

ARBITRATION APPLICATION NO.135 OF 2026

Executive Ship Management Pvt Ltd. ... Applicant

V/s.

Smruti Sajan Kumbalaparambil & Anr. ... Respondents

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Mr.K. P. Anil Kumar a/w Priyanka Kumar, for the Applicant.

Mr. Kunal Mehta A/W Mahesh Dube, Vyoma Joshi I/B
Crawford Bayley & Co., for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 11, 2026.

PRONOUNCED ON : SEPTEMBER 17, 2026.

JUDGMENT:

1. The present Application has been filed by the Applicant seeking appointment of a Sole Arbitrator by this Court under Section 11 of the Arbitration and Conciliation Act, 1996. The Applicant relies upon the arbitration clause contained in the Agreement-cum-Bond dated 11 November 2021.

2. The facts and circumstances leading to the filing of the present Application are as follows. The Applicant is a Shipping Company. Respondent No. 1 was employed by the Applicant and was bound by the Agreement-cum-Indemnity Bond dated 11 November 2021. Respondent No. 2 is the father of Respondent No.

1 and stood as her guarantor under the said Agreement. On 11 November 2021, Respondent No. 1 joined the Applicant after executing the Agreement-cum-Indemnity Bond. At the time of joining, it was agreed that Respondent No. 1 would first undergo an initial training period of 18 months with the Applicant. After completing the training, Respondent No. 1 was required to complete 36 months of sea service. This period was to be divided into six separate contracts. The expenses for the said training and sea service were to be borne by the Applicant. The Agreement provided that if Respondent No. 1 committed a breach of any of its terms, she would be liable to pay Rs.10 lakhs to the Applicant Company as liquidated damages. The Agreement contained an arbitration clause for resolution of disputes between the parties. According to the Applicant, Respondent No. 2 stood as guarantor for Respondent No. 1 under the Agreement. Therefore, according to the Applicant, both Respondents became jointly liable for the bond amount of Rs.10 lakhs in the event Respondent No. 1 failed to complete the required 36 months of service after completion of her training. After completing the initial training, Respondent No. 1 served on board MARLIN APATITE as "CDT" from 29 December 2021 to 12 June 2022. Thereafter, she served on FRONT GAULA as "CDT" from 18 October 2022 to 28 May 2023 and subsequently on GOLDEN AQUAMARINE as "CDT" from 18 November 2023 to 18 June 2024. Thereafter, Respondent No. 1 joined another company without informing the Applicant. The Applicant claims that Respondent No. 1 committed a breach of the Agreement. The Applicant made repeated attempts to recover the bond amount

from the Respondents. However, those attempts did not result in payment.

3. On 28 November 2025, the Applicant issued a notice to the Respondents by post and email, calling upon them to pay Rs.10 lakhs on account of the alleged breach of the Agreement. The Respondents did not respond to the said notice. Thereafter, on 18 December 2025, the Applicant, through its Advocate, issued legal notices to the Respondents demanding payment of Rs.10 lakhs. Those notices were returned. Thereafter, on 21 January 2026, the Applicant issued a notice by courier and email invoking the arbitration clause contained in the Agreement-cum-Bond. In the said notice, the Applicant proposed appointment of a Sole Arbitrator and called upon the Respondents to give their consent or to suggest a nominee. The Respondents did not respond to the said notice. Subsequently, on 4 March 2026, Respondent No. 1 sent a reply to the Applicant's demand notice. In the said reply, Respondent No. 1 denied the existence of the Agreement and refused to pay Rs.10 lakhs. At the same time, Respondent No. 1 admitted that she had been employed by the Applicant and had undertaken sea service with the Applicant. On 4 March 2026, the Applicant replied to Respondent No. 1. The Applicant reiterated its case and again pointed out the alleged breach committed by Respondent No. 1. The Applicant asserted that both Respondents were jointly and severally liable to pay Rs.10,00,000/- under the Agreement-cum-Bond dated 11 November 2021. According to the Applicant, 30 days had thereafter passed without any agreement between the parties regarding appointment of a Sole Arbitrator.

