



Limits of Section 11 Jurisdiction: Non-Signatories Cannot Be Referred to Arbitration Absent Prima Facie 'Veritable Party' Status

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Introduction

The Supreme Court recently in the matter titled as *Hindustan Petroleum Corporation Limited versus BCL Secure Premises Private Limited*¹ examines the limits of judicial scrutiny under Section 11 of the Arbitration and Conciliation Act, 1996, ("Act") particularly where a party seeks to invoke arbitration clause against a non-signatory to an Arbitration Agreement. The Hon'ble Court reiterates that while the Referral Court must adopt a *prima facie* standard when examining arbitrability, such scrutiny cannot be reduced to a mere formality. Where the record reveals no material is on record which establishes even *prima facie* that the applicant is a "veritable party" to the Arbitration Agreement, a reference to arbitration is impermissible.

The judgment provides significant clarity on the interplay between assignment of receivables, anti-assignment Clauses, and the jurisdictional threshold the Courts must apply before compelling parties to arbitrate.

Factual Background

HPCL i.e., the Appellant, issued a tender for design, supply, installation, integration, testing, commissioning and post-commissioning warranty support services of Tank Truck Locking System, awarding the contract to AGC Networks Limited (AGC) (who was the party to Arbitration Agreement with the Appellant). In lieu of the same, the Appellant issued a Purchase Order, dated 20.08.2013, in favour of AGC, which was accepted by AGC. Thereafter, AGC entered into a separate Agreement with BCL (Respondent) for the performance of work. It is imperative to note that BCL was not a party to Agreement/Purchase Order with the Appellant.

The contract between HPCL and AGC included explicit anti-assignment and anti-subletting provisions, requiring AGC to obtain HPCL's prior written approval before assigning or subletting any part of the contract. No such approval was ever obtained by AGC before sub-assigning its work to BCL.

Disputes arose between AGC and BCL regarding payments. A Settlement-cum-Assignment Agreement, dated 31.10.2023, was executed between AGC and BCL, under which AGC assigned certain receivables from HPCL to BCL. In lieu of the same, BCL issued a notice invoking arbitration against HPCL. HPCL denied the contentions made by BCL and objected to the invocation.

BCL then filed a Petition under Section 11 of the Act before the Hon'ble Bombay High Court, seeking appointment of an Arbitrator to adjudicate its claims against HPCL. The Hon'ble High Court allowed the Petition and referred the parties to Arbitration, leaving issues of jurisdiction and arbitrability to be decided by the Arbitral Tribunal.

Aggrieved, HPCL approached the Supreme Court.

Findings of the Court

The Supreme Court set aside the High Court's Order and dismissed the Petition under Section 11 of the Act, observing the following:

1. Scope of *Prima Facie* Review under Section 11 of the Act

¹ (2025) SCC Online SC 2746



The Supreme Court has authoritatively reaffirmed that a Referral Court exercising jurisdiction under Section 11 of the Act is not a mere conduit for mechanically constituting Arbitral Tribunals, particularly where a non-signatory seeks invocation of an Arbitration Agreement. Relying extensively on the Constitution Bench decision in *Cox and Kings Limited versus SAP (India) Private Limited*² the Court reiterated that while the doctrine of competence-competence mandates deference to the arbitral tribunal, the referral court must still undertake a *prima facie* examination of the existence of an Arbitration Agreement and whether the non-signatory is a “veritable party” thereto.

The Court clarified that mere commercial or contractual association is insufficient to bind a non-signatory, echoing *Cox and Kings (supra)* that “mere presence of a commercial relationship between signatory and non-signatory parties is not sufficient to infer a legal relationship”.

The Court held that if the material before the Court clearly rules out the existence of an Arbitration Agreement between the parties, no reference can be made.

