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

% Judgment delivered on: 28/02/2026

+ **CS(COMM) 783/2025**

TERIX COMPUTER SERVICE INDIA PVT LTDPlaintiff

Versus

M/S TPM GURU PRIVATE LTD & ORS.Defendants

Advocates who appeared in this case

For the Plaintiff : Mr. Prashant Mehra and Ms. Paridhi Chhibber, Advocates.

For the Defendants : Mr. Vyom Raghuvanshi, Ms. Akanksha Rathore and Mr. Nitin Bhardwaj, Advocates for D1, 2, 3, 7, 8 & 9.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

I.A. 27016/2025

1. Defendant Nos. 1, 2, 3, 7, 8 and 9 (“**Defendants**”) have filed the present Application under Section 8 of the Arbitration and Conciliation Act, 1996 (“**Act**”) to dismiss the Suit and refer the dispute in the Suit to arbitration and appoint a Sole Arbitrator for adjudication of the disputes that have arisen between the Parties.



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CONTROVERSY IN THE SUIT:

2. The Plaintiff is engaged in the business of providing hardware and software maintenance services to customers across the globe. It is the Plaintiff's case that the Plaintiff manages its business by using various proprietary tools and software it developed in USA, Canada and India beginning in 2002 and are at the core of its business to provide IT services to its various clients.

3. According to the Plaintiff, during the fourth quarter of the financial year 2020-21, the Plaintiff allegedly observed a sharp and unexplained decline in contract renewal business. Upon conducting independent enquiries to ascertain the cause, it was allegedly revealed that the Defendants, acting in concert and without the knowledge of the third director, Ms. Christine Appleby, had unlawfully diverted several of the Plaintiff's clients to Defendant No. 1.

4. It is the Plaintiff's case that this diversion of business was not incidental, but was the result of a coordinated scheme orchestrated by Defendant Nos. 2 and 3, who were at the relevant time directors of the Plaintiff and now the directors of Defendant No. 1. It is further alleged by the Plaintiff that the Defendants systematically diverted the Plaintiff's clients, manpower and resources to Defendant No. 1, thereby hollowing out the Plaintiff's business and leaving it without sufficient cash flow to meet its operational obligations.

5. It is further the Plaintiff's case that to facilitate this diversion, the Defendants represented to the Plaintiff's clients and employees that the Plaintiff was undergoing a rebranding exercise and that Defendant No. 1 was a sister concern through which all future renewals would be processed.



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6. As per the Plaintiff, the background to the incorporation of Defendant No. 1 is also material to the present controversy since owing to certain legal complications involving the Plaintiff's parent company in the United States in 2017, one of large customers of the Plaintiff was reluctant to contract directly with the Plaintiff and, therefore, Defendant No. 2, along with one Mr. Bernd Appleby, the majority shareholder, proposed the incorporation of a separate entity for the limited purpose of approaching the said large customer and other companies who were unwilling to deal directly with the Plaintiff. Accordingly, the majority shareholders of the Plaintiff consented for the incorporation of Defendant No. 1 on 28.01.2020, with Defendant Nos. 2 and 3 as its directors.

7. It is the Plaintiff's case that the said arrangement was exploited by Defendant Nos. 2 and 3 to divert not merely restricted accounts, but all other clients and business opportunities of the Plaintiff to Defendant No. 1. It is alleged by the Plaintiff that while clients were serviced using the Plaintiff's manpower, expensive hardware, parts, and infrastructure, payments were routed to the bank accounts of Defendant No. 1. Through this mechanism, the Defendants are alleged to have siphoned off service contracts exceeding ₹ 3.70 crores, involving at least 115 client contracts.

8. It is further alleged by the Plaintiff that the Defendants have copied the Plaintiff's software, its appearance, overall logic, source code, and associated materials to service diverted clients and that the Collaboration Agreement dated 28.01.2020 ("**Collaboration Agreement**"), is also allegedly a fabricated document executed without the knowledge or consent of the third director or the shareholders of the Plaintiff in an attempt to conceal these allegedly illegal activities.



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9. It is the Plaintiff's case that upon the allegedly deceitful conduct of the Defendants coming to light in March 2021, Defendant Nos. 2, 3 and certain other Defendants were terminated or resigned from the Plaintiff and, thereafter, joined Defendant No. 1. It is alleged by the Plaintiff that Defendant No. 2, being an authorised signatory to the Plaintiff's bank accounts, froze the Plaintiff's bank accounts, thereby preventing the Plaintiff from disbursing payments to its suppliers and employees and coercing the Plaintiff into executing an Exit Agreement dated 30.04.2021 ("**Exit Agreement**"), which was presented as a precondition for unfreezing the bank accounts and as a means for Defendant No. 2 to absolve himself and others of their liabilities. Owing to the urgent financial crisis created by the said actions, the Plaintiff was compelled to execute the Exit Agreement under coercion and duress.

10. It is the Plaintiff's case that perusal of document created by Defendant No. 1's titled 'TPMGuru Ticketing System and Call Management' allegedly demonstrates copying of the Plaintiff's software, references to service records and system location parameters that could only have originated from the Plaintiff's database. It is the Plaintiff's case that such acts constitute infringement of the Plaintiff's copyright and misappropriation of the Plaintiff's software.