The Applicant approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator. Hence, the present Application.

4. The Learned Advocate for the Applicant submits that the present Arbitration Application is legally maintainable. According to the Applicant, it is a party to the Agreement-cum-Bond dated 11 November 2021 (“the Agreement”). In any event, the Applicant submits that it is a “veritable party” to the said Agreement. In this connection, the Agreement-cum-Bond annexed as Exhibit-A to the present Application may be considered. The Agreement provides that the word “Company” includes its directors, officers, authorised representatives, assignees, and successors. According to the Applicant, it comes within this definition because it was an authorised representative under the Agreement. The Applicant submits that its position is not limited to being an authorised representative. It claims that it is a direct party to the Agreement. The Agreement was signed by Late Mr. S. M. Iyer, who was at the relevant time a Director and authorised signatory of the Applicant. In this regard, reliance is placed on Pages 41 and 42 of the Arbitration Application and Schedule A to the Agreement. Late Mr. S. M. Iyer has signed the Agreement in his capacity as the authorised signatory of the Applicant.

5. The Applicant submits that Respondent No. 1 subsequently recognised the Applicant's status and rights under the Agreement. In particular, reliance is placed on the reply dated 4 March 2026 sent by Respondent No. 1 to the Applicant's legal notice, which is annexed as Exhibit-G to the present Arbitration Application.

Respondent No. 1 had signed the Agreement-cum-Bond. In her reply, she addressed the communication to the present Applicant, ESM Pvt. Ltd. According to the Applicant, this shows that Respondent No. 1 recognised the Applicant's role and position in the agreement. It is submitted that Respondent No. 2 did not send any reply to the Applicant's notice invoking arbitration. According to the Applicant, this is relevant because Respondent No. 2 did not raise any objection at the stage when arbitration was invoked regarding the Applicant's status or its rights under the Agreement.

6. Respondent No. 2 has raised an objection in the present Limited Affidavit-in-Reply that the Arbitration Application is not maintainable because the Applicant is not a signatory to the Agreement. The Applicant submits that this objection is incorrect. As stated earlier, the Agreement bears the signature of Late Mr. S. M. Iyer, who was at that time a Director and authorised signatory of the Applicant. His signature appears on the Agreement. For the limited purpose of showing and identifying the signature and authority of Late Mr. S. M. Iyer, reliance is placed upon a copy of the Board Resolution authorising him to sign documents in respect of two earlier legal proceedings. Respondent No. 2 has contended that since one of the entities mentioned in the Agreement-cum-Bond is based in Singapore, the arbitration would amount to an “international commercial arbitration” under Section 2(1)(f) of the Arbitration and Conciliation Act, 1996. The Applicant submits that this objection is based on an incorrect understanding of the relationship between the parties.

7. The Applicant submits that, as stated earlier, it is a signatory to the Agreement-cum-Bond and is an authorised representative covered by the definition of “Company”. It is submitted that the obligations under the Agreement were in fact performed between the Applicant and the Respondents. The representations and functions arising from the Agreement were carried out between the Applicant and the Respondents.

8. The Applicant submits that even if it is assumed, without admitting, that it is not a formal signatory in its own capacity, it would still be a “veritable party” to the arbitration agreement. This is because of its participation in the agreement, its role in performing the Agreement and the intention of the parties as shown from the surrounding circumstances. The Applicant submits that ESM Pte. Ltd. is not a party to the Agreement-cum-Bond. None of its officers or representatives has signed the Agreement as a party. Therefore, merely because an entity connected with the Applicant is based in Singapore, the arbitration cannot be treated as an international commercial arbitration. The Applicant submits that this fact, by, cannot take away its substantive rights under the Agreement.

9. The question whether a non-signatory or a “veritable party” can be treated as a party to an arbitration agreement has been considered by the Supreme Court in several decisions. The basic principle is that there must be consent for a person or entity to be treated as a party to an arbitration agreement. Normally, a signature is the clearest way of showing such consent. However, according to the Applicant, the absence of a formal signature does

not in every case mean that there was no consent to the arbitration agreement.

