



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 209 OF 2024

BETWEEN:

BABOON INVESTMENTS HOLDING B V
OUDE LINDESTRAT 70
HEERLEN, 6411 EJ
THE NETHERLANDS
THROUGH ITS AUTHORIZED SIGNATORY
MR. JOHANNES WILHELMUS RUISBROCK.

...APPELLANT

(BY SRI. TAMARRA SEQUEIRA, ADV.)

AND:

1. M/S. ATRIA BRINDVAN POWER PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
NO.11, 1ST FLOOR, COMMISSARIAT ROAD
BANGALORE- 560025
THROUGH MR. CHINNASWAMY SUNDER RAJU.
2. MR. CHINNASWAMY SUNDER RAJU
S/O LATE SHRI A S CHINNASWAMY RAJU
AGED ABOUT 66 YEARS
RESIDING AT NO 294,
UPPER PALACE ORCHARDS,
BANGALORE- 560080.
3. MR. K NAGARAJU
S/O LATE SHRI KUPPARAJU
AGED ABOUT 64 YEARS
R/AT NO.158, 2ND MAIN, 1ST BLOCK,
DOLLARS COLONY, RMV 2ND STAGE,
ASHWATH NAGAR, BANGALORE- 560094.





4. RAJU FAMILY TRUST
HAVING REGISTERED OFFICE AT NO.1,
PALACE ROAD, BANGALORE -560001
REPRESENTED BY TRUSTEE
MR. CHINNASWAMY SUNDER RAJU.
5. PIRAMAL CAPITAL AND HOUSING FINANCE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
1ST FLOOR, PIRAMAL TOWER,
PENINSULA CORPORATE PARK
GANPATRAO KADAM MARG,
LOWER PAREL - MUMBAI -400013
THROUGH MR. ABHIMANYU RANA.
6. OMKARA ASSET RECONSTRUCTION
PRIVATE LIMITED
ACTING AS TRUSTEE OF OMKARA
PS28/2023-2024/TRUST
C-515, KANAKIA ZILLION,
JUNCTION OF LBS ROAD AND CST ROAD,
KURLA WEST, MUMBAI -400070
THROUGH MR. SHUBHODEEP BONENJEE.
7. AXIS TRUSTEE SERVICES LIMITED
AXIS HOUSE BOMBAY DYING
MILLS COMPOUND
PANDURANG BUDHKAR
MARG WORLI, MUMBAI -400025
THROUGH ITS DIRECTOR.

...RESPONDENTS

(BY SRI.C.K. NANDAKUMAR, SR. ADV. A/W
MS. ASHWINI PATIL, ADV. &
SRI AJAY J NANDALIKE, ADV. FOR R1 TO 4
SRI UDAYA HOLLA, SR. ADV. A/W
SRI AVINASH BALAKRISHNA, ADV. FOR R5
SRI SRINIVASAN V RAGHAVAN, SR. ADV. FOR
A/W SRI VINAY KUTTAPPA, ADV. FOR R6
SRI S RAMAKRISHNAN ADV. FOR R7)

THE APPEAL IS FILED UNDER SECTION 13 (1-A) OF THE
COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE ORDER
DATED 25.04.2024 PASSED ON IA III IN COM.O.S.298 OF 2024
PASSED BY LD. LXXXII ADDITIONAL CITY CIVIL AND SESSIONS



JUDGE (CCH83), BENGALURU; GRANT COSTS OF THE PROCEEDINGS; AND PASS SUCH ORDERS AS THIS COURT MAY DEEM FIT AND PROPER IN THE FACTS AND CIRCUMSTANCES OF THE PRESENT CASE.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant (defendant No.2) has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**the CC Act**] impugning an order dated 25.04.2024 [**impugned order**] passed by the learned LXXXII Additional City Civil and Sessions Judge, Bengaluru (CCH.83) [**Commercial Court**] in I.A.No.III in Com.OS.No.298/2024.

2. The respondent No.1 [plaintiff] had filed the said application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 [CPC] *inter alia* praying for an injunction restraining defendant Nos.1, 2 and 3 from exercising any and all rights, title, benefits and interests under the Debenture Trust Deed dated 05.12.2016 [**DTD**] or under any and all securities



created by the plaintiffs in terms of the said DTD. The appellant is arrayed as defendant No.2 in the said suit.

3. The appellant had resisted the said application on the grounds including on the ground of jurisdiction. It is the appellant's case that the learned Commercial Court did not have jurisdiction to entertain the suit as the DTD dated 05.12.2016 expressly provided that the courts at Mumbai would have the exclusive jurisdiction to adjudicate disputes arising out of or in relation to the DTD. Paragraph 72.1 and 72.2 of the said DTD are set out below.

