



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.....of 2026
[@ Special Leave Petition (C) No.33128 of 2025]**

Elecon Engineering Company Limited

...Appellant

Versus

Bhartiya Rail Bijlee Company Limited & Anr.

...Respondents

J U D G M E N T

K. Vinod Chandran, J.

Leave granted.

2. A Collaborator's request for arbitration, which collaboration was essential to technically qualify the Contractor to proffer a bid was declined on the ground of there being no privity of contract. The High Court considering a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (Act of 1996) rejected the same against which the present appeal is filed. We refer to the parties as the Employer; the 1st respondent herein, the

Contractor; the 2nd respondent and the Collaborator; the appellant.

3. The High Court noticed the trite principle that even non-signatories to an agreement with an arbitration clause would be entitled to invoke it, if such non-signatory is a veritable party to the arbitration agreement. However, finding that there was nothing in the notice under Section 21 of the Act of 1996 to find such inextricable connection; the notice also having specifically sought for a consent to initiate an arbitration, declined the prayer.

4. Learned Senior Counsel Sri Sridhar Potaraju, appearing for the appellant took us through the initial bid document itself to urge that without the collaboration, the Contractor would not have been able to satisfy the eligibility criteria of experience in design and commissioning of an integrated bulk material handling plant with rated capacity of 1000 Metric tonnes per hour or above for coal/other minerals of a minimum period of one year. The Collaborator was thus an inextricable party to the contract, which also required submission of 'Deed of Joint Undertaking' (DJU)

executed jointly by the Collaborator and the Contractor. Later, the Contractor having slipped into liquidation the Employer called upon the Collaborator to take up the full responsibility for the successful performance of the contract as per the DJU dated 22.02.2010 submitted along with the bid documents.

5. Sri Aman Lekhi, learned Senior Counsel on the other hand submits that the very notice under Section 21, as has been found by the High Court, sought a consent for arbitration, which reveals the understanding of the Collaborator itself that the contract between the parties, did not contain a clause for resolving the disputes through arbitration. The tripartite agreement entered into by the Collaborator with the Employer and the Contractor does not contain such a clause which eclipses any earlier contract. Though a combined, complementary role was contemplated initially as of now, the Contractor having gone into liquidation, no claim can be raised against the Employer by the Collaborator.

6. The bid document along with the special conditions of contract and general conditions of contract produced as Annexure P1 clearly stipulates the qualification requirements for bidders and provides for the eligibility to be satisfied through collaborations in which event the bidder is required to furnish DJU's executed by the bidder and the collaborator/associate for successful performance of the relevant system, as per the NTPC format enclosed with the bid documents. The contract awarded was for installing a Coal Handling Plant Package for Nabinagar Thermal Power Project of the respondent, the Employer. The successful bidder/Contractor, the 2nd respondent collaborated with the appellant for its design capabilities and supply of certain equipment/materials based on the latter's experience in a project of the required strength and its successful operation for one year. The bid form also contains various DJUs to be executed by 'a Collaborator/Associate' along with the Contractor for the Coal Handling Plant for Nabinagar Thermal Power Project. The DJU was executed by the Collaborator with the Contractor, in favour of the Employer

which clearly indicates that the Collaborator was an inseparable part of the contract and its execution.

7. The DJU was executed on 22.02.2010, as is available at Annexure P2 and there is no dispute that the contract entered into between the Contractor and the Employer has an arbitration clause. The question to be decided is as to whether the Collaborator/Associate is a veritable party to the contract, which from the very terms of the contract and those discernible from the bid document and requirements thereof, has to be answered in the affirmative.