2. No Evidence that BCL Was a Veritable Party to the HPCL–AGC Arbitration Agreement

The Court found no material suggesting that HPCL ever consented to treat BCL as a party to the contract or intended to bind itself to BCL. Further, the Purchase Order, clearly prohibited subletting/assignment without HPCL’s written approval. The back-to-back agreement between AGC and BCL expressly restricted BCL from contacting HPCL’s personnel without AGC’s permission. No document showed that HPCL consented to or was aware of the Settlement-cum-Assignment in a manner that could bind it to arbitrate with BCL. Thus, there was no *prima facie* basis to conclude that BCL could invoke arbitration against HPCL.

3. Effect of the Settlement-cum-Assignment Agreement

The Court noted that the assignment of receivables by AGC to BCL did not, by itself, create: any privity of contract between HPCL and BCL, or any Arbitration Agreement between them. Drawing from *Ajay Madhusudan Patel versus Jyotrindra S. Pate*³, the Court emphasized that intention to be bound, conduct during performance, and mutuality of obligations are decisive factors in determining veritable party status.

The Court emphasised the distinction between assignment of rights and transfer of obligations, reiterating that obligations cannot be transferred without the consent of the person to whom they are owed. No such consent from HPCL existed.

4. Significance of word “examination” under Section 11(6) of the Act

Reinforcing the limited yet meaningful scrutiny envisaged at the referral stage, the Court relied on *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 & the Stamp Act, 1899*⁴ and *SBI General Insurance Co. Limited versus Krish Spinning*⁵ to hold that the word “examination” under Section 11(6-A) requires inspection and scrutiny, though not a laborious trial.

² (2024) 4 SCC 1

³ (2025) 2 SCC 147

⁴ (2024) 6 SCC 1

⁵ (2024) 12 SCC 1



Applying these principles, the Court held that where a contract expressly prohibits assignment or sub-contracting without consent, and where no *prima facie* intention to bind the non-signatory is discernible, the Referral Court is duty-bound to decline reference, thereby preventing “absolute strangers” from being dragged into Arbitration proceedings. In lieu of the same, the Court concluded that BCL’s claim failed at the threshold, as the material on record negated any possibility of an Arbitration Agreement between HPCL and BCL.

Legal Significance

The Judgment reinforces critical principles governing arbitration referrals:

- ***Prima Facie* Test is meaningful, not mechanical**

The Court reaffirmed that Referral Courts must undertake a substantive *prima facie* analysis, especially when a non-signatory seeks to rely on an Arbitration clause. If the material demonstrates that the applicant is clearly outside the scope of the arbitration agreement, a reference cannot be made.

- **Non-Signatories must show clear intent or legal basis to be bound**

The decision clarifies that a non-signatory must produce at least *prima facie* material showing: intention of the signatory parties to bind the non-signatory, legally recognised mechanism—assignment, novation, or otherwise—validly extending the Arbitration Agreement. BCL failed to establish either.

- **Assignment of Receivables does not automatically transfer Arbitration rights**

The Court drew a clear distinction between: Assignment of rights (e.g., receivables), and transfer of obligations, including the obligation to arbitrate. Without HPCL’s consent, the Assignment could not create Arbitration obligations against it.

- **Anti-Assignment Clauses are enforceable at the Referral stage**

The presence of explicit prohibitions on assignment/subletting without consent played a decisive role. The Court treated such clauses as an important indicator of the parties’ intent and contractual structure.

Conclusion

The Supreme Court’s decision decisively restores balance to Section 11 of the Act jurisprudence by reaffirming that the Referral Court’s role, though limited, is neither illusory nor mechanical. By insisting upon a *prima facie* demonstration of “veritable party” status before a non-signatory can be referred to arbitration, the Court has drawn a principled boundary between legitimate deference to the arbitral tribunal and abdication of judicial responsibility. The judgment ensures that arbitration remains a consensual dispute resolution mechanism rather than an instrument for coercive joinder.

Importantly, it curtails the growing tendency to stretch doctrines such as “claiming through or under” and assignment beyond their legal contours, thereby safeguarding contractual certainty and preventing arbitral overreach.

The Supreme Court’s held that where the Applicant cannot, even *prima facie*, demonstrate that it is a party or a veritable party to an Arbitration Agreement, no reference to arbitration is permissible.