OCD 20

ORDER SHEET
AP-COM/990/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

TURNER MORRISON LIMITED
VS
BERGER PAINTS INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th January, 2026.

Appearance:
Mr. Debanjan Mandal, Adv.
Mr. Debayan Sen, Adv.
Ms. Mahima Cholera, Adv.
Mr. N. Ojha, Adv.
…for the petitioner

Mr. Srinjoy Bhattacharya, Adv.
…for the respondent

The Court:

1. This is an application for appointment of an arbitrator in terms of Clause 12.3.2 of the Share Purchase Agreement dated October 18, 2019. The Dispute Resolution Clause provides that if the disputes between the parties cannot be settled by discussions then, the disputing party may submit the claim or dispute to be finally settled by a sole arbitrator to be appointed in term of the provisions of the Arbitration and Conciliation Act, 1996. The relevant clauses are quoted below:

"**12.3. Dispute Resolution**

12.3.1. Amicable Resolution of Dispute: If any dispute arises in respect of the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding a question, including the questions as to whether the termination of this Agreement by one Party has been legitimate, arising out of this Agreement (a "**Dispute**") between the Acquirer on the one hand, and one or more of the Sellers on the other hand (together, the "**Disputing Party(ies)**"), the Disputing Parties shall attempt to first resolve such dispute or claim through mutual discussion between the Disputing Parties.

12.3.2. Arbitration: If the Dispute is still not resolved through discussions as aforesaid after 30(thirty) days of it having arisen, then any Disputing Party may submit the claim or Dispute to be finally settled by arbitration, by a sole arbitrator appointed in accordance with the provisions of the Arbitration and Conciliation Act 1996 (as amended from time to time). All arbitration proceedings shall be conducted in the English language and the seat and venue of arbitration shall be Kolkata, West Bengal.

12.3.3. Costs and Nature of Award: The arbitral award shall be substantiated in writing and the arbitrator shall also have the right to decide on the costs of arbitration proceedings. Any award made by the arbitrator shall be final and binding on each of the Parties that were parties to the Dispute.

12.3.4. Co-operation: Each Party shall cooperate in good faith to expedite (to the maximum extent practicable) the conduct of any arbital proceedings commenced under this Agreement."

2. The petitioner is an existing company within the meaning of the Companies Act, 2013 and is engaged in the business of investments in shares and securities, financial activities, trading, renting and property management.

3. STP Limited was a company which was set up by the petitioner sometime in 1935. In July, 2019, the respondent allegedly approached the petitioner and other shareholders to acquire the shares of STP. The petitioner as the promoter shareholder was holding about 80.36% of the share capital in STP and the balance shares of the company were held by other minority shareholders. The Share Purchase Agreement dated October 18, 2019 was executed between the petitioner as the promoter

along with the other shareholders of STP and the respondent. Under the said agreement, the respondent acquired 95.53% of the shareholding in STP. The petitioner contends that, as the disputes are exclusively between the petitioner and the respondent, the application for reference is restricted to the adjudication of the dispute between the petitioner and respondent alone, on the strength of the arbitration clause in the Share Purchase Agreement.

4. It is alleged that on the closing date, i.e., October 31, 2019, the respondent was required to pay the actual purchase consideration to the petitioner subject to retention of an amount of Rs.1,77,68,580/- towards “Tax Liability Holdback Amount”. The Tax Liability Holdback Amount was in respect of an indentified tax litigation, being ITA No.749/KOL/2017, which was pending before the Income Tax Appellate Tribunal relating to Assessment Year 2011-12. The said tax litigation ultimately concluded with an order passed by the department on July 7, 2025 under Section 92(2) read with Section 93 of the Finance Act, 2024 under the “Direct Tax Vivad se Vishwas” Scheme. STP became entitled to refund of Rs.65,72,595/-. Under such circumstances, upon conclusion of the tax litigation, the Tax Liability Holdback Amount which was retained by the respondent was to be released to the petitioner. The petitioner claimed such release, but the respondent did not take steps.