11. It is under these circumstances that the Plaintiff has instituted the present Suit for permanent injunction restraining the Defendants from infringing the Plaintiff's copyright, for damages and rendition of accounts.



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SUBMISSIONS ON BEHALF OF THE DEFENDANTS:

12. The learned Counsel for the Defendants made the following submissions:

12.1. The Collaboration Agreement was executed between the Plaintiff and Defendant No. 1. Clause 7 of the Collaboration Agreement provides that all disputes arising in relation to the Collaboration Agreement are amenable to adjudication through arbitration. Clause 7 of the Collaboration Agreement provides as under:

“7. Dispute Resolution

7.1 If a dispute in relation to this agreement is not resolved through discussions within thirty (30) business days then such dispute shall be referred at the request in writing of any party to the dispute to binding arbitration by sole arbitrator in accordance with the arbitration and conciliation act 1996. The sole arbitrator shall be appointed by the parties mutually. All arbitration proceedings shall be conducted in English language and the place and seat of arbitration shall be Noida, Uttar Pradesh, India. Judgment upon any arbitral award rendered hereunder may entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

7.2 The costs and expenses of the arbitration, including, without limitation, the fees of the arbitration, shall be borne equally by the parties to the dispute or claim and each party shall pay its own fees, disbursements and other charges of its counsel, except as may be determined by the arbitrator. The arbitrator would have the power to award interest on any sum awarded pursuant to the arbitration proceedings and such sum would carry interest, if awarded, until the actual payment of such amounts.

7.3 Subject to applicable laws, any award made by the arbitrator shall be final and binding.

7.4 Subject to arbitration provision above, the courts at Noida, Uttar Pradesh, India shall have the exclusive jurisdiction for matters relating to this agreement”.



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- 12.2. Clause 2.7 of the Collaboration Agreement also enabled both contracting parties to access / use resources and infrastructure of the other party without payment of any compensation.
- 12.3. The Plaintiff has approached this Court with unclean hands as it has suppressed the material facts pertaining to the Exit Agreement by and between (i) Plaintiff (ii) Plaintiff's Director, Ms. Christine Florence Appleby (DIN: 08425036) in the capacity of authorized representative of both the Plaintiff and Terix International Pte. Ltd., Singapore i.e., the holding company of the Plaintiff, which was ultimately controlled by Mr. Bernd Dudley Appleby, who is husband of Ms. Christine Florence Appleby, (iii) Mr. Bernd Dudley Appleby as a confirming party, (iv) Mr. James Olding as a confirming party, (v) Defendant Nos. 2 and 3 i.e., the directors of the Plaintiff at that time, and (vi) Defendant No. 9.
- 12.4. The Plaintiff is attempting to agitate some issues, which were subject matter of the Exit Agreement in this Suit, however, all the concerned parties thereto had mutually agreed that in the event of any dispute in connection thereof would be referred to arbitration in terms of Clause 9 of the Exit Agreement. Clause 9 of the Exit Agreement provides as under:

"9. Arbitration

9.1 The Parties mutually agree that in the event of any dispute, howsoever, arising in connection with the interpretation or implementation of this Agreement then the dispute shall be referred to Indian Council of Arbitration for the appointment of the Sole Arbitrator to carry out arbitration proceedings as per the Indian Arbitration and Conciliation Act, 1996 as amended up to date. The contact details of Indian Council of Arbitration are mentioned below:



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Address	:	Room 112, Federation House, Tansen Marg, New Delhi – 110001
Phone No.	:	(011) 23350087, 23319849, 23719103, 23319760, 23738760-70
E-mail	:	ica@ficci.com

9.2 The Parties agree that the Seat of the Arbitrator shall be New Delhi and the arbitration proceedings shall be conducted in English language.

9.3 The parties agree to bear the cost of arbitration proceeding equally.”

- 12.5. The Plaintiff had also executed the Exit Agreement with the Registrar of Companies (“**Form MGT-14**”), NCT of Delhi and Haryana, Ministry of Corporate Affairs in terms of section 117(3)(h) of the Companies Act, 2013. The Form MGT-14 was digitally signed by the Plaintiff’s Director, Ms. Christine Florence Appleby on behalf of the Plaintiff and was certified by a practicing Company Secretary, one Ms. Sonika Bharti having FCS No. 7335 and COP No. 8011.
- 12.6. Under Section 8 of the Act, this Court may refer the Parties to arbitration in terms of their arbitration agreements. The limited scope of judicial scrutiny at the stage of Section 8 of the Act extends only to the determination of the following aspects:
- a) the existence of a valid arbitration agreement between the parties;
 - b) whether one of the parties to such agreement has initiated an action before the court against the other;



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- c) whether the subject matter of such action is the same as that of the arbitration agreement; and
- d) whether the application for reference to arbitration has been made before submission of the first statement on the substance of the dispute.

Upon fulfilment of these conditions, the judicial authority is statutorily mandated to refer the parties to arbitration, thereby upholding the legislative policy of minimal judicial interference as envisaged under Section 5 of the Act.

