IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION (L) NO. 18608 OF 2025

Jupicos Entertainment Private Limited ..... **APPLICANT**

: VERSUS :

Probability Sports (India) Private Limited and Anr. ....**RESPONDENT**

Mr. Prahlad Paranjpe with Mr. Vikramjit Garewal, Ms. Shweta More and Ms. Rupa Shaw i/b Mr. Atishay Jain for the Applicant.

Mr. Rashmin Khandekar with Mr. Pranav Nair, Ms. Swati Sawant, Mr. Milind Spose and Mr. Utkarsh Pawar i/b M/s. S.K. Legal Assoicates LLP for Respondent No.2**.**
Mr. Devesh Juvekar with Mr. Mithilesh Chalke and Ms. Shivangi Goel i/b Rajani Associates for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON : 27 FEBRUARY, 2026.

JUDG. PRON. ON: 16 MARCH 2026

JUDGMENT:

1) The disputes relating to right of participation in a cricket league are sought to be arbitrated by one of the team owners against the conductor of the league as well against the Mumbai Cricket Association, under whose aegis the league is conducted.

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2) This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** for appointment of an arbitrator for adjudication of disputes and differences, which are said to have arisen between Applicant and Respondents under the Participation Agreement dated 9 March 2018. The disputes between the parties relate to Applicant's right to participate in T20 Mumbai League **(League)** organised by Respondent No.1 under the aegis of Mumbai Cricket Association (Respondent No.2). There is no dispute about the existence of arbitration agreement between the Applicant and Respondent No.1, who are signatories to the Participation Agreement dated 9 March 2018. However, Respondent No.2 has opposed its impleadment to the arbitration on the ground that it is a non-signatory to the Participation Agreement. Respondent No.1, though does not dispute existence of arbitration agreement with the Applicant, opposes constitution of Arbitral Tribunal on the ground of Applicant's claim being hopelessly barred by limitation.

3) Briefly stated, facts of the case are that in February 2018, Respondent No.2-Mumbai Cricket Association **(MCA)** conceptualised a cricket league at the local level in the areas of Mumbai, Navi Mumbai, and Thane and appointed Respondent No.1 as an agency for management and operation of the League. Respondent No.1-Probability Sports (India) Pvt. Ltd. **(Probability)** issued Invitation to Bid Document in February 2018 inviting interested parties to bid to secure the rights to operate and field teams to participate in the first five editions of T20 Mumbai League.

Upon expression of interest, a consortium of Jupiter City Developers (India) Ltd. **(JCDIL)** and Cosmos Prime Projects Ltd. **(Cosmos)** were confirmed as winning bidders for the team representing the territory of Mumbai South Central for the first five editions of the League. Accordingly, Letter of Intent dated 23 February 2018 was executed by Probability in favour of the consortium, which was amended on 9 March 2018. On 9 March 2018, a Novation Agreement was executed between Probability, consortium and Applicant-Jupicos Entertainment Pvt. Ltd. **(Jupicos)** by which Jupicos was substituted as a winning bidder in the LOI in place of consortium. Applicant-Jupicos is a Special Purpose Vehicle of the consortium members, with JCDIL holding 85% shareholding and Cosmos holding 15% shareholding.

4) On 9 March 2018, the Participation Agreement was executed between Probability and Applicant-Jupicos, under which the Applicant was granted right to operate a cricket team named 'Shivaji Park Lions' representing Mumbai South Central territory for the first five editions of the League. According to the Applicant, various clauses of the Participation Agreement **(PA)** make it clear that the entire decision-making power given under the agreement was with the MCA. It is Applicant's case that Probability entered into the PA on behalf of MCA and the entire league is being conducted by MCA.

5) In March 2018, the first edition of the League was held with total six teams participating in the edition including the team of the Applicant-Shivaji Park Lions. On 14 March 2019, MCA called upon the

Applicant and other team owners to execute Supplementary Agreement and accordingly on 12 April 2019, a Supplementary Agreement to the PA was executed between the Applicant, Probability and MCA, under which certain terms of the PA dated 9 March 2018 were supplemented/varied. Two more teams were agreed to be added to the upcoming editions of the League. Under the Supplementary Agreement, MCA had the sole discretion and right to determine the schedule, format, length and associated aspects of the remaining editions of the League. According to the Applicant, all the terms of PA dated 9 March 2018 were incorporated by reference in the Supplementary Agreement. It is also the case of the Applicant that PA and Supplementary Agreement constitute one composite transaction. There is arbitration clause in the PA, but there is no arbitration clause in the Supplementary Agreement. According to the Applicant however, since the two documents are executed to constitute one composite transaction and since all the terms of PA are incorporated in the Supplementary Agreement, there exists valid arbitration agreement between the Applicant and both the Respondents.

6) In the second edition of the League, Applicant was required to pay participation fees of Rs.4,56,00,000/- alongwith GST @ 18% of Rs.82,08,000/- totaling to Rs.5,38,08,000/-. The Applicant was also called upon to pay player and support staff fees of Rs.50,00,000/- alongwith GST @ 18% of Rs.9,00,000/- totaling to Rs.59,00,000/-. This is how Applicant was required to pay total fees of Rs.5,97,08,000/- towards second edition of the League. On 23 April 2019, Applicant transferred amount of Rs.1,00,00,000/- to Respondent No.1 towards participation fee and

Rs.54,00,000/- towards player and support fee. A further amount of Rs.50,00,000/- towards participation fees was transferred on 9 May 2019. According to the Applicant, dispute arose between the team owners and Respondents with regard to securing and protecting financial interests of the team owners. On 9 May 2019, team owners addressed a joint communication to the Respondents expressing concerns. On 10 May 2019, MCA sought to deny the allegations and stated that it had *inter alia* assured a minimum guaranteed revenue amount of Rs.3,15,00,000/- from Respondent No.1 towards the second edition of the League. Respondent No.1 had also assured another Rs.25,00,000/- from one of the sponsors. Applicant claims that it has received from Respondent No.1 only the minimum guaranteed income of Rs.3,15,00,000/- alongwith GST@18% of Rs.56,70,000/- minus TDS @10% of Rs.31,50,000/- amounting to Rs.3,40,20,000/-. The Applicant transferred the entire amount of Rs.3,40,20,000/- to Respondent No.1 towards participation fees. Applicant claims that it has not received the amount assured from the sponsors. According to the Applicant, it has paid a total amount of Rs.5,61,91,000/- towards participation fees and player and support fee (including GST) but has received income of only Rs.3,71,70,000/- (including GST) from the second edition of the League, causing huge loss to it. On the other hand, Respondent No.1 alleged that the Applicant committed default of payment of Rs.35,17,000/- towards participation fee and had also failed to deposit the amount of TDS in the two financial years.

7) In the above background, Respondent No.1 terminated the PA as well as Supplementary Agreement by letter dated 24 January 2020. According to the Applicant, despite termination, meetings were conducted between representatives of Applicant and Respondents. According to the Applicant, Respondent No.2-MCA directly communicated with the team owners to resolve the disputes. In the year 2020, third edition of the League was not to be held due to COVID-19 pandemic. Applicant was thereafter invited to take part in the meetings of the team owners in relation to the League even though the termination was not formally withdrawn. Thereafter, several meetings were held, and correspondence was made with MCA, in which the Applicant participated. On 18 February 2021, the Governing Council of the League presented a proposal before the team owners, including the Applicant, and they were called upon to submit their counter proposals. The Applicant gave in-principal consent to the proposal on 23 February 2021. Thereafter, correspondence was made by MCA with the team owners including the Applicant. On 10 November 2021, Respondent No.1 sought audit confirmation in respect of the due amount of Rs. 35,17,000/- and the Applicant paid the same to Respondent No.1 on 16 January 2024. Applicant thereafter demanded No Dues Certificate and withdrawal of termination vide emails exchanged in January and February 2024. However, no response was received by the Applicant.

