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

COMM ARBITRATION APPLICATION NO.250 OF 2026

Citrus Solutions Private Limited ... **Applicant**

Vs.

1. **Digital Live Services**
2. **Digital Live Solutions Limited**
3. **Mudit Gupta** ... **Respondents**

Mr. Vaibhav S. Kulkarni for the Applicant.
Ms. Deepika Saini for Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 11, 2026.

PRONOUNCED ON : SEPTEMBER 17, 2026

<u>JUDGMENT</u>:

1. By the present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant is seeking appointment of an Arbitrator to decide the disputes and differences which have arisen between the parties out of the Supply Agreement dated 16 July 2024. According to the Applicant, an amount of Rs.49,07,753/- is outstanding and payable, along with interest at the rate of 18% per annum from the date of default.

2. The facts and circumstances which have led to filing of the present Application, as stated by the Applicant, are as follows.

According to the Applicant, the Respondents represented that the Microsoft License (Digital) Keys supplied to them would be used strictly for educational purposes and in accordance with the policies of Microsoft. Relying upon this representation, the parties entered into a Supply Agreement dated 16 July 2024 ("the Agreement"). The Agreement sets out the terms relating to the supply, restrictions regarding the end-use of the products, payment obligations and liabilities of the parties.

3. The Applicant has relied upon Clause 7 of the Agreement, which deals with the terms of payment. The said clause provides as under:

> "7. Payment Terms the Parties covenant that the payment term is 100% advance and shall be made on receipt of Proforma Invoice raised upon the DLS by CSPL for the supply of Agreed Products on a time-to-time basis."

4. According to the Applicant, the above clause shows that payment in advance was required before the products could be supplied. However, relying upon the repeated assurances given by the Respondents and their representation that the products would be used for educational purposes, the Applicant, in good faith, allowed the Microsoft License (Digital) Keys to be activated and used even though the advance payment was not made within time. The Applicant states that certain invoices were raised in the name of Respondent No.2 at the request of Respondent No.3. It is stated that Respondent No.2 is a sister concern of Respondent No.1 and that both the said Respondents are owned, managed and operated by Respondent No.3. The Applicant states that as the outstanding amount remained unpaid and there was no other option available to it, the Applicant invoked the arbitration clause by issuing a Notice dated 16th February 2026 to all the Respondents. According to the Applicant, despite receipt of the said notice, the Respondents did not give any reply to the same.

5. Mr. Kulkarni, learned Advocate for the Applicant submits that, considering its goodwill, position in the market and past experience in the field, Respondent No.1, through its Director/Authorised Officer Mr. Mudit Gupta, who is Respondent No.3 herein, approached the Applicant and requested supply of Microsoft Licensed (Digital) Keys to Respondent Nos.1 and 2. Respondent No.2 represented to the Applicant that the Microsoft License (Digital) Keys were required only for implementation of an education project. The Respondents represented that they had validly undertaken the said project pursuant to a government tender/award. Relying upon these representations, the Applicant states that it believed them to be true, correct and made in good faith.

6. The Applicant submits that, during the transaction in November 2025, Mr. Mudit Gupta, Respondent No.3, assured an officer of the Applicant over a telephone call that the payment would be made within three (3) days from the date of supply. According to the Applicant, the said assurance was given by Respondent No.3 despite knowing that the promised payment would not be made. The Applicant states that certain invoices were raised in the name of Respondent No.2 at the request of Respondent No.3. According to the Applicant, Respondent No.2 is a sister concern of Respondent No.1 and both Respondent Nos.1 and 2 are owned, managed and operated by Respondent No.3.

7. Ms. Saini, learned Advocate appearing for Respondent Nos.1 to 3, submits that the Supply Agreement dated 16 July 2024, which contains the arbitration agreement relied upon by the Applicant, was entered into only between the Applicant and Respondent No.1, Digital Live Services. Respondent No.2, Digital Live Solutions Limited, has not signed the said Agreement and is not a party to the arbitration agreement contained in it. Learned Advocate submits that, in spite of this position, the Applicant has made Respondent No.2 a party to the present proceedings. However, the Applicant has not shown any contractual, factual or basis for making Respondent No.2 liable or for treating Respondent No.2 as a party to the arbitration agreement. Learned Advocate submits that an arbitration agreement is based on the consent of the parties. It normally binds only those parties who have agreed to submit their disputes to arbitration. A person who has not signed the agreement can be treated as a party to the arbitration agreement only in certain recognised circumstances. For this purpose, there must be proper pleadings and material showing that the requirements for including such a non-signatory are satisfied.

