2026:DHC:5995

$~J-1

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

% *Judgment reserved on: 07.05.2026*
Judgment delivered on: 27.07.2026

\+ **CS(COMM) 295/2024**

CORRTECH ENERGY LTD .....Plaintiff
Through: Mr. Dayan Krishnan, Sr. Adv. with Ms. Anushree Kapadia, Mr. Sukrit Seth, Mr. Pranay Bhardwaj and Ms. Pragya Jaishwal, Advs.

versus

INDIAN OIL CORPORATION LTD & ANR. .....Defendants
Through: Mr. V.N. Koura, Ms. Paramjeet Benipal and Mr. Aditya Sharma, Advs. for D-1.
Mr. Vishal Gehrana, Ms. Megha Dugar and Mr. Tribhuvan N. Singh, Advs. for D-2.

\+ **CS(COMM) 1083/2024**

CORRTECH ENERGY LIMITED .....Plaintiff
Through: Mr. Dayan Krishnan, Sr. Adv. with Ms. Anushree Kapadia, Mr. Sukrit Seth, Mr. Pranay Bhardwaj and Ms. Pragya Jaishwal, Advs.

versus

INDIAN OIL CORPORATION LTD .....Defendant
Through: Mr. V.N. Koura, Ms. Paramjeet Benipal and Mr. Aditya Sharma, Advs. for D-1.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

I.A. 32759/2024 (under Section 8(1) of Arbitration and Conciliation Act, 1996) in CS(COMM) 295/2024
I.A. 8561/2025 (under Section 8(1) of Arbitration and Conciliation Act, 1996) in CS(COMM) 1083/2024

FACTS IN CS(COMM) 295/2024

1. The case set up by the plaintiff in CS(COMM) 295/2024 is that he was awarded the contract to carry out composite work for the *Catalytic Reforming Unit work at the Guwahati refinery* of the defendant no. 1 for a total contract value of Rs. 32,60,33,744/. Pursuant thereto, Contract No.: 213102-00123-C-004/AGT/2022-2023 (WO No.: 28127311 dated 06.09.2022) (hereinafter **'the contract'**) was signed between the plaintiff and the defendant no.1/Indian Oil Corporation Ltd. (hereinafter **'IOCL'**). Defendant no. 2 was retained as the Engineering, Procurement and Construction Management Consultant (hereinafter **'EPCM Consultant'**) and the personnel thereof were appointed as the engineer-in-charge of the said project.

2. It is stated that the prescribed period of 12 months for mechanical completion of the work concluded on 25.08.2023 and there has been no extension of time despite several requests by the plaintiff. Defendants have been illegally coercing the plaintiff to mobilize heavy resources for a very small portion of work by issuing permits to work with conditions prejudicial to the plaintiff.

3. It is stated that the defendant no. 2, *vide* letter dt. 07.03.2024, admitted that 100% of the work front had not been made available and the delay for the same was not attributable to the plaintiff. The plaintiff states that such failure on the part of the defendants to provide the complete work front, relevant drawings and a schedule of work within the contract period has led to the plaintiff being able to invoice only around 3% of the total contract value.

4. It is the case of the plaintiff that after 24.02.2024, the defendants have been pressuring it to again mobilize resources under the pretext of false and frivolous show cause notices, withholding of payments in other projects and threats of encashment of his initial security deposit bank guarantee.

5. Pursuant to the aforesaid, the plaintiff instituted CS(COMM) 295/2024 titled ***M/s Corrtech Energy Ltd. v. Indian Oil Corporation Limited & Anr.*** seeking the following reliefs:

> *"**(a)** Permanent injunction against the defendant/s, and/or their servants, agents, successors, employees, etc. restraining them from adjusting or making any claims of any nature whatsoever, raised by defendant/s against the Plaintiff, from the account of the Plaintiff in any project other than COMPOSITE WORKS FOR CATALYTIC REFORMING UNIT (CRU) AT GUWAHATI REFINERY, ASSAM, CONTRACT NO.: 213102-00123-C-004/AGT/2022-2023 (WO No. - 28127311 dated 06.09.2022);*
>
> ***(b)** Permanent injunction against the defendant/s and/or their servants, agents, successors, employees, etc. from undertaking any coercive and/or penal measures against the Plaintiff in respect of or in connection with the works awarded to the Plaintiff under the tender for COMPOSITE WORKS FOR CATALYTIC REFORMING UNIT (CRU) AT GUWAHATI REFINERY, ASSAM, CONTRACT NO.: 213102-00123-C-004/AGT/2022-2023 (WO No. – 28127311 dt. 06.09.2022);*

> ***(c)*** *Mandatory injunction directing the defendant/s and/or their servants, agents, successors, employees, etc. to deliver up the Bank Guarantee bearing no. 0810IGP22029940, dated 28 Nov 2022, issued by Kotak Mahindra Bank Ltd. in favor of the Defendant No. 1 so as to discharge the same;*
>
> ***(d)*** *Declaration that the show-cause notices issued by the defendant/s and/or their servants, agents, successors, employees, etc. to the Plaintiff in connection with COMPOSITE WORKS FOR CATALYTIC REFORMING UNIT (CRU) AT GUWAHATI REFINERY, ASSAM, CONTRACT NO.: 213102-00123-C-004/AGT/2022-2023 (WO No. - 28127311 dated 06.09.2022), are bad in law and null and void;*
>
> ***(e)*** *Declaration that any offloading or re-tendering of the works under the Tender COMPOSITE WORKS FOR CATALYTIC REFORMING UNIT (CRU) AT GUWAHATI REFINERY, ASSAM, CONTRACT NO.: 213102-00123-C-004/AGT/2022-2023 (WO No. - 28127311 dated 06.09.2022), by the defendant/s and/ or and their servants, agents, successors, employees, etc. shall not be at the risk and cost of the Plaintiff;*
>
> ***(f)*** *Recovery of a total sum of Rs. 9,56,71,682/- (Rupees Nine Crores Fifty-six Seventy-one Lakhs Six Hundred Eighty-Two only) along with applicable taxes, towards claims of the Plaintiff narrated in detail hereinabove, along with interest at the rate of 24% p.a. till date of payment"*

FACTS IN CS(COMM) 1083/2024

6. The plaintiff has also instituted CS(COMM) 1083/2024 titled ***M/s Corrtech Energy Ltd. v. Indian Oil Corporation Limited*** in respect of the project *"BR-9 RFCC Revamp Project at Barauni Refinery"* which arises out of substantially similar facts, *albeit* with the following distinguishing factors:

(i) The erstwhile defendant no.2, who was retained as the EPCM Consultant in the contract pertaining to Barauni

Refinery, was deleted from the array of defendants *vide* order dated 19.12.2024 passed in CS(COMM) 1083/2024, therefore, IOCL is the sole defendant in this suit.

(ii) Defendant introduced a sub-contractor and a condition of requirement of a "No-Objection Certificate" from the said sub-contractor before their Running Account Bills (hereinafter **'RA Bills'**) would be cleared by the defendant, was imposed.

(iii) Defendant re-tendered the project at the plaintiff's risk and cost while explicitly barring the plaintiff from participating in the re-tendering process.