8) On 24 April 2024, Respondents held a meeting with other team owners excluding the Applicant to discuss the third edition of the League. Another meeting was held on 10 May 2024. Applicant protested

against holding of meetings behind its back. On 3 May 2024, Applicant invoked Clause 11 of Schedule 2 of the PA dated 9 March 2018, calling upon Respondents to enter into negotiation. On 13 February 2025, one more meeting was held with other team owners excluding the Applicant by the MCA. On 27 March 2025, MCA invited the Applicant for a meeting. However, since the Applicant felt that the meeting was not being conducted by MCA in good faith, the Applicant filed Arbitration Petition (L) No.10243/2025 under Section 9 of the Arbitration Act *inter alia* seeking injunction against the Respondents from excluding the Applicant from participating in the team owner meetings of the League. During pendency of the petition, MCA issued advertisement for auction of teams in respect of two territories including the territory for which the Applicant's team was formed. By order dated 16 April 2025, Single Judge of this Court rejected ad-interim relief in favour of the Applicant in Arbitration Petition (L) No.10243/2025. Applicant preferred appeal before the Division Bench challenging the order dated 16 April 2025. However, by order dated 7 May 2025, the Division Bench dismissed the appeal of the Applicant. The Applicant thereafter preferred Special Leave Petition (Civil) No.14920 of 2025. According to the Applicant, the Supreme Court while disposing off the SLP, has clarified that observations made by the Division Bench in paragraph 20 of its order shall have no bearing or binding effect on the arbitral proceedings.

9) In the meantime, the Applicant invoked arbitration clause vide notice dated 5 April 2025, which was responded to by Respondent No.1 on 5 May 2025. Since no agreement could be reached on

appointment of arbitrator, the Applicant has filed the present application under Section 11 of the Arbitration Act seeking reference for adjudication of disputes against both the Respondents.

10) Mr. Paranjpe, the learned counsel appearing for the Applicant submits that the League is being conducted essentially by Respondent No.2-MCA, who has full authority even under the PA, to take all decisions relating to participation by the team owners as well as conduct of the League. That Respondent No.1 does not have any independent decision-making power with regard to the conduct of the League. That the PA is executed by Respondent No.1 at the behest of the MCA. Additionally, MCA has participated in performance of the PA. That therefore MCA is a veritable party to the PA containing the arbitration agreement.

11) Mr. Paranjpe further submits that PA and Supplementary Agreement constitute one composite transaction. That both the documents are essentially effected for the purpose of performance of contractual obligations relating to organisation and holding of the League. That PA is the principal/master document which contains arbitration agreement and Supplementary Agreement is merely executed to give shape to the PA. That Respondent No.2-MCA has specifically taken over the obligations under the PA. That Supplementary Agreement cannot exist on a standalone basis. That therefore the case involves execution of multiple documents to complete same transaction. Mr. Paranjpe relies upon judgment of Constitutional Bench in ***Cox and Kings***

Ltd. vs. SAP India Pvt. Ltd. and Anr[1] and ***ASF Buildtech Pvt. Ltd. vs. Shapoorji Pallonji and Company Pvt. Ltd.***[2] in support of his contention that MCA is a veritable party to the arbitration agreement contained in the PA.

12) Mr. Paranjpe further submits that the Supplementary Agreement otherwise incorporates all the terms and conditions of the PA and that therefore the arbitration clause contained in the PA is incorporated by reference in the Supplementary Agreement . This is how Mr. Paranjpe submits, that there is agreement between the Applicant and both the Respondents for adjudication of disputes through the mechanism of private arbitration. Relying on judgment of the Apex Court in ***Hindustan Petroleum Corporation Ltd. Vs BCL Secure Premises Pvt. Ltd.***[3], Mr. Paranjpe submits that the issue of non-signatory being veritable party to arbitration agreement needs to be decided by referral court under Section 11 of the Arbitration Act rather than leaving the same for being adjudicated by the Arbitral Tribunal.

13) Mr. Paranjpe further submits that the objection of limitation sought to be raised on behalf of Respondent No.1 is baseless since series of meetings and correspondence have taken place after issuance of the termination letter dated 24 January 2020. That the cause of action has actually arisen only on 24 April 2024 when Respondent No. 2 proceeded to conduct meeting with the other team owners for the third edition of

1 (2024) 4 SCC 1
2 (2025) 9 SCC 76
3 2025 SCC OnLine SC 2746

the League by excluding the Applicant. On above broad submissions, Mr. Paranjpe would submit that Arbitral Tribunal be constituted by appointment of a sole arbitrator for adjudication of disputes and differences between the parties.

14) Main opposition to the Application is by the MCA. Mr Khandekar, the learned counsel appearing for Respondent No.2-MCA opposes the Application, contending that the MCA is not a signatory to the PA which contains the arbitration clause. That disputes have arisen purely between Applicant and Respondent No.1. That there is no arbitration agreement in the Supplementary Agreement. That the claim of Applicant about MCA being veritable party is based on a premise that Respondent No.1 is the agent of MCA. That the argument of agency is already rejected by the Division Bench of this Court in Section 9 proceedings.

15) Mr Khandekar submits that there is no material on record indicating that Respondent No.1 is acting on behalf of or as an agent of MCA or that MCA is the principal of Respondent No.1. That all payments to the Applicant are made by Respondent No.1 and similarly, Applicant has made all payments to Respondent No.1. That there is no financial transaction between the Applicant and MCA. So far as the argument of incorporation of arbitration clause in PA in the Supplementary Agreement is concerned, Mr Khandekar submits that there is no such incorporation. That the supplementary agreement merely refers to the PA. That the Supplementary Agreement is executed only for the purpose

of recording of varied terms and conditions between Applicant and Respondent No. 1, to which MCA is a mere conforming party and that there is nothing on record to indicate that MCA has undertaken any obligations under the PA onto itself. That there is no clause in the Supplementary Agreement to suggest that arbitration clause in the PA is intended to be incorporated in the Supplementary Agreement. That parties have not intended to incorporate arbitration clause in the PA into the Supplementary Agreement. He relies on judgments of the Apex Court in ***M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited***[4], ***NBCC (India) Ltd. vs. Zillion Infraprojects Pvt. Ltd.***[5] and ***Duro Felguera, S.A. vs. Gangavaram Port Ltd.***[6] in support of his contention there is no incorporation of arbitration clause in the Supplementary Agreement. In support of his contention of MCA not being veritable party to the arbitration agreement contained in the PA, Mr. Khandekar also relies on judgment of this Court in ***Mukesh Patel and Ors. Vs. Pant Nagar Ganesh Krupa CHS Ltd***[7]. Mr. Khandekar would accordingly pray for dismissal of the application.

16) Mr. Juvekar, the learned counsel appearing for Respondent No.1 submits that no reference to arbitration can be made since the alleged claim of the Applicant is hopelessly barred by limitation. He relies on judgment of this Court in ***Graceworks Realty & Leisure Pvt. Ltd. Vs. Zahid Hussain Khan***[8] in support of his contention that cause of

4 (2009) 7 SCC 696
5 (2024) 7 SCC 174
6 (2017) 9 SCC 729
7 Commercial Arbitration Application No.389 of 2024, decided on 9 October 2025
8 2022 SCC OnLine Bom 550

action arises on the date of issuance of termination notice. He also relies on judgment of the Apex Court in ***Bharat Sanchar Nigam Limited (BSNL) & Anr. Vs. Nortel Networks India Private Limited***[9] in support of his contention that *ex facie* time barred claims cannot be referred to arbitration. He also relies on judgment of this Court in ***Kay Vee Enterprises Engineers and Builders vs. Director & Secretary, Shri. Guru Gobind Singhji Institute of Engineering & Technology***[10]. He would accordingly pray for dismissal of the Application.