8. It is submitted that, in the present case, the Applicant has neither pleaded nor shown any such circumstance in respect of Respondent No.2. The mere fact that Respondent Nos.1 and 2 may have common management, or that there may be some other connection between them, cannot make Respondent No.2 a party to the arbitration agreement. There must be aly valid basis to show that Respondent No.2 had consented to arbitration.

9. Learned Advocate submits that the impleadment of Respondent No.2 in the present proceedings is without any proper basis and is not supported by the documents. The Applicant has not placed on record any document showing that Respondent No.2 entered into a novation, assignment, succession agreement or any independent undertaking by which Respondent No.2 accepted the obligations of Respondent No.1 or agreed to be bound by the arbitration agreement. Learned Advocate submits that the Applicant cannot create an arbitration agreement merely by making Respondent No.2 a party to the present Petition. Where there is no arbitration agreement binding Respondent No.2, the dispute cannot be referred to arbitration against Respondent No.2. Therefore, to the extent the present Petition seeks any relief against Respondent No.2, the same is liable to be dismissed.

REASONS AND FINDINGS:

10. I have considered the Application, the submissions made on Mr. Kulkarni, learned Advocate appearing behalf of the Applicant, the submissions made by Ms. Saini, learned Advocate appearing for Respondent Nos.1 to 3. At this stage, the Court has to see whether there is an arbitration agreement and, so far as Respondent Nos.2 and 3 are concerned, whether there is sufficient prima facie material to show that they can be treated as real and intended parties to the arbitration agreement.

11. The document before the Court is the Supply Agreement dated 16 July 2024. In the said Agreement, Citrus Solutions Private Limited is described as “CSPL / Licensee / Supplier” and Digital Live Services is described as “DLS”. Digital Live Services is stated to be a proprietorship firm and its office address is mentioned in the Agreement. The Agreement uses the words “CSPL” and “DLS” and says that they are collectively referred to as "Parties" and individually as a "Party". The recitals show that DLS approached CSPL and CSPL agreed to supply the Agreed Products to DLS. Therefore, from the Agreement, it can be seen that the arrangement was between CSPL and DLS. The other clauses of the Agreement show that the rights and obligations were placed upon DLS as the purchaser. Clause 1 provides that DLS shall purchase the Agreed Products exclusively from CSPL. Clause 2 provides that DLS shall issue purchase orders and CSPL shall issue the Proforma Invoice and supply the Agreed Products to DLS. Clause 7 provides that the payment term is 100% advance and payment has to be made after receipt of the Proforma Invoice raised upon DLS by CSPL. Thus, from these clauses, it is seen that the obligations were between CSPL and DLS.

12. The Applicant has relied upon the fact that some invoices were issued in the name of Respondent No.2 at the request of Respondent No.3. It is the case of the Applicant that Respondent Nos.1 and 2 are sister concerns and are managed by Respondent No.3. The Applicant states that Respondent No.3 approached the Applicant, made representations about the purpose for which the Microsoft License Keys were required and assured the Applicant's officer that payment would be made within three days from the date of supply. These facts stated by the Applicant cannot be ignored only because Respondent Nos.2 and 3 are not shown as signatories to the Agreement. The alleged conduct and involvement of Respondent Nos.2 and 3 in the transaction is relevant for seeing whether there is some prima facie basis to bring them within the arbitration agreement. At the same time, merely because a person has some role or involvement in the dealings connected with a contract, it cannot be said that such person has become a party to the contract or to the arbitration agreement. For this purpose, the terms of the Agreement have to be seen. In the present Agreement, the expression "DLS" is stated to include its Affiliates. The Agreement defines "Affiliate" as an entity which directly or indirectly controls, is controlled by, or is under common control with the concerned entity during the period of such control. It is stated that reference to DLS shall include its affiliates. This provision is relevant to the issue which arises before the Court. It shows that when the Agreement was entered into, the parties had contemplated that the expression "DLS" could include its affiliates in the manner stated in the Agreement. Therefore, the submission made on behalf of Respondent Nos.1 to 3 that since Respondent No.2 has not signed the Agreement, the matter ends there, cannot be accepted. A non-signatory cannot in every case be excluded only because its signature is not appearing on the Agreement. The Supreme Court has recognised that in proper cases a non-signatory can be bound by an arbitration agreement. The important question is whether the facts and conduct show the necessary intention and consent to be bound by the arbitration agreement.