- 12.7. Reliance was placed on *Eros International Media Ltd. v. Telemex Links India Ltd. & Ors.*, 2016 SCC OnLine Bom 2179 wherein the Bombay High Court rejected the submission made by the plaintiff therein that all the arbitration clauses pertaining to copyright matters must be treated as entirely null, void and otiose.
- 12.8. The present Application is being filed at first instance. Therefore, this Court may allow the Application and dismiss the Suit being barred under Section 5 read with Section 8 of the Act and appoint a Sole Arbitrator for adjudication of the disputes that have arisen between the Parties.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

- 13. The learned Counsel for the Plaintiff made the following submissions:
 - 13.1. The Application is misconceived and liable to be dismissed at the threshold. The Defendants seek reference of the Suit to arbitration relying upon (a) Clause 7 of a Collaboration Agreement, and (b) Clause 9 of the Exit Agreement. Neither of these clauses is attracted on account of the sphere and subject matter of the Suit.



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- 13.2. The Plaintiff's cause of action arises from independent acts of copyright infringement, data theft, and diversion of business committed by the Defendants after cessation of all alleged contractual relationships. The Suit is founded on statutory rights under the Copyright Act, 1957 ("**Copyright Act**") and not on any contractual covenant.
- 13.3. Section 8 of the Act mandates reference to arbitration only when:
- i. there exists a valid and subsisting arbitration agreement between the parties, and
 - ii. the subject-matter of the action is one which is the subject of that agreement.

However, both the above conditions fail in the present case. In addition, the Defendants have further failed to place on record the original agreements as mandated by Section 8 of the Act.

- 13.4. The Suit asserts rights conferred by the statute namely, the exclusive right to reproduce, use, and exploit the proprietary software systems namely 'Ticketmaster', 'Apollo', 'Parser' under Sections 14 and 55 of the Copyright Act to the exclusion of others. The infringement of such rights is governed by the statute and not by any private agreement.
- 13.5. Reliance was placed on *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532, to submit that the copyright infringement claims being actions *in rem* are non-arbitrable, and are matters reserved for the exclusive jurisdiction of civil courts and Supreme Court in *Booz Allen* (*supra*) drew a fundamental distinction between rights *in rem* and *in personam*, holding that



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actions enforcing rights *in rem* are non-arbitrable. Reliance was further placed on ***Mundipharma AG v. Wockhardt Ldd.***, (1990) SCC Online Del 269, wherein the Delhi High Court observed as under:

“If reference is made to Chapter XII of the Copyright Act, 1957 relating to civil remedies in case of infringement of copyright, every suit or other civil proceedings arising under that Chapter in respect of Infringement of copyright in any work or the infringement of any other right conferred by that Act have to be instituted in the district court having jurisdiction. This would mean that in case where copyright in any work is infringed the remedies by way of injunction damages, account and otherwise as are or may be conferred by law for the infringement of such a right, cannot be subject-matter of arbitration.”

- 13.6. The Copyright Act manifests legislative intent for adjudication by public fora, wherein Section 55 of the Copyright Act provides statutory remedies for infringement, Section 62(1) of the Copyright Act confers jurisdiction exclusively upon the District Court having jurisdiction. This statutory conferment of jurisdiction cannot be ousted by private agreement.
- 13.7. Reliance was placed on ***Vidya Drolia v. Durga Trading Corporation***, (2021) 2 SCC 1 to submit that the disputes are non-arbitrable:
- i. when the cause of action and subject matter of the dispute relates to actions *in rem*, that do not pertain to subordinate rights *in personam* that arise from rights *in rem*;
 - ii. when the cause of action and subject matter of the dispute affects third party rights; have *erga omnes* effect; require centralised adjudication;



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- iii. when the cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State; and
 - iv. when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).
- 13.8. The contesting Defendants, in Paragraph No. 3 of their reply to I. A. No. 18561 of 2025, have specifically denied the Plaintiff's copyright in the software in question, and in Paragraph No. 8 have asserted copyright ownership in themselves. The scope of the *lis*, therefore, squarely involves an adjudication of, and declaration upon, the subsistence and existence of copyright, a right *in rem*, enforceable *erga omnes*. The outcome of such adjudication necessarily affects the legal status of the software in question and the rights of the Parties *vis-a-vis* all third parties, not merely *inter se* between the litigants. Determination of such rights lies within the exclusive domain of civil courts under the Copyright Act and, by settled law, is non-arbitrable.
- 13.9. Accordingly, even assuming and without admitting that an arbitration clause existed and survived, the subject matter of this suit is non-arbitrable, and Section 8 of the Act cannot apply.
- 13.10. The alleged Collaboration Agreement was executed by Mr. Deepak Joshi i.e., Defendant No. 2, then a director of the Plaintiff, without any Board Resolution, or any other document; authorising him to enter into such contract on behalf of the Plaintiff. Under Section 21 read with Section 179 of the Companies Act, 2013,



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only the Board of Directors is competent to authorize the execution of contracts in the company's name. Reliance was placed on *M/s. Nibro Ltd. v. National Insurance Co. Ltd.*, AIR 1991 Del 25 to submit that a company acts through its Board of Directors and an individual director has no authority to act on behalf of the company unless so authorised by the Board of Directors.

