$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **O.M.P. (I) (COMM.) 373/2025 & I.A. 22577-78/2025**

Between:-

NATASHA OBEROI
7 AVONBURRY COURT, BRIGHTON
3186, VICTORIA, AUSTRALIA

.....PETITIONER

(*Through: Mr. Dayan Krishnan, Sr. Adv. with Ms. Amita Gupta Katragadda, Ms. Surabhi Khattar, Ms. Ambika Mathur, Ms. Niharika Chhabra and Mr. Shivansh Vishwakarma, Advs.*)

versus

1. **RAJARAMAN SHANKAR**
   19, RAJPUR ROAD, 302-B
   DELHI – 110054

2. **VIKRAMJIT SINGH OBEROI**
   OBEROI FARM, VILLAGE BIJWASAN,
   NAJAFGARH ROAD, KAPASHERA,
   DELHI - 110037

3. **ARJUN SINGH OBEROI**
   OBEROI FARM, VILLAGE BIJWASAN,
   NAJAFGARH ROAD, KAPASHERA,
   DELHI - 110037

4. **ANASTASIA MIRJANA JOJIC OBEROI**
   11 EATON TERRACE
   LONDON SWI W 8EX, ENGLAND

5. **OBEROI HOTELS PVT. LTD.**
THROUGH ITS DIRECTORS
N-806-A, 8TH FLOOR,
DIAMOND HERITAGE BUILDING,
16, STRAND ROAD, FAIRLEY PLACE,
KOLKATTA G.P.O., KOLKATA,
WEST BENGAL - 700001

.....RESPONDENTS

(*Through: Mr. Saurabh Kirpal, Sr. Adv. with Mr. Ankur Sood, Mr. Dhaman Trivedi, Mr. Prajwal Suman and Ms. Romila Mandal, Advs. for R-1.*
Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Aseem Chaturvedi, Mr. Aakash Bajaj, Mr. Shivank Diddi, Ms. Prerona Banerjee and Ms. Sania Abbasi and Mr. Priyansh Sharma, Advs. for R-2.
Mr. Akhil Sibal, Sr. Adv with Mr. Aseem Chaturvedi, Mr. Aakash Bajaj, Mr. Shivank Diddi, Ms. Prerona Banerjee and Ms. Sania Abbasi and Mr. Priyansh Sharma, Advs. for R-3.
Mr. Swapnil Gupta, Mr. Aadil Singh Boparai, Ms. Shivambika Sinha, Ms. Nimita Kaul, Mr. Harshit Gupta, Mr. Abhishek Dubey, Mr. Tarun Mishra, Ms. Prakruti Jain, Ms. Sajal Jain and Mr. Vaibhav Mendiratta, Advs. for R-4.
Mr. Rajiv Nayar, Sr. Adv. and Mr. Rajshekhar Rao, Sr. Adv with Mr. Aman Gupta, Mr. Anup Kashyap and Mr. Divyam Kandhari, Advs. for R-5)

%

Reserved on: 16.12.2025
Pronounced on: 15.01.2026

J U D G M E N T

INDEX

The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter "**Arbitration Act**"/"**the Act**") seeking an interim stay on the operation of a resolution dated 06.06.2025, passed by the board of directors of respondent no. 5, whereby, one Mr. Tejaswi Dixit has been granted the authority, *inter alia*, to deal with legal matters/cases relating to the estate of late Mr. P.R.S. Oberoi, including to initiate and defend legal proceedings in relation thereto (hereinafter "**said Resolution**"). Certain consequential reliefs, including the stay of respondent nos. 1-3's consent on the said Resolution, and restraining them from giving effect to or acting upon such consent have also been sought.

I. FACTUAL MATRIX

2. The factual history of the case at hand is not particularly relevant to the controversy involved, however, it may be adverted to briefly. The petitioner and respondent no. 4 are the two daughters of late Mr. P.R.S. Oberoi (hereinafter "**Mr. Oberoi**"), who passed away on 14.11.2023. Respondent nos. 2 and 3 are Mr. Oberoi's son and nephew respectively. The daughters are also the managing directors of respondent no. 5 i.e., Oberoi

Hotels Pvt. Ltd. (hereinafter "**the Company**"), with the other members of the board of directors of the Company (hereinafter "**the Board**") being respondent nos. 1-3.

3. The petitioner contends that on 25.10.2021, Mr. Oberoi executed his last and final will, which was amended *vide* a codicil dated 27.08.2022 (hereinafter collectively "**said Will**"), under which the petitioner and respondent no. 4 were the primary legatees. On 13.06.2024, the Board passed a resolution granting authority to respondent no. 1 to, *inter alia*, deal with any legal matters/cases on behalf of the Company, and do all acts incidental and necessary thereto. Thereafter, on 10.09.2024, respondent no. 4 filed a suit bearing CS (OS) No. 736/2024 before this Court seeking reliefs of declaratory, mandatory and permanent injunctions in respect of the estate of Mr. Oberoi (hereinafter "**Estate Suit**"). The defendants in the said suit, included among others, the petitioner, respondent nos. 1-3 and 5. Further, in the Estate Suit on 09.01.2025, a written statement signed by respondent no. 1, was filed on behalf of the Company, which purportedly supported the stand taken by respondent no. 2 and 3 in the said suit (hereinafter "**said WS**").

4. Subsequently, respondent no. 4 and the petitioner raised concerns over the filing of the said WS, which according to them should have been neutral, but instead had supported the version put forth by their brother and cousin. Ultimately, the said Resolution came to be passed, with respondent nos. 1, 2, 3 assenting to the same, and the petitioner and respondent no. 4 objecting to it. Citing certain actions already taken by Mr. Tejaswi Dixit in

exercise of powers conferred by the said Resolution, and apprehending further steps being taken, the present Section 9 petition came to be filed.