10. The Supreme Court in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 SCC 641, recognised that in appropriate cases a non-signatory entity may be made a party to arbitration. This can be done where the overall transaction, the relationship between the entities and the intention of the parties show that the concerned entity was intended to be bound by the arbitration agreement. The Applicant submits that the principle of the “group of companies doctrine” is relevant. According to the Applicant, it and ESM Pte. Ltd. are entities belonging to the same group. The Applicant's participation in performing the Agreement and the conduct of the Respondents towards it show that the Applicant was treated as an integral part of the agreement.

11. The Applicant submits that Respondent No. 1 recognised the Applicant as having rights and obligations under the Agreement. This is shown by her acceptance of the assignment of vessels to the Applicant. According to the Applicant, this subsequent conduct is relevant for understanding the intention of the parties and the Applicant's status under the Agreement. Therefore, the objection that the Applicant cannot invoke arbitration only because it allegedly did not sign the Agreement in a formal manner cannot be accepted. The Applicant submits that the legal position has subsequently been considered by the Supreme Court in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, (2024) 4 SCC 1, read with *ASF Build-Tech Private Limited v. Shapoorji Pallonji and Company*

Private Limited, (2025) 9 SCC 76. According to the Applicant, whether a non-signatory is legally a party to the arbitration agreement depends upon the facts of each case. This may require consideration of the intention of the parties, the Applicant's participation in performing the Agreement, the documents and the surrounding circumstances. The Applicant submits that this question can be considered by the Arbitral Tribunal. Once the Applicant is found to be a “veritable party” to the Agreement, it would have the right to invoke the arbitration clause and maintain the present Arbitration Application.

12. The Applicant submits that this view is consistent with the order passed by the Learned Single Judge in Arbitration Application Nos. 117 and 118 of 2026. In those proceedings, it was observed that if the Tribunal finds that the Applicant had participated in performing the Agreement and was covered by the definition of the term “Company”, the Applicant could be treated as a “veritable party” to the Agreement. On this basis, the Applicant submits that the objection raised by Respondent No. 2 regarding the maintainability of the present Arbitration Application has no merit and should be rejected.

13. The Learned Advocate for the Respondents submits at the outset that the Subject Agreement was entered into between Executive Ship Management Pte. Ltd. (“ESM Singapore”), which is a Singapore-based entity, and the Respondents. According to the Respondents, the Applicant, Executive Ship Management Private Limited, is admittedly neither a signatory nor a party to the Subject Agreement. This is clear from Page 42 of the Application,

where the names and signatures of the parties to the Subject Agreement are recorded.

14. In this background, the Respondents submit that one of the parties to the arbitration is ESM Singapore, which is a Singapore-based entity. Therefore, according to the Respondents, the arbitration would fall within the definition of “international commercial arbitration” under Section 2(1)(f) of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”). The relevant provision is reproduced below for reference:

- (i) an individual who is a national of, or habitually resident in, any country other than India, or
- (ii) a body corporate which is incorporated in any country other than India; or
- (iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

15. According to the Respondents, it is an admitted position that ESM Singapore is a body corporate incorporated in Singapore and is a party to the Subject Agreement. Therefore, the Respondents submit that the arbitration falls within the definition of “international commercial arbitration” under Section 2(1)(f) of the Arbitration Act. In view of the above submission, the Respondents rely upon the relevant provisions of Section 11(6) and Section 11(12) of the Arbitration Act. The said provisions deal with the Court which can be approached when the agreed procedure for appointment of an arbitrator has not been followed.

16. Section 11(6) provides as follows:

“Where, under an appointment procedure agreed upon by the parties—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”; and

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to “the High Court” within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court is the Court referred to in that clause, to that High Court.”

17. On the basis of these provisions, the Respondents submit that an application seeking appointment of an arbitrator in an international commercial arbitration must be filed before the

Supreme Court of India. According to them, such an application cannot be entertained by this Court. They submit that this issue concerns the basic jurisdiction of this Court to hear the present Application. Therefore, according to the Respondents, the present Application is liable to be dismissed on this ground.