- 13.11. Further, as Defendant No. 2 was also the *de facto* promoter and controlling mind of Defendant No. 1 i.e., the counterparty to the same agreement, the transaction constitutes self-dealing and conflict of interest.
- 13.12. The alleged Collaboration Agreement was, assuming the best case of the contesting Defendants, a temporary operational arrangement between the Parties when the same individuals managed both entities, therefore, the subsequent Exit Agreement, executed by those very individuals, formalised their separation and the same would have terminated all of the alleged collaborative relationships.
- 13.13. Upon execution of the Exit Agreement and cessation of joint operations, the alleged Collaboration Agreement became '*impossible of further performance*' and stood discharged by novation under Section 62 of the Indian Contract Act, 1872.
- 13.14. Clause 7 of the Collaboration Agreement provides for arbitration of disputes '*in relation to this agreement.*' The present dispute concerning unauthorised copying and use of proprietary software even otherwise, does not arise in relation to the Collaboration Agreement, but from independent statutory violations committed



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after the alleged collaboration ended. Consequently, the alleged Collaboration Agreement neither subsists nor governs the present dispute, and that its arbitration clause is inoperative, and Section 8 of the Act has no application to the facts of the present case.

- 13.15. The Exit Agreement merely formalised the resignation and separation of some of the Defendants from the Plaintiff. All obligations under the Exit Agreement including resignation of directors, transfer of control, hand-over of accounts, and payment of dues were completed immediately upon execution. The Exit Agreement has been fully performed and stands satisfied and exhausted. No continuing obligation or dispute concerning the Exit Agreement's implementation exists.
- 13.16. Clause 9 of the Exit Agreement provides for arbitration of disputes '*in connection with the interpretation or implementation of this Agreement.*' The Suit does not concern interpretation or implementation of any terms of the Exit Agreement. Therefore, the *lis* between the Parties is not concerned with the Exit Agreement in any manner. The Exit Agreement, having been fully satisfied, is *non est* for the purpose of Section 8 of the Act, and that its arbitration clause cannot be revived to oust this Court's jurisdiction.
- 13.17. Section 8 of the Act can be invoked only where the parties to the suit are also parties to the arbitration agreement. The contesting Defendants seek to invoke two distinct arbitration clauses, one in the alleged Collaboration Agreement between the Plaintiff, and Defendant No. 1, and another in the Exit Agreement between the



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Plaintiff, and Defendant Nos. 2, 3 and 9. Also, not all the Defendants are parties to either agreement. Several other Defendants are not signatories to any arbitration agreement whatsoever. Reliance was placed on ***Sukanya Holdings Pvt. Ltd, v. Jayesh H. Pandya***, (2003) 5 SCC 531 wherein it was observed that:

“15. The relevant language used in Section 8 is "in a matter which is the subject of an arbitration agreement". The court is required to refer the parties to arbitration. Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words "a matter" indicate that the entire subject-matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is – even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.”

The Suit involves both signatory and non-signatory Defendants, and a single composite cause of action arising out of intertwined acts of infringement, diversion, and misuse. The reliefs sought are



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joint and several; the claims cannot be split or partly referred to arbitration.

- 13.18. Reliance was further placed on *Ameet Lalchand Shah v. Rishabh Enterprises*, (2018) 15 SCC 678 to submit that non-signatories can be bound to arbitration only when a single composite transaction is shown to exist with mutual intent to arbitrate and that no such case is made out here. The Collaboration Agreement and Exit Agreement are separate in time, subject-matter, and parties and that there being no common arbitration agreement encompassing all the Defendants, Section 8 of the Act cannot be invoked in the present case. The statute does not permit a court to carve out some defendants or causes of action for arbitration while retaining others.
- 13.19. Reliance was placed on a decision of the Bombay High Court in *The Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd.*, Arbitration Petition No.341/2012 order dated 31.08.2016 wherein the Bombay High Court in view of the facts therein set aside the award passed by the arbitrator therein pertaining to the issue of copyright made by the claimant declaring that the claimant therein was not required to obtain a licence from respondent therein, on the ground of want of jurisdiction of the arbitrator therein and dispute therein being not arbitrable.
- 13.20. Neither the Collaboration Agreement nor the Exit Agreement provides a basis for reference. The Collaboration Agreement was executed without authority, tainted by conflict of interest, and stood discharged upon execution of the Exit Agreement. The Exit



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Agreement has been fully satisfied and bears no nexus to the subject-matter of the present Suit. There is, therefore, no subsisting arbitration agreement governing the present dispute and that the dispute is not arbitrable in law.

13.21. Therefore, the present Application under Section 8 of the Act is liable to be dismissed.

ANALYSIS AND FINDINGS:

14. The issue that arises for consideration is whether the dispute forming the subject matter of the Suit is liable to be referred to arbitration under Section 8 of the Act, on the basis of the Collaboration Agreement and / or the Exit Agreement.

15. Before advertng to the facts of the case, it is necessary to first set out the law governing an application under Section 8 of the Act. Section 8 of the Act mandates judicial authorities to refer parties to arbitration when *prima facie* there is a valid arbitration agreement.

