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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION NO.317 OF 2026

SO Tunnelling India Private Limited ... **Applicant**

Vs.

Hindustan Construction Co. Limited ... **Respondent**

Mr. Zal Andhyarujina, Senior Advocate with Tine Abraham, Anshul Singh, Anjali Sharma and Yashashwini Santuka i/by Trilegal for the Applicant.

Mr. Harsh Sawant i/by Mr. Puspak Chamariya for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 19, 2026.

PRONOUNCED ON : AUGUST 24, 2026

JUDGMENT:

1. The present Arbitration Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole Arbitrator in terms of the Settlement Agreement dated 20 October 2022 executed between the Applicant and the Respondent in relation to the Tapovan Vishnugad Hydroelectric Power Project, comprising four units of 130 MW each, situated in Uttarakhand, India, hereinafter referred to as the "Tapovan Project". The said Settlement Agreement is hereinafter referred to as the “Tapovan Settlement Agreement”.

2. The facts leading to the filing of the present Application, as stated by the Applicant, are as follows. The parties executed the Tapovan Settlement Agreement on 20 October 2022. Under the said Agreement, the Respondent was required to pay the Final Settlement Amount. The Agreement provided for payment of interest at the rate of 12% per annum in case of delay in payment. The Applicant addressed letters dated 15 November 2023 and 22 February 2024 calling upon the Respondent to pay the overdue instalments along with the interest accrued thereon. By its letter dated 12 March 2024, the Respondent refused to make payment under the Tapovan Settlement Agreement. The Applicant, by its letter dated 28 March 2024, rejected the contentions raised by the Respondent and called upon it to pay the entire Final Settlement Amount together with interest.

3. The Applicant thereafter, by email dated 2 April 2024, forwarded the tax invoice relating to the Logistics and Spares components of the Final Settlement Amount along with the applicable GST. The Applicant addressed letters dated 17 May 2024, 7 June 2024 and 6 August 2024, recording that the Respondent continued to commit breach of its obligations and again calling upon it to make payment. The Respondent, by emails dated 11 June 2024 and 8 August 2024, disputed the levy of GST in the invoice, while admitting its liability to pay the Final Settlement Amount. The Applicant, by communications dated 26 June 2024 and 31 August 2024, rejected the contentions of the Respondent concerning GST. Thereafter, by letter dated 8 October

2024, the Applicant denied the allegations made by the Respondent and proposed that the disputes be resolved amicably. However, by letter dated 11 February 2025, the Respondent once again refused to make payment. The Applicant, by its letter dated 27 March 2025, denied the allegations of the Respondent and again demanded payment of the amount due.

4. The Applicant issued a Dispute Notice dated 14 July 2025 under Clause 9.2.2 of the Tapovan Settlement Agreement, recording that the efforts for amicable settlement had failed. Thereafter, on 11 August 2025, the Applicant issued a Notice of Arbitration under Clause 9.2.3 of the Agreement and proposed the name of Mr. Justice Shiavax Jal Vazifdar, former Chief Justice of the Punjab and Haryana High Court, as the sole Arbitrator. By letter dated 5 September 2025, the Respondent objected to the Notice of Arbitration and proposed that a meeting be held for resolving the disputes. The Applicant, by its communication dated 24 September 2025, rejected the objections raised by the Respondent, while agreeing, without prejudice to its rights and contentions, to participate in a virtual meeting.

5. By email dated 17 October 2025, the Applicant recorded that the parties had failed to arrive at an amicable settlement and once again proposed the appointment of Justice Vazifdar as the sole Arbitrator. Thereafter, correspondence was exchanged between the parties from 17 October 2025 till 12 January 2026. During this period, however, Justice Vazifdar recused himself from acting as the Arbitrator in the proposed arbitration.

6. The Applicant thereafter proposed the name of another sole Arbitrator on 29 January 2026. Discussions then took place between the parties regarding the arbitral fees from 3 February 2026 till 28 February 2026. The proposed sole Arbitrator did not accept the Respondent's request for adoption of the fee structure prescribed under the Fourth Schedule to the Arbitration and Conciliation Act, 1996. The Applicant, therefore, by letter dated 12 March 2026, called upon the Respondent to confirm the appointment of the proposed sole Arbitrator or, alternatively, to suggest other names. No consensus could thereafter be reached between the parties regarding the appointment of a sole Arbitrator. It is in these circumstances that the Applicant has filed the present Arbitration Application.

7. Mr. Andhyarujina, learned Senior Advocate appearing for the Applicant, submits that under Section 11(6A) of the Arbitration and Conciliation Act, 1996, while considering an application for appointment of an arbitrator, this Court is required to confine its examination to whether an arbitration agreement exists. According to him, at this stage, the Court is not expected to enter into detailed examination of disputed issues which can be decided by the Arbitral Tribunal under Section 16 of the Act.