5. Learned counsel for the parties were heard on 15.10.2025, 10.11.2025, 13.11.2025, 24.11.2025, 03.12.2025, 08.12.2025, and 16.12.2025. Mr. Dayan Krishnan, learned senior counsel's written submissions, his note on the non-applicability of Section 430 of the Companies Act, 2013, and on the possibility of raising the present issues before the Court hearing the Estate Suit, as also his rejoinder submission note, and a final note containing his additional rejoinder submissions have been perused. A six-volume judgement compilation submitted by the petitioner, has also been considered. The notes of learned senior counsel Dr. Singhvi, Mr. Kirpal, Mr. Sibal, Mr. Nayar, and Mr. Gupta, as also the judgement compilations submitted by each of them have been examined.

6. Upon careful consideration, the Court has arrived at the conclusion that there does not exist an arbitration agreement, in terms of Section 7 of the Arbitration Act, on the strength of which the petitioner could file the instant Section 9 petition as — *first*, the document which contains the purported arbitration clause, namely the Articles of Association of the Company, is not signed by the petitioner; *second*, the petitioner is not a party to the agreement/document containing the alleged arbitration clause; and *third*, Clause 30A of the AoA, which the petitioner contends is an arbitration clause, does not evince an intent to arbitrate. Before adverting to the analysis, the submissions of the parties, material to the issue decided by the Court may be considered.

II. SUBMISSIONS MADE ON BEHALF OF THE PARTIES

7. Mr. Krishnan contends that the Impugned Resolution violates Article 18 of the Articles of Association (hereinafter "**AoA**") of the Company, which is a mandatory provision intended to prohibit delegation of powers to individuals who do not, as per the provisions of the Companies Act, 2013, owe a fiduciary duty to the Company. A dispute pertaining to the same, Mr. Krishnan contends, is to be adjudicated upon through the means of arbitration as per Article 30A of the AoA, which according to him, is a valid arbitration clause binding on the Company and its directors.

8. Learned senior counsel further submits, that the reference to lawyers and auditors of the Company as arbitrators, is a concern only *qua* the mechanism to arbitrate, which can be severed and eschewed from the intent to arbitrate. He claims that in any case, questions pertaining to arbitrability and jurisdiction are better left to be decided by the arbitral tribunal.

9. Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of respondent no. 2, made various submissions, pertaining to, *inter alia*, the said Resolution being in consonance with the settled principles of corporate governance, including majority rule, and the same also being recognized under Article 16.6 of the AoA. In passing, he also submitted that the clause contained in Article 30A of the AoA is not *really* an arbitration clause.

10. Building from where Dr. Singhvi left off, Mr. Akhil Sibal, learned senior counsel appearing on behalf of respondent no. 3, submitted that despite the law allowing the procedure for arbitration to be severed from the

intent to arbitrate, Article 30A of the AoA contains sufficient *indicia* for it to not qualify as an arbitration clause at all. Next, he argued that the petitioner is not a party to the AoA, which is a contract between the Company and its shareholders. The petitioner, a director, though is governed by the articles, is not a signatory to the AoA, and therefore does not comply with the requirements of Section 7 of the Arbitration Act. Further, he argued that really speaking, the claim raised by the petitioner ought to have been agitated by a shareholder, at whose pleasure the petitioner and other directors serve.

11. Mr. Saurabh Kirpal, learned senior counsel appearing on behalf of respondent no.1, argued that unlike English law, where, only shareholders are bound by an AoA, in India, the articles bind both the company and its shareholders. However, that does not, by any stretch, extend to a director *simplicitor*. Mr. Kirpal analogized that similar to us being bound by the Constitution of India without being a party to it, the director as well is governed by the AoA, without being a signatory to it. Section 7 of the Act, learned senior counsel stressed, requires a claimant to be a party to the arbitration agreement/clause. Mr. Rajiv Nayyar and Mr. Rajshekhar Rao, learned senior counsel appearing on behalf of respondent no. 5, also, *inter alia*, submitted that each of the prayers made in the petition concern the Company, however, there is not even a whisper in the petition alleging any wrongdoings on the part of the Company.

12. Mr. Swapnil Gupta, learned counsel appearing on behalf of respondent no. 4, eloquently argued that the Resolution is confined only to the Estate Suit, and the Court therein, can adjudicate on the issue as to

whether the said WS was filed with appropriate authorization, including whether the authorization itself could have been given in law.

III. ANALYSIS

13. The present petition seeking interim reliefs has been filed under Section 9 of the Arbitration Act. Sub-section 1 of Section 9 provides, that it is a "*party*" who can apply for interim measures. The said provision is reproduced as under:

> "***9. Interim measures, etc., by Court.***
> *(1) A* ***party*** *may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—*
> *...*"
>
> (Emphasis supplied)

Section 2(1)(h) of the said Act, further, defines a "*party*" in the following words:

> "***2. Definitions.***
> *(1) ...*
> *(h) "party" means a party to an arbitration agreement*"

14. A perusal of the aforenoted provisions reveal that there are two essentials that need to be satisfied before the merits of a Section 9 petition can be touched. They are, that the petitioner must be a party to an arbitration agreement, and naturally, flowing from it, that there must exist an arbitration agreement between the parties. The meaning of an "*arbitration agreement*" has been dealt with, in a detailed provision, under Section 7 of the Act, which reads as under:

> "***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****.*
(4) An arbitration agreement is in writing if it is contained in—
(a) ***a document signed by the parties****;*
(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

15. The ingredients of Section 7, for the purposes of the present discussion, may be divided into three parts—*first*, the condition of signing under Section 7(4)(a) of the Arbitration Act; *second*, the requirement of being party to the arbitration agreement under Section 7(1) read with Section 2(1)(h) of the Act; and *third*, the existence of an intent to arbitrate under Section 7(1) of the Act. The following analysis, shall be divided into these three parts.

A. THE CONDITION OF SIGNING THE DOCUMENT CONTAINING THE ARBITRATION AGREEMENT

16. Section 7(3) of the Act requires the arbitration agreement to be "*in writing*". Section 7(4) then enumerates the situations wherein an arbitration agreement could be said to be "*in writing*". Section 7(4)(a), unlike sub-clause (b) and (c) of sub-section 4, explicitly records the requirement of signing. Thus, in a case where the existence of an arbitration agreement is

sought to be proved through the means of a document, and not letters, telex, telegrams or other means of telecommunication, the document must necessarily be signed by the parties.