7. CS(COMM) 1083/2024 has been instituted seeking the following reliefs:

> *"**(a)** A decree of permanent injunction restraining the Defendant(s), their agents, representatives, successors, or any other persons acting on their behalf, from adjusting, appropriating, or recovering any amount claimed by the Defendant(s) from the Plaintiff under any project of IOCL (from List at Document 38), where the Plaintiff is engaged as a "Contractor," against / out of any dues or payments payable by IOCL to the Plaintiff in any other project of IOCL, or in any other manner whatsoever, unless:*
>
> *a. Such adjustment or recovery is expressly agreed to in writing by the Plaintiff, or*
>
> *b. The claim or adjustment is adjudicated and determined in accordance with law by a Court of competent jurisdiction;*
>
> ***(b)** A decree for a Permanent Injunction restraining the Defendant(s), their agents, employees, representatives, or any other person(s) acting on their behalf from undertaking any coercive and/or penal measures against the Plaintiff in connection with or arising out of the works awarded to the Plaintiff under the tender for BR-9 RFCC REVAMP PROJECT*

AT BARAUNI REFINERY OF M/S IOCL, CONTRACT NO.: TP/08175757C001/T/BR-9/03/AGT/2022-2023 (WO No.-27663535 dated 17.03.2022);

(c) *A decree for a Mandatory Injunction directing the Defendant(s), their agents, employees, representatives, or any other person(s) acting on their behalf to discharge the Plaintiff from all obligations under and to deliver up the ISD Bank Guarantee bearing No. 0064NDDG00007223 dated 16.06.2022, as amended on 28.10.2024, valid up to 07.08.2025, issued by ICICI Bank Ltd. in favour of Defendant No. 1;*

(d) *A decree declaring that the show-cause notice dated 17.07.2024 issued by the Defendant(s) to the Plaintiff in connection with the BR-9 RFCC Revamp Project at Barauni Refinery of M/s IOCL, Contract No.: TP/08175757C001/T/BR-9/03/AGT/2022-2023 (WO No. 27663535 dated 17.03.2022), for holiday listing, and any subsequent or consequential actions arising therefrom, is bad in law, null, and void;*

(e) *A decree declaring that any offloading or re-tendering of the works under the Tender BR-9 RFCC Revamp Project at Barauni Refinery of M/s IOCL, Contract No.: TP/08175757C001/T/BR-9/03/AGT/2022-2023 (WO No. 27663535 dated 17.03.2022), by the Defendant(s), their agents, or representatives, shall not be at the risk and cost of the Plaintiff;*

(f) *A decree for a Mandatory Injunction directing the Defendant(s), their agents, employees, representatives, or any other person(s) acting on their behalf to extend the tenure of projects other than the BR-9 RFCC Revamp Project at Barauni Refinery of M/s IOCL, Contract No.: TP/08175757C001/T/BR-9/03/AGT/2022-2023 (WO No. 27663535 dated 17.03.2022), where the tenure has expired on any date after the debit declared by IOCL on 24.10.2024;*

(g) *Pass a decree in favor of the Plaintiff and against the Defendant(s) for the recovery of a total sum of ₹ 17,87,96,569.14 (Rupees Seventeen Crores Eighty-seven Lakhs Ninety-six Thousand Five Hundred Sixty-nine and paise*

Fourteen) along with applicable taxes, as detailed in the statement of claims submitted herein, pertaining to various claims arising on account of works carried out by the Plaintiff towards BR-9 RFCC Revamp Project at Barauni Refinery of M/s IOCL, Contract No.: TP/08175757C001/T/BR-9/03/AGT/2022-2023 (WO No. 27663535 dated 17.03.2022);

***(h)** Pass a decree awarding interest on the amounts due as per Document 38 from the date of accrual till the date of payment at the rate of 24% p.a."*

APPLICATIONS UNDER SECTION 8(1) OF THE ARBITRATION AND CONCILIATION ACT, 1996

8. The IOCL filed the captioned applications under Section 8(1) of the Arbitration and Conciliation Act, 1996 (hereinafter **'Act'**) in both the suits for referring the matter to arbitration in view of the arbitration agreement incorporated in clauses 9.0.1.0 and 9.0.1.1 of the General Conditions of Contract (hereinafter **'GCC'**).

9. Insofar as I.A. 32759/2024 in CS(COMM) 295/2024 is concerned, the defendant no.1/IOCL has prayed for referring the disputes raised in prayer (a) to (e) of the suit to the arbitration, while leaving out the disputes arising out of prayer (f). The prayer in I.A. 8561/2025 in CS(COMM) 1083/2024 shows that the defendant is essentially seeking reference of the disputes arising out of and in respect of all the prayers to the arbitration.

I.A. 32759/2024 IN CS(COMM) 295/2024

10. Since the submissions by both sides were advanced in I.A. 32759/2024 in CS(COMM) 295/2024 and adopted for the I.A. 8561/2025 in CS(COMM) 1083/2024, therefore, the former application is first taken up for consideration.

11. It is stated in the application that the plaintiff, anticipating that the defendant no.1/IOCL will exercise its contractual remedies for the recovery of amounts claimed by it, has filed the suit incorporating prayers (a) to (e) to prevent the defendant no.1 from recovering from the plaintiff any amount under the contract.

12. It is further stated that since the amount to be claimed by the defendant no.1 from the plaintiff under or in respect of the contract is the subject matter of the arbitration agreement, the suit cannot proceed against the defendant no.1 insofar as prayers (a) to (e) thereof are concerned, which entirely arises out of the claims of the defendant no.1.

13. The plaintiff has resisted the aforesaid application by filing a reply. It is stated in the reply that the defendant no.1 has admittedly filed the application only in respect of the reliefs (a) to (e) in the suit and not in respect of prayer (f). It has been further elaborated that once the suit is filed for the reliefs all of which are not arbitrable under the arbitration agreement, the application is not maintainable.

14. It is further stated that defendant no.2 who is non-signatory to the arbitration agreement has not pressed for referring the suit to the arbitration. In that view of the matter also, the application is liable to be dismissed.

15. Mr. V.N. Koura, learned counsel for the applicant submits that the contract undisputedly contains an arbitration clause in Clauses 9.0.1.0 and 9.0.1.1 of the GCC.

16. He submits that at the stage of Section 8, this Court only has to satisfy itself as to *prima facie* existence of a valid arbitration agreement in relation to the contract in question and nothing else. In case the Court comes to a

positive finding with respect to the existence of a valid arbitration agreement then the Court is bound to refer the disputes to arbitration under Section 8 of the Act, leaving it to the arbitrator to decide every other issue including that of non-arbitrability.

17. In support of his above contention, he places reliance on the decisions of the Hon'ble Supreme Court in - **(i)** ***Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751***, **(ii)** ***Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1*** and **(iii)** ***In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, (2024) 6 SCC 1***.

18. Mr. Koura also relies on the decisions of this Court in ***Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd., 279 (2021) DLT 99*** and ***Knowledge Podium Systems Pvt. Ltd. v. S.M. Professional Services Pvt. Ltd., 278 (2021) DLT 348*** to contend that the role of the court at this stage of an application under Section 8 is highly restricted and the referral court is not the appropriate forum to conduct a mini-trial as to the validity of the arbitration agreement and such determination ought to be left to the Arbitral Tribunal.

