filed on behalf of the respondent.

**6.** Learned senior advocate appearing for the appellant points out that, in the affidavit-in-opposition to the application under Section 8 of the Act of 1996, respondent took a stand that the appellant did not sign every page of the written agreement. He submits that, existence of the written agreement was admitted. In any event, ingredients of Section 7 of the Act of 1996 stood satisfied. In this regard, he relies upon **(2008) 14 Supreme Court Cases 240 (Great Offshore Limited -Vs- Iranian Offshore Engineering And Construction Company)**.

**7.** Learned senior advocate appearing for the appellant draws the attention of the Court to the impugned judgment and order. He submits that, impugned judgment and order proceeded on the basis of fraud and that a criminal liability was involved. He submits that so far as the criminal complaint was concerned, the same was stayed by the High Court. He contends that, in the facts and circumstances of the present case, there was no issue of fraud being committed.

**8.** Relying upon **(2009) 8 Supreme Court Case 751 (Mohammed Ibrahim And Others -Vs- State of Bihar and Another)** learned senior advocate appearing for the appellant submits that, the appellant did not receive any benefit out of the so called falsification of the written agreement dated January 2, 2007. He submits that both the parties executed the agreement dated

January 2, 2007. The so called discrepancy in the date of the agreement and the date when the stamp paper was purchased is of no significance since, the agreement can be predated or antedated in a given circumstance. Significantly, the parties signed the agreement. Signature of the respondent was admitted. Appellant also acknowledged that it signed the agreement and therefore, according to him, there was a valid agreement dated January 2, 2007 which contains an arbitration clause. Consequently, the subject matter of the suit was required to be referred to arbitration in terms of the arbitration agreement contained in the agreement dated January 2, 2007. In support of such contention, he relies upon **2024 SCC OnLine SC 1754 (SBI General Insurance Co. Ltd -Vs- Krish Spinning)** and **2026 SCC OnLine SC 135 (Rajia Begum -Vs- Barnali Mukherjee)**.

**9.** Learned senior advocate appearing for the appellant submits that, the issue as to the genuineness of the arbitration agreement can be taken up as a preliminary issue in the arbitration. In support of such contention, he relies upon an order dated February 20, 2026 passed by the Hon'ble Supreme Court in **Special Leave Petition (Appeal) (C) No./16022/2025 (Salson Liquors Private Limited -Vs- United Spirits Limited)**.

**10.** Learned senior advocate appearing for the respondent submits that, there was a distributorship agreement entered into in 2007. He submits that, the respondent was constrained to file a suit seeking damages and other reliefs from the appellant. Such suit was filed on January 3, 2015.

**11.** Learned senior advocate appearing for the respondent draws the attention of the Court that, the so called agreement dated January 2, 2007 was not terminated till July 3, 2015, which is subsequent to the filling of the suit. He refers to the reply of the respondent dated July 13, 2015. He submits that a copy of the agreement dated January 2, 2007 was sought for by the reply dated July 13, 2015. A copy of such agreement was not made over to the respondent.

**12.** Learned senior advocate appearing for the respondent submits that, the appellant approached the High Court of Judicature at Bombay under Section 11 of the Act of 1996 being Arbitration Application no.1733/2015. Such application was subsequently withdrawn. He draws the attention of the Court to the annexure to the application under Section 11 of the Act of 1996 filed by the appellant before the Hon'ble High Court at Bombay. He submits that, the copy of the agreement dated January 2, 2007 annexed to such application contains signature of the respondent on all pages. Signature of the appellant was not appearing only on the last page of such documents. He points out that, a copy of the application under Section 11 of the Act of 1996 was served upon his client under cover of a letter dated October 1, 2015.

**13.** Learned senior advocate appearing for the respondent submits that, the so called written agreement dated January 2, 2007 sought to be introduced by way of the application under Section 8 of the Act of 1996, is a product of fabrication and forgery. He refers to the date of the stamp paper. He submits that, an application for forensic examination of the purported document dated January 2, 2007 is pending before the learned Single Judge.

**14.** Learned senior advocate appearing for the respondent relies upon **(2020) 4 Supreme Court Cases 41 (New Era Fabrics Limited -Vs- Bhanumati Keshrichand Jhaveri and Others)** for the proposition that, interpolated documents cannot be relied upon. On such proposition, he relies upon **2024 (3) ICC 310 (Deb Kumar Bose –Vs- Prithudipti Maity and Ors.)** and also **2006 SCC OnLine Del 777 (GE Countrywide Consumer Financial Services Ltd. -Vs- Prabhakar Kishan Khandare and Anr)**.

