

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

IA NO. GA-COM/4/2024

In CS-COM/652/2024

Flint Group India Private Limited

Vs

Sujay Lodha

For defendant/petitioner: **Mr. Rajarshi Dutta, Adv.**
 Mr. Asif Hussain, Adv.
 Mr. Sarbesh Chaudhury, Adv.
 Ms. Alia Gaffar, Adv.
 Ms. Srijata Choudhry, Adv.

For plaintiff/respondent: **Mr. Sourojit Dasgupta, Adv.**
 Mr. Souvik Mazumdar, Adv.

Reserved on: 12.11.2025

Judgment on: 20.11.2025

ANIRUDDHA ROY, J.:

In Re: IA NO. GA-COM/4/2024

Facts:

1. This is an application filed by the defendant/applicant under **Section 8** of the **Arbitration and Conciliation Act, 1996** (for short, the **Arbitration Act**), inter alia, praying for referring the subject matter of the suit for arbitration.

2. The plaintiff case, as would be evident from the plaintiff **annexure A at page 13 to the application**, that the plaintiff claims the unpaid consideration on account of goods sold and delivered to the defendant. The plaintiff case is that the parties to the suit entered into negotiations and discussions, during which terms and conditions for supply/delivery of goods and the payment of consideration were agreed upon. The defendant was to place verbal as well as written purchase orders on the plaintiff, the plaintiff shall cause delivery of the ordered goods. It was further agreed upon by and between the parties that immediately upon delivery of the goods, the plaintiff shall raise invoices on the defendant and upon receiving the invoices, the defendant shall make payment against the same within a period of 90 days from the date of each invoice. In default, it was agreed upon that the outstanding amount would be carried an interest at the rate of 18 per cent per annum.
3. The plaintiff states that pursuant to such agreement, the defendant placed purchase orders upon the plaintiff from time to time, annexed to the plaintiff. Upon receiving such purchase orders, the plaintiff duly supplied and delivered the goods to defendant during the period March 2022 and May 2022. The goods were accepted by the defendant to its satisfaction and without any demur. The defendant utilised the goods and consumed it. The plaintiff then raised invoices on the defendant for the goods supplied. Along with the invoices the plaintiff made over the e-way bills and delivery notes demonstrating due delivery of all goods to the defendant. Invoices and related documents/delivery notes are annexed to the plaintiff.
4. The defendant made part payment from time to time and requested to make further supplies, assuring that due payment would be made forthwith.

Relying upon the assurances and repeated representations of the defendant, the plaintiff further supplied goods from time to time. The parties maintained a running and continuous account between them. Despite written assurance by the defendant, it has failed and neglected to make payment towards the price of the goods payable to the plaintiff.

5. Further plaintiff case is that by a letter dated November 30, 2022, the plaintiff called upon the defendant to make payment for a sum of Rs.83,54,375/- as on November 30, 2022, including interest. In respect thereto, by a letter issued by the learned Advocate for the defendant and in clear reference to the said letter of demand dated November 30, 2022, the defendant acknowledged its debt to the extent of Rs.67,43,755/-. The defendant has also raised frivolous and unsustainable allegation against the plaintiff with the purpose to deny the legitimate claim of the plaintiff. By an e-mail dated January 31, 2023, the defendant acknowledged its liability to the extent of Rs.64,93,755.68/-.
6. In view of the above, the plaintiff has claimed a total sum of Rs.1,07,74,375/- consisting of principal and interest.
7. The defendant has failed and neglected to file its written statement within the mandatory period of 120 days as provided under the amended provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short the CPC). The defendant has fortified its right to file written statement.
8. In the above backdrop, the instant application has been taken out by the defendant.
9. Pursuant to the direction of this Court the parties have filed and exchanged their respective affidavits.

Submissions:

10. Mr. Rajarshi Dutta, learned counsel appearing for the defendant/applicant submits that **Flint Netherlands** (for short FN) is the holding company of the plaintiff. The distributorship agreement (for short the said distributor ship agreement) was entered into by and between the said FN and the defendant which was concluded in 2019. Whereunder, the defendant was appointed as distributor of the products of the said FN and its group. The said agreement contains an arbitration clause. The agreement is available at page 29 to the affidavit-in-opposition. Article 12 is the arbitration clause therein at page 39 to the affidavit-in-opposition. The agreement was initially executed manually in 2019. The plaintiff later requested the digital signing. Despite repeated delays on the plaintiff's part in providing the finalized agreement, the defendant digitally signed the agreement on May 30, 2020.
11. Learned counsel Mr. Rajarshi Dutta submits that the plaintiff has deliberately suppressed the fact that the dispute and subject matter of the present suit filed by the plaintiff are governed by the said arbitration clause under the distributorship agreement. The intention of the plaintiff is to circumvent the arbitration process by undermining the contractual terms agreed by and between the parties. The plaintiff has failed to disclose that it has directly engaged the consumers of the defendant in violation of the distributorship agreement and caused irreparable harm to the business and reputation of the defendant. Referring to multiple correspondences exchanged by and between the parties from time to time which are annexed to the affidavit-in-opposition, inter alia, dated August 9, 2019, September 8, 2019, April 20 and 21, 2020, April 22, 2020, April 28, 2020, May 15, 2020,

April 23,2020, April 28, 2020, May 19, 2020, May 30, 2020, learned counsel for the defendant submits that all these correspondences would demonstrate that the distributorship agreement with its arbitration clause would apply relating to the subject matter in the plaint and would be corroborated as such. The said correspondence would unequivocally establish the existences and enforceability of the said distributorship agreement with its arbitration clause.

12. Mr. Rajarshi Dutta, learned counsel appearing for the defendant then refers to various pleadings from its affidavit-in-opposition and specifically from paragraph 15 thereto, he submits that the Flink Ink Mauritius Limited holds the controlling interest in the plaintiff company. Therefore, the subject transaction in the plaint is inter-linked with the said distributorship agreement where a valid arbitration clause exists.
13. Mr. Mr. Rajarshi Dutta, learned counsel then submits that plaintiff being a part of a group of companies where its holding company has a valid agreement with the defendant for distributorship, the goods alleged to have been sold by the plaintiff which is a subsidiary of FN is a related transaction having a direct nexus with the said distributorship agreement. The phenomenon of group of companies is a modern reality of economic life and business organization. Group of companies are a set of separate firms linked together in formal or informal structures under the control of a parent company. A group of company involving the parent and subsidiary companies is created for myriad purposes such as legal liability of the parent corporation, facilitating international trade, entering into business ventures with investors, establishing domestic corporate residence and

avoiding tax liability. The single economic entity or the single economic entity theory imposes one enterprise liability on the corporate group. An arbitration agreement is the commercial understanding of business entities as regards to the mode and manner of settlement of dispute that may arise between them in respect of their legal relationship. In most situations, the language of the contract is only subjective of the intention of the signatories to such contract and not the non-signatories. However, there may arise situations where a person or entity may not sign an arbitration agreement, as the plaintiff in the instant case, yet giving appearance being a veritable party to such arbitration agreement due to their legal relationship with the signatory parties, FN in the instant case and involvement in the performance of the underlying contract. Specifically in case involving complex transactions involving multiple parties and contracts, a non-signatory may be substantially involved in the negotiation or performance of the contractual obligations, as the plaintiff in the instant case, without formally consenting to be binding by the ensuing burdens including arbitration.

14. With reference to the subject matter of the plaint, learned counsel Mr. Rajarshi Dutta submits that the goods allegedly supplied by the plaintiff to the defendant is actually a fall out and consequential to the said distributorship agreement between FN and the defendant. Thus, even if the plaintiff is not a party to the said arbitration agreement, is bound by it. The intention of the plaintiff to be bound by the said arbitration agreement can be gauged from the circumstances that surrounded the participation of the plaintiff as non-signatory party in the arbitration agreement, performance

underlying the distributorship agreement. As the underlying performance of the distributorship agreement is clearly ascertained from the subject matter of the instant plaint when the plaintiff claims it allegedly sold and supplied goods to the defendant and the defendant has consumed it, the arbitration agreement would govern the said subject matter and the provisions under Sections 5 and 8 of the Arbitration Act squarely apply. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of : Cox and Kings Limited vs. SAP India Private Limited and Another*** reported at ***(2024) 4 SCC 1***.

15. In the light of the above, the defendant prays that the parties to the instant suit should be referred to arbitration.
16. Mr. Sourojit Dasgupta, learned counsel appearing for the plaintiff at the threshold refers to Article 7 of the distributorship agreement from page 147 to the application and submits that the said distributorship agreement provides for sell of products to the defendant. The terms and conditions of the said distributorship agreement shall also apply to the purchase agreements concluded under the said distributorship agreement. In any event, admittedly, the plaintiff is not a party to the said distributorship agreement. The said distributorship agreement is binding only on FN and the defendant, who are parties thereto. Therefore, the arbitration clause embodied in the said distributorship agreement shall not bind the plaintiff. Therefore, the arbitration clause under the said distributorship agreement would have no effect and application in the subject matter of the instant suit.