19. *Per contra,* Mr. Dayan Krishnan, learned Senior Counsel for the plaintiff submits that all the claims in prayer (a) to (f) are the claims of the plaintiff and the same are not notified claims, therefore, the same are non-arbitrable. He contends that in ***Indian Oil Corporation Limited v. NCC Limited, (2023) 2 SCC 539***, in which same clauses were interpreted, it was held that the claims which are not notified claims cannot be referred to arbitration.

20. He further contends that in the event present application is allowed, the defendant no.1 will raise the issue of non-arbitrability based on the aforesaid judgment and will get the claims dismissed, which in turn, will render the plaintiff remediless.

21. He further submits that the disputes in prayer (a) to (e) do not arise from any claim of the defendant no. l and such prayers have been sought on account of illegal threats of coercive measures by both the defendants, whereas prayer (f) pertains to the plaintiff's claim for recovery of monies.

22. He further submits that the present application under Section 8(1) has been filed seeking to have the disputes arising out of prayers (a) to (e) referred to arbitration, leaving out the plaintiff's claim in prayer (f). Placing reliance on the decision of the Hon'ble Supreme Court in ***Sukanya Holdings Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531***, he contends that bifurcation of cause of action or the subject matter of dispute of the suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the court, is not permissible.

23. He further submits that ***Sukanya Holdings*** (supra) is still good law and continues to have binding effect over disputes including the present one. He contends that ***Sukanya Holdings*** (supra) has also been referred in latest decisions of the Hon'ble Supreme Court in ***Ameet Lal Chand Shah & Ors. v. Rishabh Enterprises, (2018) 15 SCC 678*** and ***Gujarat Composite Limited v. A Infrastructure Limited and Ors., (2023) 7 SCC 193,*** *as well as* the decision of Division Bench of this Court in ***Canara Bank v. Sanjeev Sharma, 2025 SCC Online Del 4959***.

24. Mr. Krishnan further submits that the present application deserves to be rejected also on the ground that the suit seeks relief against both the defendants including defendant no.2, who has issued show cause notices proposing to take action against the plaintiff, whereas the defendant no. 2 is not a signatory to the arbitration agreement, therefore, the disputes cannot be referred to arbitration insofar as defendant no.2 is concerned.

25. He invites attention of the Court to order dated 15.05.2025 in CS (COMM) 1083/2024 to contend that a submission was made by the plaintiff in the said suit that the relief/claims sought in the suit were not notified to the General Manager of Indian Oil Corporation Limited, accordingly, an apprehension was expressed that the defendant will non-suit the plaintiff in the arbitral proceedings relying upon the clauses of GCC which makes the unnotified claims of the contractor as non-arbitrable, leaving the plaintiff as remediless. In light of the said submission, the Court had directed the IOCL to get written instructions in that behalf, but no such instructions were submitted.

26. Mr. Vishal Gehrana, learned counsel for the defendant no. 2 submits that the defendant no.2 is a non-signatory to the arbitration agreement and is a stranger to the contract between the plaintiff and defendant no. 1, therefore, no reference to arbitration can be made insofar as defendant no.2 is concerned.

27. He submits that defendant no. 2 is neither necessary nor a proper party to the suit on account of non-disclosure of any cause of action against it. Further, the defendant no. 2 was deleted from the array of defendants in CS(COMM) 1083/2024 *vide* this Court's Order dated 19.12.2024.

28. In rejoinder, Mr. Koura submits that the dictum in ***Sukanya Holdings*** (supra) has been overruled by the statutory amendment to Section 8 of the Act brought about by the Arbitration and Conciliation (Amendment) Act, 2015 i.e. Act 3 of 2016 (hereinafter, **'amendment of 2015'**), which restricts the referral court's role only to examine the *prima facie* existence of a valid arbitration agreement. He places reliance on ***Vidya Drolia*** (supra).

29. As far as bifurcation of the claims is concerned, Mr. Koura argues that in **(i)** ***Taru Meghani and Ors. v. Shree Tirupati Greenfield and Ors., 2020 SCC OnLine Bom 110;*** **(ii)** ***Lindsay International Private Limited and Ors. v. Laxmi Niwas Mittal, MANU/WB/0487/2022***, and **(iii)** ***Marine Infrastructure (Goa) Pvt. Ltd. v. Chowgule Lavgan Shiprepair Pvt. Ltd. and Ors., MANU/MH/2001/2023,*** the High Courts of Bombay and Calcutta have split the subject matter of the suits to give effect to the arbitration agreement with respect to matters which are *prima facie* capable of being covered by the arbitration agreement, therefore, bifurcation of arbitrable and non-arbitrable subject matter is legally permissible and this Court has the power to do so.

30. I have given anxious considerations to the rival submissions and have perused the relevant record.

31. For examining the question raised in the present application with regard to the reference to arbitration under Section 8 of the Act, appropriate it would be to take note of the relevant clauses of the GCC with regard to the notified claims as well as the clauses providing for arbitration, which read thus:

"***1.21.0.0***

"Notified Claim" shall mean a claim of the CONTRACTOR notified in accordance with the provisions of Clause 6.6.1.0 hereof.

xxxxx xxxxx xxxxx

6.6.1.0

Should the CONTRACTOR consider that he is entitled to any extra payment or compensation in respect of the works over and above the amounts due in terms of the Contract as specified in Clause 6.3.1.0 hereof or should the CONTRCTOR dispute the validity of any deductions made or threatened by the OWNER from any Running Account Bills, the CONTRACTOR shall forthwith give notice in writing of his claim in this behalf to the Engineer-in-Charge and the Site Engineer within 10 (ten) days from the date of issue of orders or instructions relative to any works for which the CONTRACTOR claims such additional payment or compensation or of the happening of other event upon which the CONTRACTOR bases such claim, *and such notice shall give full particulars of the nature of such claim, grounds on which it is based, and the amount claimed.* ***The OWNER shall not anywise be liable in respect of any claim by the CONTRACTOR unless notice of such claim shall have been given by the CONTRACTOR to the Engineer-in-charge and the Site-Engineer in the manner and within the time aforesaid and the CONTRACTOR shall be deemed to have waived any and all claims and all his rights in respect of any claim not notified to the Engineer-in-Charge and the Site Engineer in writing in the manner and within the time aforesaid.***

xxxxx xxxxx xxxxx

6.6.3.0

Any claims of the CONTRACTOR notified in accordance with the provision of Clause 6.6.1.0 hereof as shall remain at the time of preparation of Final Bill by the contractor shall be separately included in the Final Bill prepared by the CONTACTOR in the form of a Statement of Claims attached

thereto, giving particulars of the nature of the claim, grounds on which it is based, and the amount claimed and shall be supported by copy (ies) of the notice (s) sent in respect thereof by the CONTRACTOR to the Engineer-in-Charge and Site Engineer under Clause 6.6.1.0 hereof. *In so far as such claim shall in any manner or particular be at variance with the claim notified by the CONTRACTOR within the provision of Clause 6.6..0 hereof, it shall be deemed to be a claim different from the notified claim with consequence in respect thereof indicated in Clause in 6.6.1.0 hereof, and with consequences in respect of the notified claim as indicated in Clause 6.6.3.1 hereof.*

