

Shabnoor

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

ARBITRATION APPLICATION NO.457 OF 2026

Renuka Logistics	... Applicant
V/s.	
Qwik Supply Chain Private Limited & Anr.	... Respondents

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Mr. Tushad Kakalia a/w Mr. Kartik Hede, Mr. Kayomars Kerawalla, Ms. Shruti Indorkar i/b Vohuman Legal, for the Applicant.

Mr. Kshitij Madekar a/w Mr. Gaurav Thakur, Ms. Aditi Kambli i/b A. S. Dayal & Associates, for Respondent No.1.

Mr. Ashishchandra Rao a/w Ms. Ria Dalwani, Ms. Anuli Mandalik, Mr. Mayank Pandey i/b Economic Laws Practice, for Respondent No.2.

CORAM	: AMIT BORKAR, J.
RESERVED ON	: OCTOBER 1, 2026.
PRONOUNCED ON	: OCTOBER 5, 2026.

JUDGMENT:

1. By the present Application, the Applicant is seeking appointment of a Sole Arbitrator in terms of Clause 13.2 of the Service Provider Agreement dated 18 November 2022.

2. The present dispute has arisen from a tripartite commercial arrangement dated 18 November 2022 between the Applicant, Respondent No. 1 and Respondent No. 2. Under this arrangement,

Respondent No. 2 was responsible for accounting for the cash belonging to the Applicant and for collecting and delivering the same. During the course of such collection and delivery, employees of Respondent No. 2 misappropriated an amount of ₹74,94,193/-. In view of the above events and as the Respondents did not resolve the claims made by the Applicant, the Applicant issued a notice dated 4 July 2026 under Section 21 of the Arbitration and Conciliation Act, 1996 ("A&C Act"). By the said notice, the Applicant invoked the arbitration agreement contained in Clause 13.2 of the Service Provider Agreement dated 18 November 2022. Respondent No. 2 replied to the said notice on 29 July 2026. Respondent No. 1, however, did not give any reply to the said notice within the period of thirty (30) days mentioned therein. Therefore, the Applicant has invoked Clause 13.2 of the Agreement and is seeking appointment of a Sole Arbitrator.

3. The facts and circumstances which have resulted in filing of the present Application are as follows. On 24 May 2018, Respondent No. 2 was engaged by RRL under a Service Provider Agreement ("FINO-RRL SPA") for providing Cash Management Services ("CMS"). On 7 April 2021, the Applicant started its operations in connection with the services being provided to JIO Mart. On 18 November 2022, the Applicant and Respondent No. 1 entered into a Service Provider Agreement and Work Order No. XS1/4503866100. Under the said arrangement, the Applicant was required to provide logistics, domestic carrier and transportation services. Thereafter, on 17 June 2023, Mr. Swapnil Prabhakar Tandel, Manager (Risk Control Unit) of Respondent No. 2, lodged

FIR No. 0576/2023 at Pelhar Police Station, Vasai, against two employees of Respondent No. 2 in relation to misappropriation of cash collections amounting to ₹74,94,193/-. The amount alleged to have been misappropriated was the same amount which was generated from the present commercial arrangement. On 26 June 2023, Mr. Roshan S. Shah, representative of Respondent No. 2, by email, accepted that there had been a deviation in the process and accepted that the cash had been received at the Facility. Mr. Shah stated that the amount would be released to the Applicant after completion of the investigation by the Risk Control Unit of Respondent No. 2. On 4 July 2023, at the request of Respondent No. 2, the Applicant supplied screenshots showing the handover OTPs. Thereafter, on 13 July 2023, again at the request of Respondent No. 2, the Applicant supplied CCTV footage showing the representatives of Respondent No. 2 coming to the Facility for collecting the cash. On 26 July 2023, Respondent No. 2 sent the Applicant a copy of FIR No. 0576/2023, which had been registered on 17 June 2023. Thereafter, on 6 December 2023, 12 December 2023 and 8 January 2024, the Applicant sent emails to Mr. Shailendra Singh and other senior officers of RRL. In those emails, the Applicant gave details of the outstanding invoices and requested that necessary action be taken. On 24 June 2024, the Applicant sent a detailed email to the senior management of Respondent No. 1 and RIL. In the said email, the Applicant gave the complete details of the operations and stated that an amount of approximately ₹68,51,364.38/- was outstanding.