72. JURISDICTION

- 72.1 The parties agree that the courts and tribunals in Mumbai, Maharashtra shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Debenture Documents and that accordingly any suit, action or proceedings (together referred to as "**Proceedings**") arising out of or in connection with the Debenture Documents may be brought in such courts or the tribunals and the issuer and the Promoters and the Issuer shall ensure that the Subsidiaries irrevocably submit to and accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of those courts or tribunals.
- 72.2 The Issuer and the Promoters irrevocably waive any objection now or in future and the Issuer shall ensure that the Subsidiaries do not raise



any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals at Mumbai, Maharashtra and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in the courts and tribunals at Bangalore, Karnataka shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.

4. As is apparent from the plain language of paragraph 72.1 of the DTD, the parties to the DTD had agreed that the Courts and Tribunals in Mumbai, Maharashtra shall have the exclusive jurisdiction to settle any disputes which may arise out of or in connection with the debenture documents. The expression 'arising out of' or 'in connection' have been examined by the Supreme Court in ***Renusagar Power Co. Ltd. v. General Electric Co.,:*** **(1984) 4 SCC 679** and the Supreme Court had observed is under:

26. At this stage, however, we are concerned with only the first three propositions mentioned above about which no serious dispute was raised by counsel for Renusagar. We are conscious that counsel for Renusagar have strongly disputed the correctness of Proposition 4 above, but we propose to deal with their caveat against it together with the authorities relied upon by them in support thereof later. At this stage it will suffice to observe that since the parties to the



underlying commercial contract here have used the expressions “arising out of” or “related to this contract” in the arbitration clause contained in the contract, there can be no doubt that the parties clearly intended to refer the issue pertaining to the effect (scope) of the arbitration agreement to the Court of Arbitration of I.C.C.; in other words, the issue about arbitrability of the three claims under reference has been referred.

39. As regards the third claim of compensatory damages it is true that Renusagar is being saddled with this liability as tortfeasor, a stake-holder and/or a constructive trustee, but, in our view, that aspect by itself will not justify a conclusion that the same is not covered by the arbitration clause because the question is not whether the claim lies in tort but the question is whether even though it has lain in tort it “arises out of” or is “related to” the contract, that is to say, whether it arises out of the terms of the contract or is consequential upon any breach thereof. As explained earlier, this claim is based on and is consequential upon and by way of corollary to the non-payment of the two detained amounts by Renusagar to G.E.C. in breach of the terms of the contract. In other words, it is clear that before adjudicating upon this claim the adjudicating authority will have first necessarily to adjudicate upon first two claims preferred by G.E.C. and only if it is found that G.E.C. is entitled to receive the first two amounts which ought to have been paid by Renusagar under the terms of the contract but which Renusagar had failed to pay that this third claim could, if at all, be allowed to G.E.C. In the real sense, therefore, this claim is directly, closely and inextricably connected with the terms and conditions of the contract, the payments to be made thereunder and the breaches thereof and as such will have to be regarded as a claim “arising out of” or “related to” the contract. As we shall point out presently this Court in one of its decisions has laid down the test for determining the question in such cases and the test is whether



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recourse to the contract, by which both the parties are bound, would be necessary for the purpose of determining whether the claim in question was justified or otherwise and this test, as indicated above, is clearly satisfied with regard to the third claim in the instant case.

44. In *Alliance Jute Mills Co. Ltd. v. Lalchand Dharamchand* [AIR 1978 Cal 19] disputes between the parties to a commercial contract were arbitrable under the bye-laws of the East India Jute & Hessian Exchange Association and the relevant bye-law ran thus: "All matters, questions, disputes, difference and/or claims arising out of and/or concerning and/or in connection with and/or in consequence of or relating to this contract shall be referred to arbitration...." Under the commercial contract Respondent 1 had sold, through a broker, certain quantities of fibre to the appellant Mill and after effecting delivery of the goods Respondent 1 had submitted bills to the appellant Mill again through the broker; the appellant Mill, however, claimed reduction in price on account of shortage in weight and submitted claims in that respect. Since the price was not paid, Respondent 1 referred the claim to the arbitration of Bengal Chamber of Commerce and Industry. The appellant Mill informed the Chamber of Commerce and Industry that it had filed a suit upon the whole of the subject-matter of the reference and served a notice under Section 35 of the Arbitration Act. In the suit so filed against Respondent 1 and the broker apart from the declaration sought that the broker had no claims against the appellant Mill in respect of the contract or in respect of the bills submitted by the broker for the price of goods sold and delivered the appellant Mill had also claimed a decree for Rs 50,000 as damages for the alleged libel published by Respondent 1 and the broker. In an application for stay of the suit under Section 34 of the Arbitration Act, 1940, one of the questions raised was whether the arbitration clause was wide enough to



include the claim for damages for the alleged libel. The High Court held that the claim in damages for defamation arose “out of” and “in connection with” the non-payment of the bills of Respondent 1 and in going into the question of tort the Court would necessarily have to go into the terms and conditions of the contract relating to payment and that the claim in tort was directly and inextricably connected with the terms and conditions of the contract and as such came within the scope of the arbitration clause which was wide enough to cover the same. In this view of the matter Court stayed the suit under Section 34 of the Arbitration Act.