8. In support of this submission, Mr. Andhyarujina has relied upon the decisions in *Duro Felguera, SA. v. Gangavaram Port Ltd.*, (2017) 9 SCC 729; *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1; *SBI General Insurance Co. Ltd. v. Krish Spinning*, (2024) 12 SCC 1; *Uttarakhand Purv Sainik Kalyan Nigam Limited v. Northern Coal Field Ltd.*, (2020) 2 SCC 455; *BSNL & Anr. v. Nortel Networks*

India Private Limited, (2021) 5 SCC 738; *State of West Bengal & Ors. v. BBM Enterprises*, 2026 SCC OnLine SC 980; and *ASF Buildtech v. Shapoorji Pallonji & Company Pvt. Ltd.*, (2025) 9 SCC 76.

9. In the present case, according to the learned Senior Advocate, the Respondent, in its Reply, does not dispute the following facts. Firstly, that the Tapovan Settlement Agreement was executed between the parties. Secondly, that the arbitration agreement contained in Clause 9.2 exists and is valid. Thirdly, that the Applicant and the Respondent are the only parties to the said Agreement. Fourthly, that the seat of arbitration is Mumbai. Lastly, the parties could not mutually agree upon the appointment of a sole arbitrator. He therefore submits that all the basic requirements for exercise of jurisdiction under Section 11 are satisfied and nothing more is required to be decided by this Court at this stage.

10. In relation to the objections raised by the Respondent, which according to him go beyond the limited enquiry under Section 11, Mr. Andhyarujina submits that the objection regarding the jurisdiction of this Court is misconceived. The Respondent contends that the arbitration, when properly understood, is an international commercial arbitration and, therefore, the power to appoint an arbitrator lies with the Supreme Court. This argument is based on the Respondent's contention that the Applicant is, in substance and effect, nothing but SELI Overseas S.p.A., hereinafter referred to as “SELI”, which is the foreign parent company of the Applicant, and that the separate existence of the Applicant is only a fiction. In support of this contention, the Respondent relies upon the fact that SELI holds 98 out of the 100 equity shares of the Applicant and the remaining two shares are held by Mr. Pier Massimo Marras as nominee of SELI. The Respondent relies upon the fact that the Applicant and SELI have common representation through Mr. Marras and a common address for notices under the agreements. The Respondent contends that the entire central management and control of the Applicant is exercised by SELI.

11. Mr. Andhyarujina submits that all these objections raised by the Respondent are misconceived and are liable to be rejected.

12. He submits that the Respondent's reliance upon the shareholding of SELI or the alleged central management and control of the Applicant for treating the Applicant as a foreign entity is contrary to Section 2(1)(f) of the Act. In the case of a body corporate, the relevant test under Section 2(1)(f)(ii) is the place where the body corporate is incorporated. The words relating to central management and control, according to him, do not apply to a company after the amendment made in 2015. The Applicant is incorporated in India, and this fact is clear from Exhibit 2 to the Reply filed by the Respondent. Both parties to the arbitration agreement are, therefore, companies incorporated in India. Since the seat of arbitration is Mumbai, the proposed arbitration is a domestic arbitration and falls within the jurisdiction of this Court.

13. Mr. Andhyarujina submits that the Respondent's contention that SELI is the real party is, in substance, an attempt to lift or pierce the corporate veil of the Applicant. Such an issue, according to him, does not require final determination at the stage of an application under Section 11. A company acquires its separate legal identity upon its incorporation. Such separate identity can be ignored only in exceptional circumstances. The Reply, according to him, neither properly pleads nor gives necessary particulars of any such exceptional circumstances. In any case, the facts relied upon by the Respondent do not change the separate legal identity of the Applicant or the fact that it is incorporated in India. The holding of two shares by Mr. Marras as nominee is consistent with the legal requirement regarding minimum membership of a private company. Mr. Marras is a director of the Applicant and executed the Tapovan Settlement Agreement on behalf of the Applicant in that capacity. The fact that he may hold authority or a position in another company belonging to the same group does not mean that both companies become one legal entity. Similarly, a common address for service of notices is only an administrative arrangement and does not create a common contractual identity between the two companies.

14. He submits that the Respondent's reliance upon the group of companies doctrine does not support its objection regarding jurisdiction. Whether SELI, though not a signatory to the Tapovan Settlement Agreement, can be treated as bound by the arbitration agreement is a question which can be decided by the Arbitral Tribunal after it is constituted. At the initial stage, according to him, it cannot be assumed that a domestic arbitration should be treated as an international commercial arbitration only because a non-signatory foreign company may later be claimed to be connected with the dispute.