13. The Supreme Court, in paragraph 84 of Cox & Kings, has explained the basic position in the following words:

> "84. It is presumed that the formal signatories to an arbitration agreement are parties who will be bound by it. However, in exceptional cases persons or entities who have not signed or formally assented to a written arbitration agreement or the underlying contract containing the arbitration agreement may be held to be bound by such agreement. ... Therefore, the decisive question before the Courts or Tribunals is whether a non-signatory consented to be bound by the arbitration agreement."

14. Thus, what is mainly required to be seen is whether the non-signatory consented to be bound by the arbitration agreement. Such consent may be gathered from the terms of the Agreement, the relationship between the parties and their conduct. Therefore, the Court has to look at the material placed before it and see whether there is a prima facie basis to reach such conclusion.

15. The Agreement contains a specific arbitration clause. Clause 10(a) provides:

> "If any matter, dispute, differences arises between the Parties about this Agreement then the Parties shall meet to discuss the matter and shall negotiate in good faith to endeavour to resolve the matter. Any disputes between the parties, which cannot be resolved via negotiations, shall be referred to and finally resolved by arbitration as per the provisions of the Arbitration and Conciliation Act, 1996."

16. Clause 10(b) provides that the seat of arbitration shall be Mumbai. Clause 10(c) provides for appointment of one Arbitrator and states that, if either party so wishes, the matter shall be decided by three Arbitrators, with each party appointing one Arbitrator and the two Arbitrators appointing the third Arbitrator. The language of arbitration is stated to be English. The wording of Clause 10 is important for deciding the present issue. It refers to disputes "between the Parties". The word "Parties" has been defined in the Agreement as CSPL and DLS. Therefore, there is an arbitration agreement between the Applicant and Respondent No.1. However, there is no provision in the Agreement which names Respondent No.2 or Respondent No.3 in his individual capacity as a contracting party. Respondent No.2 is not shown as a signatory to the Supply Agreement. The Agreement does not describe Respondent No.2 as purchaser, co-purchaser, guarantor or contracting entity. Learned Advocate appearing for the Respondents has pointed out that the Applicant has not placed on record any novation, assignment, or independent undertaking by which Respondent No.2 accepted the obligations of Respondent No.1 or agreed to be bound by the arbitration clause. To this extent, the submission made on behalf of Respondent No.2 has substance. The Supply Agreement does not show that Respondent No.2 executed the Agreement or accepted the arbitration clause. The reference to "Affiliates" cannot mean that every company which is later described as a sister concern of DLS became a party to the arbitration agreement. There must still be some prima facie material connecting Respondent No.2 with the relationship created under the Agreement.

17. This view is in accordance with paragraph 117 of Cox &

Kings, where the Supreme Court observed:

> "117. … However, we clarify that mere presence of a commercial relationship between the signatory and non-signatory parties is not sufficient to infer "legal relationship" between and among the parties. If this factor is applied solely, any related entity or company may be impleaded even when it does not have any rights or obligations under the underlying contract and did not take part in the performance of the contract. The group of companies doctrine cannot be applied to abrogate party consent and autonomy."

18. Therefore, merely because Respondent Nos.1 and 2 may have common management or some business relationship, that cannot be treated as sufficient consent to arbitration. There has to be some material from which the intention to have a relationship under the contract can be seen, at least prima facie.

19. The Applicant has stated that certain invoices were issued in the name of Respondent No.2 at the request of Respondent No.3. If the material relating to those invoices showed that Respondent No.2 placed purchase orders, accepted the terms of the Agreement, received or used the products, made representations regarding the Agreement, or otherwise participated in its performance in a manner showing acceptance of the arrangement, then such facts could have been relevant. Active participation by a non-signatory in performance may show that the non-signatory was intended to be a veritable party.