17) Rival contentions of the parties now fall for my consideration.

18) The issue that arises for consideration is whether there exists arbitration agreement between Applicant and Respondent No. 2 (MCA) and whether MCA can be a party to arbitration between Applicant and Respondent No. 1. The other issue is whether reference to arbitration can be made in the light of objection raised by Respondent No. 1 about the claim of Applicant being a dead wood.

19) Applicant has claims both against Respondent No. 1 as well as against MCA and is desirous of adjudication thereof through a common arbitral reference. However, arbitration agreement is contained only in the PA executed between the Applicant and Respondent No. 1 and there is no arbitration clause in the tripartite Supplementary Agreement executed between the Applicant, Respondent No. 1 and MCA.

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9 (2021) 5 SCC 738

10 2022 SCC OnLine Bom 7231

20) MCA is the governing body for cricket in Mumbai, Thane and Navi Mumbai. For promoting the sports of cricket, the MCA has decided to estabish, organise and operate the 'T-20 Mumbai League' and has appointed Respondent No. 1 as the manager of the league.

21) The case involves execution of PA between the Applicant and Respondent No.1 on 9 March 2018, under which the Applicant has acquired the rights to operate the cricket team 'Shivaji Park Lions' for representing Mumbai South Central territory in the first five editions of the League. There is no dispute to the position that there exists an arbitration clause in the PA dated 9 March 2018. Clause 11 of the PA reads thus:

> 11. Governing Law and Dispute Resolution
> 11.1 This agreement shall be governed by and construed in accordance with the laws of the Republic of India. Subject to the dispute resolution procedure provided below, the Courts at Mumbai, India shall have exclusive Jurisdiction in relation to this Agreement.
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> 11.2 If any dispute arises under this document which cannot otherwise be amicably resolved between the Parties, such dispute shall be submitted to negotiation among the senior management of the Parties in the manner specified herein. Each Party will nominate a negotiator from amongst their respective Representatives, and such designated negotiators will promptly meet to discuss and attempt to resolve the dispute in good faith.
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> 11.3 In the event the Parties fail to resolve the dispute through negotiation under paragraph 11.2, such dispute shall be submitted to arbitration under The Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment/replacement thereof then in effect and conclusively resolved by a single arbitrator appointed by mutual consent or failing which by such process as is laid down in said Act. All relevant Parties shall share equally the costs, fees and other expenses of the single arbitrator appointed by them in accordance with the Arbitration and Conciliation Act 1996.

11.4 The venue for arbitration shall be Mumbai and the arbitration shall be conducted in the English language.

11.5 The decision of the arbitrator shall be in writing and shall be final and binding upon the Parties. Each Party shall bear its own lawyers' fees and charges and shall pay one half of the costs and expenses of such arbitration, subject always to the final award of the arbitrator as to costs.

11.6 Each of the Parties hereby acknowledges and agrees that its failure to participate in arbitration proceedings in any respect, or to comply with any request, order or direction of the arbitrator, shall not preclude the arbitrator proceeding with such arbitration and/or making a valid final award.

22) The PA itself makes it clear that MCA is the governing body for cricket in Mumbai, Navi Mumbai, and Thane and that it is MCA who decided to establish, organise, and operate a 20-20 cricket league sanctioned by the BCCI in the name and style of 'T-20 Mumbai League'. The PA further makes it clear that Respondent No.1 was granted rights to manage the League under the aegis of MCA. There are several clauses in the PA, which clearly create a picture that the League was being organised and conducted essentially by MCA and Respondent No.1 is merely an operator. It would be apposite to extract the relevant clauses of the PA for facility of reference:

(A) The Mumbai Cricket Association ("MCA") is the governing body for cricket in Mumbai, Navl Mumbai and Thane, and is a member of the BCCI (defined below). In the interests of developing cricket and providing playing opportunities to a wide variety of talented cricketers, **the MCA has decided to establish, organise and operate a twenty20 cricket league, which has been sanctioned by the BCCI, for the territory of Mumbai, Navl Mumbai and Thane, under the name and style of 'T20 Mumbai League'.**

(B) **The MCA has granted the right to manage under its aegis the League (defined below) to PSIPL.**

2.10 **It is understood and agreed by the Participant that the League is being conducted under the aegis of the MCA in the interests of developing cricket** In Mumbai, Navi Mumbai and Thane districts and providing playing opportunities to a wide variety of talented cricketers with a view to promote cricket in its modern formats as known currently or as may be developed in the future. **The terms of this Agreement and all decisions and actions of PSIPL in relation to and pursuant to this Agreement, are and shall remain subject to the final and absolute approval of the MCA.** The Participant shall enter into this Agreement on the basis of this understanding and shall accept the final decision of PSIPL, **based on the approval of the MCA,** without demur or protest, recognising that the MCA is the sole governing body of cricket in Mumbai, Greater Mumbai and Thane districts, and the sole and absolute authority to finally approve all aspects of the structure and operation of the League at law and under contract. All decisions made above shall be final and binding on the Participant, and the Participant, by entering into this Agreement, waives all claims and **no claims shall lie against MCA and PSIPL in any respect in relation to the above approval and decision-making process.**

3.2 **Subject to the MCA's desire and willingness** to continue conducting the League beyond the Term, PSIPL has received a covenant from the MCA that the **MCA shall undertake a renewal process for the Team**, in a manner of MCA's choosing, within the last ninety (90) days of the Term, and shall offer the Participant a right to match the highest qualified bid emerging from such renewal process for the Territory, provided that this undertaking by PSIPL shall be subject to the Participant's continued performance of its obligations and the consequent applicability of industry standard termination clauses to this Agreement.

13. **MCA Approval**

The League is being conducted under the aegis of the MCA in the interests of developing cricket in Mumbai, Greater Mumbai and Thane districts and providing playing opportunities to a wide variety of talented cricketers with a view to promote cricket in its modern formats as known currently or as may be developed in the future. **The terms of this Agreement and all decisions and actions of PSIPL in relation to and pursuant to this LoI are and shall remain subject to the final and absolute approval of the MCA.** The Participant shall sign this Agreement on the basis of this understanding and shall accept that all decisions of PSIPL **shall be subject to the approval of the MCA**, recognising that the **MCA is the sole governing body** of cricket in Mumbai, Greater Mumbai and Thane districts, and the **sole and absolute authority to finally approve all aspects of the structure and operation of the League at law and under contract**. All decisions made by MCA shall be final and binding on the Participant and the Participant waives all claims and no claims shall

> lie against MCA and PSIPL in any respect in relation to the above approval and decision making process.
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> *(emphasis and underlining added)*

23) Thus, MCA had all the decision-making powers relating to conduct of the League. The clause in the PA that '*The terms of this Agreement and all decisions and actions of PSIPL in relation to and pursuant to this Agreement, are and shall remain subject to the final and absolute approval of the MCA*' makes it clear that all decisions relating to even the PA were to be taken by MCA and were binding on the Applicant.