16. The Supreme Court in *Vidya Drolia* (*supra*) has observed that the Court exercising jurisdiction under Section 8 or under Section 11 of the Act is not to enter into the merits of the case between the parties. It is only to examine whether the dispute is *prima facie* arbitrable under a valid arbitration agreement and that this *prima facie* examination is intended to weed out manifestly and *ex facie* non-existent or invalid arbitration agreements or non-arbitrable disputes, thereby cutting the deadwood and trimming off the side branches, in cases where the litigation cannot be permitted to proceed. The proceedings under Section 8 of the Act are preliminary and summary in nature and should not result in a mini-trial and that unless there is a clear case of non-existence of a valid arbitration



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agreement, or of the dispute being *ex facie* non-arbitrable the court should leave these aspects to be decided by a competently constituted arbitral tribunal. The Supreme Court in ***Vidya Drolia*** (*supra*) has also held that relegation to arbitration should be regarded as a rule, and resolution by the civil court, where a valid arbitration agreement exists and is sought to be invoked by one of the parties, as an exception. In the supplementing opinion in ***Vidya Drolia*** (*supra*), it is observed as under:

“244.1. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2. Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3. The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.

244.5. The scope of the court to examine the prima facie validity of an arbitration agreement includes only:

244.5.1. Whether the arbitration agreement was in writing? or

244.5.2. Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc.?

244.5.3. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

244.5.4. On rare occasions, whether the subject-matter of dispute is arbitrable?”

17. The Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re***, (2024) 6 SCC 1 observed that:



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“166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.”

18. For examining the nature of the dispute in the present Suit, the relevant paragraphs of the Plaint are reproduced as under:

“1. This is a case of calculated betrayal. Two trusted directors of TERiX Computer Service India Pvt. Ltd. (Plaintiff), Deepak Chandra Joshi (Defendant No. 2) and Jyoti Joshi (Defendant No. 3), along with a group of handpicked conspirators (Defendant No. 4 to 10), including the Plaintiffs own employees, hijacked the renewal of over a hundred service contracts valued at more than t3.7 crores to a shadow company-TPM Guru Pvt. Ltd. (Defendant No. 1)-which they secretly controlled. Under the guise of rebranding and collaboration, they systematically gutted the Plaintiff from within. They instructed Plaintiffs own people to service the hijacked contracts, including its call center, and used Plaintiff's own parts and suppliers. They copied and stole Plaintiff's proprietary Contract Management and Service Management software and used as their own. They deleted incriminating records, falsified communications and once exposed and terminated, stormed Plaintiffs office and seized control of its electronic infrastructure. They then froze Plaintiff's bank accounts, fired employees and claimed they were the rightful managers of Plaintiff. It is one of the most brazen corporate hijackings imaginable. The story that follows is not just of theft-it is a story of greed, deception, coercion, and abuse of trust at the highest levels.

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8. It is pertinent to state that the third director of the Plaintiff Company, Ms. Christine Florence Appleby, is based in the United States and, being a permanent resident there, served only in a non-executive capacity. She was neither involved in nor responsible for



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the day-to-day affairs of the Plaintiff Company. Taking advantage of her limited involvement, Defendant Nos. 2 and 3 assumed complete control over the functioning of the Plaintiff Company and kept Ms. Appleby entirely uninformed regarding its operations and affairs.

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18. That it is pertinent to mention that, due to certain legal complications involving the Plaintiff's parent company in the United States in 2017, a major corporation, HP, was hesitant to engage directly with the Plaintiff. This reluctance arose primarily from the fact that one of the directors of the parent company had been sentenced to a 24-month term following an adverse ruling in a copyright dispute.

19. In light of this situation, Defendant No. 2, along with one Mr. Bernd Appleby, the majority shareholder, proposed the incorporation of a separate entity—essentially an alter ego corporation—for the limited purpose of approaching HP and perhaps other companies that were unwilling to deal directly with the Plaintiff but still wanted to take advantage of the Plaintiff's pan India multi-vendor service capabilities. Trusting the representations made, the majority shareholders of the Plaintiff agreed to this proposal. Consequently, Defendant No. 1 Company was incorporated on 28th January 2020, with Defendant No. 2 and Defendant No. 3 as its directors. Unbeknownst to the shareholders of the Plaintiff Company, this played straight into the conspiracy already hatched by Defendant No. 2 and 3 and possibly other defendants as well. Defendants Nos. 2 and 3, taking undue advantage of the situation, began diverting not just restricted accounts but all other clients and business opportunities of the Plaintiff to Defendant No. 1 without any authority or consent. These actions were carried out unlawfully and in breach of their fiduciary duties. Subsequently, when the Plaintiff began to observe a sharp and unexplained decline in contract renewal business, the majority shareholder, Mr. Bernd Appleby, specifically enquired from Defendant No. 2 whether renewals or new business were being routed through Defendant No. 1. Defendant No. 2 denied any such activity and concealed the fact that the entirety of the renewal business had, in fact, been illegally diverted to Defendant No. 1—a company in which neither the Plaintiff nor shareholders Mr. Bernd Appleby and Jim Olding had any stake or means of oversight.”



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19. The relevant clauses of the Collaboration Agreement are reproduced as under:

"This collaboration agreement is entered into at Noida on this 28th Day of January, 2020 ("Effective Date") by and amongst: -

- 1. TERIX COMPUTER SERVICE INDIA PRIVATE LIMITED (CIN U74999DL2010PTC201092), having its business office at A-22, First Floor, Sector 3, Noida, Uttar Pradesh - 201301 (hereinafter referred to as the "TCSIPL which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its administrators, successors and permitted assigns); AND*
- 2. TPM GURU PRIVATE LIMITED (CIN U74999D2020PT360941, having its registered office at D 112, Panchsheel Enclave, New Delhi - 110017 (hereinafter referred to as the "GPL", which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its administrators, successors and permitted assigns).*

TCSIPL and TGPL shall, hereinafter, be referred to collectively as "Parties" and individually as a "Party"

WHEREAS:

A. TCSIPL and TGPL are engaged in similar business activities.

B. Certain existing clients and customers of TCSIPL have expressed reservations in continuing/ renewing/ extending association with TSIPL on account of certain litigations and other controversies involving paren: and other group entities of TCSIPL. In order to assist its clients and to maintain good relationship with its clients, TCSIPL approached TPL and requested TPL to onboard some of its clients to ensure continuity of service to its clients.