15. Mr. Andhyarujina submits that there is no basis for directing a composite reference or for joining SELI in the present arbitration at this stage. According to him, the Respondent wrongly contends that the Tapovan Settlement Agreement was part of a composite arrangement together with another settlement agreement entered into between the Respondent and SELI in relation to the Vishnugad Pipalkoti Hydroelectric Power Project, hereinafter referred to as the "Vishnugad Settlement Agreement". The Respondent contends that the present Application is based upon a calculated and artificial separation of one agreement from the other and that SELI cannot be treated as a stranger to the present dispute. These submissions, according to the learned Senior Advocate, are incorrect for the following reasons.

16. Firstly, the two agreements are separate contracts. They are entered into between different parties and relate to different projects and different employers. The consideration payable under the two agreements is different. The applicable rates of interest are different. Each agreement contains its own separate dispute resolution clause. Neither agreement refers to the other or makes the obligations under one agreement dependent upon the obligations under the other.

17. Secondly, the Tapovan Settlement Agreement is a complete and self-contained agreement. Clause 9.2.1 limits the arbitration agreement to the "Parties hereto", namely, the Applicant and the Respondent. Clause 10.3, containing the entire agreement clause, records that the Tapovan Settlement Agreement contains the entire understanding between the parties. SELI is not named anywhere in the Tapovan Settlement Agreement. No obligation under that Agreement is undertaken by SELI, nor is any obligation under it owed to SELI. The Applicant has, therefore, invoked the only agreement to which it is a party. According to the learned Senior Advocate, there is thus no question of any artificial separation of the two agreements.

18. Thirdly, according to Mr. Andhyarujina, the conduct of the Respondent does not support its case of a composite arrangement. By its letter dated 11 May 2026, the Respondent separately invoked arbitration under Clause 9.2.3 of the Vishnugad Settlement Agreement against SELI. According to him, such a separate invocation would not have been necessary if both settlement agreements had been invoked together as part of one composite arrangement. He submits that, in any event, a composite reference cannot be directed in the present proceedings. The arbitration under the Vishnugad Settlement Agreement is between the Respondent and SELI, which is a company incorporated in Italy. Such arbitration would be an international commercial arbitration, in which the power of appointment under Section 11(9) lies with the Supreme Court. Therefore, according to him, a consolidated reference involving both agreements cannot be made without the consent of all the parties to both agreements, and no such consent has been given.

19. Fourthly, so far as the question of joining SELI is concerned, Mr. Andhyarujina submits that whether SELI, as a non-signatory, is bound by the arbitration agreement is a matter to be decided by the sole arbitrator after appointment. Questions relating to joinder of parties, the scope of reference and the admissibility of claims fall within the jurisdiction of the arbitrator under Section 16 of the Act. He points out that the Respondent has accepted this position in paragraph 30 of its Reply. He therefore submits that the appointment of an arbitrator at this stage cannot cause any serious prejudice to the Respondent or take away its substantial jurisdictional or other rights, as alleged by it. He relies upon the decision of the Supreme Court in Cox and Kings and submits that, at the stage of reference, the question whether a non-signatory is bound by the arbitration agreement should be left for consideration by the Arbitral Tribunal.

20. Mr. Andhyarujina submits that the Respondent has wrongly relied upon the email dated 18 December 2024. According to the Respondent, the said email is relevant in three respects. Firstly, it is said to amount to a composite invocation of the dispute resolution mechanism under both settlement agreements. Secondly, it is relied upon to show that the Applicant and SELI act as one entity because the email was sent by Mr. Marras. Thirdly, the Respondent contends that the Applicant deliberately suppressed this email and, therefore, has approached this Court without clean hands. Mr. Andhyarujina submits that all these contentions are without basis.

21. Firstly, he submits that the email dated 18 December 2024 does not invoke the dispute resolution mechanism under either of the two agreements. It was a communication sent without prejudice during the course of efforts made by the parties to resolve their disputes amicably.

22. Secondly, according to him, the email dated 18 December 2024 does not support the Respondent's case of a composite arrangement. The email makes a distinction between the two projects. It records that payments had not been honoured "from Vishnugad project pointing out unilateral TBM's issues never agreed by SELI, from Tapovan side with no reason". According to the learned Senior Advocate, the reference to "SELI" appears only while referring to the Vishnugad Project and not in relation to the Tapovan Project.

23. Thirdly, Mr. Andhyarujina submits that there has been no suppression of any material document. The Applicant has placed before this Court all documents relevant for the limited enquiry under Section 11. These include the Tapovan Settlement Agreement, the correspondence showing the existence of disputes between the parties and the notices by which the dispute resolution procedure was invoked.

24. The Respondent has submitted, without prejudice to its objections, that if an arbitrator is appointed, the appointment should be made while expressly keeping open all its rights and contentions. Mr. Andhyarujina submits that no such specific order is necessary. Any objection which is available to the Respondent in law, including an objection under Section 16 of the Act, does not come to an end merely because an arbitrator is appointed under Section 11.

25. In view of these submissions, Mr. Andhyarujina submits that the present Application deserves to be allowed and that a sole arbitrator be appointed to decide the disputes and differences between the Applicant and the Respondent arising under the Tapovan Settlement Agreement.