24) Thereafter, the MCA, Respondent No.1, and Applicant executed Supplementary Agreement dated 12 April 2019. It appears that the Supplementary Agreement was executed mainly for the purpose of ensuring the minimum guaranteed payment to the team owners by the Respondent No. 1. The Supplementary Agreement envisaged payment of Participation Fee, and Team Purse and Officials Purse towards the Second, Third, Fourth and Fifth editions respectively by the Applicant to Respondent No.1. Applicant was supposed to issue cheques and post-dated cheques towards such fees in respect of the five editions of the League. Additionally, under the Supplementary Agreement, Respondent No.1 agreed to pay to the Applicant a minimum guaranteed central rights income of Rs.3,15,00,000/- for Second Edition, Rs.3,46,50,000/- for Third Edition, Rs.3,81,15,000/- for Fourth Edition, and Rs.4,19,26,500/- for Fifth Edition. Thus, the exact purport of execution of Supplementary Agreement was to essentially guarantee certain payments to the Applicant in respect of each of the editions of the League. Though the guarantee was given by Respondent No.1, MCA also became signatory to

the Supplementary Agreement. The Supplementary Agreement contains specific reference to the PA dated 9 March 2018, which is clear from recital (B) which reads thus :

> (B) Participant has been granted certain rights to operate a Team in the T20 Mumbai League ("League") by virtue of the Participation Agreement entered into between Jupiter City Developers (India) Limited & Cosmos Prime Projects Limited and PSIPL dated 09/03/2018 ("Agreement") as novated to Participant by means of the Novation Agreement entered into between Participant and PSIPL dated 09/03/2018 ("Novation Agreement") each as in the form as approved and confirmed by the MCA.

25) Applicant, Respondent No.1 and MCA also confirmed the terms and conditions of the PA, in the supplemented form, which is clear from para-1 of the Supplementary Agreement:

> 1. Supplement to Agreement. Through this Supplementary Agreement, PSIPL and the Participant agree, and MCA confirms and approves, with effect from the date of this Supplementary Agreement ("Supplementary Agreement Effective Date"), to supplement the terms of the Agreement involving the Participant to the limited extent as follows:

26) In para-1(b) of the Supplementary Agreement, the Applicant agreed that MCA shall have the sole discretion and right to determine the schedule, format, length and associated aspects of the remaining editions of the League. Clause-1(b) of the Supplementary Agreement reads thus :

> b) The Participant agrees and confirms that MCA shall have the sole discretion and right, subject to BCCI approval where relevant to determine the schedule, format, length and associated aspects of each remaining Editions of the League during the Term, and that PSIPL shall retain all control and decision making over the conduct, promotion, marketing, broadcasting, sponsorship. and associated aspects of the League.

27) Clauses-2 and 3 of the Supplementary Agreement read thus :

> 2. Interpretation. As of the Supplementary Agreement Effective Date, PSIPL and the Participant agree, and MCA confirms and approves, to the variances and forbearances from the Agreement to the limited extent as specified herein. Except as expressly provided for herein, the Agreement shall remain unchanged

and in full force and effect for the Term. The term "Agreement", as used in the Agreement and all other instruments and agreements executed thereunder; shall for all purposes refer to the Agreement as novated to the Participant by the Novation Agreement and supplemented by this Supplementary Agreement. All definitions in the Agreement shall continue to apply to this Supplementary Agreement.

3. General. This Supplementary Agreement has been executed by the Parties as on the Supplementary Agreement Execution Date, with such execution being effective as of the Supplementary Agreement Effective Date. This Supplementary Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one instrument. A breach of this Supplementary Agreement shall constitute a breach of the Agreement in all respects and all contractual and other remedies available to PSIPL and Participant shall be available in respect of the rights created herein and hereunder. It is hereby agreed and understood by the Parties that the provisions of this Supplementary Agreement shall not limit or restrict nor shall they preclude PSIPL from pursuing such further and other legal actions against the Participant for any breach or non-compliance of the terms of the Agreement, read with this Supplementary Agreement.

28) As observed above, the PA repeatedly makes reference to MCA and its right to take final and ultimate decisions in respect of conduct of the League. It is Applicant's case that after the first edition of the League was held in March 2018, the team owners experienced lack of transparency on the part of Respondent No.1 and therefore, Respondent No.2-MCA called upon the team owners to execute the Supplementary Agreement. Perusal of the Supplementary Agreement dated 12 April2019 would indicate that MCA is a party of the first part, Respondent No.1 is party of the second part and Applicant is party of the third part to the Supplementary Agreement. Recital-(C) states that Supplementary Agreement is executed '*to supplement'* the PA. By executing Supplementary Agreement, MCA confirmed and approved to supplement the terms of the PA. Under the Supplementary Agreement, Applicant

agreed and confirmed that MCA had the sole discretion and right to determine the schedule, format, length and associated aspects of each of the editions of the League, whereas, Respondent No.1 would retain the control and decision making over the conduct, promotion, marketing, broadcasting, sponsorship and associated aspects of the League. Thus, the Supplementary Agreement defined the roles of MCA and Respondent No.1 *qua* conduct of the League. The scope of Respondent No.1 was restricted to conduct, promotion, marketing, broadcasting, sponsorship and associated aspects of the League whereas all other decisions relating to determining the schedule, format, length and associated aspects of the League remained in the exclusive domain of MCA. This is how MCA has stepped in and has become part of the contract between the Applicant and Respondent No.1 and took upon itself some of the obligations under the PA. Under the Supplementary Agreement, Respondent No.1 agreed not to enforce its rights to obtain bank guarantee from teams as provided in the PA until maturity of post-dated cheques and this was made '*subject to approval of MCA*'. Under Clause 3 of Supplementary Agreement, it was stipulated that its breach of would constitute breach of PA.

29) As observed above, the scope of the League was also expanded to 8 teams by MCA and this was agreed upon by the team owners. Thus, there was give and take between MCA and team owners under the Supplementary Agreement. The MCA ensured that Respondent No.1 paid Minimum Guaranteed Central Rights Share to all team owners for each edition of the League and in lieu of the same, the team owners permitted the MCA to expand the scope of the League to 8 teams.

30) Thus, the case involves execution of PA between the Applicant and Respondent No.1 with references to MCA. Since the League is ultimately held and controlled by MCA with Respondent No.1 being a mere conductor/borrower, the MCA had the right to take all the decisions in regard to the League even as per the PA. While MCA could have kept itself away from contractual relations between the Applicant and Respondent No.1, somehow it was advised to become party to the contract and accordingly executed Supplementary Agreement dated 12 April 2019 with Applicant and Respondent No.1 and took upon itself certain contractual obligations. MCA essentially acted as a mediator by executing the Supplementary Agreement and ensured that the team participants pay their respective dues to Respondent No.1 and team participants also receive a certain minimum guaranteed amount from Respondent No.1. For having mediated between the Applicant and Respondent No.1, MCA extracted for itself the right to expand the scope of the League by adding two more teams. Ordinarily, adding two more teams would have had an adverse impact on the bids submitted by the 6 participating teams. However, they permitted MCA to add 2 more teams because it took upon itself certain contractual obligations arising out of the PA.

31) Thus, by executing the Supplementary Agreement, MCA has participated in performance of the PA by Applicant and Respondent No.1. MCA also took upon itself some of the contractual obligations under the PA.

32) Apart from the contractual terms between the parties, the conduct of MCA again clearly creates an impression that it has participated in performance of contract between the Applicant and Respondent No. 1. After the Applicant participated in the first edition of the League, Respondent No.1 proceeded to terminate both PA as well as Supplementary Agreement vide notice dated 24 January 2020. However, post termination, several meetings have taken place between the Applicant and MCA. On 28 January 2021, MCA invited the Applicant for introductory meeting with the newly elected Governing Council members of the League. It appears that team owners, including the Applicant, submitted a proposal during the course of the meeting held on 29 January 2021 with MCA. Thereafter, another meeting was organised by MCA on 18 February 2021 and the Applicant was invited for the same. In that meeting, it appears that a proposal was placed by the MCA for approval by the team owners, including the Applicant. On 19 February 2021, Applicant received email from MCA calling upon it to send in-principle approval or denial to the proposal presented by the MCA. The Applicant expressed its in-principle approval to the proposal by email dated 23 February 2021. Again, a meeting was convened by MCA on 24 March 2021 with team owners, including with the Applicant. Applicant has also placed on record emails of MCA calling upon the Applicant to remain present for meetings held on 7 February 2022, 13 February 2023 etc.