17. Importantly, the requirement of signing a document, which forms part of Section 7(4)(a) of the Act, was absent in the erstwhile Arbitration Act, 1940. The said Act, under Section 2(a) defined an "*arbitration agreement*" as a written agreement to submit present and future differences to arbitration, whether an arbitrator is named therein or not. Unlike Section 7(4) of the present Act, the erstwhile Act did not specifically enumerate the circumstances wherein an agreement could be considered as being "*in writing*." Further, there was no provision, in the earlier legislation, akin to Section 7 of the present Act, specifically dealing with the requirements of an arbitration agreement.

18. Both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "**New York Convention**") and the United Nations Commission on International Trade Law Model Law (hereinafter "**Model Law**") seem to incorporate the requirement of signing and for the arbitration agreement to be "*in writing*".[1] The New York Convention requires contracting states, including India, to recognize an agreement in writing, under which parties undertake to submit to arbitration all or any differences which have arisen or may arise between them in respect of a legal relationship, whether contractual or not, concerning a

[1] See Andrew Tweeddale and Keren Tweeddale, Arbitration of Commercial Disputes International and English Law and Practice, Oxford University Press, Chapter 4 – The Arbitration Agreement and the Parties, pg. 99-101.

subject matter capable of settlement by arbitration.[2] Article II(2) of the New York Convention then defines the term "*agreement in writing*" and provides:

> "*2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement,* ***signed by the parties*** *or contained in an exchange of letters or telegrams.*"
>
> (Emphasis Supplied)

19. There appears to have been some degree of judicial debate as to whether the signing requirement is *qua* the arbitration clause in particular or whether a signature on the contract containing the clause would also be sufficient compliance with Article II(2).[3] But, what has, however, remained clear, is that signature itself on the contract is a *sine qua non*.[4]

20. Further, the Model Law under Article 7(2) provides the requirement of "*in writing*" in the following words:

> "*(2) The arbitration agreement shall be in writing.* ***An agreement is in writing if it is contained in a document signed by the parties*** *or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.*"
>
> (Emphasis Supplied)

---

[2] Article 2 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10th June 1958.

[3] The New York Arbitration Convention of 1958 – Towards a Uniform Judicial Interpretation, Albert Jan van den Berg, Kluwer Law and Taxation Publishers, 1984 reprint, II-2.3.2 Whether signatures are necessary, pg. 192-193: "*In the case of the first alternative, there is no doubt that the signature of the parties are required because the text of Article II(2) states so explicitly.*"

[4] *Ibid.*

21. Dr. Peter Binder's commentary,[5] while not explicitly stating, presumably because the same is obvious, that the Model Law under Article 7(2) requires a document to be actually signed, presents an interesting analysis as to whether digital signatures would be sufficient compliance of the said article. Submitting in the negative, the learned author stated as under:

> "*Accordingly, it is submitted that it was no the drafters' intention to give "document signed by the parties" such a wide interpretation as to include digitally signed electronic documents; rather, the interpretation should take the New York Convention as the precedent, which provides for a signed paper document only.*"[6]

22. The English law through the Arbitration Act, 1996 also requires an arbitration agreement to be in writing, however, a conscious departure seems to have been made by making the requirement of signing optional. Section 5 of the said Act titled "*agreements to be in writing*" reads as under:

> *"**5. Agreements to be in writing.***
> *(1) The provisions of this Part apply only where the arbitration agreement is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing.*
> *The expressions "agreement", "agree" and "agreed" shall be construed accordingly.*
> *(2) There is an agreement in writing—*
> *(a) if the agreement is made in writing (**whether or not it is signed by the parties**),*
> *(b) if the agreement is made by exchange of communications in writing, or*
> *(c) if the agreement is evidenced in writing.*
> …"
>
> (Emphasis Supplied)

[5] Dr. Peter Binder, International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 3rd Ed., 2010, Sweet and Maxwell.
[6] *Ibid*, para. 2-025, pg. 84.

23. The Indian Arbitration Act, therefore, unlike its English counterpart, requires, in case an arbitration agreement is a document or contained in a document, an additional mandatory requirement of signing, for it to be "*in writing*". The rationale, seems to be, to require clear evidence of the consent of a party that their right to approach courts is being closed by them voluntarily by opting in favour of a private adjudicatory mechanism *viz.* arbitration. Thus, the mere existence of a document, despite it containing an arbitration clause, and persons, even if they are party to it, would not qualify as an "*arbitration agreement*" unless it is signed by the parties, including the party seeking to invoke the clause as also the party against whom enforcement is sought.

24. Reliance may be placed on the decision of the Bombay High Court in ***Pramod Chimanbai Patel v. Lalit Constructions and Anr.***,[7] where a petition filed under Section 9 of the Arbitration Act was dismissed on the ground, *inter alia*, that there was no arbitration agreement between the parties, as the document containing the alleged arbitration clause, was not signed by both the parties. The material portion of the judgement reads as under:

> "9. ***The only question relevant for deciding the controversy in the present case is whether the arbitration agreement, if in writing, must be signed by both the parties. I am of the view that it must be signed by both the parties.*** *The other categories of agreements in writing contemplated by sub-section (4) i.e. letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or a statement of claim and defence clearly contemplate that such documents would be arbitration agreements in writing only when they are exchanged between the parties. The purpose is clear enough. The*

[7] 2002 SCC OnLine Bom 546.