C. The Parties acknowledge and understand that certain existing and potential clients and customers of each of the Party might be better served by the other Party.

D. Based upon the intent and desire expressed by the promoters of each of the Parties, the Parties agree to collaborate and assist each other in business development, customer acquisition and also synergise the use of infrastructure and resources of the Parties for mutual benefit, subject to and in accordance with the provisions of this Agreement.

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2. PURPOSE AND MANNER OF COLLABORATION

2.1 TGPL agrees and undertakes to onboard and handhold all the clients/ customers referred to otherwise suggested by TCSIPL and provide them with quality services as agreed between TPL and such customer.

2.2 TSIPL agrees and undertakes to onboard and handhold all the clients/ customers referred to otherwise suggested by TGPL and provide them with quality services as agreed between TSIPL and such customer.

2.3 In order to facilitate smooth communication with the existing and potential clients and customers, each Party shall provide select employees and other resources of the other Party with temporary email id and access to and on its email domain. It is hereby clarified that access and use of other Party's email and domain by employee/representative of a Party shall not make person employee of such other Party.

2.4 Each Party agrees to allow other Party to use its resources and services capabilities, including data center resolution center, call center etc., in a limited manner to provide services to clients and customers.

2.5 Each Party shall have the right to access and use the other Parties name, trade-name, logo etc., for the purposes of this Agreement.

2.6 The Parties shall be free to publicize the arrangement between the Parties pursuant to this Agreement so as to fulfill object of this Agreement.

2.7 The Parties agree that the arrangement detailed in this Agreement is for mutual benefit of each Party and that no Party shall be required to compensate the other Party for (i) any access and use of resources and infrastructure of the other Party; or (ii) any benefit that may accrue or arise to it pursuant to this Agreement.

2.8 Each Party shall continue to own rights over and in relation to all Intellectual Property owned by such Party a on the Effective Date and all Intellectual Property and rights therein originated, conceived, written, made or discovered by such Party pursuant to this Agreement.

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5. TERM AND TERMINATION

5.1 *The Parties may terminate this Agreement at any time during the term of this Agreement by mutual agreement in writing.*

5.2 *Each Party shall have right to terminate this Agreement at any time by providing a prior written notice of 30 (thirty) days to the other Party.*

5.3 *The termination of this Agreement or the purported termination of this Agreement shall be without prejudice to any claim or rights of action previously accrued to any Party hereto against the other Party.*

5.4 *Termination of this Agreement for whatsoever reasons will be without prejudice to the right of either Party against each other than accruing or accrued in respect of the event giving rise to such termination or otherwise under this Agreement.*

5.5 *The provisions of Clause 4 (Confidentiality), Clause 5 (Term and Termination), Clause 6 (Notices) and Clause 7 (Dispute Resolution) shall survive the termination of this Agreement pursuant to this Clause.”*

20. From a bare perusal of the extracts of the Complaint and Collaboration Agreement as reproduced above, *prima facie* the dispute raised in the present Suit is rooted in, and revolves around, the commercial understanding governing the relationship between the Parties. The incorporation of Defendant No. 1, the manner in which clients were to be serviced, the sharing and use of manpower, infrastructure, systems and software, as well as the scope and limits of such access, were all contemplated within the framework of the Collaboration Agreement. Whereas the Exit Agreement addressed the cessation of this relationship and the consequences flowing therefrom. Although the Plaintiff has framed the Suit as one alleging copyright infringement and diversion of business, the substance of the grievance is that the Defendants acted beyond, or contrary to the permissions and arrangements flowing from the contractual understanding



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between the Parties. The dispute in the present Suit, therefore, is not independent of the contractual framework, but arises in connection with the rights and obligations created thereunder, matters which the Parties have agreed to resolve through arbitration.

21. The learned counsel for the Plaintiff contented that the dispute in the present Suit, being founded on alleged infringement of copyright and misappropriation of the software namely 'Ticketmaster', 'Apollo' and 'Parser' partakes the character of a determination of intellectual property rights operating *in rem* and is therefore not amenable to resolution by arbitration. Reliance has been placed, in this context, on the decisions of the Supreme Court in **Booz Allen** (*supra*), to submit that disputes involving intellectual property rights stand excluded from the arbitral domain by their very nature.