45. Lastly, we would refer to the decision of this Court in *Union of India v. Salween Timber Construction (India)* [AIR 1969 SC 488 : (1969) 2 SCR 224 : (1969) 1 SCJ 682] where the Court has laid down the test for determining the question whether the arbitrators would have jurisdiction to adjudicate upon a claim made by one of the parties to a contract, though not strictly arising “under” it. In that case a dispute arose between the appellant (Union of India) and the respondent regarding the supply of timber made by the respondent under a contract between the parties. One of the items in dispute was a claim by the respondent that there was an excess supply of timber to cover up possible rejection, which should have been returned by the appellant with compensation for deterioration, or that payment should be made for it at the market rate. The appellant contended that the terms of the contract did not require the respondent to tender for inspection any quantity in excess of the contracted quantity, that the claim was in detinue relating to an involuntary bailment and not in relation to anything done in the performance, implementation or execution of the contract and, therefore, it was not a dispute arising out of the contract or in connection with the contract. Arbitration clause in the contract covered any question or dispute arising under the contract or “*in connection*



with the contract". On the question whether the arbitrators had jurisdiction to adjudicate upon that claim this Court, relying upon its earlier decision in *Ruby General Insurance Co. Ltd. v. Pearey Lal Kumar* [(1952) 1 SCC 194 : AIR 1952 SC 119 : 1952 SCR 501 : 1952 SCJ 156 : (1952) 22 Com Cas 111] held, that the test for determining the question is whether recourse to the contract, by which both the parties are bound, was necessary for the purpose of determining whether the claim of the respondent was justified or otherwise and since it was necessary in the case to have recourse to the terms of the contract for the purpose of deciding the matter in dispute the matter was within the scope of the arbitration clause and the arbitrators had jurisdiction to decide it.

46. As stated earlier since this third claim for compensatory damages is directly, closely and inextricably connected with the terms and conditions of the contract, the payments to be made thereunder and the breaches thereof and since for adjudication thereof recourse to the contract would be necessary it will have to be held that it is a claim "arising out of" and in any event "related to" the contract.

5. In view of the above, there can be no cavil that the expression "arise out of or in connection with the Debenture Documents" must be construed in the widest terms. Plainly, if the terms of the DTD or Debenture Documents is required to be examined to examine the issues for granting the relief as sought; the dispute would be covered by the said expression. We may now refer to the reliefs sought by the plaintiffs in the said suit. The same are set out below:



1. Decree of declaration declaring that the Deed of Assignment dated 13.02.2024 executed between defendant No.1 and defendant No.3 is null and void;
2. Decree of declaration declaring that the defendant No.1's Post Assignment Intimation dated 14.02.2024 and defendant No.3's Post Assignment Intimation dated 16.02.2024, to the Plaintiffs are non-est and bad in law;
3. Decree of Permanent Injunction restraining defendant No.3 from acting upon/under Deed of Assignment dated 13.02.2024 and Post Assignment Intimation dated 16.02.2024;
4. Decree of declaration that the securities created by the plaintiffs in terms of the DTD and as detailed in paragraphs 18 and 19 of the Plaint stand discharged;
5. Decree of declaration declaring that defendant No.3 does not have any rights in respect of securities created in terms of the Debenture Trust Deed dated 05.12.2016 as mentioned in paragraphs 18 and 19;
6. Decree of Permanent Injunction restraining defendant No.1 and 2 from exercising any rights under the securities created by the plaintiffs in terms of the DTD and as detailed in paragraphs 18 and 19 of the plaint;
7. Decree of permanent injunction restraining the defendant No.3 from exercising any and all rights, title, benefits and interests under the Debenture Trust Deed dated 05.12.2016 or under any and all securities created in terms of the Debenture Trust Deed dated 05.12.2016 as



mentioned in paragraphs 18 and 19, and Deed of Assignment dated 13.02.2024;

8. Decree of permanent injunction restraining defendant No.2 from, in any manner, assigning the rights, title, interests under the balance Debentures held by them to any third party;
9. Award costs of litigation and pass any other orders in the interest of justice and equity."

6. It is at once clear from a plain reading of the relief sought in the suit that it would be necessary to refer to the DTD and the debenture Documents to address the same. Thus, clearly, the claims made by the plaintiff arise out of or in connection with the DTD.