6.6.3.1

The OWNER shall not anywise be liable in respect of any notified claim not specifically reflected in the Final Bill in accordance with the provisions of Clause 6.6.3.0 hereof and any and all notified claims not specifically reflected and included in the Final Bill in accordance with the provisions of Clause 6.6.3.0 hereof shall be deemed to have been waived by the CONTRACTOR. *Further the OWNER shall have no liability in respect thereof and the CONTRACTOR shall not be entitled to raise or include in the Final Bill any claim(s) other than a notified claim conforming in all respects and in accordance with the provisions of Clause 6.6.3.0 hereof.*

xxxxx xxxxx xxxxx

9.0.1.0

Subject to the provisions of Clauses 6.7.1.0, 6.7.2.0 and 9.0.2.0 hereof, any dispute arising out of a Notified Claim of the CONTRACTOR included in the Final Bill of the CONTRACTOR in accordance with the provisions of Clause 6.6.3.0 hereof, and any dispute arising out of any claim(s) of the OWNER against the CONTRACTOR shall be referred to the arbitration of a Sole Arbitrator selected in accordance with the provisions of Clause 9.0.1.1 hereof. *It is specifically agreed that the OWNER may prefer its claim(s) against the*

CONTRACTOR as counter-claim(s) if a Notified Claim of the CONTRACTOR has been referred to arbitration. The CONTRACTOR shall not, however, be entitled to raise as a set-off, defence or counter-claim any claim which is not a Notified Claim included in the CONTRACTOR's Final Bill in accordance with the provisions of Clause 6.6.3.0 hereof.

9.0.2.0

Any dispute (s) or difference (s) with respect to or concerning or relating to any of the following matters are hereby specifically excluded from the scope, purview and ambit of the Arbitration Agreement embodied in Clause 9.0.1.0 with the intention that any dispute or difference with respect to any of the said following matters and/or relating to the Arbitrator's or Arbitral Tribunal's jurisdiction with respect thereto shall not and cannot form the subject-matter of any reference or submission to arbitration under Clause 9.0.1.0 and the Arbitrator or the Arbitral Tribunal shall have no jurisdiction to entertain the same or to render any decision with respect thereto, and such matter shall be referred to the General Manager for decision by the nominee, as the case may be (whose decision shall be final and binding on the OWNER and the CONTRACTO) prior to the Arbitrator appointed under Clause 9.0.1.0 proceeding with or proceeding further with the reference, as the case may be. The said excluded matters are:

(i) With respect to or concerning the scope or existence or otherwise of the Arbitration Agreement.

(ii) Whether or not to a Claim sought to be referred to arbitration by the Contractor under clause 9.0.1.0 is a Notified Claim;

(iii) Whether or not a Notified claim is included in the CONTRACTOR's Final Bill in accordance with the provisions of clause 6.6.3.0 hereof."

32. As can be seen from above Clause 1.21.0.0 defines "notified claims" to mean a claim of the contractor notified in accordance with the provisions

of Clause 6.6.1.0. Clause 6.6.1.0. provides that the contractor shall have to give notice with respect to his claim of the nature mentioned therein to the Engineer-in-Charge and the Site Engineer within the specified period of 10 days failing which the contractor shall be deemed to have waived any and all claims and all his rights in respect of any claim not so notified.

33. Clauses 9.0.1.0 and 9.0.2.0 were also subject matter of consideration before the Hon'ble Supreme Court in ***Indian Oil Corporation Limited (supra)*** wherein the Court, with reference to the said clauses, observed that only the notified claims of the contractor which have been included in the final bill of the contractor can be referred to arbitration. Further, for deciding the question as to whether or not a claim sought to be referred to arbitration by the contractor is a notified claim, the arbitrator or Arbitral Tribunal shall have no jurisdiction at all, and the same shall have to be decided by the General Manager and that too prior to arbitral proceedings. The relevant extract from the said decision reads thus:

> *"95. Now, so far as Civil Appeal No. 342 of 2022 arising out of SLP (C) No. 13816 of 2019 is concerned, the General Manager in exercise of powers under Clause 9.0.2.0 had declared that none of the claims of the respondent is a notified claim. From the communication dated 22-6-2018, it appears that the General Manager, after elaborately dealing with all the alleged notified claims of the respondent has thereafter found that none of the claims made by the respondent is a notified claim.* ***On a conjoint reading of the relevant clauses of GCC viz. Clauses 9.0.1.0 and 9.0.2.0, the dispute arising out of notified claims only, which is included in the final bill of the contractor can be referred to arbitration. However, as per Clause 9.0.2.0, any dispute or difference on whether or not a claim sought to be referred to arbitration by the contractor is a notified claim falls within the excluded matters and the arbitrator or Arbitral***

> ***Tribunal shall have no jurisdiction and/or authority with respect thereto. The dispute or difference whether or not a claim sought to be referred to arbitration by the contractor is a notified claim shall not and cannot form the subject-matter of any reference or submission to arbitration.***
>
> *96. Therefore, on a fair and conjoint reading of Clauses 9.0.1.0 and 9.0.2.0, it can safely be concluded that:*
>
> > ***(i) only the notified claims of the contractor included in the final bill of the contractor in accordance with the provisions of Clause 6.6.3.0 shall have to be referred to arbitration;***
> >
> > ***(ii) whether or not a claim sought to be referred to arbitration by the contractor is a notified claim or not, the arbitrator or Arbitral Tribunal shall have no jurisdiction at all;***
> >
> > *(iii) whether or not a claim is a notified claim or not shall have to be decided by the General Manager and that too, prior to arbitration proceeding with or proceeding further with the reference."*
>
> *Therefore, once the General Manager, on the basis of the material on record takes a conscious decision that a particular claim sought to be referred to arbitration is not a notified claim, such a claim thereafter cannot be referred to arbitration. The language used in Clauses 9.0.1.0 and 9.0.2.0 is very clear and unambiguous."*

34. The submission put forth on behalf of the plaintiff is that the disputes raised in the prayer (a) to (f) of CS(COMM) 295/2024 are the claims of the plaintiff and the same not notified claims, therefore, they are not arbitrable. As it is an admitted case of the plaintiff that the disputes raised in the prayer (a) to (f) of CS(COMM) 295/2024 are not notified claims, therefore, as per the Clauses 9.0.1.0 and 9.0.2.0 of the GCC as well as the dictum in ***Indian Oil Corporation Limited (supra)*** such disputes cannot be referred to

arbitration, if the same are found to be the claims of the plaintiff i.e. the Contractor.

35. However, in the event this Court *prima facie* finds that the prayer (a) to (f) involves the disputes arising out of the claim(s) of the defendant no.1 i.e. the Owner, the same will have to be referred to the arbitration, as there is no pre-condition under clause 9.0.1.0 for notifying the claims of the Owner (defendant no.1), for referring the same to arbitration.

36. Therefore, the question that whether the claims in the prayer (a) to (f) are the claims of the plaintiff or of the defendant no.1 assumes relevance.