26. Mr. Sawant, learned Advocate appearing for the Respondent, submits that the Applicant is, in fact, an “alter ego” of SELI Overseas S.P.A., a company incorporated in Italy, and that the Applicant is under the central management and control of the said foreign company. According to him, having regard to the principles relating to the “group of companies” doctrine, Section 2(1)(f)(ii) of the Arbitration and Conciliation Act, 1996, hereinafter referred to as “the Arbitration Act”, and the various facts stated in the Affidavit in Reply, the present arbitration has the character of an international commercial arbitration. He, therefore, submits that the jurisdiction to deal with any matter arising from the arbitration agreement in question lies with the Supreme Court.

27. Mr. Sawant submits that the contemporaneous and undisputed records show the following facts. Mr. Pier Massimo Marras had negotiated and arrived at the settlement with the Respondent while representing both SELI Overseas S.P.A. and the Applicant. The TVHEP Settlement Agreement, concerning the Applicant, and the VPHEP Settlement Agreement, concerning the Applicant's foreign parent company, SELI Overseas S.P.A., were executed on the same date by the same person representing both entities. According to him, both Settlement Agreements formed part of a larger settlement and exit arrangement between SELI and the Respondent. He submits that the Applicant is a wholly owned Indian subsidiary or group entity of SELI Overseas S.P.A. SELI and the Applicant also acted through common representatives, including Mr. Marras, at all relevant times. It is submitted that the dispute resolution process was initially invoked by SELI in respect of both Settlement Agreements together by issuing the Dispute Invocation Notice. According to the learned Advocate, these facts, when considered together, show that the Applicant and SELI cannot be treated as completely separate for the purpose of deciding the jurisdictional issue.

28. Mr. Sawant submits that Section 2(27) of the Companies Act, 2013 defines the expression “control”, in relation to a company incorporated in India, to “include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner”. According to him, though the Applicant is an Indian company, it is only a shell company and does not have any real independent existence. He submits that it is completely under the control of SELI Overseas S.P.A. because all its directors are appointed by SELI Overseas S.P.A., and the entire shareholding, management and policy decisions of the Applicant are controlled by SELI Overseas S.P.A. He submits that these facts have not been disputed by the Applicant. Mr. Sawant clarifies that the Respondent is not seeking the joinder of any third party to the present proceedings. Its objection is based upon the nature of the Applicant's existence and the manner in which its control, management and affairs are said to be completely exercised by SELI Overseas S.P.A.

29. According to Mr. Sawant, this complete control and management of the Applicant by SELI Overseas S.P.A., together with the fact that the Dispute Invocation Notice dated 18 December 2024 was issued by Mr. Pier Massimo Marras in respect of both the TVHEP and VPHEP Settlement Agreements in a composite manner, clearly establishes that the Applicant is an "alter ego" of SELI Overseas S.P.A. He submits that, by applying Section 2(27) of the Companies Act, 2013 together with Section 2(1)(f) of the Arbitration Act, an arbitration between the Applicant and the Respondent under the arbitration agreement contained in the Settlement Agreement has to be treated as an "international commercial arbitration". He, therefore, submits that the Supreme Court has the proper jurisdiction to deal with and decide the present Application.

30. In support of these submissions, the Respondent relies upon the principles laid down by the Supreme Court in *Duro Felguera S.A. v. Gangavaram Port Limited, (2017) 9 SCC 729* and *Cox and Kings Ltd. v. SAP India Pvt. Ltd. & Ors., (2024) 4 SCC 1*. Mr. Sawant submits that where connected disputes contain elements of both domestic arbitration and international commercial arbitration, the statutory distinction between the two cannot be ignored. According to him, the Supreme Court has also recognised that even where separate arbitral tribunals may be required under separate arbitration agreements, the same arbitrator may be appointed where the disputes are connected or interrelated. He submits that similar consideration should be given in the present matter, particularly in view of the facts stated by the Respondent in paragraph 2 of its Affidavit in Reply, which read as follows:

> "2.1 In view of the aforesaid background, the Respondent has filed the Arbitration Petition No. 61/2026 before the Supreme Court of India under Section 11 of the Arbitration Act, seeking the appointment of the Sole Arbitrator, while providing complete details about the subject Application pending before this Court.
>
> 2.2 Upon hearing the Respondent in the said Arbitration Petition on August 12, 2026, the Supreme Court made an oral suggestion to file for the Transfer Petition seeking the transfer of the subject Application from this Court to the Supreme Court. However, since SELI was not represented during the said hearing, notice was issued to it and it was indicated that such directions can be passed in the next hearing, upon SELI's submissions. A copy of the Order dated August 12, 2026 passed by the Supreme Court is enclosed as Annexure 1 hereto.
>
> 2.3 The aforesaid facts show the bonafide of the Respondent that it is neither delaying nor seeking to evade the arbitration, as alleged by the Applicant. This Court may kindly consider the aforesaid observations made by the Supreme Court while adjudicating the subject Application"