18. The Respondents submit that the Applicant's claim that it is a “veritable party” to the Subject Agreement does not change the nature of the arbitration. According to them, the arbitration would still be an international commercial arbitration. In this regard, the Respondents submit that even if, without admitting, the Applicant is assumed to be a “veritable party” to the Subject Agreement, that would not change the nature of the arbitration. It would continue to be an “international commercial arbitration” because ESM Singapore would admittedly remain one of the parties to the Agreement.

19. According to the Respondents, even if the Applicant is correct in saying that it is a “veritable party” to the Subject Agreement, this would not change the fact that ESM Singapore is the principal party seeking relief against the Respondents. The Respondents submit that ESM Singapore would be a necessary and proper party to the arbitration. According to them, there cannot be any arbitral proceedings without ESM Singapore being made a party. The fact that ESM Singapore has authorised the Applicant to conduct the proceedings on its behalf would not change this position.

20. The Respondents submit that this position is clear from the Applicant's own Notice dated 28 November 2025, annexed as Exhibit B at Page 46 of the Application. The relevant portion of the notice reads as follows:

“On behalf of M/s. Executive Ship Management Pte. Ltd. (hereinafter referred to as the “Principal”), I hereby serve you the following Legal Notice—

Further, on failure to pay the stipulated amount, within the time frame, Principal shall be constrained to initiate appropriate legal action for recovery of dues,.....”

21. According to the Respondents, the above wording makes the position clear. It is the Applicant's own case in the notice that ESM Singapore is the party claiming the money from the Respondents. The Applicant is only acting as an authorised representative of ESM Singapore for pursuing that claim.

22. Therefore, the Respondents submit that the Applicant cannot now dispute that ESM Singapore is a necessary and proper party to the arbitration. Once ESM Singapore is treated as a party to the arbitration, the arbitration would necessarily be an “international commercial arbitration”, since ESM Singapore is incorporated outside India. Consequently, according to the Respondents, any application under Section 11 of the Arbitration Act would fall within the jurisdiction of the Supreme Court of India and not this Court.

REASONS AND FINDINGS:

23. I have considered the objections raised by the Respondents, the legal provisions relied upon by both sides and the judgment in

Arbitration Application Nos.117 and 118 of 2026 placed before this Court. There is no dispute that the Agreement contains an arbitration clause. Clause 10 provides for arbitration. Therefore, the real dispute is not about the existence of an arbitration agreement. The main question is as to who are the parties to that arbitration agreement. After deciding this question, it is necessary to decide whether this Court has jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 to entertain the present Application.

24. To decide this question, the Agreement has to be looked at first. On the last page of the Agreement, Executive Ship Management Pte. Ltd., Singapore is shown as “PARTY OF THE FIRST PART”. Respondent No.1 is shown as “PARTY OF THE SECOND PART” and Respondent No.2 is shown as “PARTY OF THE THIRD PART”. The signature page shows the signature against Executive Ship Management Pte. Ltd., Singapore. Therefore, as the Agreement is written, the first contracting party is Executive Ship Management Pte. Ltd., Singapore. For convenience, it will hereafter be referred to as ESM Singapore. This position cannot be ignored only because the present Application has been filed by Executive Ship Management Pvt. Ltd. The Applicant is not shown in the Agreement as “PARTY OF THE FIRST PART”. The Agreement names Executive Ship Management Pte. Ltd., Singapore as the first party. The same difference between the two companies was noticed in the earlier order passed in Arbitration Application Nos.117 and 118 of 2026. In paragraph 5 of that order, it was recorded that the Agreements-cum-Indemnity Bonds were

executed by the Respondents with Executive Ship Management Pte. Ltd., whereas the Applications were filed by Executive Ship Management Pvt. Ltd.