4. On 10 February 2025, as the Applicant had not received any proper response to the earlier correspondence, the Applicant issued a notice calling upon the concerned parties to deal with and pay the outstanding amounts. On 10 March 2025, Respondent No. 1 replied to the notice dated 10 February 2025. In the said reply, Respondent No. 1 sought to place the responsibility upon the Applicant and alleged that the Applicant had not complied with the SOPs stated to have been prescribed by Respondent No. 2. Thereafter, on 16 June 2025, the Applicant issued a legal notice to both the Respondents. By the said notice, the Applicant called upon the Respondents to pay the outstanding amount together with interest at the rate of 18% per annum and consequential damages of ₹15,00,000/-. On 23 July 2025, Respondent No. 2, through its advocate, replied to the legal notice dated 16 June 2025. In the said reply, Respondent No. 2 stated that it had no dealings with Respondent No. 1 and that it was coming to know about the existence of Respondent No. 1 for the first time. On 11 November 2025, a meeting was held between the Applicant and the representatives of Respondent No. 1 and RIL at RCP, Navi Mumbai. On 12 November 2025, the Applicant sent an email recording what had been discussed in the meeting held on 11 November 2025. The email recorded the statement of the representatives of Respondent No. 1 that RRL had stopped its dealings with Respondent No. 2, that any amount payable by Respondent No. 2 would be retained with RRL, and that Respondent No. 1 would cooperate with the Applicant in making a complaint to the RBI. However, on 22 December 2025, Respondent

No. 1, by email, withdrew from the assistance which it had agreed to provide on 12 November 2025 and merely directed the Applicant to take advice from its own advisers and lodge its own FIR.

5. On 18 February 2026, the Applicant issued a second legal notice to both the Respondents. The Applicant again demanded payment of ₹68,51,364.38/-, consequential losses of ₹15,00,000/- and interest at the rate of 18% per annum. Thereafter, on 4 July 2026, the Applicant invoked the arbitration agreement contained in Clause 13.2 of the Service Provider Agreement dated 18 November 2022 by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 ("A&C Act"). On 29 July 2026, Respondent No. 2 replied to the notice dated 4 July 2026. Respondent No. 2 denied its liability and rejected the Applicant's invocation of arbitration. Respondent No. 1, however, did not reply to the said notice within the period of thirty (30) days mentioned therein. In view of these facts and circumstances, and in terms of Clause 13.2 of the Service Provider Agreement dated 18 November 2022, the Applicant has approached this Court seeking appointment of a Sole Arbitrator for adjudication of the disputes and claims which have arisen between the parties.

6. Mr. Kakalia, Learned Advocate for the Applicant, submits that Respondent No. 1 is a signatory to the Agreement as well as to the arbitration agreement contained in Clause 13.2 thereof. According to him, the entire Commercial Arrangement was carried out at the instance of Respondent No. 1 and for the business of Respondent No. 1. The Applicant provided the services under the

Agreement and the WO to the satisfaction of Respondent No. 1. No complaint or objection was ever raised by Respondent No. 1 regarding the services provided by the Applicant. It was Respondent No. 1 which decided and directed how the entire Commercial Arrangement was to be carried out, including handing over the cash collected by the Applicant to the representatives of Respondent No. 2. It is submitted that after the Applicant completed its part of the work, the main responsibility for payment of the Applicant's invoices was upon Respondent No. 1. The said invoices have remained unpaid. Therefore, according to the Applicant, Respondent No. 1 is liable to pay the amounts due under the Commercial Arrangement. It is submitted that Respondent No. 1 has not taken any steps against Respondent No. 2 for recovery of the amount or for taking action against it, even though Respondent No. 1 had accepted that Respondent No. 2 was ultimately responsible for the misappropriation of the cash collected under the Commercial Arrangement. According to the Applicant, it is entitled to recover the amounts due from both Respondent No. 1 and Respondent No. 2 jointly and severally.

7. As regards Respondent No. 2, it is submitted that Respondent No. 2 is in substance a party to the arbitration agreement contained in Clause 13.2 and, in any event, is a necessary and proper party to the arbitration proceedings. It is submitted that a written arbitration agreement can bind a person who has not signed it, if the conduct and participation of that person in the transaction show an intention to be bound by the agreement. Such intention can be understood from the relationship between the

parties, the common subject matter, the nature of the transaction as a whole and the role played by the non-signatory in carrying out the contract. According to the Applicant, the present case depends upon the conduct and participation of Respondent No. 2 in the Commercial Arrangement.