33) The above correspondence would clearly indicate participation by MCA in performance of the PA read with Supplementary

Agreement by Applicant and Respondent No.1. MCA is thus not a stranger to the principal contract executed between the Applicant and Respondent No.1. Whether the decision to terminate the contract is taken by Respondent No.1 at the behest of MCA or not is something which can be decided by the Arbitral Tribunal. However, some part of cause of action for the Applicant has arisen on account of refusal by MCA to permit the Applicant to participate in the League for the year 2023. It appears that a meeting of team owners was held by the MCA on 24 April 2024, for which again the Applicant was not called. Thus, the grievance of the Applicant is that though it has cleared all the dues of Respondent No.1, which was the reason for termination and MCA always called Applicant for various meetings ignoring the termination, the Applicant is essentially aggrieved by the decision taken by MCA to not permit the Applicant to participate in the League. Applicant believes that the decision in that regard is taken not by Respondent No.1, but by MCA. From various clauses of the PA and Supplementary Agreement, it is more than apparent that the ultimate decision to permit a team to participate in the League is taken by MCA. Since the League is held by the MCA, Respondent No.1 cannot allow any team to participate in the League without the approval of the MCA.

34) The MCA is thus actively involved in execution of PA though it is not a signatory thereto. It thereafter became signatory to the Supplementary Agreement, which is executed for giving shape to the PA. MCA has played an active role and has actively participated in performance of even PA. The issue for consideration is whether

Petitioner can be treated as a veritable party to the arbitration agreement contained in PA?

35) In ***Cox and Kings*** (supra), the Constitution Bench has elaborated and explained the concept of veritable party, especially in relation to the 'group of companies' doctrine. The Apex Court has held that a non-signatory to the agreement can be subjected to arbitration without his/her prior consent on the basis of :

(i) mutual intent of parties,

(ii) relationship of non-signatory to a signatory party.

(iii) commonality of subject matter.

(iv) composite nature of transaction, and

(v) performance of contract.

36) It is held in paragraphs 101, 116, 120, and 122 of the judgment in ***Cox and Kings*** as under:

> 101. A formalistic construction of an arbitration agreement would suggest that the decision of a party to not sign an arbitration agreement should be construed to mean that the mutual intention of the parties was to exclude that party from the ambit of the arbitration agreement. Indeed, corporate entities have the commercial and contractual freedom to structure their businesses in a manner to limit their liability. **However, there have been situations where a corporate entity deliberately made an effort to be not bound by the underlying contract containing the arbitration agreement but was actively involved in the negotiation and performance of the contract. The level of the non-signatory party's involvement was to the extent of making the other party believe that it was a veritable party to the contract, and the arbitration agreement contained under it.** Therefore, the group of companies doctrine is applied to ascertain the intentions of the parties by analysing the factual circumstances surrounding the contractual arrangements [Gary Born (n 44) 1568].

116. Since the group of companies doctrine is a consent based theory, its application depends upon the consideration of a variety of factual elements to establish the mutual intention of all the parties involved. In other words, the group of companies doctrine is a means to infer the mutual intentions of both the signatory and non-signatory parties to be bound by the arbitration agreement. The relationship between and among the legal entities within the corporate group structure and the involvement of the parties in the performance of the underlying contractual obligations are indicators to determine the mutual intentions of the parties. **The other factors such as the commonality of the subject matter, composite nature of the transactions, and the performance of the contract ought to be cumulatively considered and analysed by courts and tribunals to identify the intention of the parties to bind the non-signatory party to the arbitration agreement.** The party seeking joinder of a non-signatory bears the burden of proof of satisfying the above factors to the satisfaction of the court or tribunal, as the case may be.

120. **In case of multiple parties**, **the necessity of a common subject-matter and composite transaction is an important factual indicator.** An arbitration agreement arises out of a defined legal relationship between the parties with respect to a particular subject matter. Commonality of the subject matter indicates that the conduct of the non-signatory party must be related to the subject matter of the arbitration agreement. For instance, if the subject matter of the contract underlying the arbitration agreement pertains to distribution of healthcare goods, the conduct of the non-signatory party should also be connected or in pursuance of the contractual duties and obligations, that is, pertaining to the distribution of healthcare goods. The determination of this factor is important to demonstrate that the non-signatory party consented to arbitrate with respect to the particular subject matter.

122. The general position of law is that parties will be referred to arbitration under the principal agreement if there is a situation where there are disputes and differences "in connection with" the main agreement and also disputes "connected with" the subject-matter of the principal agreement [Olympus Superstructures (P) Ltd v. Meena Vijay Khetan, (1999) 5 SCC 65]. In Chloro Controls (supra), this Court clarified that the principle of "composite performance" would have to be gathered from the conjoint reading of the principal and supplementary agreements on the one hand, and the explicit intention of the parties and attendant circumstances on the other. **The common participation in the commercial project by the signatory and non-signatory parties for the purposes of achieving a common purpose could be an indicator of the fact that all the parties intended the non-signatory party to be bound by the arbitration agreement.** Thus, the application of the group of companies doctrine in case of composite

> transactions ensures accountability of all parties who have materially participated in the negotiation and performance of the transaction and by doing so have evinced a mutual intent to be bound by the agreement to arbitrate.
>
> *(emphasis added)*

37) In para-127 of the judgment in ***Cox and Kings*** (supra), the Constitution Bench has clarified that the nature and the standard of involvement of non-signatory in performance of contract must be such that it has actively assumed obligations or performance upon itself under the contract. Mere incidental involvement in the negotiations or performance of contract is not sufficient to infer consent of non-signatory to be bound by the underlying contract or its arbitration agreement. It has held in para-127 of the judgment as under:

> **127.** In *Cox & Kings* [*Cox & Kings Ltd.* v. *SAP India (P) Ltd.*, (2022) 8 SCC 1 : (2022) 4 SCC (Civ) 45] , Surya Kant, J. observed that *Reckitt Benckiser* [*Reckitt Benckiser (India) (P) Ltd.* v. *Reynders Label Printing (India) (P) Ltd.*, (2019) 7 SCC 62 : (2019) 3 SCC (Civ) 453] fixed a higher threshold of evidence for the application of the Group of Companies doctrine as compared to earlier decisions of this Court. This Court's approach is *Reckitt Benckiser* [*Reckitt Benckiser (India) (P) Ltd.* v. *Reynders Label Printing (India) (P) Ltd.*, (2019) 7 SCC 62 : (2019) 3 SCC (Civ) 453] is indicative of the fact that the mere presence of a group of companies is not the sole or determinative factor to bind a non-signatory to an arbitration agreement. Rather, the Courts or tribunals should closely evaluate the overall conduct and involvement of the non-signatory party in the performance of the contract. **The nature or standard of involvement of the non-signatory in the performance of the contract should be such that the non-signatory has actively assumed obligations or performance upon itself under the contract. In other words, the test is to determine whether the non-signatory has a positive, direct, and substantial involvement in the negotiation, performance, or termination of the contract. Mere incidental involvement in the negotiation or performance of the contract is not sufficient to infer the consent of the non-signatory to be bound by the underlying contract or its arbitration agreement.** The burden is on the party seeking joinder of the non-signatory to the arbitration agreement to prove a conscious and deliberate conduct of involvement of the non-signatory based on objective evidence.

(emphasis and underlining added)

38) The judgment of the Apex Court in ***Cox and Kings*** has been further elaborated and built-upon in subsequent judgment in ***ASF Buildtech*** (supra).