25. The Applicant relies upon the definition of the word “Company” given in the Agreement. The said definition reads as follows:

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

26. This definition gives a wider meaning to the word “Company”. It includes the directors, officers, authorised representatives, assigns, and successors of the first party. On this basis, the Applicant submits that, as it is an authorised representative of ESM Singapore, it can act for the “Company” under the Agreement. This definition was noticed in paragraph 5 of the earlier order.

27. The Applicant has relied upon the Board Resolution dated 9 January 2014. According to the Applicant, this Resolution authorised Executive Ship Management Private Ltd. to enter into contracts and agreements relating to hiring and onboard training. It authorised the Applicant to deal with the legal rights and liabilities of Executive Ship Management Pte. Ltd., Singapore. The Resolution authorised the Applicant to represent ESM Singapore before Courts and Tribunals in India, including arbitration authorities. The relevant portion of the Resolution reads:

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

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

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

28. The Board Resolution shows that the Applicant was authorised to act for ESM Singapore. The same Board Resolution was considered in paragraph 6 of the earlier judgment. However, there is a difference between acting as an authorised representative of a contracting party and becoming a separate contracting party. Merely because one company has authority to represent another company, it does not mean that the parties to the Agreement automatically change. The Board Resolution says that the Applicant is to act “on behalf of” ESM Singapore. It does not say that the Applicant will replace ESM Singapore in contracts

entered into by ESM Singapore. The Resolution repeatedly treats ESM Singapore as the principal and the Applicant as the person authorised to act for it. Therefore, I am unable to accept the Applicant's submission that the Board Resolution makes the Applicant a signatory or a contracting party under the present Agreement.

29. The signature page of the Agreement supports this conclusion. ESM Singapore is shown as the first party and the signature is of its authorised signatory. The Applicant is not separately shown there as a contracting party. Therefore, the Agreement shows that the Respondents entered into the Agreement with ESM Singapore. The Applicant cannot establish that it executed the Agreement in its own capacity merely because an authorised signatory of ESM Singapore signed the document.

30. The Applicant has taken an alternative stand. It submits that even if it is not a formal signatory to the Agreement, it can still be treated as a “veritable party” to the arbitration agreement. In support of this submission, the Applicant relies upon its participation in the performance of the Agreement, the definition of “Company” which includes authorised representatives and the fact that the Respondents dealt with the Applicant in relation to the obligations. This submission cannot be said to be without any basis. The earlier judgment records in paragraph 8 that the Applicant had stated that it participated in the performance of the Agreement and that the Respondents had corresponded with it regarding the obligations. At the same time, merely acting as a representative of one of the contracting parties does not by make

the Applicant a “veritable party”. The Agreement has to be read as a whole. It has to be considered whether the non-signatory had given consent to the arbitration agreement in the manner recognised by law. In the present Agreement, the parties are identified. ESM Singapore is the first party. The Trainee and the Guarantor are the other parties. The word “Company” is then defined in the Agreement. This definition may permit an authorised representative of the Company to perform certain acts under the Agreement. However, from this alone, it cannot be held that such representative becomes a party to the arbitration agreement.

31. This distinction is seen from the other clauses of the Agreement. Clause 7 deals with the guarantee given by the Guarantor. It states that the guarantee is given “to the Company on behalf of the Trainee”. It makes the Guarantor jointly and severally liable for the obligations of the Trainee. Clause 8 similarly provides that the Trainee and the Guarantor shall indemnify “the Company” against the losses and expenses suffered by the Company. Therefore, the rights arising from the alleged breach are the rights of the “Company” under the Agreement. The agreement is between the first party, namely ESM Singapore, and the other parties to the Agreement.

32. Clause 10, which contains the arbitration agreement, is important. It provides as follows:

“10. In the event of any disputes or differences arising out of or in respect of any breach of any terms and conditions of this agreement, the same shall be referred to arbitration as

per the provisions of the Arbitration and Conciliation Act, 1996. The reference shall be made to a sole arbitrator to be appointed jointly by the Company, the Trainee & the Guarantor. In the event, the parties are unable to so appoint a sole arbitrator, the sole arbitrator shall be appointed as per the provisions of the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be at Mumbai. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court at Mumbai only.”