8. The fact also remains that in the course of the execution of the contract, the Contractor was faced with a liquidation proceeding and ordered to be liquidated on 16.01.2020. The High Court in rejecting the arbitration request had referred to and extracted the letters invoking arbitration, issued by the Collaborator on 02.07.2022 and responded to by the Employer, on 29.07.2022, to decline the request. We see from the letter dated 02.07.2022 produced as Annexure P10 that the Collaborator had specifically referred to the DJU and the delay caused in the execution of

the project by reasons only of the default of the Contractor, upon which there was even an encashment of the bank guarantee submitted by the Collaborator, which was also described as wrongful. It was specifically pointed out that, on the Contractor failing to fulfil its obligations, the Collaborator was called upon to fulfil its obligations as a sub-vendor of the Contractor for the Coal Handling Project. It was pursuant to the decisions taken in the meetings convened, pursuant to the above referred communication; which was also attended by the Contractor, that a tripartite agreement was entered into between the Contractor, the Collaborator and the Employer dated 05.04.2016; produced as Annexure P8. The tripartite agreement specifically authorized payments to the Collaborator with respect to the outstandings against the earlier supplies and those to be supplied in future by the Collaborator, to be paid directly to the Collaborator.

9. Subsequently, communication dated 08.10.2021, Annexure P9, was issued by the Employer which again called upon the Collaborator to fulfil its obligations as per the DJU furnished at the inception and it was also threatened that on

failure, the Employer will be constrained to execute the balance work at the risk and cost of the Collaborator. It is also to be noticed that the consent required by the Collaborator in the letter dated 02.07.2022 was for reference of the matter to the Delhi International Arbitration Centre and not necessarily a consent for resolving the dispute through arbitration; which provision was already available in the agreement executed by the contractor to which the Collaborator is an essential and inextricable part. The communications issued pursuant to the default of the Contractor is a reaffirmation of the obligation of the Collaborator as per the contract executed, of which the DJU is an inextricable part. The tripartite agreement only asserted the responsibility of the Collaborator to fulfill the contract and was only a measure of ensuring payments to the Collaborator directly, in the wake of the inability of the Contractor and does not wipe out the earlier contract.

10. In response to the notice under Section 21, the Employer specifically referred to the DJU and the '*joint and several*' responsibilities of the Contractor and the

Collaborator to complete the project. The tripartite agreement was also referred to along with various letters issued by the Employer to the Collaborator for effective completion of the project. Despite the Employer having called upon the Collaborator to fulfil its obligations as per the DJU, due to the disability of the Contractor, the Employer asserted absence of privity of contract and refused consent for adjudication of the dispute between themselves in its letter dated 29.07.2022.

11. We are of the opinion that the contract by itself necessitated the execution of joint undertaking by the Contractor and the Collaborator who had the '*joint and several*' liability for the due completion of the contract. The arbitration clause applied both to the Collaborator and the Contractor in so far as the disputes with the Employer and between themselves the agreement of collaboration provided a like clause for dispute resolution. On the Contractor defaulting in the completion of the project, the Employer had also called upon the collaborator to fulfil the obligations as per the DJU specifically raising the issue of

joint and several responsibilities. The meetings convened between the Employer, the Contractor and the Collaborator, after delay in execution of the contract, the tripartite agreement entered into between them and the further communications addressed to the collaborator to take up his responsibility as per the DJU makes the Collaborator a veritable party to the contract who is also entitled to invoke the arbitration clause as available in the contract between the Contractor and the Employer in which the DJU executed by the Collaborator and the Contractor, in favour of the Employer is an inextricable part.

12. On the above reasoning, we find the High Court to have wrongly declined the prayer for arbitration. We set aside the judgment impugned and allow the petition filed under Section 11(6) of the Act of 1996. Justice (Retd.) Chakradhari Sharan Singh, (former Chief Justice of the Orissa High Court, Mobile No.: +91 94310 15002) is appointed as the sole Arbitrator to adjudicate upon the disputes between the parties. All contentions available to the parties are left open to be urged before the Arbitrator.

13. The learned Arbitrator will proceed in accordance with law and make his declaration in terms of Section 12 of the Arbitration and Conciliation Act, 1996 within a period of 15 days from the date a copy of this judgment is received by him. He shall be paid in terms of the Fourth Schedule to the Act of 1996.

14. The Registry is directed to intimate/inform the appointment made by us to the learned Arbitrator.

15. The above appeal is allowed with the above directions.

..... J.
(SANJAY KUMAR)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
MAY 07, 2026.**