31. Mr. Sawant submits that it is not disputed that there are two separate arbitration agreements. One is contained in the TVHEP Settlement Agreement between the Applicant and the Respondent. The other is contained in the VPHEP Settlement Agreement between the Respondent and the Applicant's foreign parent company, SELI Overseas S.P.A. According to him, disputes have arisen under both the Settlement Agreements. He submits that both Agreements were executed as part of a larger and composite arrangement between the parties and the disputes under both Agreements are required to be decided in accordance with the agreed dispute resolution mechanism.

32. Mr. Sawant submits that both sides agree that an arbitral tribunal is required to be constituted and the disputes are required to be resolved through arbitration. According to him, it is only for this reason that the Applicant has approached this Court and the Respondent has approached the Supreme Court under Section 11 of the Arbitration Act, both seeking appointment of a sole arbitrator. He submits that if this Court appoints one sole arbitrator and the Supreme Court appoints another sole arbitrator, there would be two separate arbitration proceedings between what the Respondent describes as the same real parties, since the Applicant is said to be an alter ego of SELI Overseas S.P.A. According to him, the entire dispute would then not be considered in one composite and complete manner. This may lead to several difficulties. Mr. Sawant relies upon the decision of the Delhi High Court in Gammon India Limited and Anr. v. National Highways Authority of India, AIR 2020 Del 132, particularly in the context of proceedings under Section 11 of the Arbitration Act. He submits that separate proceedings may result in the possibility of conflicting decisions, increased costs and time for the parties, and questions relating to res judicata and delay in the administration of justice.

33. Mr. Sawant, therefore, submits that in order to avoid such difficulties at a later stage, particularly when disputes have arisen under both Settlement Agreements and, according to the Respondent, both Agreements form part of a composite arrangement, it would be proper that one Court appoint a sole arbitrator and all the disputes be referred to the same sole arbitrator.

34. Mr. Sawant submits that the Notice dated 18 December 2024 clearly showed an intention to invoke arbitration. In particular, reliance is placed upon the statement that “I am hereby informing you that we have no other option but activate the clause of arbitration for enforcing our dues, if we do not receive any tangible signal by 28 of December 2024.” He submits that, according to the settled principles of law, the substance of the communication is more important than its form. For this purpose, he relies upon the decisions in *M/s Alchemist Hospitals v. M/s ICT Health Technology Services India, 2025 INSC 1289* and *Glencore International AG v. Shree Ganesh Metals, 2025 SCC OnLine SC 1815*. He submits that it was not necessary for the Dispute Invocation Notice to specifically mention any particular clause of the arbitration agreement. Once SELI communicated its intention to invoke arbitration in respect of both SELI Overseas S.P.A. and what the Respondent describes as its alter ego, namely the Applicant, and the Respondent acted upon the same, the said communication amounted to a valid notice invoking arbitration.

35. Mr. Sawant submits that the Arbitration Invocation Notice dated 18 December 2024 was replied to by the Respondent on 11 February 2025. According to him, in that reply, the Respondent dealt with and crystallised the disputes arising under both

Settlement Agreements and requested the other side "to withdraw the present notice and engage in constructive discussions to reach a mutually acceptable resolution." He points out that, despite this specific request, SELI did not withdraw the Arbitration Notice dated 18 December 2024. The same was acted upon and referred to in the communication dated 27 March 2025, which is at Exhibit I, page 90 of the Application.

36. In view of the Arbitration Invocation Notice dated 18 December 2024, which according to the Respondent was issued by SELI in respect of both matters in a composite manner, the Respondent's reply dated 11 February 2025 and the communication dated 27 March 2025, Mr. Sawant submits that the entire settlement arrangement between the parties was composite in nature. According to him, these circumstances show that the Applicant is nothing but an alter ego of SELI Overseas S.P.A. He, therefore, submits that any arbitration between the Applicant and the Respondent has to be treated as an "international commercial arbitration" within the meaning of Section 2(1)(f) of the Arbitration Act. On this basis, he submits that the present Application is liable to be dismissed or, in the alternative, transferred to the Supreme Court.

REASONS AND ANALYSIS:

37. I have considered the submissions made by Mr. Andhyarujina, learned Senior Advocate appearing for the Applicant, and Mr. Sawant, learned Advocate appearing for the Respondent. I have considered both the Settlement Agreements, the correspondence relied upon by the respective parties, the Dispute Invocation Notice dated 18 December 2024, the pleadings filed in the present proceedings and the judgment of the Supreme Court in *Ajay Madhusudan Patel v. Jyotrindra S. Patel,* (2025) 2 SCC 147. The main question which is required to be considered at this stage is of limited nature. The question is whether, from the material before this Court, the arbitration agreement between the Applicant and the Respondent can be treated as an international commercial arbitration and, because of that, whether the jurisdiction of this Court under Section 11 is taken away.