33. The words “the Company, the Trainee & the Guarantor” appearing in Clause 10 have to be read together with the definition of “Company” in the Agreement. Therefore, the definition cannot be ignored. The question is whether this definition makes the Applicant a party to the arbitration agreement or whether the Applicant continues to be only an authorised representative of the Company. On the material available before this Court, I find that the Applicant's authority to represent ESM Singapore is established. However, the material does not establish that the Applicant replaced ESM Singapore as the contracting party or that it acquired a status under the Agreement.

34. I have considered the Applicant's reliance upon its subsequent dealings with Respondent No.1. These dealings may show that the Applicant was actively involved in carrying out the arrangement. They may show that the Respondents understood that the Applicant was acting for ESM Singapore. However, such subsequent conduct by cannot change the identity of one legal entity into another. At the most, this conduct may be relevant while considering whether the Applicant can in law be treated as a

non-signatory party to the arbitration agreement. It cannot lead to a finding that the Applicant was a formal signatory to the Agreement.

35. The earlier judgment placed before the Court is relevant in this regard. In paragraph 10, while considering an Agreement of the same nature and the same issue concerning Executive Ship Management Pvt. Ltd. and Executive Ship Management Pte. Ltd., the learned Judge observed:

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

36. The above judgment concerned different Agreements and the issue regarding the Applicant's status was kept open. Therefore, I do not treat that judgment as finally deciding the issue before this Court. However, its reasoning is relevant because the agreement in the present case is materially similar. The earlier judgment makes a distinction between there being an arbitration agreement between ESM Singapore and the Respondents and the separate question whether the Applicant can be treated as a party to that arbitration

agreement. I find this distinction to be correct.

37. I find that the Respondents' submission that there is no arbitration agreement at all is too broad. There is an arbitration agreement in the present Agreement. Clause 10 provides that disputes arising from the Agreement are to be referred to arbitration. The Agreement has been executed by ESM Singapore, the Trainee and the Guarantor, and Clause 10 forms part of that Agreement. The earlier judgment recorded in paragraph 3 that the concerned Agreements contained an arbitration agreement. Therefore, the submission that there is no arbitration agreement whatsoever cannot be accepted. The actual objection of the Respondents is narrower. Their case is that the Applicant is not the contracting party and cannot claim to be the foreign contracting entity named in the Agreement. On this limited issue, the Respondents' submission has force. The Agreement names ESM Singapore as the first party. The signature page does not separately name the Applicant as a party. The Board Resolution shows that the Applicant was authorised to represent ESM Singapore. When these documents are read together, they do not establish that the Applicant became a contracting party under the Agreement.

38. I now come to the objection concerning “international commercial arbitration”. Section 2(1)(f), as relied upon by the parties, uses the words “where at least one of the parties is” and includes a case where the party is “a body corporate which is incorporated in any country other than India”. Section 2(1)(h) defines “party” as “a party to an arbitration agreement”. Therefore, while deciding whether an arbitration is an international

commercial arbitration, the Court first has to identify the parties to the arbitration agreement. It is not enough to look at every person or entity which may have participated in the transaction. In the present case, the entity shown as the first party in the Agreement is Executive Ship Management Pte. Ltd., Singapore. The last page of the Agreement describes it as “PARTY OF THE FIRST PART” and gives its address in Singapore. Therefore, the Agreement provides clear evidence that one of the parties to the Agreement is a body corporate incorporated outside India.

39. Once this position is accepted, the submission of the Respondents regarding the nature of the arbitration has substantial merit. The arbitration concerns disputes arising from a commercial Agreement. One of the parties to the arbitration agreement is ESM Singapore, which is a foreign body corporate. Therefore, the arbitration comes within the definition of “international commercial arbitration” under Section 2(1)(f). The fact that the present Application has been filed in the name of the Indian company does not remove ESM Singapore from the Agreement. It does not change the identity of the party which executed the Agreement. The Applicant's answer is that it is the party or, at least, a “veritable party” to the arbitration agreement. Even if this submission is considered for the purpose of argument, it does not remove ESM Singapore from the arbitration agreement. The Agreement continues to be an Agreement in which ESM Singapore is a party along with the Respondents. Even if the Applicant is found to have some additional status, that cannot remove the foreign party which is shown in the Agreement. Therefore, even on

the Applicant's wider case, ESM Singapore remains a party to the arbitration agreement.