22. The decision in **Booz Allen** (*supra*) stands comprehensively analysed in **Vidya Drolia** (*supra*), which clarifies that disputes excluded from arbitration are those relating to the grant, registration or existence of intellectual property rights, which involve exercise of sovereign functions and have *erga omnes* effect. In the present case, the Plaintiff is not seeking a declaration of copyright ownership and the relief claimed in the Plaint is directed against the Defendants, as is evident from the Prayers in the Suit, which are reproduced as under:

- “a) *a decree of perpetual injunction restraining the Defendants, its/ their promoters, shareholder, heirs, assigns, representatives, directors, employees, associates, servants, agents, and all others acting on their behalf, from directly or indirectly copying, reproducing, storing, installing and or using the pirated/unlicensed Software programs of Plaintiff in any manner that may amount to infringement of the Plaintiff's*



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copyright subsisting in its Software programs and Software related documentation;

- b) an order of delivery-up the Plaintiff, of all the unlicensed copies of the Plaintiff's Software and/or articles/software, the duplicating equipment used in the copying of the Plaintiff's Software including computers, laptops, stampers, hard disks, diskettes, packaging and advertising material, lables, stationery articles and all other infringing material under Section 58 of the Copyright Act, 1957;*
- c) an order for rendition of accounts of profits illegally earned by the Defendants by reason of infringement of the Plaintiff's copyrights, including conversion damages which are presently indeterminate and towards salaries, bonuses, leave encashments etc. received from the Plaintiff while working for Defendant No. 1 and pass a decree bepassed against the Defendants in the sum of the amount so ascertained;*
- d) an order for damages of Rs. Rs 12,29,80,880/- (Rupees Twelve Crore Twenty Nine Lakh Eighty Thousand eight Hundred Eighty Only) to be paid by the Defendants in total on account of infringement of the Plaintiff's copyright and also loss of sales and reputation."*

23. The objection raised by the Plaintiff on the ground of arbitrability of the dispute in the Suit is plainly arguable and necessitate a detailed evaluation of the Collaboration Agreement, the covenants therein, their operation, and the Parties' rights and obligations, an exercise which would be impermissible within the limited scope of *prima facie* scrutiny under Section 8 of the Act.

24. It is settled law that an arbitral tribunal has jurisdiction to determine and decide all questions of non-arbitrability and unless the dispute is manifestly and / or *ex facie* non-arbitrable, the rule is to refer the dispute to arbitration. On perusal of the Plaint and the Collaboration Agreement, the dispute, as has emerged in the present case, cannot be said to be *ex facie* non-arbitrable. In such circumstances, and consistent with the settled



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principle that relegation to arbitration is the rule and retention of the *lis* by the civil court an exception, the Parties ought to be referred to arbitration, leaving all questions on merits expressly open to be decided by the arbitral tribunal in accordance with law.

25. As regards the reliance placed on **Ameet Lalchand Shah** (*supra*), to submit that Collaboration Agreement and Exit Agreement are separate in time, subject-matter, and parties and that there being no common arbitration agreement encompassing all the Defendants, Section 8 of the Act cannot be invoked in a mixed-party, mixed-cause of action cannot be accepted. The disputes raised in the present case arise from the rights and obligations created under the Collaboration Agreement. The Exit Agreement merely records the termination of the relationship between the parties and cannot form the basis of the present reference.

26. The objection that a non-signatory cannot be bound by the arbitration agreement also does not merit acceptance. The Supreme Court in **Cox & Kings Ltd. v. SAP India (P) Ltd.**, (2024) 4 SCC 1 observed that:

“96. An arbitration agreement encapsulates the commercial understanding of business entities as regards to the mode and manner of settlement of disputes that may arise between them in respect of their legal relationship. In most situations, the language of the contract is only suggestive of the intention of the signatories to such contract and not the non-signatories. However, there may arise situations where a person or entity may not sign an arbitration agreement, yet give the appearance of being a veritable party to such arbitration agreement due to their legal relationship with the signatory parties and involvement in the performance of the underlying contract. Especially in cases involving complex transactions involving multiple parties and contracts, a non-signatory may be substantially involved in the negotiation or performance of the contractual obligations without formally consenting to be bound by the ensuing burdens, including arbitration.”

xxx xxx xxx



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123. *The participation of the non-signatory in the performance of the underlying contract is the most important factor to be considered by the Courts and tribunals. The conduct of the nonsignatory parties is an indicator of the intention of the nonsignatory to be bound by the arbitration agreement. The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The UNIDROIT Principle of International Commercial Contract, 2016 [UNIDROIT Principles of International Commercial Contracts, 2016, Article 4.3.] provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances: (a) preliminary negotiations between the parties; (b) practices which the parties have established between themselves; (c) the conduct of the parties subsequent to the conclusion of the contract; (d) the nature and purpose of the contract; (e) the meaning commonly given to terms and expressions in the trade concerned; and (f) usages.*

xxx xxx xxx

127.....*[T]he Courts or tribunals should closely evaluate the overall conduct and involvement of the non-signatory party in the performance of the contract. The nature or standard of involvement of the non-signatory in the performance of the contract should be such that the non-signatory has actively assumed obligations or performance upon itself under the contract. In other words, the test is to determine whether the non-signatory has a positive, direct, and substantial involvement in the negotiation, performance, or termination of the contract. Mere incidental involvement in the negotiation or performance of the contract is not sufficient to infer the consent of the nonsignatory to be bound by the underlying contract or its arbitration agreement. The burden is on the party seeking joinder of the non-signatory to the arbitration agreement to prove a conscious and deliberate conduct of involvement of the nonsignatory based on objective evidence.*