8. It is submitted that from the facts stated above, it is clear that Respondent No. 2 had an important and inseparable role in the Commercial Arrangement. The cash which was later misappropriated was received by the authorised representatives of Respondent No. 2. Each receipt was authenticated by generating OTP messages and by endorsing the PIS slips under the seal of Respondent No. 2. Respondent No. 2, therefore, acted as the agent of Respondent No. 1 for collecting the cash. The Applicant handed over the cash collections to the representatives of Respondent No. 2 only because of the express instructions given by Respondent No. 1. Respondent No. 2 confirmed each receipt by generating the OTP and by putting its seal on the PIS slip. It is submitted that the conduct of Respondent No. 2 at the relevant time shows that Respondent No. 2 considered responsible towards the Applicant. In its email dated 26 June 2023, produced at Exhibit-I, Respondent No. 2 accepted that there had been a deviation from the prescribed process and stated that the funds would be released after they were recovered. Respondent No. 2 has started criminal proceedings for recovery of the same amounts which were payable to Respondent No. 1 under the Commercial Arrangement. Those amounts had been misappropriated by the employees of Respondent No. 2 and, because of this, the payments due to the

Applicant were not made. In substance, Respondent No. 2 acted in the place of Respondent No. 1 for receiving the cash. According to the Applicant, where a non-signatory receives and deals with the subject matter of the contract as an agent of the signatory, such person can be bound by the arbitration agreement relating to that contract. The simple denial of agency by Respondent No. 2, according to the Applicant, has no substance when its actual conduct in the Commercial Arrangement is considered. Respondent No. 2 played an inseparable role in the Commercial Arrangement. It accepted that the collected cash had been misappropriated, communicated with the Applicant for resolving the issue and initiated criminal proceedings for recovery of the amount. Therefore, according to the Applicant, Respondent No. 2 cannot now say that it cannot be made a party to the arbitration proceedings only because it had not signed the Agreement. Its own conduct, according to the Applicant, shows that it was an integral part of the Commercial Arrangement.

9. It is submitted that at the stage of referring the parties to arbitration, this Court is required only to be prima facie satisfied that an arbitration agreement exists and that Respondent No. 2 can be treated as a party to that agreement. The actual disputes on merits, according to the Applicant, are required to be decided by the Arbitral Tribunal after it is constituted. It is submitted that the dispute between the parties is concerning one monetary claim. Therefore, for proper and efficient adjudication of the dispute, the Applicant requests that a Sole Arbitrator be appointed to decide the disputes between the Applicant and the Respondents. In these

circumstances, the Applicant submits that it is entitled to recover the amounts claimed from Respondent No. 1 and Respondent No. 2 jointly and severally by referring the disputes to arbitration. The Applicant requests this Court to appoint a Sole Arbitrator to adjudicate and decide the disputes between the parties. It is submitted that Clause 13.2 of the Agreement contains the arbitration agreement and provides for jurisdiction of the Courts at Mumbai. Therefore, according to the Applicant, this High Court has jurisdiction to entertain, hear and decide the present Application.

10. Mr. Rao, Learned Advocate for Respondent No. 2, submits that the Applicant has wrongly filed the present Application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") against Respondent No. 2 and is seeking, among other reliefs, appointment of an arbitrator. He submits that Respondent No. 2 is not a signatory to the Service Provider Agreement dated 18 November 2022 ("Purported SPA"). The said Agreement was entered into between the Applicant and Respondent No. 1 and contains the arbitration agreement relied upon by the Applicant. Respondent No. 2 was neither a party to the Purported SPA nor was it involved in its negotiation, signing, performance or termination. Respondent No. 2 has never agreed, either or otherwise, to be bound by the arbitration agreement contained in the Purported SPA. However, the Applicant is trying to bring Respondent No. 2 within the proposed arbitration by relying upon the separate contract between Respondent No. 2 and Reliance Retail Limited ("RRL") and on some other circumstances

which, according to the Applicant, show the involvement of Respondent No. 2 in the underlying commercial arrangement. It is submitted that these circumstances do not create any legal relationship between the Applicant and Respondent No. 2 in respect of the Purported SPA. They do not show that Respondent No. 2 ever agreed to refer any dispute with the Applicant to arbitration.