40. This conclusion is supported by the Applicant's own Board Resolution. The Resolution does not state that the Applicant replaces ESM Singapore. Instead, it authorises the Applicant to act “on behalf of” ESM Singapore and to represent ESM Singapore before Courts, Tribunals, and arbitration authorities. The language of the Resolution supports the position that the Applicant was acting as a representative. It does not show that the Applicant became the principal contracting party in place of ESM Singapore.

41. There is one more relevant point in Clause 10. The clause does not state that disputes are to be referred only between the Applicant and the Respondents. It provides for appointment of the arbitrator by “the Company, the Trainee & the Guarantor”. When this clause is read with the identity of the first party and the Board Resolution, the “Company” is, on the material presently available, ESM Singapore acting through its authorised representative wherever required. Therefore, the presence of an authorised representative does not remove the principal from the arbitration agreement.

42. I reject the submission that the Applicant's status as an authorised representative changes the arbitration from an international commercial arbitration into a domestic arbitration. It does not have that effect. The important fact is that ESM Singapore is a party to the arbitration agreement. The Applicant may have authority to act on its behalf. That is a different question

from deciding the nature of the arbitration.

43. I have considered the Applicant's reliance upon the judgments in *Cox and Kings Limited v. SAP India Private Limited & Ors.*, *ASF Build-Tech Private Limited v. Shapoorji Pallonji and Company Private Limited*, and *Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises Pvt. Ltd.* The earlier order placed before the Court considered these judgments in relation to the question whether a non-signatory can be treated as a “veritable party” and whether that question can be considered by the Court under Section 11 or by the Arbitral Tribunal under Section 16. In paragraph 9, the learned Judge considered these decisions and recorded that a reference Court under Section 11 can consider whether a non-signatory is a veritable party, while the Arbitral Tribunal has power under Section 16 to consider that issue. For deciding the present Application, I do not find it necessary to give a final finding that the Applicant can never be treated as a “veritable party”. The material before this Court is sufficient to decide the more basic question of jurisdiction. There is a clear arbitration agreement involving ESM Singapore and the Respondents. The Applicant's position as a representative does not remove ESM Singapore from that agreement. Therefore, for deciding the proper forum under Section 11, the arbitration has to be treated as an international commercial arbitration.

44. The Respondents have relied upon Section 11(12) and submitted that, where the arbitration is an international commercial arbitration, the reference to the Supreme Court or the High Court in Section 11 has to be understood as a reference to

the Supreme Court. I find this submission to be correct. Therefore, this Court cannot assume jurisdiction to appoint an arbitrator merely because the Agreement fixes Mumbai as the venue of arbitration or provides that court proceedings are to be instituted in Mumbai. The reference to Mumbai in Clause 10 has to be understood in its proper meaning. Clause 10 states that “The venue of arbitration shall be at Mumbai” and states that court proceedings “shall be instituted and held in the court at Mumbai only.” These words may fix the agreed venue of the arbitration. They may be relevant in proceedings where the parties are otherwise free to choose the Court. However, the parties cannot by agreement give jurisdiction to a Court in a manner which is contrary to the Arbitration Act. The parties may agree that Mumbai will be the venue of arbitration. They cannot, merely by making such an agreement, confer jurisdiction under Section 11 upon a Court which does not have such jurisdiction under the statute. Therefore, the Applicant's submission that the reference to Mumbai in the Agreement gives jurisdiction to this Court cannot be accepted to that extent. The provision and the statutory provisions have to be read together. The Agreement may determine the agreed venue of the arbitration. The statute determines which Court has the power to appoint the arbitrator under Section 11.