> *exchange signifies an active assent by both parties and a demonstrable meeting of minds of both parties as to the arbitration agreement. Having regard to this context, I am of view that in clause (a) when Parliament says "document signed by the parties" it intends a document signed by both the parties.*
>
> *…*
>
> *14.* ***Therefore, the arbitration clause relied on by the petitioner contained in the letter dated 21-5-1999 signed by the petitioner alone is not a valid arbitration agreement****. There is no merit in this petition under section 9.*"
>
> (Emphasis supplied)

25. In ***O.P. Malhotra's Commentary on The Law of Arbitration***, it is also, materially, noted that: "*…if it can be prima facie shown that the parties are ad idem, then the mere fact of one party not having signed the agreement, cannot absolve him from the liability under the agreement.*"[8] However, the present case does not attract the aforenoted treatment. The parties are, evidently, not *ad idem* on whether the petitioner is a party to the agreement; the effect, rights and liabilities of the petitioner under the AoA; and specifically, whether the petitioner can enforce the AoA against the respondents. The petitioner has also not placed on record material that would suggest a common consensus between the parties on the effect and import of the agreement.

26. In the instant case, the purported arbitration clause relied upon by the petitioner is part of the Company's AoA, in which she is a managing director. The petitioner does not claim that the alleged arbitration agreement is contained in an exchange of letters, telegrams or other means of communication, nor is her case that it is part of an exchange of statements of claim and defence in which the existence of the agreement is alleged by one

[8] 4th Ed., Volume 1, pg. 301.

party and not denied by the other. Thus, the petitioner, in order to satisfy the "*in writing*" requirement per Section 7(4) of the Arbitration Act, and in turn fulfil the condition pre-requisite for an "*arbitration agreement*" under Section 7 of the Act, needs to point to a document, containing the arbitration clause, that is signed by the parties to the instant petition.

27. The AoA, however, admittedly, is not signed by the petitioner, let alone the other parties. The document which contains the purported written arbitration clause, on the strength of which interim reliefs are prayed for by the petitioner, therefore, falls foul of Section 7(4) of the Arbitration Act. Thus, it could safely be concluded that there exists no arbitration agreement between the parties in the manner required by the Act. The petition, on this ground alone, deserves to be dismissed. However, there are additional reasons, which are alluded to in order to appreciate the other arguments canvassed by Mr. Krishnan.

B. THE REQUIREMENT OF BEING PARTY TO THE ARBITRATION AGREEMENT

28. Independent of the signing requirement mandated by Section 7(4)(a) of the Act. Another requirement of Section 7 may be analysed. As was noted in paras 13-14 of this judgement, Section 7(1) read with Section 2(1)(h) of the Act requires a person relying on an arbitration clause/agreement to be privy/party to the said contract. The alleged arbitration clause relied upon by the petitioner is contained in the AoA of the Company, and thus binds the company and its members. Section 10(1) of the Companies Act, 2013 creates this deeming fiction in the following words:

> "***10. Effect of memorandum and articles.***
> *(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.*"

29. A bare perusal of the aforenoted provision reveals that it is only the members and the Company itself who can be considered parties to the AoA, by virtue of a deemed signature, and covenants on their part, to observe all provisions of the founding documents. A director/managing director *simplicitor* who is not a "*member*" as defined under Section 2(55) of the Companies Act, 2013, cannot be termed as a party to the AoA, especially not for the purposes of Section 7 of the Arbitration Act.

30. Reliance may be placed on ***C. Duraiswami Iyangar v. United India Life Assurance Co. Ltd.***[9] in which a Division Bench of the Madras High Court held as under:

> "*Nor can the policyholders take advantage of the articles of association, to which they were not parties. It is now well established that, though the articles constitute a contract between the company and a member in respect of his rights as a member, the articles do not constitute a contract between the company and third persons, a third person who purports to have rights against the company would be precluded from relying on the articles as the basis of his claim and must prove a special contract. This question was the subject of an authoritative pronouncement of the House of Lords in Southern Foundries Ld. v. Shirlaw[1]. Reference may also be made to Browne v. La Trinidad[2], where the proposition was affirmed that the articles are merely a contract between the shareholders inter se, and that, though a person, in whose favour a stipulation is made in the articles, may afterwards have shares allotted to him, he is not, by that means, in the same position as if he had entered into a contract with the company. Similarly, in Baily v. British Equitable Assurance Co.[3], it was pointed out that the rights of a shareholder in respect of his shares, except so*

[9] SCC OnLine Mad 243.

> *far as they may be protected by the memorandum of association or by statute, may be liable to be altered by special resolution. But the case of a contract between an outsider and the company is entirely different, and even a shareholder must be regarded as an outsider in so far as he contracts with the company otherwise than in respect of his shares.*"

31. The learned authors of ***Buckley on the Companies Acts*** note that "*all the authorities as to whether the articles constitute a contract as between the company and its members were reviewed by Astbury J. in the case of in the case of* ***Hickman v. Kent or Romney Marsh Sheep Breeders Association and Anr.,***[10] *who decided … that though the articles can neither constitute a contract between the company and an outsider nor give any individual member of the company special contractual rights beyond those of the members…generally, they do in fact constitute a contract between a company and its members in respect of their ordinary rights as members*."[11]

32. In ***Hickman v. Kent or Romney Marsh Sheep Breeders Association and Anr.*** (supra) (hereinafter "***Hickman***") the Chancery Division was to decide on a stay sought against proceedings brought about by a member of the defendant-company on grounds that there existed an arbitration clause in the AoA, with which the plaintiff-member therein was bound. The Court after discussing a catena of authorities, concluded:

> "*In all these last-mentioned cases the respective articles sought to be enforced related to the rights and obligations of the members generally as such, and not to rights of the character dealt with in the four authorities first above referred to. It is difficult to reconcile these two classes of decisions and the judicial opinions therein expressed, but I think this much is clear -* ***first, that no article can constitute a contract between the company and a third person****;* ***secondly, that no right merely purported to be given by an article to a person, whether***

[10] (1914-15) All ER Rep 900 : (1915) 1 Ch 881.
[11] 14th Ed., Volume 1, London Butterworths, 1981, pg. 66.

a member or not, in a capacity other than that of a member, as, for instance, as solicitor, promoter, or director, can be enforced against the company*;*...”