37. Upon reading of the prayer clause of the suit, this Court *prima facie* finds that -

(i) The plaintiff in prayer (a) of the suit seeks to restrain the defendants from adjusting or making any claim of any nature, whatsoever, raised by the defendants against the plaintiff, from the account of the plaintiff in any project other than the project of the subject contract. This prayer itself refers to the claim of the defendants against the plaintiff. In para C (viii) of the plaint, it has been elaborated that the defendants have unlawfully threatened the plaintiff to withhold money from their other projects with IOCL, in order to recover the dues of the workers who are required to be allegedly compensated by IOCL as the principal employer. This prayer apparently gives rise to a dispute as to whether the defendant no.1 is entitled to recover the dues paid to workers, from the money payable to the plaintiff under other projects.

(ii) In prayer (b), the plaintiff prays for permanent injunction to restrain defendants from undertaking any coercive and/or penal measures against the plaintiff in respect of or in connection with the works awarded under the subject contract. Likewise, this prayer also raises a dispute as to whether the defendants are entitled to take any proposed coercive or penal measures against the plaintiff under the contract.

(iii) In prayer (c), the plaintiff seeks mandatory injunction directing the defendants to deliver up the bank guarantee so as to discharge the same. This prayer raises a dispute as to the entitlement of the defendants to invoke bank guarantee in terms of the contract.

(iv) Prayer (d) is for declaration that show cause notices issued by defendants are bad in law and null and void. Likewise, in prayer (e), declaration is sought that any offloading or re-tendering of the works under the subject contract/tender by the defendants shall not be at the risk and cost of the Plaintiff. These two prayer clauses relate to the proposed action of the defendants to offload or re-tender the incomplete work at the risk and cost to the plaintiff as per clause no. 4.7.3.0 of GCC for which defendant no.2 also issued show cause notices. Thus, these two prayer clauses also raise the disputes concerning the defendant no.1's contractual authority or competence to offload or re-tender the work at the risk and cost of the Plaintiff.

(v) Prayer in clause (f) is for recovery of a total sum of Rs.9,56,71,682/-, which is possibly the aggregate amount of the nine claims made by the plaintiff in paras 6 to 14 of the plaint.

38. As can be seen, in the prayers (a) to (e) the plaintiff is only seeking to prevent defendant no.1 from recovering any amount or taking any other action proposed by the defendants under the contract. The said prayers do not pertain to the substantive claims of the plaintiff, rather they are the disputes arising out of the claims of, or action proposed to be taken by the defendant no.1 (owner) against the plaintiff (contractor) under the contract and are thus, arbitrable in the *prima facie* opinion of this Court.

39. Insofar as the payer (f) is concerned, the same pertains to disputes arising out of non-notified claims of the plaintiff, and are thus, non-arbitrable. The defendant no.1 has rightly not prayed in the application for having the dispute *qua* the said claims referred to the arbitration.

40. The next question which arises for consideration of this Court is that whether the defendant no.1/applicant could seek reference to arbitration only in respect of the disputes arising out of the prayers (a) to (e), leaving out the disputes arising out of prayer (f). The submission on behalf of the plaintiff premised on the *dictum* laid down in ***Sukanya Holdings*** (supra), is that bifurcation of cause of action/subject matter of dispute of the suit in two

parts, one to be decided by the Arbitral Tribunal and the other to be decided by the court, is not permissible, and that the law laid down in ***Sukanya Holdings*** (supra) is still holding the field.

41. To appreciate the above submission, apposite would it be to advert to the provisions contained in Section 8 prior to the amendment of 2015; the amendments as proposed; and the provisions of Section 8 after its amendment.

42. Section 8 prior to its amendment read as under:

> ***"8. Power to refer parties to arbitration where there is an arbitration agreement.***—*(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*
>
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:*
>
> *(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

43. The proposed amendment of Section 8(1) of the Act as well as a Note referring to the decision in ***Sukanya Holdings*** (supra) as mentioned in Report no. 246 of the Law Commission of India dated 05.08.2014, reads as under:

> *"5. In section 8 of the Act,*
> *(i) In sub-section (1), after the words "substance of the dispute, refer" add "to arbitration, such of" and after the words "the parties to" add "the action who are parties to the" and after the word "arbitration" add the word "agreement".*

(ii) after sub-section (1), add ***"Provided that no such reference shall be made only in cases where –***

(i) ***the parties to the action who are not parties to the arbitration agreement, are necessary parties to the action****;*

(ii) the judicial authority finds that the arbitration agreement does not exist or is null and void.

Explanation 1: If the judicial authority is prima facie satisfied about the existence of an arbitration agreement, it shall refer the parties to arbitration and leave the final determination of the existence of the arbitration agreement to the arbitral tribunal in accordance with section 16, which shall decide the same as a preliminary issue;

Explanation 2: Any pleading filed in relation to any interim application which has been filed before the judicial authority shall not be treated to be a statement on the substance of the dispute for the purpose of this section."

[NOTE: The words "such of the parties… to the arbitration agreement" and proviso (i) of the amendment have been proposed in the context of the decision of the Supreme Court in Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya and Anr., (2003) 5 SCC 531, – in cases where all the parties to the dispute are not parties to the arbitration agreement, the reference is to be rejected only where such parties are necessary parties to the action – and not if they are only proper parties, or are otherwise legal strangers to the action and have been added only to circumvent the arbitration agreement. *Proviso (ii) of the amendment contemplates a two-step process to be adopted by a judicial authority when considering an application seeking the reference of a pending action to arbitration. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration* *agreement to be finally determined by the arbitral tribunal. However, if the judicial authority concludes that the agreement does not exist, then the conclusion will be 44 final and not prima facie. The amendment also envisages that there shall be a conclusive determination as to whether the arbitration agreement is null and void.]"*

(emphasis supplied)

44. However, Section 8 was amended by the amendment of 2015 i.e. Amendment Act 3 of 2016, and post amendment Section 8 reads as under:

> *"**8. Power to refer parties to arbitration where there is an arbitration agreement**.—(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, **notwithstanding any judgment, decree or order of the Supreme Court or any Court**, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*
>
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:*
>
> > *Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.*
>
> *(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial*

authority, an arbitration may be commenced or continued and an arbitral award made.”

(emphasis supplied)

45. Since the submission of the plaintiff that there cannot be splitting of cause of action and the subject matter of the suit is essentially predicated on the decision of the Supreme Court in ***Sukanya Holdings*** (supra), therefore, the relevant paragraphs of the said decision are set out below for the ease of reference:

> ***“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.*
>
> ***17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings.*** *The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums."*
>
> (emphasis supplied)

46. Notably, the decision in ***Sukanya Holdings*** (supra) was rendered prior to the amendment of Section 8 by the amendment of 2015. As borne out from the Note appended to the proposed amendment, a *proviso* was proposed to be incorporated in Section 8(1) with reference to ***Sukanya Holding*** (supra) to the effect that no reference shall be made where the parties to the action who are not parties to the arbitration agreement, are necessary parties to the action. However, this *proviso* did not find place in the amendment that was finally carried out. Rather, amended Section 8(1) is broader in terms having non-obstante clause which, in effect, provides that a judicial authority shall *notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

47. After the amendment of Section 8(1), though reference was made by the Supreme Court to ***Sukanya Holdings*** (supra) in the subsequent decision in ***Ameet Lal Chand Shah*** (supra), but no observation was made therein that the law laid down in ***Sukanya Holding*** (supra) continues to hold the field even after the amendment.