45. I do not accept the Applicant's submission that the earlier Bombay High Court judgment in Arbitration Application Nos.117 and 118 of 2026 requires this Court to treat the Applicant as a party and appoint an arbitrator in the present proceedings. The

earlier order did appoint a sole arbitrator. However, paragraph 12 of that order states:

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

46. Therefore, the earlier order cannot be understood as giving a final finding that the Indian representative company became a contracting party for all purposes. At the most, the earlier order shows that arbitration was allowed to proceed while the question of the Applicant's status was kept open. In the present case, this Court has to decide the jurisdictional objection on the basis of the material placed before it.

47. I have considered the possibility that the Applicant may have performed substantial functions under the Agreement. The Agreement shows that training, education, deployment on vessels and subsequent service obligations formed part of the arrangement. Clause 6 records the Trainee's agreement to complete the training and thereafter join and work on vessels for the required period. Therefore, the Applicant may have had an active role in implementing the arrangement. However, performance of functions by an authorised representative cannot, by and without material, change the identity of the contracting party recorded in the Agreement.

48. In my considered view, the distinction which has to be made is clear. The Applicant may have authority to represent ESM Singapore. The Applicant may have participated in the

performance of the Agreement. The Applicant may, depending upon the evidence and applicable law, seek to establish before the Arbitral Tribunal that it is a “veritable party”. But ESM Singapore continues to be a party to the arbitration agreement. This is what the Agreement shows. Therefore, the arbitration remains an international commercial arbitration for the purposes of Section 2(1)(f) and Section 11.

49. The Respondents' submission that the Applicant's possible status as a “veritable party” does not change the international character of the arbitration is accepted. Even if the Applicant is ultimately held to be a party to the arbitration agreement, ESM Singapore remains a party to it. The statutory requirement is satisfied because at least one of the parties to the arbitration agreement is a body corporate incorporated outside India. This finding affects the jurisdiction of this Court. The present Application has been filed under Section 11 for appointment of a sole arbitrator. Since the arbitration is an international commercial arbitration, the competent forum under Section 11 is the Supreme Court of India and not this Court. Therefore, the issue is not merely a technical defect. It concerns the jurisdiction of this Court to entertain the present Application.

50. I accordingly hold, on the merits of the jurisdictional objection, that the present Arbitration Application under Section 11 is not maintainable before this Court. Since the arbitration is an international commercial arbitration, the appropriate forum for seeking appointment of the arbitrator is the Supreme Court under the statutory scheme. The present Application has to be rejected

for want of jurisdiction.

51. In view of the above finding, it is not necessary for this Court to finally decide whether the Applicant is a “veritable party” to the arbitration agreement. That issue does not change the conclusion regarding jurisdiction because ESM Singapore continues to be the foreign contracting party shown in the Agreement. Any rights of the Applicant, if available, to act for or represent ESM Singapore can be considered in appropriate proceedings before the competent forum.

52. The objection of the Respondents regarding the territorial and subject-matter jurisdiction of this Court is upheld. Their submission that there is no arbitration agreement at all is rejected. Their submission that the arbitration is not an international commercial arbitration is rejected. However, their objection that the present Application under Section 11 is not maintainable before this Court is accepted.

53. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Arbitration Application filed by the Applicant under Section 11 of the Arbitration and Conciliation Act, 1996 is dismissed for want of jurisdiction;

(ii) It is held that the arbitration agreement contained in Clause 10 of the Agreement-cum-Indemnity Bond dated 11 November 2021 constitutes an international commercial arbitration within the meaning of Section 2(1)(f) of the Arbitration and Conciliation Act, 1996;

- (iii) The Applicant shall be at liberty to approach the competent forum in accordance with law for appointment of an arbitrator;
- (iv) All contentions of the parties on the merits of the underlying dispute are kept open;
- (v) The question whether the Applicant can be treated as a “veritable party” to the arbitration agreement is kept open to be decided by the competent forum in accordance with law;
- (vi) There shall be no order as to costs.

(AMIT BORKAR, J.)