(Emphasis supplied)

On articles specifically, ***Buckley on Companies Act*** notes that “*in Beattie v Beattie, it was decided that an article referring to arbitration any dispute between the company and any member did not constitute a submission applicable to a dispute between the company and one of its directors as such, notwithstanding that the director was a member of the company*”.[12]

33. The decision of the Court of Appeals in ***London Sack & Bag Co. Ltd. v. Dixon & Lugton Ltd.***,[13] is also rather interesting. In the said case the respondent-buyer company paid £500 for the purchase of certain goods and upon complaining that the goods were not satisfactory, filed a claim seeking their money back with interest and damages. The sellers-appellant company sought to stay the proceedings on the grounds that an arbitration agreement existed between the parties. This was sought to be pleaded by the appellant, in Scott LJ’s words, “*by a devious route*”.

34. First the respondent relied on Section 20 of the English Companies Act, 1929 which is *pari materia* to Section 10 of the Companies Act, 2013 to emphasise that members are bound by the Memorandum of Association (hereinafter “**MoA**”) as if they had signed the said document; next reliance was placed on the rules framed under the MoA, where Rule 1 of the same provided for an arbitration clause; next to argue that it is a “*member*”, reliance was placed on the articles of the AoA which noted that “*companies*

[12] *Ibid*., pg. 67. Also see Russel on Arbitration, 24th Ed., Sweet and Maxwell, para. 2-053, pg. 55-56.
[13] (1943) 2 All ER 763.

may be admitted", and they must be represented by one or more of their directors whose names must be submitted to the association.

35. Scott LJ rejected the application for stay on multiple grounds, one of which, importantly was:

> "*...The two companies parties to this litigation are not ordinary members of the company at all; they are only members in the same sense that members of a proprietary club who have no shares in the company owning the club, are given certain rights of members, eg, to frequent the club for meals, or golf, or reading. I cannot think that the principle of the cases cited to us can be extended to such members as these two companies are. Their directors are required to hold a share in order to represent them, but no trusts are recognised by the articles; and I do not think the cases in question have any bearing on the issue we have to decide.* ***I am not satisfied that it is possible to spell a written submission out of the memorandum and articles of association and the rules, even with the help of the Companies Act 1929, s 20***."
>
> (Emphasis supplied)

Even if the respondent in the said case were an individual director, the last sentence emphasized in the extracted portion above, would have still applied with full force. Mackinnon LJ in his separate concurring opinion, also, importantly, held as under:

> "*It is asserted that the plaintiff company and the defendant company have been "admitted to the association," being represented by a director or directors holding a share.* ***No doubt articles of association may create a contract between the member-shareholders. Indeed, it is so provided by the Companies Act 1929, s 20. But I think it is impossible to contend that, by reason of these articles, the plaintiff company and the defendant company have made a contract to submit disputes to arbitration because each has a director who is a shareholder and the companies have been admitted to the association—whatever that may mean***."
>
> (Emphasis supplied)

36. Before concluding the discussion on this issue, the reliance by Mr. Krishnan on ***Biswanath Rungta v. Oriental Industrial Engineering Co. Pvt. Ltd.***[14] may be considered in a bit more detail. The material portion of the judgement reads as under:

> *"**2.** That there was such an article containing the aforesaid term is undisputed. **It was contended, firstly, that the disputes in this case were covered by the said arbitration clause inasmuch as these disputes were those arising between the company and the directors relating to their dues or privileges or otherwise.** Read in proper perspective the disputes raised in the suit were those that were within the ambit of the arbitration clause covered by the article. In support of the proposition reliance was placed on Section 36 of the Companies Act, 1956, which unlike Section 20 of the English Companies Act, 1948, makes the Articles of Association binding on the company in specific terms. **Reliance was also placed in aid of the arguments that the Articles of Association bound the directors as well as the company on the decision in the case of Hickman v. Kent or Romney Marsh Sheep Breeders' Association, reported in (1915) 1 Ch D 881 at p. 902 and also on the decision of the Supreme Court in the case of Hanuman Prasad Gupta v. Hiralal, reported in (1970) 1 SCC 437 : AIR 1971 SC 206**. **The facts that the directors as well as the company are bound by the Articles of Association and the arbitration clause in the instant case was quite enough to cover the disputes raised in this case between the company and its directors are not seriously disputed**. ..."*
>
> (Emphasis supplied)

37. The issue as to whether the AoA bound the directors and the company was not, as the judgement records, "*seriously disputed*" by the parties therein. Observations made by a court, on the basis of parties' admission, do not, it is trite law, create binding precedents. Also then, it is apposite to clarify that the true issue is not whether a director non-member is merely bound by the AoA, certainly he is bound/governed in the sense that he cannot act contrary to the articles, but that neither makes him a party to the

[14] 1974 SCC OnLine Cal 74, para. 2.

AoA, nor allows him to enforce the articles against a member or the company concerned.

38. The decision of ***Hickman*** (supra) cited by the Calcutta High Court does not stand for the authority that a director *simplicitor* who is not a member can invoke an arbitration clause in the AoA. The facts of the said case narrate that the party seeking a referral for arbitration was indeed a "*member*", and therefore a party to the AoA. Astbury J. succinctly stated as such in the following words:

> "*In the present case the plaintiff's action is, in substance, to enforce rights as a member under the articles against the company.*"[15]

39. Insofar as the reliance placed by the Calcutta High Court on ***Hanuman Prasad Gupta*** (supra) is concerned, this was a case concerning appeals from complaints filed under Section 207 of the Companies Act, 1956 on an allegation of failure on the part of the appellant therein, to pay him dividends on shares held by him. The said judgement is not at all germane to the issue at hand. This Court is, therefore, not persuaded to adopt the view expressed by the Calcutta High Court.

40. Next, the petitioner in its rejoinder submission note dated 16.12.2025, made an interesting argument, which for accuracy is being reproduced as under:

> "*7. Without prejudice to the above, the Petitioner submits that the directors do not need to be in a contractual relationship in order to fulfil the requirements of a valid arbitration agreement under Section 7 of Arbitration Act. The Hon'ble Supreme Court in* ***Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1****, while discussing Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, observed that "a legal*

[15] *Id.* (No. 10) at 911.