17. Mr. Sourojit Dasgupta, learned counsel appearing for the plaintiff submits that Section 8 of the Arbitration Act, inter alia, provides that an application under Section 8 can be filed not later than the date of submitting the first statement by the defendant on the substance of the dispute, which is the outer limit for filing the application. In the instant case, the mandatory time frame for filing the written statement of 120 days in a commercial suit as provided under amended Order VIII Rule 1 of Code of Civil Procedure, had expired and the right of the defendant to file written statement in the instant suit stands forfeited. Thus, the application having been filed by the defendant after the said date of submitting his first statement on the substance of the dispute is not maintainable.
18. Mr. Sourojit Dasgupta then submits that if the defendant/applicant relies upon the said distributorship agreement executed with FN then, the provisions under Section 8 of the Act would not apply as the said distributorship agreement relates to foreign arbitration where Section 45 of the Arbitration Act would have been the proper recourse. He has made this submission that without the prejudice to the rights and contentions of the defendant that the said distributorship agreement has got nothing to do with the subject matter of the instant suit and the same would have no effect on it. He then submits that provisions under sub-Section (2) of Section 8 of the Arbitration Act, inter alia, provides while applying, the application must be accompanied by the original arbitration agreement or a duly certified copy thereof. In the instant case, neither the original agreement nor the duly certified copy thereof is accompanied with the original application. Hence, the Court should not entertain the said application at all. In support,

he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of : N. Radhakrishnan vs. Maestro Engineers & Others*** reported at ***(2010) 1 SCC 72.***

19. To distinguish the decision of the Hon'ble Supreme Court ***In the matter of : Cox and Kings Limited (supra)***, learned counsel Mr. Sourojit Dasgupta submits that the commonality principle would not apply in the facts of this case. Since neither the plaintiff is a party to the said distributorship agreement nor there is any written arbitration agreement pleaded in the plaint. The application of law as provided under Section 8 of the Arbitration Act would have to be tested at the threshold, only on the basis of the averments made in the plaint. There is no averment in the plaint that any written arbitration agreement or any arbitration agreement in any manner was executed by and between the parties which governs the subject matter of the instant suit. Just because FN is the holding company of the plaintiff, would not bind the plaintiff by the said distributorship agreement when under an independent agreement for sale, as pleaded in the plaint, the parties to the instant suit have entered into a commercial transaction and accepted the transaction held between the parties.
20. FN and plaintiff are two separate and independent juristic entities. FN is a foreign company. The plaint case does not show that the plaintiff is willing to be bound by the underlying contract under the said distributorship agreement in any manner whatsoever. Therefore, the arbitration clause in the said distributorship agreement would not apply or prevail upon the subject matter of the instant suit.

21. Mr. Sourojit Dasgupta then after referring to the various portions from the decision ***In the matter of : Cox and Kings Limited (supra)***, submits that a non-party to an agreement who claims a right under that agreement through one party thereto, can apply before the Court under Section 8 of the Arbitration Act and not otherwise, if that particular agreement which governs the subject matter of the suit. Admittedly the plaint case is that no written agreement was executed by and between the parties and whatever agreement has been pleaded in the plaint, it is between the plaintiff and the defendant without having any arbitration clause.
22. In the light of the above submissions, Mr. Sourojit Dasgupta, learned counsel appearing for the plaintiff/respondent submits that, the instant application is not maintainable and devoid of any merit and the same should be dismissed in limini.

Decision:

23. Upon hearing the rival contentions of the parties and on perusal of the materials on record, this Court is of the firm view and the law is also well settled that when an application filed under Section 8 of the Arbitration Act, is taken for consideration the primary obligation of the Court is to read the averments in the plaint as true and correct and to be taken the same as sacrosanct. If a plain reading of the averments in the plaint clearly demonstrates that the subject matter of the plaint is governed under an arbitration agreement, and the defendant applies for reference to arbitration, then it is mandatory for the Court to refer the parties to arbitration. Therefore, at the outset the averments in the plaint are read by the Court.