48. However, in ***Emaar MGF*** (supra) the Supreme Court noted the decision in ***Sukanya Holdings*** (supra) in light of the 246th Report of the Law Commission as well as the consequent amendment carried out in Section 8 of the Act and observed that the insertion of words *"notwithstanding any judgment, decree or order of the Supreme Court or any Court"* were with intent to minimize the intervention of judicial authority in the context of arbitration agreement. Further, emphasizing on the pro-arbitration approach post amendment of Section 8(1) of the Act, it was observed that amended provision limits the intervention of the judicial authority only on one aspect i.e. when it finds that *prima facie* no valid arbitration agreement exists. The Court also opined that several conditions which were noticed by the Supreme Court in various pronouncements made prior to amendment were not to be adhered to and the intention of the Legislature as borne out from the amended provisions shows clear departure from adherence to the conditions as noticed in earlier two decisions of the Supreme Court including ***Sukanya Holdings*** (supra). The relevant extract from the said decision reads thus:

> ***"52.*** *The law as declared by this Court in the above cases was in existence when the Law Commission submitted its 246th Report and Parliament considered the Bill, 2015 for the Amendment Act, 2016.* ***The Law Commission itself in its Report has referred to amendment in Section 8 in the context of decision of this Court in Sukanya Holdings (P) Ltd. [Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531], which was clearly noticed in the Note to Section 8 as extracted above. The words "notwithstanding any judgment, decree or order of the Supreme Court or any court" added by amendment in Section 8 were with intent to minimise the intervention of judicial authority in the context***

of arbitration agreement. As per the amended Section 8(1), the judicial authority has only to consider the question "whether the parties have a valid arbitration agreement?" The Court cannot refuse to refer the parties to arbitration "unless it finds that prima facie no valid arbitration agreement exists". The amended provision, thus, limits the intervention by judicial authority to only one aspect i.e. refusal by judicial authority to refer is confined to only one aspect, when it finds that prima facie no valid arbitration agreement exists. Other several conditions, which were noticed by this Court in various pronouncements made prior to amendment were not to be adhered to and the legislative intendment was a clear departure from fulfilling various conditions as noticed in the judgment of P. Anand Gajapathi Raju [P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539] and Sukanya Holdings (P) Ltd. [Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531]

xxx xxx xxx

56. *This Court, thus, in the above cases has noticed that amendments are expressed to apply notwithstanding any prior judicial precedents, but the scope of amendment under Section 8(1) was confined to three categories as has been noted in para 28 of Ameet Lalchand Shah v. Rishabh Enterprises [Ameet Lalchand Shah v. Rishabh Enterprises, (2018) 15 SCC 678 : (2019) 1 SCC (Civ) 308 : AIR 2018 SC 3041].* ***Amendments under Section 8, thus, were aimed to minimise the scope of judicial authority to refuse reference to arbitration and only ground on which reference could have been refused was that it prima facie finds that no valid arbitration agreement exists. Notwithstanding any prior judicial precedents referred to under Section 8(1) relates to those judicial precedents, which explained the discretion and power of judicial authority to examine various aspects while exercising power under Section 8.***"

(emphasis supplied)

49. Further, post amendment of 2015 a clear shift can be seen in the legal

position insofar as judicial interference at the stage of reference is concerned. A three Judges Bench of the Supreme Court in ***Vidya Drolia*** (supra) with reference to the legislative mandate of the Act 3 of 2016 and Act 33 of 2019, the principle of severability and competence-competence, emphasized that the arbitral tribunal is the first preferred authority to determine and decide all questions of non-arbitrability whereas the power conferred on the Court on the said aspect is of "second look" and that too post passing of the award. The Apex Court also held that the Court by default would refer the matter when contentions relating to non-arbitrability are arguable and the Court would not enter into a mini-trial or elaborate review. It was also observed that post amendment of 2015, the judicial interference at the reference stage has been substantially curtailed. The pro-arbitration approach is also evident from the conclusion of the Hon'ble Supreme Court that *"when in doubt, do refer"*. The relevant extracts from ***Vidya Drolia*** (supra) read thus:

> ***"154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.***
>
> ***154.4.*** *Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and*

nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. ***The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.***

xxx xxx xxx

225.2. Post the 2015 Amendment, judicial interference at the reference stage has been substantially curtailed.

xxx xxx xxx

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"****."*

(emphasis supplied)

50. The Seven Judges Bench of the Hon'ble Supreme Court in ***In Re: Interplay*** (supra) while examining the scope of Sections 8 and 11 of the Act again made following pertinent observations which also shows tilt in favour of greater arbitral autonomy and extremely limited judicial interference:

*"**164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and***

> ***11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11****. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.*
>
> *xxx xxx xxx*
>
> ***166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. <u>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</u>. This position of law can also be gauged from the plain language of the statute.***
>
> (emphasis supplied)

51. Again, in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, the Hon'ble Supreme Court observed that Section 16 of the Act recognized the Doctrine of competence-competence and empowers the arbitral tribunal to rule on its own jurisdiction. Elaborating on the said doctrine, the Hon'ble Supreme Court made following significant observations:

> *"101. **What follows from the negative facet of arbitral autonomy when applied in the context of Section 16 is that the national courts are prohibited from interfering in matters pertaining to the jurisdiction of the Arbitral Tribunal, as exclusive jurisdiction on those aspects vests with the Arbitral Tribunal.** The legislative mandate of prima facie determination at the stage of Sections 8 and 11, respectively, ensures that the Referral Courts do not end up venturing into what is intended by the legislature to be the exclusive domain of the Arbitral Tribunal.*
>
> *xxx xxx xxx*
>
> *104. **Section 16 of the 1996 Act recognises the doctrine of competence-competence and empowers the Arbitral Tribunal to rule on its own jurisdiction.** The policy consideration for the same is, firstly, to recognise the intention of the parties in choosing arbitration as the method for resolving the disputes arising out of the contract and secondly, to prevent the parties from initiating parallel proceedings before courts and delaying the arbitral process.*
>
> *105. **The negative aspect of competence-competence is aimed at restricting the interference of the courts at the referral stage by preventing the courts from examining the issues pertaining to the jurisdiction of the Arbitral Tribunal before the Arbitral Tribunal itself has had the opportunity to entertain them.** The courts are allowed to review the decision of the Arbitral Tribunal at a later stage."*
>
> (emphasis supplied)