> *relationship means a relationship which gives rise to legal obligations and duties, and confers a right. Such a right may be contractual or non-contractual. In case of a non-contractual legal relationship, the cause of action arises in tort, restitution, breach of statutory duty, or some other non-contractual cause of action. Thus, the legislative intent underlying Section 7 suggests that any legal relationship, including relationships where there is no contract between the persons or entities, but whose actions or conduct has given rise to a relationship, could form a subject-matter of an arbitration agreement under Section 7.*"

The petitioners are in the context of this submission, plainly wrong. The reference to a "*legal relationship*" in ***Cox & Kings*** (supra) was in the context of Section 7(1) of the Act, and dealt with the issue concerning the kinds of claims that can be referred for arbitration by the parties. These claims may be, in the words of the Supreme Court, contractual or non-contractual, and in the latter category of cases, the cause of action may arise in tort, restitution, breach of statutory duty etc. The said judgement is not an authority for waiving off the requirement of an arbitration agreement to be a contract. It is but obvious that such a declaration would lie at the teeth of the statute itself.

41. From the discussion above, it could safely be concluded that the petitioner is not a party to the purported arbitration agreement/agreement containing the arbitration clause *viz.* the AoA. The petitioner not being a party to the AoA, is precluded from relying upon the same, owing to Section 7(1) read with Section 2(1)(h) of the Arbitration Act. There, therefore, does not exist an arbitration agreement between the parties, and, resultantly, the present Section 9 petition is not maintainable.

42. However, even if it is assumed, for the purposes of analysing the *lis* further, that the petitioner is a party to the document containing the arbitration clause, and furthermore that the signing requirement can be waived in the facts of this case, it needs to be seen whether Clause 30A relied upon by the petitioner actually evinces an intent to arbitrate.

C. THE INTENT TO ARBITRATE

43. Separate from the requirement of signing the document containing the arbitration clause, as also of being a party to that agreement, it may now be seen whether, substantively, there is an arbitration agreement in consonance with the Arbitration Act. Since this discussion will turn on the actual wording of the clause, it is at this stage, found appropriate to reproduce the same:

> "***30A*** *In case of any dispute between the shareholders' interest as Directors or any Director on the one hand and the Managing Director on the other or the Shareholders on the one hand and the Company on the other, the same shall be in the first instance referred to the joint arbitration of the auditors and the lawyers of the Company.*"

44. The essential ingredients of an arbitration agreement have been declared by the Supreme Court in ***KK Modi v. KN Modi and Ors.***,[16] which read as under:

> "*17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:*
> *(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,*
> *(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration,*

[16] (1998) 3 SCC 573.

(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,
(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,
(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,
(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

18. The other factors which are relevant include, whether the agreement contemplates that the tribunal will receive evidence from both sides and hear their contentions or at least give the parties an opportunity to put them forward; whether the wording of the agreement is consistent or inconsistent with the view that the process was intended to be an arbitration, and whether the agreement requires the tribunal to decide the dispute according to law.

…

20. The authorities thus seem to agree that while there are no conclusive tests, by and large, one can follow a set of guidelines in deciding whether the agreement is to refer an issue to an expert or whether the parties have agreed to resolve disputes through arbitration.

21. Therefore our courts have laid emphasis on (1) existence of disputes as against intention to avoid future disputes; (2) the tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made by the parties before it; and (3) the decision is intended to bind the parties. Nomenclature used by the parties may not be conclusive. One must examine the true intent and purport of the agreement…"

45. More recently, the Supreme Court in ***South Delhi Municipal Corporation of Delhi v. SMS Ltd.***,[17] after relying upon ***KK Modi*** (supra), and analysing the global position on the validity of arbitration agreements detailed the following, as necessary ingredients of a valid arbitration agreement:

"*D.1.3. The Necessary Ingredients of a Valid Arbitration Agreement*

[17] 2025 SCC OnLine SC 1138.

> ***30.*** *Considering the global position on the validity of arbitration agreements in tandem with the settled law that holds the field in India, we find that the existence of an arbitration agreement necessarily postulates the presence of the following ingredients:*
>
> ***i. Clear Intent to Arbitrate***
>
> *The agreement must reflect a definitive and mutual intention to refer disputes to arbitration, excluding the jurisdiction of civil courts in respect of such matters. Consensus ad-idem or 'meeting of the minds' of the respective parties towards settling any disputes that may arise between them through the process of arbitration must be made out from the form and substance of the legal agreement or contract. This ideally entails the parties reducing their intention of entering into an arbitration agreement into some tangible medium.*
>
> ***ii. Binding Adjudicatory Process***
>
> *The arbitration agreement must contemplate a binding and enforceable resolution of disputes. The process must culminate in a final and conclusive award, not a non-binding recommendation or mediation outcome. In essence, the result of the arbitral process should be final and binding on both the parties.*
>
> ***iii. Compliance with Arbitration Norms***
>
> *While the statutory minimums do not universally require specification of seat, venue, or applicable procedural rules, best practices and several foreign jurisdictions encourage clarity in these respects to ensure legal certainty. The agreement should allow for party autonomy in the appointment of arbitrators and procedural conduct, subject to statutory safeguards. The adversarial process, which inheres in the institution of arbitration, must also be given due credence via provision for an impartial adjudicatory body, whose decisions involve deference to the principles of natural justice.*"

46. There is no requirement to express, in novel terms, what the essentials of an arbitration agreement are. The authorities cited above are sufficiently detailed and clear. What is more important, however, is to analyse the grounds on the basis of which the validity of arbitration clauses have been assailed. This discussion is less concerned about the exact wording of the clauses, and more about the principled inferences which courts have drawn, on the basis of the broad setting of a clause.

