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Supreme Court of India widens scope of Section 11 of Arbitration Act; holds inquiry into 'existence' of arbitration agreement includes *prima facie* assessment of whether non-signatory is a 'veritable' party

In the recent decision of *Hindustan Petroleum Corporation Limited vs. BCL Secure Premises Private Limited*¹, the Supreme Court of India (“**Supreme Court**”) revisited the contours of the referral court’s jurisdiction under Section 11² of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) in cases where arbitration is sought to be invoked by a non-signatory. The Supreme Court clarified that not only should the referral court be *prima facie* satisfied that an arbitration agreement exists, but the referral court ought to also be *prima facie* satisfied as to “*whether the non-signatory is in the real sense a party to the arbitration agreement*”.

Though earlier decisions of the Supreme Court had held that the referral court should leave it to the arbitral tribunal to decide whether the non-signatory is indeed a party to the arbitration agreement, the Supreme Court in this judgment held that the referral court is not a “*monotonous automation*” and it may not leave the matter for the arbitral tribunal when it *prima facie* finds that the non-signatory is not a veritable party. The Supreme Court also clarified that the examination by the referral court does not contemplate a laborious or contested inquiry, and even after the referral court *prima facie* holds that a non-signatory is a veritable party, the arbitral tribunal would not be denuded of its jurisdiction to decide whether the non-signatory is indeed a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine.

Brief facts

The judgment has been passed in an Appeal filed by Hindustan Petroleum Corporation Limited (“**Appel**”) against BCL Secure Premises Private Limited (“**Respondent**”) challenging a judgment passed by the High Court of Judicature at Bombay (“**Bombay HC**”) allowing an application filed by the Respondent under Section 11(4) of the Arbitration Act (“**Section 11 Application**”) and appointing an arbitrator to adjudicate upon the disputes between the parties (“**Impugned Judgment**”).

Briefly stated, the Appellant floated a tender for design, supply, installation, integration, testing, commissioning and post commissioning warranty support for a Tank Truck Locking System (“**TTLS**”). The tender conditions included an arbitration clause for disputes between the contracting parties. The Appellant issued a purchase order to the

¹ (2026) 3 SCC 711 (decided on December 9, 2025)

² Section 11 of the Arbitration Act provides the procedure for appointment of arbitrators, allowing parties to agree on a method for appointment of arbitrator, failing which, the parties may approach the High Court or Supreme Court, as the case may be, for seeking appointment of the arbitrator(s).

successful tenderer, AGC Networks Limited (“AGC”). AGC engaged the Respondent as a sub-contractor, however, there was no direct contract between the Appellant and Respondent.

In 2018, the Respondent informed the Appellant that it was AGC’s sub vendor entitled to 94% of the payment. The Appellant disputed any liability towards the Respondent and stated that no contract existed between them. Beginning 2018, the Appellant initiated several disputes against AGC, including a civil suit, an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, and multiple arbitral proceedings under the aegis of the MSME Facilitation Council. These disputes culminated into the execution of a settlement cum assignment agreement dated October 31, 2023 between the Respondent and AGC, under which AGC’s receivables from the Appellant were assigned to the Respondent.

On August 28, 2024, the Respondent issued a notice invoking arbitration under Section 21 of the Arbitration Act to the Appellant, claiming that it had stepped into AGC’s shoes. However, the Appellant denied existence of any arbitration agreement with the Respondent. The Respondent, thereafter, filed the Section 11 Application before Bombay HC, which was allowed by the Impugned Judgment dated April 7, 2025. The Bombay HC held that “*an arbitration agreement is in existence*”, and referred the parties to arbitration, while clarifying that the arbitral tribunal should decide the Appellant’s objections in an application under Section 16³ of the Arbitration Act at the preliminary stage.

Issues

Whether Bombay HC erred in allowing the Section 11 Application in context of the following legal and factual issues:

1. whether referral court can assess whether non-signatory is a veritable party to the arbitration agreement;
2. whether referral court ought to refer the dispute to arbitration even if the non-signatory is not a veritable party to the arbitration agreement; and
3. whether, in the facts of the case, the Respondent could even *prima facie* establish that it was either (a) a veritable party to the arbitration agreement between the Appellant and AGC; or (b) a person claiming ‘through or under’ AGC so as to enforce the arbitration agreement against the Appellant?