11. It is submitted that the monetary claim of the Applicant is based on alleged unpaid invoices raised against Respondent No. 1 under the Purported SPA. The Applicant has not shown any contractual or other legal basis for making Respondent No. 2 liable for those amounts. Respondent No. 2 was not a party to the transaction between the Applicant and Respondent No. 1. Therefore, according to Respondent No. 2, the reliefs claimed against it are misconceived. To the extent that the present Application seeks to bring Respondent No. 2 into the proposed arbitration proceedings, the Application is liable to be rejected at the initial stage. It is submitted that the Applicant has failed to show that there is any arbitration agreement between the Applicant and Respondent No. 2. The Applicant's case is based upon the Purported SPA dated 18 November 2022 and Work Order No. XS1/4503866100 dated 18 November 2022. Both these documents were entered into between the Applicant and Respondent No. 1.

12. Respondent No. 2 was neither a party nor a signatory to the Purported SPA or the Work Order. Therefore, the arbitration agreement contained in Clause 13.2 of the Purported SPA is an

agreement between the Applicant and Respondent No. 1. According to Respondent No. 2, in the absence of any separate agreement or consent by Respondent No. 2, the said arbitration clause cannot bind Respondent No. 2. It cannot be treated as showing that Respondent No. 2 agreed to refer any dispute with the Applicant to arbitration. In fact, Respondent No. 2 has never entered into any contract with the Applicant. There is no question of Respondent No. 2 entering into an agreement containing an arbitration clause with the Applicant. In these circumstances, Respondent No. 2, not being a party to the Purported SPA, cannot be made to participate in arbitration proceedings arising from an arbitration agreement to which it is not a party. Therefore, according to Respondent No. 2, the reliefs claimed in the present Application, insofar as they concern Respondent No. 2, ought not to be granted. It is submitted that, in an attempt to overcome the admitted absence of any contractual relationship or arbitration agreement between the Applicant and Respondent No. 2, the Applicant is relying upon various circumstances. These include: (a) the separate Service Provider Agreement between Respondent No. 2 and Reliance Retail Limited, namely the FINO-RRL SPA; (b) the alleged collection of cash by Respondent No. 2 and the communications or conduct said to be connected with such collection; (c) the allegation that Respondent No. 2 acted as an agent of Respondent No. 1; (d) the FIR said to have been filed against employees of Respondent No. 2 regarding alleged misappropriation of cash; and (e) the Applicant's contention that Respondent No. 2 is a "veritable party" to the Purported SPA.

13. It is submitted that none of these circumstances shows that Respondent No. 2 agreed to the arbitration agreement contained in the Purported SPA, to which Respondent No. 2 is not a party. These circumstances do not show that Respondent No. 2 otherwise agreed to refer any dispute with the Applicant to arbitration. According to Respondent No. 2, the Applicant's reliance upon its alleged involvement in a wider "commercial arrangement" cannot take the place of an actual agreement to arbitrate. Unless there is some material showing that Respondent No. 2 consented to an arbitration agreement with the Applicant, there is no arbitration agreement between them which can be invoked against Respondent No. 2 under Section 11 of the Arbitration Act. He submits that Respondent No. 2 had entered into a Service Provider Agreement dated 24 May 2018 with Reliance Retail Limited ("RRL"), namely the "FINO-RRL SPA", for providing cash management and collection services to RRL in accordance with the Scope of Work mentioned in that Agreement. It is pointed out that: (i) the FINO-RRL SPA did not state that services were to be provided to Respondent No. 1 or in connection with the transaction between the Applicant and Respondent No. 1; (ii) the Applicant was not a party to the FINO-RRL SPA; (iii) Respondent No. 2 had not entered into any agreement with Respondent No. 1; and (iv) RRL is not a party to the present proceedings. He submits that the Scope of Work under the FINO-RRL SPA was limited to providing services to RRL and its retailers. Therefore, according to Respondent No. 2, that Agreement was not entered into for Respondent No. 1 and has no contractual connection with the

transaction between the Applicant and Respondent No. 1. Though the FINO-RRL SPA was subsequently renewed, Respondent No. 2 is not carrying on any business with RRL. It is submitted that the Applicant is neither a party to the FINO-RRL SPA nor an affiliate of RRL. He submits that on 18 November 2022, the Applicant appears to have entered into the Purported SPA and Work Order No. XS1/4503866100 with Respondent No. 1 for providing logistics, domestic carrier and transportation services to Respondent No. 1. Respondent No. 2 was neither a party to the Purported SPA nor to the Work Order. Respondent No. 2 was not a beneficiary of any transaction between the Applicant and Respondent No. 1. He submits that during the period of the Purported SPA, the Applicant claims to have raised various invoices amounting in total to INR 68,51,364.38/- against Respondent No. 1. These invoices relate to the period from January to March 2023 and are stated to be towards services allegedly provided by the Applicant. As stated by the Applicant in paragraph 12 of the Application, these invoices remain unpaid by Respondent No. 1. According to Respondent No. 2, these allegations relate only to the contractual relationship claimed by the Applicant with Respondent No. 1. Respondent No. 2 was neither the recipient of these alleged invoices nor the entity which engaged the Applicant to provide logistics, domestic carrier or transportation services.