47. In ***Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd.***,[18] the Supreme Court interpreted an arbitration clause in a contract between the parties under which the appellant had undertaken the work of construction of a factory and allied buildings of the respondent therein. The clause in their agreement provided that the decision of the Managing Director of the respondent-corporation shall be final. This was found to be in the nature of an expert determination, intended to avoid a dispute rather than to decide formulated disputes in a quasi-judicial manner.

48. The issue of interested parties being named as arbitrators, and the intent of the parties as reflected therefrom was further considered by the Supreme Court in ***Alchemist Hospitals Ltd. v. ICT Health Technology Services India (P) Ltd.***,[19] where the clause in issue provided the arbitrators to be the respective Chairmen of the parties themselves. It was held that while the arbitrators so named are disqualified under Section 12(5) of the Act, and to that extent this part of the clause may be "*waived*", the parties choosing the Chairmen to conduct adjudication is an important *indicium* to decipher the intent of the parties. Ultimately, it was found that the clause suggested an attempt at amicable resolution *inter se* rather than a definitive submission to arbitration.

49. On similar lines, this Court in ***Super Ads v. All India Radio (Akashvani) and Ors.***,[20] dealt with an arbitration clause between the parties, where the Director General of the respondent was made the adjudicator of

[18] (1999) 2 SCC 166.
[19] 2025 SCC OnLine SC 2345.
[20] 2023 SCC OnLine Del 1837.

disputes. It was held that the clause did not amount to an arbitration agreement but was an in-house escalation/dispute resolution mechanism.

50. The discussion above would safely lead to the conclusion that the naming of an interested party as an adjudicator between the parties, may be an indication of the clause not intending to be a binding process to decide their substantive rights and liabilities, but an in-house, pre-escalation, resolution-oriented mechanism.

51. The decision of ***South Delhi Municipal Corporation of Delhi*** (supra), further provides guidance on inferences which could be drawn from the general and broad wording of a clause. The material principles, as deduced from para 38 of the judgement are *firstly*, the subject-clause is a useful indication of the intent of the parties; *secondly*, similar to the case-law discussed above, the naming of an interested party is indicative of the process being an internal dispute resolution mechanism; and *thirdly*, the fact that the appointment of the decision-maker is entirely within the control of one party, further indicates that it was not intended to be an arbitration as meant under the Arbitration Act.

52. Before delving into Article 30A of the AoA, the decisions relied upon by the petitioner may be considered. In ***Offshore Infrastructures Ltd. v. Bharat Petroleum Corpn. Ltd.***,[21] the Supreme Court was considering an appeal against a judgement of the High Court,[22] whereby an application filed for the appointment of an arbitrator under Section 11 of the Act was rejected on the sole ground that it was time barred. A review petition assailing the

[21] 2025 SCC OnLine SC 2147.

said decision was again rejected, with no other arguments being made apart from limitation.[23] Before the Supreme Court, an argument was made that independent of limitation, since the arbitration clause contained in the General Conditions of the Contract provides for arbitration to be conducted by the managing director of one of the parties or an officer appointed by him, the same is bad in law.

53. This submission was rejected by the Supreme Court, and the appeal was allowed. While the exact clause has not been reproduced in the judgement, two aspects of this decision may be noted — *first*, at para 20 it was found that the "*core part of the contract*" was the referring of dispute for arbitration; and *second*, since the procedure for arbitration could be effectively severed from the intent to arbitrate, relying on ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***[24] an independent arbitrator can be appointed under Section 11 of the Act.

54. Next in ***SK Engineering and Construction Company India v. Bharat Heavy Electricals Ltd.***[25] a coordinate bench of this Court analysed an exceedingly detailed arbitration clause contained in a work order which fructified into a contract. The issue therein was restricted to whether the following stipulation in the clause poisons the entirety of the arbitration agreement, and prevents a court from appointing an arbitrator under Section 11(6) of the Act:

> "*It is also a term of this contract that no person other than a person*

[22] Arbitration Case No. 23/2022, Order Dt. 19.12.2023, High Court of Madhya Pradesh at Jabalpur.
[23] Review Petition No. 76/2024, Order Dt. 10.04.2024, High Court of Madhya Pradesh at Jabalpur.
[24] (2020) 20 SCC 760.
[25] 2023 SCC OnLine Del 7575.

> *appointed by such Head TBG as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all*"

Upon finding there to be an agreement to refer disputes for arbitration, the aforenoted stipulation was found to be a mere expression of procedure, and resultantly severable from the remaining part of the arbitration agreement, which, was found to have evinced an intent to arbitrate.

55. In both these decisions, it was found that at the core of the clause/agreement in issue, there was an underlying intent for referring disputes to arbitration. It is only when the intent to arbitrate is established, that a Court can venture into an analysis of what the procedure for arbitration is, and whether it can be severed from the "*core*" part of the contract, to uphold the intent of the parties. The analysis as to whether there exists an intent to arbitrate, naturally, precedes the inquiry on whether the named arbitrators disqualified under Section 12(5) of the Act can be replaced with neutral arbitrators, by eschewing the mechanism from the substantive will of the parties.

56. Importantly, as was observed above, a stipulation naming persons disqualified under Section 12(5) of the Act to act as arbitrators, is material to conclude whether there exists an arbitration clause between the parties or not. If the clause/agreement in issue itself does not contemplate arbitration, the applicability of ***Perkins*** never becomes a consideration.

57. In ***Babanrao Rajaram Pund v. Samarth Builders and Developers and Anr.***,[26] the Supreme Court considered an arbitration clause, which by a bare perusal, would be found to be markedly different from Article 30A of the AoA. Additionally, unlike the present case, in that case there was an explicit recital to the effect that the arbitration shall be governed by the Arbitration Act. Evidently, the facts of the present dispute lie on a different footing. The reliance placed on ***Jagdish Chander v. Ramesh Chander***[27] also does not really assist the petitioner. The material paragraph relied upon by Mr. Krishnan reads as under:

> "*(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement.* ***Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement****.* ***But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement****. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.*"

58. The petitioner while stressing upon the first sentence of para. 8(iii), contends that since Article 30A effectively provides that disputes are to be referred for arbitration, the inquiry ends. However, the Court cannot lose sight of the fact that the mere mention of the word "*arbitration*" would not be conclusive of the parties' intention. As the second sentence notes, where

[26] (2022) 9 SCC 691.
[27] (2007) 5 SCC 719.

there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement. However, in the instant case, as the analysis below shall reveal, there is — *firstly*, no such clear expression of intent; and *secondly*, sufficient textual indications that detract from Article 30A of the AoA being considered as an arbitration agreement.