39) Applying the tests of ***Cox and Kings*** as discussed above to the facts of the present case, in my view, MCA is clearly a veritable party to the arbitration agreement contained in the PA. MCA always expressed intention to effect legal relationship with Applicant and Respondent No.1 as all decisions relating to organising and holding of the League including participation by a team are ultimately taken by MCA. If conduct and relationship between the MCA on one hand and Respondent No.1 and the Applicant on the other is taken into consideration, there can be little doubt that MCA always exhibited intention to be bound by the PA. If any doubt was left, MCA stepped in and executed Supplementary Agreement to which it is a principal party. Though the Supplementary Agreement essentially governed payment terms between the Applicant and Respondent No.1, MCA still chose to become party thereto. MCA has also participated in termination of the contractual arrangement with the Applicant which is clear from the following statement in the termination notice:

> With this as background, and without prejudice to any of our other legal and contractual rights and remedies, you are hereby notified that with reference to Clause 9.1 of the Participation Agreement and **Clause 1(g) of the Supplementary Agreement**, the Participation Documents and all your rights and entitlement thereunder stand terminated with

> immediate effect. **The service of this Notice of Termination has been endorsed and approved by the MCA**.
>
> *(emphasis added)*

As a matter of fact, while defending Section 9 Petition, MCA took specific plea before this Court that it approved the termination, and this position is discussed in greater details in latter part of the judgment. Thus, the decision to terminate the PA and Supplementary Agreement also could not be taken by the Respondent No. 1 on its own and it required approval of the MCA. Furthermore, the source of termination of the PA is also stated as clause 1(g) of the Supplementary Agreement. Thus, the PA is terminated by using the power under the stipulation of the Supplementary Agreement. This would leave no manner of doubt that the Supplementary Agreement is intrinsically intertwined with the PA. The contract signed my MCA is used for terminating the PA. Also, MCA has taken the decision of termination of the PA.

40) Thus, intention on the part of MCA to be bound by the underlying contract (PA) is writ large. If the test of level of involvement by MCA in performance of contract is applied, it is seen that without participation by MCA in performance of PA, no contractual obligations therein can ever be fulfilled. MCA is fully, completely and absolutely involved in conduct of the League. Without its approvals, it is not permissible for any team to participate in the League. The PA cannot neither be performed nor can be terminated without the approval of MCA. If conduct of MCA relating to subject matter (League) is taken into consideration, there can be little doubt that MCA has directly dealt with

the applicant, thereby exhibiting clear intention of being bound by PA read with Supplementary Agreement. In my view therefore, after applying the tests laid down by Constitution Bench in ***Cox and Kings Ltd*** (supra), there can be little doubt to the position that MCA is a veritable party to the arbitration agreement contained in the PA.

41) It is also contended on behalf of the Applicant that the PA and Supplementary Agreement execute a composite transaction and that therefore, the arbitration clause in PA can also be enforced for seeking performance of contractual obligations by MCA out of the composite transaction. I do find force in the submission. The Supplementary Agreement cannot be performed on its own. It is inextricably intertwined with the PA. Both documents are ultimately executed to complete a common transaction. In ***Ameet Lalchand Shah and Ors. vs. Rishabh Enterprises and Anr***[11], a sale purchase agreement was executed for purchase of products, which were to be leased to another company and which did not contain arbitration clause. A separate equipment lease agreement was executed between the purchaser of products and the lessee, under which the lessee agreed to pay rent in respect of the leased products to the purchaser. The lessee defaulted in payment of rent and the purchaser filed a suit seeking declaration that the sale purchase agreement as well as equipment lease agreement were vitiated by fraud and were void. The seller of the equipment (defendant) filed application under Section 8 of the Arbitration Act for reference of dispute to Arbitration. The High Court dismissed the Section 8 application holding

[11] (2018) 15 SCC 678

that the Equipment Lease Agreement, which had arbitration clause could not be treated as mother/principal agreement. The Apex Court further held that though there were different agreements involving separate parties, the same were executed to effect a single commercial project. The Apex Court referred to its judgment in ***Chloro Controls India (P) Ltd.*** **v.** ***Severn Trent Water Purification Inc.***[12] and held in pars-22, 23 and 24 as under:

> 22. In *Chloro Controls* , this Court was dealing with the scope and interpretation of Section 45 of the Act, Part II of the Act and in that context, discussed the scope of relevant principles on the basis of which a non-signatory party also could be bound by the arbitration agreement. Under Section 45 of the Act, an applicant seeking reference of disputes to arbitration can either be a party to the arbitration agreement or any person claiming through or under such party. Section 45 uses the expression "*... at the request of one of the parties or any person claiming through or under him...*" includes non-signatory parties who can be referred to arbitration provided they satisfy the requirements of Sections 44 and 45 read with Schedule I of the Act.
>
> 23. In para 73 of *Chloro Controls* , this Court held as under: (SCC p. 683)
>
> "*73.* A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. ***The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute.*** *Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed*."

[12] (2013) 1 SCC 641

> 24. In a case like the present one, **though there are different agreements involving several parties, as discussed above, it is a single commercial project,** namely, operating a 2 MWp Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh. Commissioning of the Solar Plant, which is the commercial understanding between the parties and it has been effected through several agreements. The agreement — Equipment Lease Agreement (14-3-2012) for commissioning of the Solar Plant is the principal/main agreement. The two agreements of Rishabh with Juwi India: (*i*) Equipment and Material Supply Contract (1-2-2012); and (*ii*) Engineering, Installation and Commissioning Contract (1-2-2012) and the Rishabh's Sale and Purchase Agreement with Astonfield (5-3-2012) are ancillary agreements which led to the main purpose of commissioning the Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh by Dante Energy (lessee). Even though, the Sale and Purchase Agreement (5-3-2012) between Rishabh and Astonfield does not contain arbitration clause, it is integrally connected with the commissioning of the Solar Plant at Dongri, Raksa, District Jhansi, U.P. by Dante Energy. Juwi India, even though, not a party to the suit and even though, Astonfield and Appellant 1 Ameet Lalchand Shah are not signatories to the main agreement viz. Equipment Lease Agreement (14-3-2012), it is a commercial transaction integrally connected with commissioning of Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, U.P. Be it noted, as per Clause (*v*) of Article 4, parties have agreed that the entire risk, cost of the delivery and installation shall be at the cost of the Rishabh (lessor). Here again, we may recapitulate that engineering and installation is to be done by Juwi India. What is evident from the facts and intention of the parties is to facilitate procurement of equipments, sale and purchase of equipments, installation and leasing out the equipments to Dante Energy. The dispute between the parties to various agreements could be resolved only by referring all the four agreements and the parties thereon to arbitration.
>
> *(emphasis added)*

42) The judgment of the Apex Court in ***Ameet Lalchand Shah*** has been affirmed in three Judge Bench decision in ***Cox and Kings Ltd. vs. SAP India Pvt. Ltd. and Anr.***[13] while making reference to the larger bench. The judgment in ***Ameet Lalchand Shah*** also finds approval in the judgment in ***ONGC Ltd. v. Discovery Enterprises (P) Ltd*** [14]. Finally, the

[13] (2022) 8 SCC 1

[14] (2022) 8 SCC 42

Constitution Bench in ***Cox and Kings*** has also approved the view taken in ***Ameet Lalchand Shah***. The Constitution Bench held in paras-36 and 219 in ***Cox and Kings*** as under:

> **36.** In *Ameet Lalchand Shah* v. *Rishabh Enterprises* [*Ameet Lalchand Shah* v. *Rishabh Enterprises*, (2018) 15 SCC 678 : (2019) 1 SCC (Civ) 308] , a two-Judge Bench of this Court was dealing with an arbitral dispute arising out of four interconnected agreements executed towards a single commercial project. The issue was whether the four agreements were interconnected to refer all the parties to arbitration. In that case, all the parties were not signatories to the main agreement containing the arbitration clause. This Court relied on *Chloro Controls* [*Chloro Controls India (P) Ltd.* v. *Severn Trent Water Purification Inc.*, (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] to hold that a non-signatory, which is a party to an interconnected agreement, would be bound by the arbitration clause in the principal agreement. It observed that in view of the composite nature of the transaction, the disputes between the parties to various agreements could be resolved effectively by referring all of them to arbitration.
>
> **219.** The subsequent decision in *Ameet Lalchand Shah* v. *Rishabh Enterprises* [*Ameet Lalchand Shah* v. *Rishabh Enterprises*, (2018) 15 SCC 678 : (2019) 1 SCC (Civ) 308 : 2018 INSC 450] is yet another instance where this Court has allowed a non-signatory to be party to an arbitration agreement, in connected contracts, on the ground of business efficacy, noting that all agreements were executed for a single commercial project. This approach was noted in the subsequent decision of *Discovery Enterprises* [*ONGC Ltd.* v. *Discovery Enterprises (P) Ltd.*, (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80 : 2022 INSC 483] , where the learned Chief Justice has noted : (SCC p. 69, para 28)
>
> > "*28*. … In *Ameet Lalchand* [*Ameet Lalchand Shah* v. *Rishabh Enterprises*, (2018) 15 SCC 678 : (2019) 1 SCC (Civ) 308] , the *Court did not explicitly invoke the Group of Companies doctrine to bind a non-signatory, rather it relied onChloro Controls* [*Chloro Controls India (P) Ltd.* v. *Severn Trent Water Purification Inc.*, (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] *to hold that a non-signatory would be bound by the arbitration clause in the mother agreement, since it is a party to an inter-connected agreement, executed to achieve a common commercial goal*."
>
> (emphasis supplied)

43) This Court in its recent judgment in ***Mahindra Mangilalji Jain vs. M/s Radha Construction Co and Ors.***[15] has referred to the

[15] Commercial Arbitration Petition (L) No. 12427 of 2025 decided on 4 March 2026.

judgment of Apex Court in ***Ameet Lalchand Shah*** and has held in 39 as under:

> **39)** In my view, the ratio of judgments in ***Ameet Lalchand Shah*** and ***Cox and Kings Ltd.*** (supra) would squarely apply in present case where multiple documents are executed by parties to give effect to a composite transaction. The MOU is inseparably intertwined with Retirement Deed and does not have its own legs to stand on. The MOU therefore cannot be separated from the Deed of Retirement, notwithstanding the 'entire agreement' clause. The MOU, on its own, does not seek to execute any separate transaction and only provides for a methodology for payment of consideration under the MOU. In my view therefore, reference to arbitration can be made by invoking arbitration clause in the Deed of Retirement, even though the Petitioner seeks to enforce the contractual obligations flowing out of the MOU.

44) In my view therefore, the ratio of the judgment in ***Ameet Lalchand Shah*** would squarely apply to the present case also. In the present case, the PA is executed between Applicant and Respondent No. 1, but the Supplementary Agreement is executed between MCA, Respondent No. 1 and Applicant. But both the agreements ultimately execute a single commercial transaction. The transaction is of composite nature where performance of the mother agreement (PA) is not feasible without aid, execution and performance of the Supplementary Agreement. Can it be said that PA can be performed on its own by ignoring the stipulations of Supplementary Agreement? The answer is emphatically in the negative. The Supplementary Agreement materially alters and supplements the terms and conditions of the PA. The PA can be performed only in the manner provided for in the Supplementary Agreement. In my view therefore, the case is squarely covered by the judgments of the Supreme Court in ***Chloro Controls*** and ***Ameet Lalchand Shah*** (supra) and therefore even non-signatory to the PA (MCA) can be

roped in the arbitration by following the principle of composite transaction.

45) Mr. Khandekar has relied on judgment of learned Single Judge of this Court in ***Mukesh Patel*** (supra), which in my view has no application to the facts of the present case. In ***Mukesh Patel***, there were disputes between the society and the earlier developer and the society had appointed new developer to complete the redevelopment process. The earlier developer sought appointment of arbitrator for adjudication of disputes not just with the society but also with the new developer. It is in the light of those peculiar facts that the learned Single Judge of this Court held that the concept of veritable party discussed in judgment in ***Cox and Kings*** and ***ASF Buildtech*** could not be imported to make the new developer a party to arbitration between the society and the earlier developer. In redevelopment agreement, the new developer appointed by the society can never be treated as the one participating in performance of the terminated development agreement. The two development agreements together do not form part of a composite transaction as the two transactions are distinct and different. The second development agreement is executed not to supplement the first one but because the first one is terminated. Therefore, the judgment of this court in ***Mukesh Patel*** has no application to the facts of the present case.

46) More recently, in ***Space Master Realtors Vs. Mulund Sadhyaprakash CHSL***[16] this Court has discussed the principles governing treatment of a non-signatory to the contract as veritable party to the

[16] Commercial Arbitration Petition No. 35545 of 2025 decided on 6 March 2025

arbitration agreement contained in that contract. It is broadly held that where a non-signatory voluntary participates in performance of contract and creates an impression on the opposite party that it has taken over obligations under the contract, such non-signatory can be treated as a veritable party to the arbitration agreement. This Court has held that mere factum of the non-signatory being a beneficiary of the contract is not sufficient but there must be will and intent to be bound by the contract by a non-signatory.

47) Though not strenuously argued, the Applicant has also pleaded the ground of incorporation of arbitration clause of PA in the Supplementary Agreement. In my view, it is not necessary to go into this aspect since existence of arbitration agreement between the Applicant and MCA can otherwise be inferred by applying the doctrine of veritable party and composite transaction. I therefore find it unnecessary to go into the issue as to whether there is only a reference to the contractual terms of PA in the Supplementary Agreement or whether parties intended to incorporate even arbitration clause of PA in the Supplementary Agreement. It is therefore not necessary to discuss the ratio of the judgments in ***M.R. Engineers***, ***NBCC*** and ***Duro Felguera*** (supra).

48) Mr. Khandekar has strongly relied on judgment of this Court delivered in the Appeal filed by the Applicant against the order refusing to grant ad-interim measures in Section 9 Petition. As observed above, the Applicant had filed Arbitration Petition (L) No.10243/2025 seeking interim measures to restrain the Respondents from conducting the

League by excluding participation of Applicant's team. A Single Judge of this court refused to grant ad-interim relief on the grounds of inordinate delay, non-challenge of termination notice, ratification of termination notice by MCA, and PA not creating any proprietary rights in respect of the territory, the same being a mere conducting agreement. However, *prima facie* findings recorded by the learned Single Judge in para-21(c) of the order dated 16 April 2025 are in favour of the Applicant, which read thus :

> (c) I also find no merit in the contention that the Termination Notice dated 24th January 2020 was not ratified by the MCA. Firstly, the Termination Notice itself expressly records that the same was issued under instructions and with the approval of the MCA, and secondly, clause 1(g) of the Supplemental Agreement, upon which reliance has been placed by the Petitioner vested the sole power to terminate both agreements with Respondent No. 1. **Thus, the Petitioners contention that the termination lacked approval of the MCA is plainly untenable.**
>
> *(emphasis added)*

49) Thus, MCA itself took a position before this Court in Section 9 Petition that it has participated in termination of the PA between the Applicant and Respondent No.1. This is clear from following submissions made on behalf of MCA:

> 16. **Mr. Kamat then submitted that the contention of the Petitioner that the termination was not ratified by the MCA was plainly misconceived** since (i) the termination notice specifically recorded 'the service of notice of termination has been endorsed and approved by the MCA and that (ii) Clause 1(g) of the Supplemental Agreement gave Respondent No. 1 the sole discretion to terminate the Supplemental Agreement and other agreements previously executed by and between the Petitioner and Respondent No. 1, including the Participation Agreement. **He then pointed out that the Termination Notice was issued by Respondent No. 1 specifically under clause 1(g) of the Supplemental Agreement.** He also then pointed out that the email dated 22nd November 2019 addressed by Respondent No. 1, calling upon the Petitioner to cure the material breach, also expressly stated that **it was issued under**

> **instructions from and approved by the MCA. It was thus that he submitted that the Petitioner's contention that the termination was not ratified by MCA was factually misconceived.**
>
> *(emphasis added)*

The above stand taken by the MCA before this Court that it has approved the termination of Applicant's contract would again make the MCA a veritable party to the arbitration agreement contained in the PA.