14. He submits that the Applicant has stated in paragraphs 11.2 and 11.4 of the Application that, on the instructions of Respondent No. 1, the cash shown in the "TMP" system was required to be handed over to the representatives of Respondent No. 2. On this

basis, the Applicant claims to have handed over cash amounting to INR 74,94,193/- to Respondent No. 2. It is submitted that even if this alleged handing over or collection of cash is accepted for the present purpose, it does not show that Respondent No. 2 was a party to the Purported SPA. It does not show that Respondent No. 2 consented to the arbitration agreement contained in that Agreement.

15. It is submitted that the Applicant's own pleadings and the documents relied upon by it show that the contractual relationship under the Purported SPA was between the Applicant and Respondent No. 1. Respondent No. 2 was not a signatory to the Purported SPA or the Work Order. It did not enter into any contract with the Applicant and did not agree to the arbitration clause contained in Clause 13.2 of the Purported SPA. The later allegations regarding collection of cash, the contractual arrangement between Respondent No. 2 and RRL, the alleged agency relationship, or the FIR concerning the employees of Respondent No. 2 cannot by establish that there was an arbitration agreement between the Applicant and Respondent No. 2. In these circumstances, according to Respondent No. 2, the Applicant has failed to establish the basic requirement for invoking Section 11 of the Arbitration Act against Respondent No. 2, namely, the existence of an arbitration agreement between the Applicant and Respondent No. 2. Therefore, insofar as the present Application seeks appointment of an arbitrator or constitution of arbitral proceedings against Respondent No. 2, the Application is liable to be dismissed as against Respondent No. 2.

16. Learned Advocate for Respondent No. 1 submits that the arbitration clause is contained only in the Service Provider Agreement. He submits that both the Work Orders provide Ahmedabad as the seat of arbitration. Therefore, insofar as the present Application seeks appointment of an Arbitrator in relation to disputes arising from the Work Orders, this Court would not have territorial jurisdiction to entertain the Application or appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

REASONS AND FINDINGS:

17. The present Application is under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of a Arbitrator under Clause 13.2 of the Service Provider Agreement. Therefore, the questions which arise are whether there is an arbitration agreement between the Applicant and Respondent No.1, whether Respondent No.2 though not a signatory can be brought into the arbitration and whether this Court can appoint the Arbitrator.

18. As far as Respondent No.1 is concerned, there is not much dispute that the Service Provider Agreement dated 18 November 2022 was entered into between the Applicant and Respondent No.1. Clause 13.2 says that if the parties are not able to settle their dispute within 30 days, the dispute can be referred to arbitration. It provides for appointment of three arbitrators and says that the arbitration shall be conducted under the Arbitration and Conciliation Act, 1996. The clause says, “The venue of arbitration

shall be Mumbai, India and arbitration proceedings shall be conducted in English.” Thus, from the clause, it is clear that the parties had agreed that their disputes can be decided through arbitration.

19. Respondent No.1 has not disputed execution of the Service Provider Agreement or the existence of Clause 13.2. The objection of Respondent No.1 is regarding the Work Orders. It is submitted that the Work Orders dated 18 November 2022 contain an arbitration provision and under that provision the arbitration is to be held at Ahmedabad, Gujarat. Therefore, according to Respondent No.1, this Court at Mumbai has no territorial jurisdiction to appoint an Arbitrator. This submission has to be considered from the documents which are on record.

20. The Work Order No. XS1/4503866100 is dated 18 November 2022. In this Work Order, the Applicant is shown as the contractor and Respondent No.1 as the other contracting party. The period of work is from 25 October 2022 to 31 March 2023 and the total order value is Rs.15,34,000/-. The work relates to transport services. There is a separate heading in the Work Order, “GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION”. It says that the contract shall be governed by Indian law and disputes which cannot be settled amicably shall be referred to arbitration. It states, “The arbitration proceedings shall be held in Ahmedabad, Gujarat, India”. Thus, on looking at both the documents, it is seen that there are arbitration provisions in two documents executed on the same date. Clause 13.2 of the Service Provider Agreement mentions Mumbai, while the Work Order

mentions Ahmedabad. Merely because there are two such provisions, the present Application cannot be dismissed. It is first necessary to see which agreement is relied upon by the Applicant and from which contractual arrangement the dispute has arisen.