5. According to the petitioner, in terms of Clause 5.9 read with Clause 12 of the Share Purchase Agreement, the respondent should have released

the amount with interest at the rate of 6 percent per annum within 15 business days from the order dated July 7, 2025. Consequently, the respondent was under a duty and obligation to pay the outstanding amount. Despite repeated written demands, the respondent failed and neglected to make the aforementioned payments and allegedly denied its liability. Thus, it is contended by the learned advocate for the petitioner that the dispute which arose on account of non-release of the amount which was held by the respondent, a notice invoking arbitration was issued on November 20, 2025 and the petitioner suggested the name of a retired Chief Justice as a sole arbitrator. By a letter dated December 3, 2025, the learned advocates for the respondent denied the allegations of the petitioner and did not agree to the nomination of the retired Chief Justice, as the sole arbitrator.

6. Mr. Srinjoy Bhattacharya, learned advocate for the respondent submits that the claim is deadwood and the respondent is not liable to refund the amount which was held under the Share Purchase Agreement. He relies on the different clauses to submit that the petitioner had made a claim contrary to the treatment of identified tax liability as provided in the Share Purchase Agreement.

7. Mr. Bhattacharya submits that the Tax Liability Holdback period, that is, the period for which the money could be retained by the respondent was for a maximum of two years from the closing date. The closing date was 31st October, 2019 under the said purchase agreement and the period of two years expired on October 31, 2021. The petitioner invoked

arbitration sometime in November, 2025 which was beyond the period of three years from the date of accrual of the cause of action. The petitioner ought to have taken steps within three years from October 31, 2021. He submits that the said claim has now become deadwood and the question of refund of the same did not arise. He further submits that the tax litigation culminated sometime in February, 2020 with the assessment of the liability. Only because the petitioner preferred a writ petition and a litigation was pending before the High Court, the period of limitation would not stand extended. He further submits that it is totally irrelevant in the context as to whether the petitioner availed of the Vivad se Vishwas Scheme or not. The petitioner was required to come within three years from at least culmination of the tax assessment and not thereafter. Clause 5.5.2 was relied upon specifically by Mr. Bhattacharya, which is quoted below:

> "5.2. No later than 5 (five) Business Days prior to the Closing Date. Company, and the Promoter shall ensure that the Company shall deliver to the Acquirer, with reasonable supporting information, setting forth, in the format prescribed in Schedule V good faith estimates of the Net Working Capital ("Estimated Net Working Capital") and Net Debt ("Estimated Net Debt") of the Company as on the Closing Date.
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> 5.5.2 An amount of INR 1,77,68,580 (Indian Rupees One Crore Seventy Seven Lakhs Sixty Eight Thousand Five Hundred and Eighty only) (being 95.53% of INR 1,86,00,000)("**Tax Liability Holdback Amount**") from the amount payable to the Promoter shall be retained for a maximum period of 2 (two) years from the Closing Date ("**Tax Liability Holdback Period**"), for settlement in the manner set out in clause 5.9 below. It is agreed that if between the Execution Date and the Closing Date, the estimated tax liability with respect to the Tax Litigation is rectified by the Assessing Officer pursuant to an appeal effect order, then the Tax Liability Holdback Amount shall

> be proportionately reduced to such rectified amount, including interest and penalty (if any). Further, in the event such appeal effect order is passed after the Closing Date, the excess amount from the Tax Liability Holdback Amount (i.e. Tax Liability Holdback Amount less the proportionate rectified amount, including interest and penalty) shall be refunded immediately by the Company to the Promoter (along with interest thereon to be calculated from the Closing Date until the date of payment), and in any case within 7(seven) Business Days thereof, and the balance shall be treated as the Tax Liability Holdback Amount for the purposes of adjustment in terms of clause 5.9 below."