52. A learned Single Judge of the Bombay High Court in ***Taru Meghani*** (supra) also had an occasion to consider the effect and import of ***Sukanya Holdings*** (supra). In the said decision the Court was confronted with the question as to whether by claiming additional relief not covered by the arbitration agreement, does the object of the Act which enjoins the Court to refer the disputes to arbitration in terms of the arbitration agreement, get

diluted? The plaintiffs therein had relied upon ***Sukanya Holdings*** (supra) to contend that bifurcation of subject matter of the suit is impermissible. The Court endeavoured to find an answer to the above question in light of the legislative mandate of Section 8 of the Act, and the provisions contained in Rule 3 and 6 of Order II of the CPC, and observed that if such a submission is accepted, it has the propensity to give a long leash to the plaintiff to circumvent the arbitration agreement by uniting a cause of action which is beyond the purview of the arbitration agreement and by adding a party who is not a party to the arbitration agreement. The pertinent observations made in the said decision reads thus:

> ***"18.*** *The question posed by the facts of the instant case, however, is required to be considered from the perspective of the legislative object contained in section 8 of the Act. It is trite that the language of section 8 is peremptory in nature.* ***In the cases where there is an arbitration clause in the agreement, the Court is enjoined to refer the dispute to arbitration in terms of the arbitration agreement and the Court would have no jurisdiction to adjudicate the dispute after such an application seeking a reference under section 8 of the Act. Can this salutary object of the Act be defeated by adding a claim over and above the claim in respect of the matter which is squarely covered by arbitration agreement?***
>
> *xxx xxx xxx*
>
> ***20.*** *The plaintiffs are within their rights in joining multiple causes of action against the defendants. In fact, the provisions contained in the Code envisage such joining of several causes of action by the plaintiffs against the defendants. Rules 3 and 6 of Order II of the Code, read as under:*
>
> > ***"Rule 3 Order II of the Code***
> >
> > *"**Joinder of causes of action**" : (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same*

defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Rule 6 Order II of the Code:

"Power of Court to order separate trials" Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice."

xxx xxx xxx

22. On the one hand, the Code permits the plaintiff to unite multiple causes of action against the same defendants in one suit. On the other hand, in the event of possibility of embarrassment, delay or inconvenience, the court is empowered to direct separate trials or pass such other order as would advance the cause of justice. If a Court is empowered to order separate trial when it finds that the joinder of causes of action would embarrass or delay the trial or it is otherwise inconvenient, a fortiori a Court cannot be said to be divested of the authority to direct separation of causes of action when the joinder of causes of action, in pursuance of an enabling provision like Rule 3 has the effect of defeating the provisions of a special law, like section 8 of the Act.

***23.** The aforesaid legal position is required to be considered coupled with the approach which is expected of the Court where an application seeking reference of the dispute to arbitration on the strength of an arbitration clause is preferred. Such an application, in substance, constitutes a plea of statutory exclusion of the jurisdiction of the court. A useful reference in this context can be made to the judgment of the Supreme Court in the case of Sundaram Finance Limited v. T. Thankam[2],* *wherein the Supreme Court delineated the approach expected of the Civil Court in dealing with an application under section 8 of the Act, in Paragraph 13:*

> *"13. Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statue, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law - generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."*

24. In the light of the aforesaid exposition of the legal position, I am of the considered view that the broad submission on behalf of the plaintiffs that the reference of the dispute to arbitration as regards the first transaction, would entail the bifurcation of the subject matter of the suit and, thus, it is impermissible in law, cannot accepted in an unqualified manner. The submission is fraught with the danger of defeating an arbitration agreement by simply adding a cause of action the plaintiff may have against the defendants, which is not covered by the arbitration agreement. If such a course is readily accepted, it has the propensity to give a long leash to the plaintiff to circumvent the arbitration agreement by uniting a cause of action which is beyond the purview of the arbitration agreement. It would have the effect of denuding section 8 of the Act of its force and vigour. Such an interpretation would also derogate from the object which

the Arbitration and Conciliation Act, 1996 is intended to achieve; of minimum judicial intervention where parties have agreed to arbitrate the dispute.

(emphasis supplied)

53. Again, in ***Marine Infrastructure*** (supra) the learned Single Judge of Bombay High Court was confronted with a situation where the suit covered certain matters, which were outside the subject matter amenable to the arbitration and also against the parties, who were not parties to the arbitration. The Court considered the controversy in the light of ***Sukanya Holdings*** (supra) and rejected the submission that the said decision continues to hold the field despite the legislative change brought about by the amendment Act and in the face of the observations of the Supreme Court in ***Emaar MGF*** (supra).

54. In ***Lindsay International*** (supra) the Calcutta High Court considered the amendment brought about in Section 8 of the Act by the amendment Act 3 of 2016, the decisions in ***Emaar MGF*** (supra) and ***Vidya Drolia*** (supra) to conclude that ***Sukanya Holdings*** (supra) is no longer a relevant factor for the Court to consider at the stage of reference in an application under Section 8 of the Act, though it may continue to be relevant for deciding applications under Section 8 filed prior to the amendment.

55. Having regard to the above discussion, more importantly, the amendment in Section 8 of the Act by the amendment Act of 2015; the tilt in favour of the greater arbitral autonomy and minimal judicial intervention post amendment as delineated in various decisions of the Supreme Court, as noted herein above; and the observation made in ***Emaar MGF*** (supra) that the pronouncements made prior to amendment of Section 8 were not to be

adhered to and the legislative intent was to make clear departure from the conditions in ***Sukanya Holdings*** (supra), this Court is not persuaded to accept the submission of the plaintiff that ***Sukanya Holdings*** (supra) will still govern the situation at hand and bifurcation of subject matter of the suit is impermissible.

56. In so far as the submission of the Plaintiff that ***Sukanya Holdings*** (supra) has been relied upon in ***Ameet Lal Chand Shah*** (supra); ***Gujarat Composite Limited*** (supra) and ***Canara Bank*** (supra), this Court finds that in ***Ameet Lal Chand Shah***[1] (supra) as well as in ***Gujarat Composite Limited*** (supra), there is reference of ***Sukanya Holdings*** (supra) but none of these decisions have specifically observed that the said decision continues to hold the field.

57. However, in ***Emaar MGF***[2] (supra), which was rendered after ***Ameet Lal Chand Shah*** (supra), the Apex Court, as noted above, categorically observed that amendment in Section 8 brought about by the amendment of Act 3 of 2016 shows the legislative intent to move away from the conditions as noticed in ***Sukanya Holdings*** (supra). The decision in ***Emaar MGF*** (supra) was not brought to the notice of the Supreme Court in ***Gujarat Composite Limited*** (supra), which was a subsequent decision rendered on 01.05.2023. Likewise, ***Emaar MGF*** (supra) has also not been noticed by the Division Bench of this Court in ***Canara Bank*** (supra).

58. Lastly, submission of Mr. Krishnan on behalf of the plaintiff was that defendant no. 2 is not a party to the arbitration agreement; therefore, the

---

[1] *Ameet Lal Chand Shah* (supra) was rendered on 03.05.2018.
[2] *Emaar MGF* (supra) was rendered on 10.12.2018.

dispute cannot be referred to arbitration. Likewise, on behalf of defendant no.2 also, similar submission was advanced.

