

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

ARBITRATION APPLICATION NO.117 OF 2026

Executive Ship Management Pvt. Ltd.	Applicant
V/S	
Dakashina Jithesh	Respondent

**WITH
ARBITRATION APPLICATION NO.118 OF 2026**

Executive Ship Management Pvt. Ltd.	Applicant
V/S	
Prethisha Punithan	Respondent

Mr. K.P. Anilkumar with Mr. Amit Sale, Ms. Priyanka Kumar and Mr. Chinmay Apte *for the Applicant.*

Ms. Sandhya Pillai with Mr. Mayank Joshi *for Respondent in ARBAP No.117 of 2026.*

Mr. Akshay Shukla *for Respondent in ARBAP No.118 of 2026.*

CORAM : SANDEEP V. MARNE, J.

DATE : 10 APRIL 2026.

P.C.:

1. These are Applications filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) for appointment of an Arbitrator for adjudication of disputes and differences that have arisen between the parties out of the Agreements-cum-Indemnity Bonds dated 27 August 2024 and 2 March 2023.

2. I have heard Mr. Anilkumar, the learned counsel appearing for the Applicant and Ms. Pillai and Mr. Shukla, the learned counsel appearing for the Respondent in Arbitration Application Nos.117 of 2026 and 118 of 2026 respectively.

3. Perusal of the concerned Agreements-cum-Indemnity Bonds indicates presence of arbitration agreement as under:

“10. In the event of any disputes or differences arising out of or in respect of any breach of any terms and conditions of this agreement, the same shall be referred to arbitration as per the provisions of the Arbitration and Conciliation Act, 1996. The reference shall be made to a sole arbitrator to be appointed jointly by the Company, the Trainee & the Guarantor. In the event, the parties are unable to so appoint a sole arbitrator, the sole arbitrator shall be appointed as per the provisions of the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be at Mumbai. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court at Mumbai only.”

4. However, both the learned counsel appearing for the Respondents submit that Applicant is not a party to the concerned Agreements-cum-Indemnity Bonds. It is therefore contended that there is no valid arbitration agreement between parties and that therefore, reference to arbitration cannot be made.

5. Perusal of the concerned Agreements-cum-Indemnity Bonds would indicate that the same is executed by the Respondents with Executive Ship Management Pte. Ltd. However, the present Applications are filed by Executive Ship Management Pvt. Ltd. However the term ‘Company’ is defined in the Agreements as under:

“The “**Company**” which expression shall, unless it be repugnant to the meaning or context thereof mean and include its Directors, officers, authorized representatives and assigns and successors the details whereof are given at the end of this agreement, of the first part.”

6. It is the case of the Applicant that it is an authorized representative of Executive Ship Management Pte. Ltd. and that therefore it is also included in definition of the term 'Company'. Reliance is placed on Board Resolution dated 9 January 2014 which reads thus:

"It is hereby resolved that M/s. Executive Ship Management Private Ltd., shall

(a) Enter into contracts and agreements in respect of hiring of suitable candidates and Onboard Training for those successful in interviews/tests. M/s. Executive Ship Management Private Ltd., is also authorized to discharge legal liabilities and rights of Executive Ship Management Pte. Ltd. Singapore, including filing of proceedings in appropriate courts of law in India both criminal and civil;

(b) M/s. Executive Ship Management Private Ltd., is hereby authorized to engage Advocates in India, and to sign Vakalatnamas, affirm compliance, applications and Writ Petitions, Affidavits, replies, Rejoinders in Indian courts and to take all necessary steps including recording witnesses, and do all acts, deeds things, matters and to represent in the court of law in India on behalf of M/s. Executive Ship Management Pte Ltd., Singapore. This authority includes representing M/s. Executive Ship Management Pte Ltd., Singapore. In proceedings before the courts and Tribunals in India on behalf of M/s. Executive Ship Management Pte Ltd. Singapore, including before the Arbitration authorities and those under the Revenue authorities."

7. The learned counsel appearing for Respondents seriously dispute the position that the Applicant can be treated as a Company with whom the Agreement is executed by the Respondents.

8. In addition to the stand that Applicant is covered by definition of the term 'Company' used in the Agreement, it is also sought to be contended on behalf of the Applicant that it is a veritable party to arbitration agreement. It is the case of the Applicant that it has participated in performance of the concerned Agreement. It is also contended on behalf of the Applicant that Respondents have

corresponded directly with the Applicant in relation to the contractual obligations arising out of the Agreement. It is therefore case of the Applicant that it is otherwise a veritable party to the principal Agreement executed with Executive Ship Management Pte. Ltd.

9. The judgment of the Apex Court in ***Cox and Kings Limited vs. SAP India Private Limited & Ors.***¹ lays down the tests for determining as to whether a non-signatory can be treated as a veritable party to arbitration agreement. The subsequent judgment in ***ASF Build-tech Private Limited vs. Shapoorji Pallonji and Company Private Limited***² builds upon the ratio of Constitution Bench judgment in ***Cox and Kings*** (supra). The judgment in ***ASF Build-tech Private Limited*** (supra) creates an impression as if the Apex Court has held that only the Arbitrator can decide the issue as to whether non-signatory can be treated as veritable party to the agreement. However, in subsequent judgment of the Apex Court in ***Hindustan Petroleum Corporation Ltd. vs. BCL Secure Premises Pvt. Ltd.***³ the judgment in ***ASF Build-tech Private Limited*** (supra) has been further explained and it is held that even a reference Court under Section 11 of the Arbitration Act can decide the issue as to whether a non-signatory party is a veritable party to the arbitration agreement. Of course, in ***Hindustan Petroleum Corporation Ltd.*** (supra) the Apex Court has not disturbed the ratio earlier declared in ***ASF Build-tech Private Limited*** (supra) that the Arbitral Tribunal under Section 16 of the Arbitration Act can decide the issue as to whether a non-signatory can

1 (2024) 4 SCC 1

2 (2025) 9 SCC 76

3 Civil Appeal No.14647 of 2025, decided on 9 December 2025.

be veritable party to the arbitration agreement. In view of the development of law on the subject of veritable party, reliance by the Respondents on judgment of the Apex Court in *Indowind Energy Limited vs. Wescare (India) Ltd. & Anr.*⁴ is inapposite.

10. In my view, considering the unique circumstances of the present case, it would be appropriate to leave open the issue as to whether Applicant can be treated as a veritable party to the arbitration agreement with the Respondents. The issue can be decided by the Arbitral Tribunal. As of now, there appears to be clear arbitration agreement between the Executive Ship Management Pte Ltd. and the Respondents. Whether Applicant is also covered by definition of term 'Company' used in the said agreement is something which the Arbitral Tribunal can decide. The Arbitral Tribunal can also decide whether the Applicant has participated in performance of the agreement and on that count whether it can be treated as veritable party to the arbitration agreement.

11. I accordingly proceed to pass the following order:

A) Ms. Aneesa Cheema, an Advocate of this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Agreement for Settlement of Disputes referred to above. The contact details of the Arbitrator are as under:

4 2010 (5) SCC 306

Office Address:- C/o. Mayur Khandeparkar, 201/202, 2nd Floor,
Hamam House, Fort, Mumbai – 400 001.

E-mail ID:- aneesa.cheema@outlook.com

B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this order.

D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

E) The sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the learned sole Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

12. All contentions including the issue as to whether the Applicant can be treated as party to arbitration agreement as well as arbitrability of dispute are left open to be decided by the Arbitral Tribunal.

13. With the above directions, both the Arbitration Applications are **allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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