**15.** In a suit for damages and other reliefs, the appellant applied under Section 8 of the Act of 1996 for referring the subject matter of the suit to arbitration in view of the arbitration clause contained in the agreement dated January 2, 2007.

**16.** According to the appellant, agreement dated January 2, 2007 was entered into between the parties which contain an arbitration clause. Appellant applied under Section 11 of the Act of 1996 before the Hon'ble High Court at Bombay being Arbitration Application no.1733/2015 in which, the appellant disclosed the agreement dated January 2, 2007. From the version of the agreement dated January 2, 2007, which is relied upon by the respondent, on the basis of the service copy of such application on the respondent, it appears that, none of the pages of such agreement was signed by the appellant. However, learned senior advocate appearing for the appellant draws the attention of the Court to the soft copy of the application under Section 11 of the Act of 1996 filed before the Hon'ble High Court at Bombay by his client which contains the signature of the appellant on the last page of such agreement.

**17.** In the application under Section 8 of the Act of 1996, the appellant disclosed a document dated January 2, 2007 which contains the signature of both the parties on all the pages of the agreement. At the very minimum, there is discrepancy with regard to the signature in the document dated January 2, 2007 disclosed before the Hon'ble High Court at Bombay by the appellant under Section 11 of the Act of 1996 and before this Court under Section 8 of the Act of 1996.

**18.** According to the appellant, it derived no benefit out of the signature of the appellant incorporated in that document, assuming that it was done so subsequent to the disclosure of such document under Section 11 of the Act of 1996. We are to consider such contention of the appellant in light of the ramification under Section 8 of the Act of 1996, conduct of the parties in disclosing the documents before two different High Courts and the criminal liability, if any, on such activity.

**19.** Contemporaneously, respondent did not accept that there was a written agreement dated January 2, 2007. The first reference to the written agreement dated January 2, 2007 appears from the letter of termination dated July 3, 2015 issued by the appellant. Response to such letter of termination is by the respondent by its letter dated July 13, 2015 where the respondent requests for a copy of the agreement dated January 2, 2007. Appellant did not make over such copy to the respondent pursuant to the letter dated January 13, 2015. Second reference to the agreement dated January 2, 2007 is in the notice under Section 21 of the Act of 1996. In the reply thereto, the respondent also does not acknowledge that there was a written agreement between the parties.

**20.** Written agreement dated January 2, 2007 is disclosed by the appellant for the first time in its application under Section 11 of the Act of 1996. There are discrepancies between the disclosure under Section 11 of the Act of 1996 as contended on behalf of the appellant and by the respondent. Softcopy of the appellant contains the signature of the appellant on the last page of the agreement while, the service copy does not contain any signature of the respondent on any of the pages.

**21.** In the application under Section 8 of the Act of 1996, the appellant discloses the agreement dated January 2, 2007 containing signatures of both the parties on all the pages. The stamp paper of the agreement dated January 2, 2007 is the same as that of the agreement disclosed by the appellant before the Hon'ble High Court of Bombay.

**22.** There is an issue as to when the signatures of the appellant appeared in the document dated January 2, 2007. Signatures of the appellant was not available on all the pages of that document, at least when it was produced before the High Court of Judicature at Bombay under Section 11 of the Act of 1996. These facts, in our view, raises serious questions as to the genuineness of the agreement dated January 2, 2007.

**23.** Arbitration clause is embedded in the agreement dated January 2, 2007.

**24.** On the issue of impact of fraud on arbitrability, **Rajia Begum *(supra)*** is of the following view:

*"12. The legal position with regard to the impact of fraud on arbitrability of a dispute under the Act is well delineated by decisions of this Court. A two-Judge Bench of this Court held that mere allegation of fraud simpliciter may not be a ground to nullify the arbitration agreement between the parties, but where the court finds that there are serious allegations of fraud which make a case of criminal offence or where the allegations of fraud are so complicated, which need to be decided on the basis of voluminous evidence, the court can sidetrack the arbitration agreement and proceed with the suit. It has further been held that the court can proceed with the suit in cases where the fraud is alleged against the arbitration provision itself or is of a such a nature which permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself which contains an arbitration clause or the validity of the arbitration clause itself.*

*13. The aforesaid principle was referred to with approval, by another two-Judge Bench of this Court and two working tests were laid down for determining serious allegations of fraud, which would render the subject matter of an agreement non-arbitrable namely, (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud, touch upon the internal affairs of the parties, inter se having no Implication in the public domain. It was further held that the first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. Thus, in a case where plea is taken with regard to nonexistence of an arbitration clause or agreement, the same would amount to serious allegation of fraud and would render the subject matter of an agreement non-arbitrable.*