24. Admittedly, the averments made in the instant plaint does not speak for any written contract/agreement by and between the parties. The plaint case is that by virtue of an agreement and a concluded contract entered into by and between the parties, which is not pleaded to be a written one, the commercial transaction by and between the parties took place as described in the plaint. The specific plaint case is that the plaintiff sold and delivered goods to the defendant and the defendant failed to pay the consideration of the goods along with interest. Whether the plaint case will succeed or not on the basis of the averments made in the plaint is not the lookout of this Court while adjudicating a Section 8 application. The Court should consider the averments in the plaint and then to come to a finding whether the subject matter of the plaint is covered by any arbitration agreement between the parties.
25. Both the provisions defining the arbitration agreement and the provisions under Section 8 are only the relevant provisions to be looked into at the threshold. Accordingly, the provisions are quoted below :-

“Section 2(b) - “arbitration agreement” means an agreement referred to Section 7.”

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Section 7. Arbitration agreement – (1) In this part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

- (2) *An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*
- (3) *An arbitration agreement shall be in writing.*

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Section 8. Power to refer parties to arbitration where there is an arbitration agreement.—1[(1) *A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*]

(2) *The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof: 2 [Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]*

(3) *Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”*

26. On reading of the said provisions from the statute, it appears to this Court, firstly, an arbitration agreement shall be in writing. Admittedly, the plaint case shows that there is no agreement in writing between the parties to the instant suit. The plaintiff has denied the averments in the Section 8 application and the defendant has not produced and disclosed any written agreement by and between the parties to the instant suit. It is not a case of

the plaintiff that there has been any written agreement between the parties governing the subject matter of the suit.

27. Section 8 of the Arbitration Act postulates that a judicial authority, before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies within the time frame mentioned therein, then, the judicial authority shall refer the parties to the suit to arbitration, if it finds that, *prima facie*, a valid arbitration agreement exists. The plaint case clearly shows that there is no arbitration agreement exists within the meaning of Section 7 of the Arbitration Act, as there is no written agreement. The plaint case is that the plaintiff and defendant has entered into an understanding and/or a contract which governs the subject matter of the plaint. Therefore, when the defendant is a party to the instant suit the question of claiming any right through or under anybody in the subject agreement does not and cannot arise and the defendant cannot raise such plea. Therefore, the defendant not being a party to any arbitration agreement with the plaintiff, within the meaning of Section 7 of the Arbitration Act and since there is no arbitration agreement at all within the meaning of Section 7 of the Arbitration Act which governs the subject matter of the instant suit, as would be evident from the averments made in the plaint, the defendant has no right to apply under Section 8 of the Arbitration Act.
28. ***In the matter of: Cox and Kings Limited (supra)***, the principle of commonality is described and elaborated. It is said that an arbitration agreement encapsulate the commercial understanding of business entities

as regards to the modes and manners of the settlement of dispute that may arise between them in respect of their legal relationship. In most situations, the language of the contract is only suggestive of the intention of the signatories to the contract and not the non-signatories. However, there may arise situations where a person or entity may not sign an arbitration agreement, yet give the appearance of being a veritable party to such arbitration agreement and due to their legal relationship with the signatory parties and involvement in the performance of the underlying contract. Applying the said principle laid down by the Hon'ble Supreme Court, in the facts of the instant case, the primary qualification should be that the subject matter of the instant suit to be demonstrated as a fall out or a consequence of the said distributorship agreement which was executed by FN and the defendant where FN is the holding company of the plaintiff. The plaintiff case shows an independent contract or understanding entered into by and between the plaintiff and the defendant arising whereof the commercial transaction took place and the defendant defaulted in paying the purchase consideration, hence, the subject matter of the instant suit. The plaintiff case no way relates the subject matter of the suit with the said distributorship agreement or shows any nexus between the two.

29. The plaintiff ultimately may not succeed in the suit with its existing plaintiff case after trial on the merit of the suit and the defendant may dislodge the claim of the plaintiff at the final hearing of the suit on the basis of the existing record but that should not be the guiding principle or consideration for this Court while adjudicating a Section 8 application.

30. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that, the application filed by the defendant under Section 8 of the Arbitration Act is devoid of any merit and substance.
31. It is made clear that this Court has not expressed any opinion on the rival contentions of the parties on the merit of the suit.
32. Accordingly, the instant application being **IA NO. GA-COM/4/2024** stands **dismissed** with cost assed at **Rs.10,000/-** to be paid by the defendant in favour of the **West Bengal State Legal Services Authority** within **two weeks** from date and the defendant shall produce a copy of the money receipt to the learned Advocate-on-record for the plaintiff.

(Aniruddha Roy, J.)