21. In the present case, the Applicant has invoked Clause 13.2 of the Service Provider Agreement. The Applicant's case is that the commercial arrangement was with Respondent No.1, the services were provided under that arrangement, invoices were raised and Respondent No.1 became liable to make payment. Therefore, according to the Applicant, the dispute regarding payment has arisen from the contractual relationship between the Applicant and Respondent No.1. Respondent No.1 accepts that the Service Provider Agreement contains an arbitration clause. Therefore, there is no real dispute regarding existence of an arbitration agreement between the Applicant and Respondent No.1.

22. The fact that the Work Order mentions Ahmedabad may create a question about which arbitration provision will apply to a particular dispute. But that question has to be seen from the nature of the claim and from the agreement under which the claim has arisen. At the stage of Section 11, the Court is not required to decide every question regarding interpretation of all the terms, unless it is found that there is no arbitration agreement. In the present case, Clause 13.2 is contained in the Service Provider Agreement and the Applicant has invoked that clause. Respondent No.1 has, without prejudice to its submissions, stated that if this Court finds that there is an arbitration clause, a Sole Arbitrator may be appointed.

23. In these circumstances, I find that the objection of Respondent No.1 regarding Ahmedabad cannot completely take away the arbitration agreement contained in Clause 13.2 of the Service Provider Agreement. The Work Order will have to be read along with the Service Provider Agreement. The exact effect of both documents and the scope of the dispute can be considered by the learned Arbitral Tribunal. The present Section 11 proceedings cannot be converted into a full trial regarding every term contained in the different contractual documents.

24. The important question is regarding Respondent No.2. Respondent No.2 has submitted that it is a stranger to the Service Provider Agreement dated 18 November 2022. According to Respondent No.2, the Agreement was only between the Applicant and Respondent No.1. Respondent No.2 did not sign the Agreement. It was not a contracting party. It did not participate in negotiation of its terms and never agreed to Clause 13.2. According to Respondent No.2, the Applicant is trying to bring it into arbitration only because its employees are alleged to have received and misappropriated the cash.

25. There is substance in the submission that Respondent No.2 is not a signatory to the Service Provider Agreement. The Applicant has not placed on record any document signed by Respondent No.2 showing that it agreed to the arbitration clause. The separate FINO-RRL Agreement relied upon by the Applicant is not an agreement between the Applicant and Respondent No.2. Therefore, from the documents on record, there is no direct arbitration agreement between the Applicant and Respondent

No.2. However, this does not end the issue. In law, there can be cases where a person who has not signed the arbitration agreement can still be brought into arbitration if the conduct and surrounding circumstances show that such person was a “veritable party” to the transaction and had agreed, either or through conduct, to be bound by the arbitration agreement.

26. The Supreme Court, while considering the issue of a non-signatory, has given importance to consent. In the judgment relied upon by the Applicant and reproduced in *HPCL v. BCL Secure Premises (P) Ltd.*, (2026) 3 SCC 711, the Supreme Court has referred to the principles in *Cox & Kings Ltd. v. Sap India (P) Ltd.*, (2024) 4 SCC 1 and has stated that the important question is whether the non-signatory had consented to be bound by the arbitration agreement. The Court has stated that the Referral Court has to prima facie see whether the non-signatory is a “veritable party” to the arbitration agreement. The final question can be considered by the Arbitral Tribunal depending upon the evidence and circumstances.

27. The words “veritable party” are important in the present matter. The Supreme Court in *HPCL* has explained “veritable” as meaning “real; rightly so called”. Therefore, merely because a person has some commercial connection with one of the signatories, that person cannot be brought into arbitration. There should be something more which, at least prima facie, shows a real legal connection and intention to be bound by the arbitration agreement. The Supreme Court in *HPCL*, while referring to *Cox & Kings*, has stated:

“At the referral stage, the Referral Court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.”

28. But this does not mean that every person named by the claimant has to be sent to arbitration. The Court has first to see whether there is some prima facie material to call that person a veritable party. Therefore, some limited examination by the Referral Court is necessary before such person is referred to arbitration.