**25.** **SBI General Insurance Co. Ltd.** ***(supra)*** amongst others, notices the differences between an exercise undertaken under Section 11 and Section 8 of the Act of 1996. It is of the following view:

***"109***. *The difference between Sections 8 and 11 respectively of the Act, 1996 is also evident from the scope of these provisions. Some of these differences are:*

*1. while Section & empowers any 'Judicial authority' to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.*

*ii. Under Section 37, an appeal lies against the refusal of the Judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.*

*ili. The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.*

*iv. During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and an application is preferred, no arbitration proceedings can commence or continue."*

**26.** Prima facie examination on fraud and existence of an arbitration agreement is required to be undertaken under Section 8 of the Act of 1996. In assessing the impact of fraud on arbitrability, a Court is required to answer the issue as to whether the plea of fraud permeated the entire contract and above all the agreement of arbitration rendering void or whether the allegation of fraud touch upon the internal affairs of the parties inter se in implication in the public domain.

**27.** In the facts and circumstances of the present case, prima facie, the genuineness of the agreement dated January 2, 2007 was rightly raised by the respondent. Documents disclosed before the Hon'ble High Court at Bombay and before this Hon'ble Court are at a variance. No explanation appears in the application under Section 8 of the Act of 1996 as to the reasons for such variance. Variances are of such nature as to justifiably raise doubts as to the existence of the agreement itself. The arbitration clause is embedded in the agreement dated January 2, 2007. Where the genuineness of the agreement dated January 2, 2007 which carries that arbitration clause is in question, relying upon such arbitration clause to refer the disputes to arbitration, in terms of Section 8 of the Act of 1996 was rightly disallowed by the learned Single Judge.

**28.** It is the contention of the appellant that, ingredients of Section 7 of the Act of 1996 stood satisfied by virtue of the agreement dated January 2, 2007.

**29.** **Great Offshore Limited** ***(supra)*** is of the view that, under Section 7 of the Act of 1996 there is no requirement that the arbitration agreement be an original, does not require the parties to stamp the agreement, does not require the parties to sign every page of the agreement and that an agreement is in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication which provides a record of the agreement.

**30.** In the facts and circumstances of the present case, as noted above, the document which contained the arbitration agreement is suspect.

**31. Mohammed Ibrahim & Ors.** ***(supra)*** considers Section 464 of the Indian Penal Code and is of the following view:

*"**14.** An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:*

> *1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*
>
> *2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.*
>
> *3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person f could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.*

*In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a g document by practising deception, or from a person not in control of his senses."*

**32.** **Mohammed Ibrahim & Ors.** ***(*****supra*****)*** is of the view that if a person is said to make a false document, if he alters or tampers with a document. In the present case, there are alterations of the agreement dated January 2, 2007 as disclosed before the High Court at Bombay and before the learned Single Judge.

**33.** In the case of **New Era Fabrics Limited** ***(supra)*** the Supreme Court found, prima facie that, there was an issue of perjury involved. It found that there were modifications made in the balance-sheet of the company. Supreme Court, therefore, directed initiation of proceedings under Sections 193 and 199 of the Indian Penal Code, 1872.

**34.** A co-ordinate Bench in **Deb Kumar Bose** ***(supra)*** found a Will to be interpolated and held that the Will stood vitiated due to such interpolation subsequent to the execution of the Will.

**35.** The Delhi High Court in **GE Countrywide Consumer Financial Services Ltd.** ***(supra)*** took a stringent view on the issue of interpolation and imposed punitive costs.

**36.** Learned Single Judge proceeded to disallow the application under Section 8 of the Act of 1996 filed on behalf of the appellant on the ground of serious allegation of fraud being made out. We find no ground to interfere with the impugned judgment and order dated March 21, 2024.

**37.** AO-COM/1/2026 along with all connected applications are dismissed without any order as to costs.

**38.** Learned advocate appearing for the appellant submits that there subsists an interim order directing the suit not to be transferred to the undefended suit. He seeks continuation of such stay for a limited period.

**39.** Since we disposed of the appeal on merits and since we find that, there is a serious issue with regard to the manipulation of a document, we are not minded to extend the subsisting order of stay any further. The prayer, therefore, is considered and refused.

**(DEBANGSU BASAK, J.)**

**40.** I agree.

**(MD. SHABBAR RASHIDI, J.)**

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