20. Paragraph 126 of Cox & Kings explains this position as follows:

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

21. In the present case the material before the Court does not show, even prima facie, to what extent Respondent No.2 participated in the performance of the Supply Agreement. The Applicant has stated that some invoices were issued in the name of Respondent No.2. But the Agreement does not show Respondent No.2 as a contracting party. There is no material shown before the Court to establish that Respondent No.2 signed the Agreement, gave any acceptance of its terms or agreed to the arbitration clause.

22. The submission that Respondent Nos.1 and 2 were under common management does not establish the required consent. Common management may show that there is some business connection between the entities, but it does not mean that Respondent No.2 accepted the arbitration agreement. The Supreme Court in paragraph 140 of Cox & Kings has stated:

> "140. An analysis of the cases cited above establishes the following propositions of law: first, the typical scenarios

> where a person or entity can claim through or under a party are assignment, subrogation, and novation; second, a person "claiming through or under" can assert a right in a derivative capacity, that is through the party to the arbitration agreement, to participate in the agreement; third, the persons claiming through or under do not possess an independent right to stand as parties to an arbitration agreement, but as successors to the signatory parties' interest; and fourth, mere or commercial connection is not sufficient for a non-signatory to claim through or under a signatory party."

23. Therefore, so far as Respondent No.2 is concerned, I am not satisfied that the material available gives sufficient prima facie basis to hold that Respondent No.2 is a veritable party to the arbitration agreement.

24. This does not mean that the Referral Court is required to conduct a detailed trial regarding every person who is not a signatory to the Agreement. The Supreme Court has made it clear that the examination under Section 11 is only a prima facie examination. Paragraph 169 of Cox & Kings states:

> "169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party seeks invocation of an arbitration agreement. In both the scenarios, the Referral Court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. …"

25. Therefore, the Court has to make only a limited examination.

But the Court cannot send every person to arbitration without first seeing whether there is at least a prima facie basis for treating such person as a party to the arbitration agreement.

26. The same position is found in paragraph 114 of *SBI General Insurance Co. Ltd. v. Krish Spg.*, which states:

> "114. The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award."

27. Therefore, I do not accept the submission of the Respondents in its absolute form that this Court has no role at all in examining the position of Respondent No.2. The Court has to see whether there is a prima facie basis for treating Respondent No.2 as a veritable party. At the same time, the Applicant cannot succeed only by showing that Respondent No.2 had some commercial connection with Respondent No.1 or that invoices were issued in its name. There has to be some material showing consent or conduct sufficient to bring Respondent No.2 within the arbitration agreement.

28. The position of Respondent No.3 requires consideration. The Applicant states that Respondent No.3 approached the Applicant, represented the purpose for which the Microsoft License Keys were required and assured the Applicant's officer that payment would be made within three days from the date of supply. The Applicant states that Respondent No.3 requested that certain invoices be issued in the name of Respondent No.2. Thus, according to the Applicant, Respondent No.3 had direct involvement in the transaction. The Agreement records that DLS approached CSPL pursuant to discussions and representations and warranties of DLS. Various obligations are imposed upon DLS regarding the use of the Agreed Products. Annexure-I provides that the products supplied to DLS should be used in India for Government Educational Authorities and not for private or commercial purposes unless prior written approval is granted. The Agreement records representations by DLS regarding its authority to enter into the Agreement and states that the Agreement, when executed and delivered, shall constitute a valid and binding obligation of DLS. Clause 11 identifies Mr. Mudit Gupta as the point of contact for Digital Live Services.

29. These facts are relevant while considering the role of Respondent No.3. However, there is a difference between a person acting on behalf of a contracting party and a person who becomes a party to the contract. A person may negotiate, communicate or give instructions on behalf of a firm or company without accepting all the obligations of that company. The Court has to see whether Respondent No.3 acted only as the representative of DLS or whether there is prima facie material showing his consent to the arbitration agreement.