38. Before going to the facts of the present matter, it is necessary to understand what enquiry this Court can make under Section 11. In *Ajay Madhusudan Patel*, the Supreme Court has considered the earlier position under *SBP & Co. v. Patel Engg. Ltd.,* (2005) 8 SCC 618 and *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.,* (2009) 1 SCC 267, as the change brought by insertion of Section 11(6-A). In paragraph 76.3, the Supreme Court has observed as follows:

> "*Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764]* , in clear terms, clarified the effect of the change brought in by Section 11(6-A) and stated that all that the courts need to see is whether an arbitration agreement exists — nothing more, nothing less."

39. The Supreme Court has observed in paragraph 76.4 that where facts are disputed and there is an arguable case, the parties may be referred to arbitration because the Arbitral Tribunal has power to decide the disputes, including the question concerning its own jurisdiction. The Supreme Court has noticed that questions arising under the group of companies doctrine, particularly in a multi-party arbitration, may involve complicated questions of fact. Such questions are better left for consideration before the Arbitral Tribunal.

40. The position is explained in paragraph 76.5. The Supreme Court has observed that the enquiry under Section 11(6) should remain confined to the "existence of the arbitration agreement" under Section 7 of the Act. The question regarding validity at this stage is concerning formal validity, for example, whether the arbitration agreement is in writing. Substantive objections which may require consideration of evidence are required to be left to the Arbitral Tribunal because the Tribunal can "rule" upon its own jurisdiction. This principle assumes importance in the present matter because the main objection of the Respondent is based upon its factual case that the Applicant is an "alter ego" of SELI Overseas S.P.A.

41. Paragraph 76.7 of the same judgment considers non-signatories and the group of companies doctrine. The Supreme Court has stated:

> "*Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680]* dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it said that

> in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16."

42. The principle coming out from the above observations is clear. At the stage of appointment of an arbitrator, this Court is required to see whether an arbitration agreement exists between the parties before it. This Court is not expected to conduct a detailed enquiry or a trial concerning questions which may arise between a signatory and a non-signatory, particularly where such questions depend upon evidence and the actual nature of relationship between different companies.

43. Coming now to the facts of the present case, there is no dispute regarding existence of the Tapovan Settlement Agreement dated 20 October 2022. Clause 9.2 contains an arbitration agreement. The Applicant is a signatory to the said Agreement. The Respondent is a signatory. Clause 9.2.1 refers to the "Parties hereto". The Applicant has invoked the said arbitration agreement. The Respondent does not dispute that disputes have arisen and that such disputes are required to be resolved through arbitration. The case of the Respondent is not that there is no arbitration agreement between the Applicant and the Respondent. Its objection is that, because of the relationship between the Applicant and SELI, the Applicant should be treated differently while deciding which Court has jurisdiction.

44. The question whether there exists an arbitration agreement between the Applicant and the Respondent is one matter. The question whether SELI is required to be treated as a party to that arbitration agreement is another matter. The first question can be seen from the Agreement. The second question may require examination of the shareholding pattern, management and control, the role and conduct of Mr. Marras, the two Settlement Agreements, the correspondence between the parties and the Dispute Invocation Notice. The material relied upon by the Respondent may give rise to an arguable case. However, only because an arguable case is raised, it does not mean that this Court must finally decide the entire controversy while exercising jurisdiction under Section 11.

45. I have considered the submission of the Respondent concerning the "alter ego" issue. It is true that the Respondent has relied upon the fact that SELI holds 98 shares in the Applicant and the remaining two shares are held by Mr. Marras as nominee. Reliance is placed upon common representation, the role of Mr. Marras and the alleged control exercised by SELI over the Applicant. These circumstances cannot be simply ignored. They are relevant for understanding the objection raised by the Respondent. However, these facts do not finally establish that the Applicant and SELI are one and the same legal person.

46. A company does not lose its separate legal identity merely because another company holds most, or even all, of its shares. The same position applies merely because one person may represent both companies. At this stage, the Respondent has not pointed out any admitted fact from which it can be said that the separate legal personality of the Applicant has been legally extinguished. Even the allegation that the Applicant is a "shell company" is a matter which may require proper factual examination. Such allegation cannot be finally accepted only because SELI has substantial shareholding or management influence over the Applicant.

47. I, therefore, find that the submission of the Respondent may be relevant to this limited extent that the relationship between the Applicant and SELI, and the effect of surrounding circumstances, can become relevant for consideration before the Arbitral Tribunal. However, I am unable to accept that those circumstances and are sufficient for holding that the Applicant is legally the same entity as SELI.