Findings and analysis

Relying on its earlier decisions in *Cox and Kings Limited vs. Sap India (P) Limited*⁴, *SBI General Insurance Co. Limited vs. Krish Spg.*⁵ and *Ajay Madhusudan Patel vs. Jyotrindra S. Patel*⁶, the Supreme Court held that:

1. The referral court should be *prima facie* satisfied that there exists an arbitration agreement and as to whether the non-signatory is a veritable party to such agreement. According to the Supreme Court, “*what is primordial is that it should be demonstrated prima facie before the Referral Court that the non-signatory is a veritable party*”;
2. The exercise to be carried on in terms of Section 11 (6-A) of the Arbitration Act is “*examination of the existence of an arbitration agreement*”. While ‘examination’ does not contemplate a laborious or a contested inquiry, there is still an obligation on the referral court to “*inspect and scrutinize*” the dealings, if any, between the parties;
3. Even if the referral court *prima facie* arrives at the satisfaction that the non-signatory is a veritable party, the arbitral tribunal is not denuded of its jurisdiction to decide whether such non-signatory is indeed a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine; and
4. Mere presence of a commercial relation between the signatory and non-signatory is not sufficient to infer a legal relationship between the parties.

³ Section 16 of the Arbitration Act allows the arbitral tribunal to rule on its own jurisdiction, including objections to the existence or validity of the arbitration agreement.

⁴ (2024) 4 SCC 1

⁵ (2024) 12 SCC 1

⁶ (2025) 2 SCC 147

The Supreme Court also clarified that there is no conflict with its earlier decisions holding that the issue of whether a non-signatory is indeed a party to the arbitration agreement ought to be left to arbitral tribunal, as the referral court cannot be relegated to the status of a “*monotonous automation*”. It was clarified that if, on a *prima facie* review, the referral court finds that a party is not a genuine party to the arbitration agreement, it can refuse reference to arbitration. The Supreme Court emphasised that accepting a contrary view would allow even complete strangers to invoke arbitration proceedings, leading to serious and impractical consequences.

Applying the above principles to the facts of the case, the Supreme Court held that there was no arbitration agreement between the Appellant and the Respondent, and the Respondent was not a ‘veritable’ party, as there was no privity of contract between the Appellant and the Respondent, the Respondent had failed to show that the Appellant had consented to AGC’s assignment of receivables in the Respondent’s favour (which was a mandatory requirement under the tender documents), and the parties’ dealings do not show an intent to bind the Appellant to arbitrate with the Respondent.

In light of the above, the Supreme Court set aside the Impugned Judgment passed by the Bombay HC and held that the dispute cannot be referred to arbitration. However, the Supreme Court granted the Respondent with liberty to pursue any other remedy available in law.

Conclusion

The judgment establishes that where a Section 11 application involves a non-signatory, the court’s examination is not a mere formality. By holding that inquiry into the ‘existence’ of an arbitration agreement includes a *prima facie* assessment of whether a non-signatory is a veritable party, the Supreme Court has reinforced that the referral stage is not intended to be a purely mechanical exercise. Instead, courts must undertake a limited but meaningful scrutiny to ensure that only parties with a legitimate legal nexus to the arbitration agreement can invoke it.

Recently, referral courts have been adopting a minimal intervention approach while deciding applications under Section 11 of the Arbitration Act. In *ASF Buildtech (supra)*, the Supreme Court held that “*even if it is assumed for a moment, that the question whether a non-signatory is a veritable party to the arbitration agreement is intrinsically connected with the issue of “existence” of arbitration agreement, the Referral Courts should still nevertheless, leave such questions for the determination of the Arbitral Tribunal to decide.*”

However, this judgment marks an important development, as it goes beyond a purely formal exercise and departs from the recent practice of routinely referring parties to arbitration while leaving all issues open for the arbitral tribunal to decide. Instead, it incorporates the ‘veritable party’ inquiry into the very concept of the ‘existence’ of an arbitration agreement at the stage of Section 11 itself. Therefore, it widens the role of referral courts, at least in cases involving non-signatories.

At the same time, the Supreme Court carefully preserves the arbitral tribunal’s primacy over substantive jurisdictional questions based on the principle of *kompetenz-kompetenz*. The Supreme Court drew a clear line between a threshold, document-based assessment by the referral court and a fuller, evidence-driven determination by the arbitral tribunal under Section 16 of the Arbitration Act. This balanced approach prevents the misuse of arbitration by unrelated third parties, while ensuring that genuine disputes, especially those involving complex factual and doctrinal questions, remain within the domain of the arbitral tribunal.

Overall, the decision brings much-needed coherence to Section 11 jurisprudence by aligning procedural efficiency with substantive fairness. It curbs the risk of opportunistic or speculative references, strengthens the gatekeeping role of courts, and at the same time respects the autonomy and competence of arbitral tribunals. Going forward, this nuanced framework is likely to guide the courts in dealing with non-signatory claims and contribute to a more disciplined and principled arbitration regime in India. However, it is important for referral courts to strike a balance, not undertake any extensive inquiry, and ensure that examination of whether a non-signatory is a ‘veritable’ party does not devolve into a dilatory tactic misused by errant parties.

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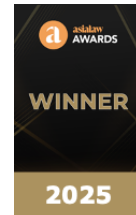
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