8. Learned advocate for the petitioner submits that Clause 5.9 clearly demonstrates how the identified tax liability should be treated. Clause 5.9.1 provides that the parties agree that any losses incurred by, or benefits accrued to the company with respect to the ongoing tax litigation before the Income Tax Appellate Tribunal relating to the assessment year 2011-2012 (Tax Litigation) shall be to the account of the promoter so far as such losses are actually incurred within seven years of the closing date. It is submitted that there is a window of seven years for closing of the tax litigation and the amount which was held by the respondent was for the purpose of utilization of the Holdback Amount, subject to the result of such litigation. Clause 5.9.2 provides that the Acquirer, which is the respondent herein, shall retain the Tax Liability Holdback Amount in terms of Clause 5.5.2 and the same shall be treated in the manner set out in Clause 5.9. Thus, it is submitted that the said amount could be held for a period upto seven years from the closing date. An interpretation of the above clauses, harmoniously read, would indicate that the cause of action may not arise within two

years from the closing date or within two years from the date when the first assessment was made. Learned advocate further relies on Clause 5.9.3(iii)(b) and submits that when an order is adverse to the company STP, and while the adjustments may be made in terms of clause 5.9.3(ii), the company shall, with the consultation of the promoter (petitioner) pursue such appeal or other remedy as applicable against such order. In the event, the order in such proceedings is in favour of the company, the Acquirer shall be required to pay to the promoter the Tax Liability Holdback Amount (any additional amounts paid by the promoter in terms of Clause 5.9.3(ii)(c) above) within 15 business days from the date of such order along with interest thereon payable from the closing date or the date of payment under clause 5.9.3(ii)(c), as applicable.

The relevant clauses are quoted below:-

> “5.9 **Treatment of Identified Tax Liability**
> 5.9.1. Notwithstanding anything contained in clause 10 (Indemnity) below, the Parties agree that any Losses incurred by, or benefits accrued to, the Company with respect to the ongoing tax litigation ITA no. 749/KOL/2017 before Income Tax Appellate Tribunal relating to assessment year 2011-2012 ("Tax Litigation"), shall be to the account of the Promoter, so far as such Losses are actually incurred within 7 (seven) years of the Closing Date ("Identified Tax Liability Period").
> 5.9.2. In order to secure the payment towards such Losses in the near future, the Acquirer shall retain the Tax Liability Holdback Amount in terms of clause 5.5.2 above and the same shall be treated in the manner set out in this clause 5.9.
> 5.9.3. In the event an order of the Income Tax Appellate Tribunal is passed in the Tax Litigation prior to expiry of the Tax Liability Holdback Period:
> (i) Where such order is favourable to the Company, the entire amount of the Tax Liability Holdback Amount (subject to deduction of all reasonable legal costs and expenses) shall be paid by the Acquirer to the Promoter (along with Interest thereon

calculated from the Closing Date until the date of payment), immediately and in any case within 7 (seven) Business Days from the date of the order;

(ii) Where such order is adverse to the Company, and:

(a) the Losses incurred by the Company on account of such order are less than the Tax Liability Holdback Amount, the Acquirer shall pay to the Promoter the difference between the Tax Liability Holdback Amount less the Losses, within 3 (three) Business Days from the date of the order;

(b) the Losses incurred by the Company on account of such order are equal to the Tax Liability Holdback Amount, the Acquirer shall not be required pay to any amounts towards the Tax Liability Holdback Amount to the Promoter; and

(c) the Losses incurred by the Company on account of such order are more than the Tax Liability Holdback Amount, the Acquirer shall be entitled to recover such excess amounts from the Claim Amount in terms of clause 5.10 below.

(iii) Any settlement of the Tax Liability Holdback Amount in terms of clause 5.9.3 (i) and

(ii) above shall be subject to the following conditions:

(a) Where the order is favourable to the Company, while the Acquirer will pay the Tax Liability Holdback Amount to the Promoter in terms of clause 5.9.3 (i), the Promoter shall continue to be liable to indemnify the Acquirer for the Losses that it may incur in relation to any appeal made against the order for such Tax Litigation so far as such Losses are incurred within the remaining Identified Tax Liability Period. It is clarified that the Promoter shall not be liable under any provision of this Agreement for any such Losses in relation to Tax Litigation which are incurred after the expiry of the Identified Tax Liability Period.