29. In the present case, the Applicant relies upon the conduct of Respondent No.2. It is submitted that the cash belonging to the Applicant's business was handed over to representatives of Respondent No.2 under the arrangement where Respondent No.2 was collecting and dealing with such cash. The Applicant relies upon OTP screenshots, PIS slips, CCTV footage and various correspondence. The Applicant relies upon the email dated 26 June 2023 from the representative of Respondent No.2. In that email, it was acknowledged that there was a process deviation and that cash had been received at the facility. It was stated that the funds would be released after investigation by the Risk Control Unit of Respondent No.2. The Applicant relies upon the FIR dated 17 June 2023 regarding alleged misappropriation of Rs.74,94,193/- by employees of Respondent No.2. The later correspondence and legal notices are relied upon. According to the Applicant, therefore, Respondent No.2 was not some totally unrelated person. It had participated in the transaction and had received the cash regarding which the Applicant's claim has arisen.

30. These facts do show that Respondent No.2 had some involvement in the actual work relating to collection and handling of cash. The correspondence relied upon by the Applicant shows that Respondent No.2 was aware of the allegation regarding the cash and had undertaken some internal enquiry. Therefore, this part of the Applicant's case cannot simply be ignored at the beginning only because Respondent No.2 did not sign the Service Provider Agreement. But the question which has to be considered is somewhat different. The issue is not only whether Respondent No.2 was involved in the commercial activity. The issue is whether because of such involvement Respondent No.2 became a party to the arbitration agreement contained in Clause 13.2. On this particular question, the material placed before the Court is not sufficient.

31. The FINO-RRL Agreement relied upon by the Applicant is between Respondent No.2 and RRL. The Applicant is not shown as a party to that Agreement. The Service Provider Agreement dated 18 November 2022 is between the Applicant and Respondent No.1. Respondent No.2 is not shown as a party to that Agreement. Therefore, merely because employees of Respondent No.2 allegedly received cash under operational instructions, it cannot mean that Respondent No.2 accepted the rights and obligations under the Service Provider Agreement or agreed to its arbitration clause.

32. The Supreme Court has cautioned that an arbitration agreement should not be extended merely because there is some commercial relationship. In *Cox & Kings*, as reproduced in *HPCL*, it

was stated:

“mere presence of a commercial relationship between the signatory and non-signatory parties is not sufficient to infer ‘legal relationship’ ... group of companies doctrine cannot be applied to abrogate party consent and autonomy.”

33. This principle is important in the present case. Respondent No.2 may have participated in one part of the commercial activity. But from the documents which are available, it is not prima facie shown that Respondent No.2 accepted the obligations contained in the Service Provider Agreement.

34. The Applicant says that Respondent No.2 was acting as an agent of Respondent No.1. Even if, for the present purpose, it is assumed that some acts were done by Respondent No.2 on the instructions of Respondent No.1, that alone will not make the agent a party to every term of the contract between the principal and the other contracting party. There should be some material showing that the alleged agent agreed to be bound by the arbitration clause, or that in law it can otherwise be treated as a party to that arbitration agreement. Such material, sufficient for the limited examination under Section 11, is not shown. The FIR and allegations of misappropriation cannot create an arbitration agreement. These allegations may explain the background of the dispute. But they cannot by show consent to arbitration. Similarly, even if Respondent No.2 had started some proceeding or internal enquiry for recovery of the amount, that does not mean that it accepted Clause 13.2 of an Agreement to which it was not a party.

35. The Applicant has submitted that there is only one monetary claim and if Respondent Nos.1 and 2 are sent before different forums, there may be multiplicity of proceedings. There may be some practical difficulty in this submission. But convenience cannot take the place of consent. Arbitration is based upon agreement. A non-signatory cannot be joined only because it may be convenient to decide all the matters together. The Applicant has submitted that at the stage of reference the Court should not make a detailed enquiry and that the final question concerning Respondent No.2 can be left to the Arbitral Tribunal. This principle is generally correct. But there is another part of the same principle. The Supreme Court in *HPCL* has made it clear that the Referral Court has to prima facie consider whether the non-signatory is really a veritable party. Therefore, merely saying that a person is connected with the transaction is not enough to send that person to arbitration. In this connection, *HPCL* has referred to the discussion in *ASF Buildtech* and *Cox & Kings*. The Court at the referral stage has to make only a limited examination. It should not conduct a full trial. At the same time, a person who is otherwise a stranger cannot be sent to arbitration unless there is some prima facie material showing the necessary legal relationship and intention to be bound.