7. We may also note that the DTD was executed in Mumbai and the office of defendant No.2 (the party to the DTD) is located in Mumbai. Thus, even if we accept that part of the cause of action had arisen in the territorial jurisdiction of the learned Commercial Court – that is in Bengaluru – it cannot be disputed that the Courts at Mumbai would also have jurisdiction to adjudicate the disputes, which are subject matter of the commercial suit. It is trite law that where more than one Court has the jurisdiction and the parties to a contract may agree that one or more of those courts would have the



exclusive jurisdiction to decide the disputes. And, such Courts alone would have the exclusive jurisdiction regarding the subject disputes. Such an agreement is lawful and does not fall foul of either Section 23 or Section 28 of the Contract Act 1872.

8. We consider it apposite to refer to the following observations of the oft cited decision of the Supreme Court in ***Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.,: (2013) 9 SCC 32.***

"32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by



Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."

9. Notwithstanding the unambiguous language of paragraph 72.1 of the DTD, the learned Commercial Court had *prima facie* found that it would have the jurisdiction to entertain the suit. The said conclusion is founded on the basis that part of the cause of action has arisen in Bengaluru and that defendant No.3 is not a party to the DTD. The relevant extract of the impugned order is set out below:

"28. It is undisputed fact that the post assignment intimation was received by the Plaintiff No.1 at Bengaluru, where the Plaintiff No.1 registered office is situated. Further, it is also undisputed fact that the debentures were issued from the Plaintiff no. 1 and received the Post Assignment Intimations dated 14.02.2024 and 16.02.2024 from Defendant no. 1 and Defendant no. 3 respectively in Bengaluru, Karnataka. Moreover, the consideration for subscription of the Debentures under Tranche 1, 2 and partly 3, was also received at Bengaluru, and the Debentures were also issued at Bengaluru i.e., within the territorial jurisdiction of this Hon'ble Court. Therefore, the cause of action has even otherwise arisen in favour of the Plaintiffs and against the Defendants at Bengaluru, Karnataka and this Hon'ble Court has the territorial jurisdiction to adjudicate upon the claims filed by the Plaintiffs.

29. At this stage on prima-facie clearly shows that the part of cause of action arose within the jurisdiction



of this court. Further, in view of the Judgment of the Hon'ble Supreme Court in D.L Suresh Babu that since the Plaintiff has received communication of assignment deed in Bengaluru. So, this court has territorial jurisdiction to adjudicate the dispute.

30. Perused the Debenture Trust Deed it reveals that the Debenture Trust Deed is entered between the Plaintiff No.1 to 4 and Defendant No.4 who is a the debenture trustee and is performa Defendant. Section 72 of the debenture trust deed refers to the jurisdiction, wherein it is clearly mentioned that the Parties agree that the courts and tribunals in Mumbai, Maharashtra shall have exclusive Jurisdiction to settle any disputes which may arise out of or in connection with the Debenture Documents and that accordingly any suit, action or proceedings (together referred to as "Proceedings") arising out of or in connection with the Debenture Documents may be brought in such courts or the tribunals and the Issuer and the Promoters and the Issuer shall ensure that the Subsidiaries irrevocably submit to and accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of those courts or tribunals..."

31. It is clear from above clause that the parties agrees the court and tribunals in Mumbai, Maharashtra. Admittedly, the Defendant No.3 is not a party to the Debenture Trust Deed. Under these circumstances, on prima-facie I hold that this court has jurisdiction to try the adjudicate dispute."

8. It is material to note that Defendant No.3 is not claiming any independent rights, but claims under defendant No.1 which undisputedly is a party to the DTD. In view of the above, the finding



of the learned Commercial Court that it has *prima facie* jurisdiction to entertain the suit, is unsustainable.

9. In view of the aforesaid discussions, Mr. C.K. Nandakumar learned Senior counsel appearing for the plaintiffs (respondent Nos.1 to 4) had sought time to take instructions at the previous date of hearing and the consideration of the present appeal was deferred to this date. He states, on instructions, that the plaintiff would move an application before the learned Commercial Court seeking return of the plaint.

10. Concededly, in view of the above, the interim orders granted by the learned Commercial Court cannot be sustained; they are founded on an *ex facie* on an erroneous finding – although on a *prima facie* basis – that the Commercial Court would have jurisdiction to entertain the suit.

11. In view of our conclusion and Mr Nandkumar's statement, we do not consider apposite to examine other issues relating to merits of the dispute. We clarify that all rights and contentions of the parties on merits are reserved.



12. We, accordingly, allow the present appeal and set aside the impugned order for the reasons as set out above.
13. The parties are left to bear their own costs.
14. Pending application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

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CT:bms: List No.: 1
SI No.: 17