59. This issue is no more *res integra*. The Supreme Court in ***Cox and Kings Ltd. v. SAP India P. Ltd., (2024) 4 SCC 1*** has laid down that at the stage of Section 8 of the Act, what has to be seen by the referral Court is the *prima facie* validity or existence of the arbitration agreement. As regards the referral of non-signatory to arbitration agreement, the only aspect on which the referral Court is to *prima facie* rule is that whether or not the non-signatory is a veritable party to the arbitration agreement, leaving it for the Arbitral Tribunal to decide on the basis of the factual evidence and application of legal doctrine that whether non-signatory is indeed bound by the arbitration agreement. The relevant extract from the said decision reads thus:

> *"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 non-signatory parties is an indicator of the intention of the non-signatory to be bound by the arbitration agreement.* ***<u>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</u>.*** *The UNIDROIT Principle of International Commercial Contract, 2016 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

126. <u>Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons.</u> First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.

127. … 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 non-signatory 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 non-signatory based on objective evidence.

xxx xxx xxx

168. In Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar, a two-judge Bench of this Court held that when a third party is impleaded in a petition under Section 11(6) of the Arbitration Act, the referral court should delete or exclude such third party from the array of parties before referring the matter to the Tribunal. This observation was made prior to the decision of this Court in Chloro Controls and is no longer relevant in light of the current position of law. Thus, when a non-signatory person or entity is arrayed as a party at Section 8 or Section 11 stage, the referral court should prima facie determine the validity or existence of the arbitration agreement, as the case may be, and leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.

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****.*
>
> *xxx xxx xxx*
>
> ***170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.****"*

(emphasis supplied)

60. Recently, in ***Ajay Madhusudan Patel v. Jyotrindra S. Patel, (2025) 2 SCC 147*** the Supreme Court ruled as to when it could be inferred that the non-signatory party was a veritable party. The relevant para from the said decision is reproduced herein below for the ease of reference:

> *"**83. It is evident that 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 an agreement. Further, when the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement.** However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental. Thus, **the conduct of the non-signatory party along with the other attending circumstances may lead the referral court to draw a legitimate inference that it is a veritable party to the arbitration agreement.**"*

(emphasis supplied)

61. Now reverting to the facts of the case at hand, it is not in dispute that the defendant no.2 is a non-signatory to the arbitration agreement. However, in the suit the plaintiff has directed all the prayers against both

the defendants. It was argued on behalf of the plaintiff that the defendant no.2 has been threatening to suggest invocation of bank guarantee, adjustment of claims against plaintiff's other contracts with defendant no.1 and termination of the contract, without consideration of the plaintiff's request for extension of time [EOT]. It is to be noted that defendant no.2 has been retained as an Engineering, Procurement and Construction Management Consultant "EPCM Consultant". Defendant no.2's personnel is appointed as the Engineer-in-Charge under the contract terms between the plaintiff and defendant no.1. The show-cause notices which are subject matter of the controversy have been issued by the defendant no.2 whereby the plaintiff has been called upon to show-cause as to why the remaining work be not re-tendered at the risk and cost of the plaintiff. The circumstances *prima facie* suggests that the defendant no.2 is a veritable party to the arbitration agreement. However, in view of the above clear expositions a final call that whether defendant no.2 can be joined as party in the arbitration proceedings and whether the Arbitral Tribunal's jurisdiction extend to the defendant no.2, shall be taken by the Arbitral Tribunal itself on the basis of the factual evidence and other attending circumstances.

62. In the earlier part of this judgment, this Court has also *prima facie* come to the conclusion that the disputes arising out of prayer (a) to (e) relate either to the claim(s) of defendant no.1 or to the action proposed to be taken by the defendant no.1 (owner) against the plaintiff (contractor) under the contract, hence, the same are arbitrable. However, even if there remains any doubt or factual controversy regarding their non-arbitrability,

still this Court is obligated to refer the matter, regard being had to the statutory mandate of Section 8 of the Act, which is to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism, leaving it to the Arbitral Tribunal to decide the said controversy.

63. In view of the above discussion, the present application is partly allowed and the following order is passed:

i) The parties are referred to arbitration in accordance with the arbitration clause contained in clause 9.0.1.0 of the GCC insofar as disputes arising out of prayer (a) to (e) are concerned.

ii) The Arbitrator shall be appointed by the parties in accordance with the provisions of the Act.

iii) As regards the claim made in prayer (f), the plaintiff is at liberty to prosecute the present suit against the defendants, and amend the plaint accordingly.

64. The application is disposed of in the above terms.

I.A. 8561/2025 in CS(COMM) 1083/2024

65. The prayers made in clauses (a) to (c) and (e) in the present suit, in substance, are identical to the prayers (a) to (c) and (e) made in CS (COMM) 295/2024, and applying the same reasoning as discussed for the said prayers in CS (COMM) 295/2024, they are *prima facie* held to be arbitrable.

66. In clause (d), prayer has been made for a decree declaring that the show cause notice dated 17.07.2024 issued by the defendant(s) to the

plaintiff for holiday listing, and any subsequent or consequential actions arising therefrom, is bad in law, null and void. This prayer relates to the proposed action of the defendant(s) to place the plaintiff on the "holiday list" (blacklisting), and raises a dispute involving the defendant's competence under the contract to take such an action, which in the *prima facie* view of this Court, is an arbitrable dispute.

67. In prayer (f), the plaintiff prays for mandatory injunction seeking direction to the defendant/IOCL to extend the tenure of the projects other than the project at Barauni Refinery. Indubitably, such other projects are not the subject matter of the present contract, which only concerns the project at Barauni Refinery, therefore, the said other projects are not covered by the arbitration contained in clause 9.0.1.0 of the GCC. In that view of the matter, dispute referred to in the prayer (f) is held to be non-arbitrable under the contract.

68. The prayer in clause (g) pertains to disputes arising out of non-notified claims of the plaintiff as detailed in para 7 of the plaint, and resultantly the same are non-arbitrable. Likewise, prayer (h), which is for the interest on the claim made in clause (g), is also non-arbitrable.

69. Under the above circumstances, the present application is partly allowed and following order is passed:

i) The parties are referred to arbitration in accordance with the arbitration clause contained in clause 9.0.1.0 of the GCC insofar as disputes arising out of prayer (a) to (e) are concerned.

ii) The Arbitrator shall be appointed by the parties in accordance with the provisions of the Act.

iii) As regards the claim made in prayer (f), (g) and (h), the plaintiff is at liberty to prosecute the present suit against the defendant, and amend the plaint accordingly.

70. The application is disposed of in the above terms.

VIKAS MAHAJAN, J

JULY 27, 2026
N.S. ASWAL/**jg**

71. After the judgment was pronounced, Ms. Anushree Kapadia, learned counsel for the plaintiff submits that in both the suits, there is an interim protection available to the plaintiff, which may be extended for four weeks.

72. Attention of the Court has been drawn to orders dated 16.04.2024 and 20.08.2024 passed in CS(COMM) 295/2024, as well as orders dated 05.12.2024 and 19.12.2024 passed in CS(COMM) 295/2024.

73. Ms. Paramjeet Benipal, learned counsel for the defendant no.1, on instruction, submits that the defendant/IOCL shall not take any coercive action against the plaintiff for two weeks from today. The statement is taken on record. No further orders are called for.

VIKAS MAHAJAN, J

JULY 27, 2026
N.S. ASWAL/**jg**