30. In the present Agreement, Mr. Mudit Gupta is not described in his individual capacity as one of the “Parties”. The named contracting party is Digital Live Services. Clause 10 refers to disputes “between the Parties”. There is no provision in the Agreement stating that Mr. Mudit Gupta undertook the liabilities of DLS or agreed to submit his individual disputes to arbitration. The fact that Mr. Mudit Gupta negotiated the transaction or allegedly gave an assurance regarding payment cannot establish that he consented to the arbitration agreement. His conduct may have relevance while considering the Applicant's underlying claim against DLS. But that issue is different from the question whether he became a party to the arbitration agreement. The Agreement describes Digital Live Services as a proprietorship firm and identifies Mr. Mudit Gupta as the person to whom notices were to be addressed. This circumstance cannot be completely ignored. However, it is not necessary at this stage to finally decide all questions concerning the constitution of the proprietorship firm or the exact capacity in which Mr. Mudit Gupta acted. For the present purpose, the question is whether he can be treated as a individual party to the arbitration agreement.

31. Applying the above principles, I find that the material does not show any consent by Respondent No.3 to the arbitration agreement. His alleged participation in the transaction may be relevant for deciding the substantive claim of the Applicant, but such participation does not make him a party to the arbitration agreement. There has to be something more to show that he accepted the obligation to arbitrate. The distinction becomes clearer from the Agreement. Respondent No.1 is the entity named in the Supply Agreement. The Agreed Products were to be supplied to DLS. The payment obligation under Clause 7 is upon DLS. The representations and warranties in the Agreement are those of DLS. The arbitration clause operates between the "Parties", namely CSPL and DLS. The arbitration agreement between the Applicant and Respondent No.1 is established. It is in writing and the contracting parties are identified. Clause 10 provides for arbitration of disputes which cannot be resolved through negotiations. The seat of arbitration is Mumbai. Therefore, there is no reason at this stage to refuse reference of the disputes between the Applicant and Respondent No.1 to arbitration.

32. The Applicant claims an outstanding amount of Rs.49,07,753/- together with interest at the rate of 18% per annum. Whether this amount is due, whether the goods or Microsoft License Keys were supplied as claimed, whether there was any default, what amount is payable and whether the Applicant is entitled to interest at the claimed rate are all matters concerning the merits of the dispute. Clause 7 provides for 100% advance payment. These questions can be considered by the Arbitral Tribunal in the arbitration between the Applicant and Respondent No.1. The Applicant has relied upon the representations concerning the educational use of the Microsoft License Keys and the alleged assurance regarding payment. The Agreement contains provisions concerning use of the Agreed Products, activation, reporting, specifications and consequences of breach. Whether the Applicant is able to prove the allegations made by it and what relief, if any, is to be granted on such facts will be decided by the Arbitral Tribunal.

33. The prima facie view taken by this Court regarding the non-signatories does not take away the power of the Arbitral Tribunal to consider its own jurisdiction in accordance with Section 16, where such question is otherwise before it. The Supreme Court has recognised that the prima facie view of the Referral Court does not finally bind the Arbitral Tribunal. But this principle does not mean that a person against whom there is no prima facie basis for being treated as a party to the arbitration agreement must be compelled to participate in the arbitration.

34. On considering the Agreement as a whole, its definitions, the arbitration clause, the payment clause, the role attributed to Respondent Nos.2 and 3 by the Applicant and the objections raised by the Respondents, I find that the Applicant has established the arbitration agreement between and Respondent No.1. The Applicant has not established the necessary prima facie basis for joining Respondent Nos.2 and 3 as parties to that arbitration agreement.

35. Accordingly, the Application deserves to be allowed to the extent of the disputes between the Applicant and Respondent No.1. The disputes arising out of the Supply Agreement dated 16 July 2024 between the Applicant and Respondent No.1 shall proceed to arbitration in accordance with Clause 10 of the Agreement.

36. In the aforesaid circumstances, the present Application under

Section 11 of the Act, is deserved to be disposed of in terms of the following order:

A) Mr Jash Gandhi, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences arising out of the Supply Agreement dated 16 July 2024 between the Applicant and Respondent No.1 shall proceed to arbitration in accordance with Clause 10 of the Agreement;

Office Address:- 3rd Office, Brady House Building, 2nd Floor, Kala Ghoda, Mumbai – 400 001

Email: jaasshgandhi@gmail.com

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.

37. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

38. 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.)