48. The Respondent has placed substantial reliance upon Section 2(1)(f) of the Arbitration Act, which defines "international commercial arbitration". Clause (ii) refers to "a body corporate which is incorporated in any country other than India". The present statutory provision does not say that a company incorporated in India becomes a foreign body corporate merely because its management is alleged to be controlled from outside India. Section 2(1)(f)(iii), after the statutory amendment, concerns an association or a body of individuals whose central management and control is exercised outside India. The Applicant is a company incorporated in India. Therefore, merely because it is alleged that SELI, being a foreign company, exercises control over the Applicant, the Applicant cannot be treated as a body corporate incorporated outside India.

49. The Respondent has relied upon Section 2(27) of the Companies Act and submits that SELI exercises control over the Applicant. Even if, for the purpose of present consideration, it is assumed that the Applicant is controlled by SELI within the meaning of the Companies Act, that by does not decide the question under Section 2(1)(f) of the Arbitration Act. The meaning of “control” for the purpose of company law and the statutory test for deciding whether an arbitration is an international commercial arbitration are not the same. Both provisions operate in their respective fields. Therefore, merely establishing corporate control cannot, by, decide the jurisdiction under Section 11.

50. Mr. Sawant has placed much reliance upon the fact that Mr. Marras negotiated and signed both the Settlement Agreements and acted for both entities. The mere fact that one person represents two companies does not make both companies one legal person. A director or an authorised representative may act for more than one company. The legal effect of such act depends upon the capacity in which he acts and the document executed by him. In the present case, the Tapovan Settlement Agreement identifies the Applicant as a party. SELI is not shown as a party to the said Agreement.

51. The Respondent has relied upon the fact that the TVHEP Settlement Agreement and the VPHEP Settlement Agreement were executed on the same date and arose from a wider settlement or exit arrangement. This circumstance may show that the two transactions were connected. However, commercial connection and legal identity are not the same thing. Two contracts may arise from one commercial understanding and yet remain separate contracts between different parties, having different obligations and separate dispute resolution clauses. The terms of the two Agreements are important. The Applicant has pointed out that the Tapovan Settlement Agreement is self-contained, that Clause 9.2.1 refers to the "Parties hereto", and that Clause 10.3 records the entire agreement between the parties. From the language of the Tapovan Settlement Agreement, the Respondent has not shown at this stage that SELI had undertaken any obligation under that Agreement or that the Applicant had executed the Agreement only as a representative of SELI. Therefore, on the material before the Court, the Tapovan Settlement Agreement is an agreement between the Applicant and the Respondent.

52. The submission of the Respondent based upon the Dispute Invocation Notice dated 18 December 2024 requires some consideration because the Respondent submits that it is the clearest material showing a composite transaction. The words relied upon are:

> "I am hereby informing you that we have no other option but activate the clause of arbitration for enforcing our dues, if we do not receive any tangible signal by 28 of December 2024."

53. The Respondent submits that this communication related to both projects and amounted to an invocation by SELI on behalf of as well as the Applicant. However, I do not think that the exact legal effect of this communication can be finally decided by this Court in the present proceedings under Section 11. Even if the said communication is taken as showing an intention to invoke arbitration in respect of both Settlement Agreements, it does not, establish that both Agreements became one single agreement. It does not establish that SELI became a signatory to the Tapovan Settlement Agreement or that the Applicant lost its separate legal identity. At the highest, the communication may give the Respondent a basis to contend before the Arbitral Tribunal that the dealings between the parties were composite in nature and that the foreign parent was intended to be involved in the arbitration. Such question can be examined by the Tribunal after considering the relevant evidence.

54. The subsequent conduct of the parties does not require a different conclusion at this preliminary stage. The Respondent has pointed out that it replied on 11 February 2025 and that the subsequent correspondence referred to disputes under both the Settlement Agreements. Such conduct is material and may require consideration if the Arbitral Tribunal is called upon to decide the scope of the arbitration, the parties bound by the arbitration agreement or applicability of the group of companies doctrine. However, correspondence between the parties cannot rewrite the terms of a written arbitration agreement when the question before this Court is whether an arbitration agreement exists between the Applicant and the Respondent.

55. The Respondent has submitted that the Applicant has artificially separated the Tapovan Settlement Agreement from the Vishnugad Settlement Agreement. I am unable to accept this submission for deciding the present Application. The Applicant is invoking a specific written arbitration agreement contained in a contract to which it is a party. Unless it is shown that no such arbitration agreement exists, or that the Applicant is not a party to the same, existence of another connected agreement does not prevent the Applicant from invoking the arbitration clause under its own Agreement.