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132. *We are of the opinion that there is a need to seek a balance between the consensual nature of arbitration and the modern commercial reality where a non-signatory becomes implicated in a commercial transaction in a number of different ways. Such a balance can be adequately achieved if the factors laid down under Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] are applied holistically. For*



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instance, the involvement of the non-signatory in the performance of the underlying contract in a manner that suggests that it intended to be bound by the contract containing the arbitration agreement is an important aspect. Other factors such as the composite nature of transaction and commonality of subject-matter would suggest that the claims against the nonsignatory were strongly interlinked with the subject-matter of the tribunal's jurisdiction. Looking at the factors holistically, it could be inferred that the non-signatories, by virtue of their relationship with the signatory parties and active involvement in the performance of commercial obligations which are intricately linked to the subject-matter, are not actually strangers to the dispute between the signatory parties.

xxx xxx xxx

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

H. Conclusions

170. In view of the discussion above, we arrive at the following conclusions:



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170.1. The definition of “parties” under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;

170.3. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;”

[Emphasis supplied]

27. The determination of whether non-signatory parties can be referred to arbitration is thus not to be based on an inquiry confined to signatures alone, but on the nature of the relationship between the parties, the composite nature of transaction and commonality of subject-matter and in view of the complexity of such a determination, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. Therefore, at this stage, the mere fact that some of the Defendants are not signatory party to the Collaboration Agreement cannot, by itself, be a ground to refuse reference to arbitration.

28. In the case of ***Sukanya Holdings*** (*supra*), the Supreme Court held that where a suit is commenced ‘*as to a matter*’ which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of section 8 of the Act. The words ‘*a matter*’ indicate that the entire subject matter of the suit should be subject to arbitration agreement and that there is no provision for splitting the causes or parties and referring the subject matter of the suit to arbitration. The question posed by the facts of the present case, however, is required to be examined keeping in view the object of Section 8 of the Act.



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The language of section 8 of the Act is peremptory in nature and obliges the Court to refer the parties to arbitration once it is found that the dispute is covered by an arbitration agreement. In the present case, the submission on behalf of the Plaintiff that reference to arbitration would result in bifurcation of the cause of action on the ground that not all Parties to the Suit are parties to either the Collaboration Agreement and / or the Exit Agreement, cannot be accepted as a matter of course. Acceptance of such a submission would permit a party to avoid arbitration merely by combining claims or causes of action which may not, by themselves, be subject to arbitration. This would effectively allow the arbitration agreement to be rendered meaningless. Such an approach would dilute the mandate of Section 8 of the Act and run contrary to the object of the Act, which is to ensure that where parties have agreed to arbitrate, the Court adopts a limited role and gives effect to that arbitration agreement.

29. To reiterate, the standard of scrutiny while exercising power under Section 8 of the Act is confined to a *prima facie* examination of the validity and existence of an arbitration agreement. The expression ‘*validity*’ has been comprehensively dealt with in ***Re: Interplay (supra)*** and ***Cox and Kings (supra)***, wherein the Supreme Court held that the term ‘*validity*’ should be read in the light of Section 7 of the Act and should be restricted to the requirement of formal validity, that *prima facie* examination ‘*should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing*’, and that the issues relating to substantive validity fall under the purview of arbitral tribunal under Section 16 of the Act, which is also in accordance with the doctrine of *Kompetenz-Kompetenz*. In the present case, the existence of formal validity is satisfied as the



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Collaboration Agreement is in writing, and the threshold of formal validity is made out. Needless to say, any issue of substantive validity including the objection on the ground that the Collaboration Agreement was executed by Defendant No. 2, then a director of the Plaintiff, without any Board Resolution, or any other document; authorising him to enter into the Collaboration Agreement remains open and shall be decided by the arbitral tribunal in accordance with law.

30. As regards the submission that, in Paragraph No. 3 of the reply to I.A. No. 18561 of 2025 (“**Reply**”), the Defendants have denied the Plaintiff’s copyright in the concerned software and, in Paragraph No. 8, have asserted copyright ownership in themselves, such averments, when the Reply is read as a whole, do not disclose any intention on the part of the contesting Defendants to abandon the arbitration agreement or to submit to the jurisdiction of this Court for adjudication of the dispute. The Reply relying on the Collaboration Agreement maintains that the dispute between the Parties is required to be resolved through arbitration. The objection raised on this ground is, therefore, does not warrant refusal of reference to arbitration.

31. The learned Counsel for the Plaintiff has also objected to the present Application on the ground that Section 8 of the Act is not complied with by the Defendants, since the Defendants failed to produce the original copy of the Collaboration Agreement and / or the Exit Agreement, thereby violating the express requirement of Section 8(2) of the Act. However, the certified copies of both the Exit Agreement and the Collaboration Agreement are on record. Accordingly, the requirement of Section 8(2) of the Act is satisfied.

32. As a result, the present Application for referring the disputes arising in the Suit to arbitration is allowed and the Parties are referred to arbitration in



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terms of the Arbitration Agreement contained in the Collaboration Agreement under Section 8 of the Arbitration and Conciliation Act, 1996.

33. Accordingly, the present Application stands disposed of.

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34. In view of the above Judgment, the Suit and I.A. No. 18561 of 2025 stand disposed of.

TEJAS KARIA, J

FEBRUARY 28, 2026

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