(b) Where the order is adverse to the company, while the adjustments may be made in terms of clause 5.9.3(ii) above, the Company shall, with the consultation of the Promoter, pursue such appeal or other remedy (as applicable) against such order. In this regard, the principles laid down with respect to pursuance of Identified Claims in clause 5.10.4 below shall become applicable. It being understood that in the event the order in such proceedings are in favour of the Company, the Acquirer shall be required to pay to the Promoter the Tax Liability Holdback Amount (any additional amounts paid by the Promoter in terms of clause 5.9.3 (ii)(c) above), within 15 (fifteen) Business Days from the date of such order along with Interest thereon payable from the Closing Date (or the date of payment under clause 5.9.3 (ii)(c) above), as applicable.

(c) Where status-quo is maintained under order of the Tax Litigation (i.e. remanded back by the Income Tax Appellate Tribunal to the Assessing Officer), the adjustments in terms of clause 5.9.3 (i) or (ii) (as applicable), shall be made after the order of the Assessing

Officer, provided the same is within the Tax Liability Holdback Period.

5.9.4. In the event an order of the Income Tax Appellate Tribunal/ the Assessing Officer (as the case may be) is not passed in the Tax Litigation prior to expiry of the Tax Liability Holdback Period, the Acquirer shall pay the Tax Liability Holdback Amount to the Promoter along with Interest thereon calculated from the Closing Date. Any Losses incurred by the Acquirer in relation to the Tax Litigation during the remaining Identified Tax Litigation Period shall be recoverable by the Acquirer from the Promoter from the Claim Amount in accordance with clause 5.10 below. After expiry of the Identified Tax Liability Period, any Losses incurred by the Company on account of the Tax Litigation shall be to the account of the Company (and not the Promoter).

5.9.5. Notwithstanding anything contained in this Agreement, all reasonable legal expenses and costs in relation to the Tax Litigation shall be to the account of the Promoter."

9. Thus, it is contended that when the order of assessment went against the company, the company instituted an appeal. The appeal continued for a considerable time and ultimately, the matter was settled by an order dated July 7, 2025. It is after such settlement that, the petitioner became entitled to claim the amount and the respondent became liable to pay the amount. Any other interpretation of the clauses would mean that the claim of the petitioner could be made prior to settlement of the income tax appeal which according to the Share Purchase Agreement was not the true intent and purport of Clause 5.2.2 of the Share Purchase Agreement.

10. Although Mr. Bhattacharya submits that these factual aspects have to be brought on record in order to substantiate that the petitioner's claim cannot be sustained in law, this Court is of the view that the arguments of Mr. Bhattachary are based on interpretation of the various clauses of the said Share Purchase Agreement which must be done by

the learned arbitrator. Thus, whether the claim is deadwood or not, cannot be decided at this stage. Limitation in this case will require a proper interpretation of the clauses discussed hereinabove and harmonious reading thereof. Limitation is a triable issue in this case. The factual aspects pointed out by Mr. Bhattacharya are not to be gone into by the referral court as the learned arbitrator is the master of facts. The scope of the referral court is limited. A deeper probe into the various documents will defeat the purpose of resolution of dispute by arbitration which is to be a speedy and time bound remedy.

11. The Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spg.,*** reported in ***(2024) 12 SCC 1*** clarified that, the scope of enquiry at the stage of appointment of arbitrator was only with regard to existence of an arbitration clause. Paragraphs 113 and 114 are quoted below:-

> **"113**. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In ***Re: Interplay (supra)*** that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted herein below:
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> "209. The above extract indicates that <u>the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings</u>. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time bound process, and therefore does not align with the stated

goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. […]" (Emphasis supplied)"

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra)."