56. The Respondent apprehends that this Court may appoint one arbitrator, whereas the Supreme Court may appoint another arbitrator in proceedings relating to the VPHEP Settlement Agreement. According to the Respondent, this may result in two separate arbitration proceedings, increased expenditure, delay and possibly inconsistent findings. However, such concern cannot either enlarge the jurisdiction of this Court or take away the jurisdiction otherwise conferred by the statute. The question before this Court is not which arrangement may be more convenient for the parties. The question is which Court has jurisdiction to act upon the arbitration agreement invoked in the present Application. If the present arbitration agreement is between two companies incorporated in India and the Applicant is a party to that agreement, the mere possibility that another arbitration involving a foreign company may arise cannot convert the present arbitration into an international commercial arbitration.

57. The Respondent has relied upon *Duro Felguera* and *Cox & Kings*. In my view, these decisions do not require dismissal of the present Application. On the contrary, they support the approach that disputed questions depending upon the relationship between a signatory and a non-signatory should not be finally decided at the preliminary stage. The quoted observations in paragraph 76.7 of *Ajay Madhusudan Patel* make this position clear. The question whether a non-signatory is a "veritable party" to the arbitration agreement may go to the jurisdiction of the Arbitral Tribunal and can be decided by the Tribunal under Section 16. This is in line with the submission of the Applicant that the Respondent will not lose its legal rights merely because an arbitrator is appointed. Section 16 gives the Arbitral Tribunal power to rule upon its own jurisdiction. Therefore, if the Respondent wants to contend that SELI is bound by the arbitration agreement under the Tapovan Settlement Agreement, that the disputes under both Settlement Agreements should be considered together, that the Applicant is acting as an alter ego of SELI, or that the Tribunal has no jurisdiction for any other reason, such objections can be raised before the Arbitral Tribunal in accordance with law.

58. I am unable to accept the submission that appointment of an arbitrator would "foreclose substantial jurisdictional and substantive rights" of the Respondent. Appointment of an arbitrator does not finally decide such issues. It only places the dispute before the forum chosen by the parties in the Tapovan Settlement Agreement. The jurisdictional objections of the Respondent continue to remain available and can be raised before the Tribunal, subject to law. The Supreme Court has recognised this distinction between the limited enquiry to be made by the referral Court and the wider jurisdiction which can be exercised by the Arbitral Tribunal.

59. The Respondent has relied upon the fact that it has filed proceedings under Section 11 before the Supreme Court and on 12 August 2026, a suggestion was made regarding filing of a possible Transfer Petition. On the present material, there is no reason for this Court to treat such oral suggestion as a final order transferring the present Application to the Supreme Court. The material placed before me shows that SELI was not represented on that date and notice was issued to it. Therefore, as of now, there is no order before this Court which takes away or divests the jurisdiction of this Court over the present Application. Pendency of another proceeding under Section 11 may, if required, need appropriate coordination between the Courts. However, that by does not establish that this Application is outside the jurisdiction of this Court.

60. I, therefore, find on the principal objection raised by the Respondent that, for the purpose of the present Application under Section 11, the Applicant is a company incorporated in India and is a party to the Tapovan Settlement Agreement. The arbitration agreement invoked in the present Application is between the Applicant and the Respondent. On the material available, the Respondent has not shown that the Applicant is legally incapable of maintaining its separate identity as a party to the said Agreement.

61. I find that the allegation that the Applicant is an "alter ego" of SELI raises a question which cannot be finally decided in the present proceedings only on the basis of shareholding, common management, common representation or the correspondence relied upon. These circumstances may have relevance before the Arbitral Tribunal. However, they do not, at this stage, displace the written agreement executed between the Applicant and the Respondent.

62. I find that existence of the separate VPHEP Settlement Agreement does not prevent the Applicant from invoking the arbitration clause contained in the Tapovan Settlement Agreement. Whether there should be any coordination between the two arbitrations, whether SELI is bound by the arbitration agreement under the Tapovan Settlement Agreement, whether there was in law a composite transaction, and which disputes can properly be considered together, are matters which can be considered in the arbitration proceedings in accordance with law.

63. The Applicant has, therefore, established existence of an arbitration agreement between and the Respondent. The Respondent has not shown any sufficient ground at this stage for this Court to refuse to exercise jurisdiction under Section 11. The questions relating to control, alter ego, group of companies, composite arrangement and the legal effect of the communication dated 18 December 2024 are not matters requiring final adjudication by this Court for the limited purpose of appointment of an arbitrator.

64. In the overall view of the matter, I am of the opinion that the present Application is maintainable before this Court and deserves to be allowed. A sole arbitrator is, therefore, required to be appointed in terms of Clause 9.2 of the Tapovan Settlement

Agreement.

65. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

A) Mr. Amrut Joshi, Advocate of this Court, is appointed as the Arbitrator to adjudicate the disputes and issues between the parties.

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

66. All objections raised by the Respondent regarding jurisdiction, including those relating to SELI Overseas S.P.A., the group of companies doctrine, the alleged composite nature of the two Settlement Agreements, the status, and effect of the communication dated 18 December 2024 and the scope of reference, are kept open to be raised before the Arbitral Tribunal in accordance with law.

67. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)