36. In the present case, there is material showing operational involvement of Respondent No.2 regarding collection of cash. There is correspondence from Respondent No.2 regarding the incident. But there is no sufficient material showing that Respondent No.2 accepted the Service Provider Agreement

between the Applicant and Respondent No.1, or accepted Clause 13.2, or entered into any separate arrangement by which disputes between the Applicant and Respondent No.2 were to be decided by arbitration. Therefore, participation in the transaction and consent to arbitration have to be treated as two different things. The Applicant has submitted that Respondent No.2 stood in the shoes of Respondent No.1 for receiving the cash. Even this submission does not change the position. The Applicant may have some claim in law against Respondent No.2 because of the alleged receipt or misappropriation of the cash. Whether such claim can be made, whether Respondent No.2 is liable and for what amount are different questions. These questions are not the same as whether Respondent No.2 agreed to the arbitration clause.

37. The Supreme Court has explained that a person claiming through or under a party stands in a derivative position, such as an assignee, subrogee or a person who has obtained rights from the original party. A mere legal or commercial connection is not enough. In the present case, Respondent No.2 is not shown to be claiming through Respondent No.1 in any such manner.

38. I find that the Applicant has shown the existence of an arbitration agreement with Respondent No.1 under Clause 13.2 of the Service Provider Agreement. However, from the material before the Court, the Applicant has not shown sufficient prima facie basis to treat Respondent No.2 as a “veritable party” to that arbitration agreement. The case against Respondent No.2 rests upon its alleged operational role and its subsequent conduct concerning the cash transaction. These facts may have some

relevance to the actual claim, but they do not show consent to arbitration.

39. The issue regarding the place of arbitration needs to be considered. Clause 13.2 of the Service Provider Agreement states that the venue of arbitration shall be Mumbai. The Work Order, however, contains a provision that the arbitration proceedings shall be held at Ahmedabad, Gujarat. The difference between these two provisions need not be decided for determining whether an arbitration agreement exists between the Applicant and Respondent No.1. The Applicant has invoked Clause 13.2 and Respondent No.1 has not denied that the Service Provider Agreement contains an arbitration clause. It is relevant that the Service Provider Agreement contains a provision that nothing in the Agreement shall prevent a party from seeking interim or permanent equitable or injunctive relief from the competent court in Mumbai. This provision alone may not decide the seat of arbitration. But it does show that the parties had contemplated Mumbai as a place where relief arising from the Agreement could be sought.

40. Therefore, the objection of Respondent No.1 based upon the Work Order cannot be accepted as showing that the arbitration clause invoked by the Applicant does not exist. At the most, it gives rise to a question regarding how the two contractual provisions are to be read together and what effect is to be given to them. Such question can be considered by the learned Arbitral Tribunal while examining the contractual documents and the dispute.

41. I find that the Applicant invoked arbitration by issuing notice dated 4 July 2026 under Clause 13.2. Respondent No.2 replied on 29 July 2026 denying liability and the arbitration arrangement. Respondent No.1 did not give its response within the period stated by the Applicant. According to the Applicant, Respondent No.1 did not appoint an arbitrator or agree for constitution of the Tribunal. The Applicant approached this Court under Section In the present proceedings, this Court is not required to decide whether the Applicant will ultimately recover Rs.68,51,364.38, Rs.74,94,193/-, interest, damages or any other amount. Those are matters on merits. Similarly, Respondent No.1 has alleged that the Applicant did not comply with the SOP. That defence will require proper consideration and evidence. Such disputed factual matters cannot be decided in the present Section 11 proceedings.

42. Respondent No.2 has submitted that the claim is against Respondent No.1 for unpaid invoices. There is some basis for this submission because the contractual invoices arise from the arrangement between the Applicant and Respondent No.1. At the same time, the Applicant has placed material alleging a separate wrongful act involving Respondent No.2. Whether such conduct makes Respondent No.2 liable to the Applicant is not required to be decided in the present Application. For the present purpose, the important finding is that there is no prima facie arbitration agreement shown which binds Respondent No.2.

43. 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) Ms. Ayushi Anandpara Parekh, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes between the Applicant and Respondent No.1 arising out of the Service Provider Agreement dated 18th November 2022, including claims and counter claims;

Office Address:- C/o Rohaan Cama, Office Nos. 17-18, 1st Floor, Islam Building, Veer Nariman Road, Fort, Mumbai – 400001.

Email ID: ayushi.anandpara@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.

44. All questions on the merits of the claims and counterclaims, including the liability of the parties, the amount allegedly due and payable, and the other factual and legal contentions of the parties, are kept open for determination by the learned Sole Arbitrator in accordance with law.

45. 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.)