12. ***Ajay Madhusudan Patel and Ors. v. Jyotrindra S. Patel and Ors.***, reported in ***(2025) 2 SCC 147***, the Hon'ble Apex Court held as follows:-

76.6.*Krish Spg.* [*SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] cautioned that the courts delving into the domain of the Arbitral Tribunal at the Section 11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected. Further, it was stated that a detailed examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage.

76.7.*Cox & Kings* [*Cox & Kings Ltd.* v. *SAP India (P) Ltd.*, (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16."

13. In the decision of ***ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited*** reported in ***(2025) 9 SCC 76***, the Hon'ble Apex Court held as follows:-

> **"72.** The next chapter in the saga of scope and ambit of Section 11 of the 1996 Act came in the form of the seven-Judge Bench decision of this Court in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*, (2024) 6 SCC 1] wherein one of us (J.B. Pardiwala, J.) as part of the Bench, undertook a comprehensive analysis of Section(s) 8 and 11, respectively, of the 1996 Act and, inter alia, made poignant observations about the nature of the power vested in the courts insofar as the aspect of appointment of arbitrator is concerned. It held that the Referral Court, be it the High Court or the Supreme Court under Section 11 of the 1996 Act shall examine only the existence of a prima facie arbitration agreement and not any other issues. The relevant observations read as under: (SCC pp. 96-97 & 104, paras 196-97 & 220)
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> > "*196. The corollary of the doctrine of competence-competence is that courts may only examine whether an arbitration agreement exists on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an Arbitral Tribunal on the basis that stamp duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.*
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> > *197. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the Arbitral Tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). …*
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> > ***
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> > *220.* The above extract indicates *that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". The other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.* Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11

stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators."

(emphasis in original and supplied)

14. ***Hindustan Petroleum Corporation Limited v. BCL Secure Premises Pvt. Ltd.*** reported in ***2025 SCC OnLine SC 2746,*** the Hon'ble Apex Court held as follows:-

"**27**. As was held in In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899, since the scope of referral court has to be within the parameter of Section 11 (6-A), the exercise carried thereon is "examination of the existence of an arbitration agreement". While "examination" does not contemplate a laborious or a contested inquiry there is an obligation in the referral court to "inspect and scrutinize" the dealings, if any, between the parties. Para 167 of *Interplay* (supra) reads as under:—

"167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd.* v. *Aksh Optifibre Ltd.*, (2005) 7 SCC 234]"

(Emphasis supplied)

28. This principle was reiterated lucidly in *SBI General Insurance Company Limited* v. *Krish Spinning*, wherein this Court (speaking through one of us, J.B. Pardiwala J.) observed as under:—

113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration

agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

114. The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth."

(Emphasis supplied)

15. Under such circumstances, in view of the existence of the dispute resolution clause providing settlement of dispute by arbitration, the application is allowed. The Court finds from the records and the numerous correspondence exchanged between the parties that there was no chance for any amicable resolution of dispute.

16. In the decision of ***Visa International Ltd. v. Continental Resources (USA) Ltd.,*** reported in ***(2009) 2 SCC 55,*** the Hon'ble Apex Court held as follows:-

"**38.** It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated "… since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed". In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause."

17. In the decision of ***Demerara Distilleries Private Limited and Another v. Demerar Distillers Limited*** reported in ***(2015)13 SCC 610,*** the Hon'ble Apex Court held as follows:-

> "**5.** Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the petitioners which alone would require an in-depth consideration."

18. All objections which are available to the respondent with regard to jurisdiction, arbitrability, admissibility and limitation etc, are kept open, to raise before the learned Arbitrator.

19. Accordingly, the Court appoints Mr. T.S. Sivagnanam, former Chief Justice, High Court at Calcutta, as the learned Arbitrator, to arbitrate

upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.

20. AP-COM/990/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

B.Pal