50) After the Single Judge of this Court refused to grant ad-interim measures in Section 9 Petition, Applicant filed Arbitration Appeal (L) No.12967/2025 before the Division Bench of this Court. It appears that for claiming interim measures before the Appeal Court, the Applicant raised the plea of Respondent No.1 acting as agent of MCA. The Appeal court did not *prima facie* find substance in the contention and held that the PA was entered into between the Applicant and Respondent No.1 on principal to principal basis. It also appears that in the Appeal preferred by the Applicant, the Division Bench has recorded a contradictory finding than the one recorded by the leaned Single Judge about termination notice having approval of MCA. However, it is not necessary to delve deeper into that aspect. Ultimately, the findings recorded by the Division Bench are only *prima facie* in nature and are recorded for the purpose of examining whether the ad-interim measures deserved to be granted at that stage. While dismissing the appeal, the Division Bench of this Court held in para-20 as under:

> 20. So far as irreparable loss is concerned, Jupicos participated in two editions till 2019. It is almost after four years that the entire outstanding payments were made by Jupicos to Probability Sports in January 2024. Jupicos has already

> invoked the arbitration clause and therefore the remedy of claiming damages in case the termination notice is held to be illegal and bad in law is available. Having perused the order of the learned Single Judge we find no reason to interfere with the same in the limited jurisdiction that we have in this Appeal under Section 37 of the said Act.

51) When Applicant approached the Supreme Court challenging the judgment of the Division Bench, by order dated 21 May 2025, it has clarified that the Court dealing with petition under Section 9 of the Arbitration Act cannot decide about scope and extent of claim to be put forth in the course of arbitrator. The Supreme Court accordingly clarified that the observations made by the Division Bench in para-20 of the judgment would not have any bearing or binding effect on arbitration proceedings. The order of the Supreme Court reads thus :

> We find no good ground and reason to interfere with the impugned order.
>
> However, we may clarify that it is not for the Court dealing with a petition under Section 9 of the Arbitration and Conciliation 1 SLP(C) No. 14943/2025 Act, 1996, to decide as to what should be the scope and extent of the claim to be put forth in the course of the arbitration. To that extent, the observation in paragraph 20 of the impugned order shall have no bearing or binding effect on the arbitration proceedings, as and when initiated.
>
> Subject to the above observation, the special leave petition is dismissed.

52) Thus, it is clarified by the Supreme Court in order dated 21 May 2025 that the observations made by the Division Bench in para-20 of the judgment about availability of another remedy shall not have any bearing or binding effect on the arbitral proceedings. Applicant contends that the clarification would mean that Applicant can claim all reliefs

including the relief of performance of contract before the arbitrator. This issue can be decided by the arbitral tribunal.

53) In my view therefore, reliance by MCA on the judgment of Division Bench does not assist it for establishing that it cannot become party to arbitration initiated between the Applicant and Respondent No.1.

54) In addition to applicability of principle of veritable party and composite transaction for roping in MCA to arbitral proceedings between the Applicant and Respondent No.1, there is one more aspect which would make MCA a necessary party to the arbitral proceedings. By seeking specific performance of the PA read with Supplementary Agreement, the Applicant would claim right to participate in the remaining editions of the League. The League is ultimately held by MCA and no team can participate in the League without MCA's nod. Respondent No.1 does not have any discretion in the matter and cannot, on its own, permit the Applicant to participate in the League without the approval of MCA. Therefore, the prayer of specific performance of PA and Supplementary Agreement cannot be decided in absence of MCA. Such is the extent of participation by MCA in performance of the contract and even in termination thereof, that without its consent Applicant cannot participate in the League. This again makes MCA bound by the arbitration agreement contained in the PA.

55) Coming to the objection of limitation sought to be raised by Mr. Juvekar on behalf of Respondent No.1, the law on the subject has been developed in ***SBI General Insurance Company Limited vs. Krish***

Spinning[17], in which the Supreme Court has held that while exercising reference jurisdiction under Section 11(6) of the Arbitration Act must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. It has held in paras-136 and 137 as under :

> 136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the Referral Court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in *Arif Azim* [*Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] . As a natural corollary, it is further clarified that the Referral Courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1 : 2023 INSC 1066] .
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> 137. The observations made by us in *Arif Azim* [*Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] are accordingly clarified. We need not mention that the effect of the aforesaid clarification is only to streamline the position of law, so as to bring it in conformity with the evolving principles of modern-day arbitration, and further to avoid the possibility of any conflict between the two decisions that may arise in future. These clarifications shall not be construed as affecting the verdict given by us in the facts of *Arif Azim* [*Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , which shall be given full effect to notwithstanding the observations made herein.

[17] (2024) 12 SCC 1

56) The principle is reiterated by the Apex Court in ***Aslam Ismail Khan Deshmukh Versus. ASAP Fluids Pvt. Ltd. & Anr.***[18] in which it has held in paras-43, 44 and 45 as under:

> 43. Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the 1996 Act, the referral Court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.
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> 44. After all, in a scenario where the referral Court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the Arbitral Tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them.
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> 45. As observed by us in *Krish Spg.* [*SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , the power of the referral Court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral Court under Section 11, be it for either appointing or refusing to appoint an arbitrator. Therefore, if the referral Court delves into the domain of the Arbitral Tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of leaving the claimant remediless for the adjudication of their claims.

57) The above principles are also enunciated by the Apex Court in ***In Re : Interplay between Arbitration Agreements under the Arbitration Act, 1996 and the Stamp Act, 1899***[19]. In the light of the above judgments, it is not necessary to discuss the judgments relied upon by Mr. Juvekar in ***BSNL*** and ***Grace Works*** (supra). Even otherwise, it is the case of the Applicant that the termination notice dated 24 January 2020

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18 (2025) 1 SCC 502

19 (2024) 6 SCC 1

was never acted upon and the Applicant was called for meetings by MCA for participating in the League. It is Applicant's case that the cause of action arose in April 2024 when it was denied participation in the meeting held by MCA.

58) Considering the above position, it would not be possible for Reference Court to finally rule as to whether the claim sought to be raised by the Applicant are within the limitation or time barred. This court would adopt hands-off approach and leave the issue of limitation to be decided by the Arbitral Tribunal.

59) The conspectus of the above discussion is that there exists arbitration agreement between the Applicant and both the Respondents. It would therefore be appropriate to constitute Arbitral Tribunal comprising of a sole arbitrator.

60) I accordingly proceed to pass the following order:

A) Mr. Justice Nitin Jamdar, former Chief Justice of Kerala High Court is appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the PA and Supplementary Agreement referred to above. The contact details of the Arbitrator are as under :

Mobile No. :- 9819829319

Email ID :- nitinjamdar@gmail.com

B) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicant within a period of one week from

the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith 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 parties within a period of 2 weeks from receipt of a copy of this order.

D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him**,** to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

E) The fees of the sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

61) All rights and contentions of the parties are expressly kept open to be raised before the Arbitral Tribunal.

62) With the above directions, the Commercial Arbitration Application is **allowed and disposed of**. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]