59. Article 30A of the AoA, itself, may now be dissected. At the outset it may be seen that it forms part of the heading titled "*Indemnity*". The argument of Mr. Krishnan that Article 30A is in no way related to Article 30, does not inspire confidence. The entire AoA is divided into the following headings—"*private company*", "*shares*", "*registration of members*", "*proceedings at general meeting*", "*directors*", "*the seal*", "*reserves and capitalization of reserves*", "*dividend*", "*accounts*", "*indemnity*" and "*winding up*". Each of these headings has various articles underneath them, or if the AoA was to be simply looked at as a numbered list, between every two headings there are various articles. Upon perusing the AoA, it appears that without a single exception every article is relatable to the heading which precedes that article or set of articles.

60. It seems rather unusual to accept the claim that the AoA, which has a separate heading for the sole article dealing with the "*company seal*", will not have some degree of categorization for the dispute resolution clause, assuming the clause was intended to be as such. The exercise of drafting a contract, takes within its sweep the assumption, that what appears to be

excluded has been excluded consciously,[28] more so when the document specifically addresses all material aspects. In such cases, omission becomes an expression of interest.

61. Thus, Article 30A does indeed relate to Article 30 which provides:

> "
> *INDEMNITY*
>
> ***30.*** *The Directors, Auditors, Secretary, and other officers for the time being acting in relation to any of the affairs of the Company and their heirs, executors and administrators respectively shall be indemnified out of the assets of the Company from and against all suits, proceedings, costs, charges, loss, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trust except such (if any) as they shall incur or sustain by or through their own wilful neglect or default respectively and no such Director, Auditor, Secretary, Officer or trustee shall be answerable for the acts, receipts, neglects, or defaults of any other officer or trustee or for joining in any receipts for the sake of conformity or for the solvency or honesty of any bankers or other persons with whom any money or effects belonging to the Company may be lodged or deposited for safe custody or for any insufficiency or any security upon which any monies of the Company shall be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust unless the same shall happen through the wilful neglect or default of such officer or trustee.*"

62. Article 30A, therefore, is meant to deal with "*any dispute*" which may arise between the parties, in relation to the indemnity extended to them. The word "*any*", must necessarily be interpreted in light of Article 30, and, thus, it would refer to the variety of disputes which may arise pertaining to indemnity. If "*any* dispute", however, was not constrained by Article 30 of the AoA, it would also seem to take into account those disputes which arise *dehors* the individuals' association with the company. It would then, at first

[28] See also Sir Kim Lewison, The Interpretation of Contracts, 7th Ed., Sweet and Maxwell, para. 7.54, pg. 430.

blush, also apply to a dispute between two directors pertaining to a loan given by one to another, without any reference to the Company. This cannot, possibly, be the intention of the parties.

63. Further, under the clause in issue, "*joint arbitration*" is to be conducted by the auditors and lawyers of the Company. If Mr. Krishnan's submission is to be accepted, the auditors and lawyers of the Company were intended to act as adjudicators, even when a dispute, in a given case, arises between the Company and its shareholders. Meaning thereby, that individuals who, in all likelihood would be litigating against a given party, were to be adjudicators determining the substantive *lis* between the parties, relating to, again if Mr. Krishnan's argument is accepted, "*any dispute*" between them.

64. Additionally, there is also the usage of the words "*in the first instance*" in Article 30A, which indicates that a step is to be taken by the parties after this "*joint arbitration*" is conducted. Learned senior counsel for the petitioner contends that arbitration would naturally be in the first instance, post which the Act takes over. However, it would be unwise to interpret the said words as being redundant and superfluous. Upon reading the clause as a whole, the intent behind the expression "*in the first instance*" appears to be to further clarify that the adjudication by the lawyers and auditors is an in-house redressal mechanism and not a final determination of their rights and liabilities.

65. The Supreme Court's decision in ***P. Dasaratharama Reddy Complex v. Government of Karnataka and Anr.***[29] was canvassed as an authority on the point that "*in the first instance*" is conclusive indication of a clause not being an arbitration agreement. While it does appear to be the case that the ultimate decision in the said case was premised on the expression "*in the first place*",[30] it is also true that the clause therein is not really similar to Article 30A. It is important to clarify that it is not merely owing to the expression "*in the first instance*" that the Court has arrived at its conclusion as to the intent to arbitrate, not to say that it could not have, but a holistic reading of the AoA and Article 30A, has led to the conclusion reached.

66. Lastly, the decisions in ***A. Ayyasamy v. A. Paramasivam***,[31] ***Enercon Indi v. Enercon GmBh***,[32] ***MTNL v. Canara Bank***,[33] and ***Govind Rubber Ltd. v. Louids Dreyfus Commodities Asia (P) Ltd.***,[34] cited by the petitioner are authorities for Courts being required to read agreements, including arbitration clauses, not in a pedantic fashion, but in manner that gives effect to the parties intention, accounts for business efficacy and commercial wisdom.

67. In this context it may be seen that directors as per Article 16(3) of the AoA can be appointed, may be dismissed, or removed with or without cause by an ordinary resolution of the Company in the General Meeting. Accepting Mr. Krishnan's argument would lead to a situation where the

[29] (2014) 2 SCC 201.
[30] *Ibid.*, para. 27.
[31] (2016) 10 SCC 386.
[32] (2014) 5 SCC 1.
[33] (2020) 12 SCC 767.
[34] (2015) 13 SCC 477.

individuals to whom Article 30A applies can fluctuate without the consent of the other parties. Meaning thereby that a director who today agitates "*any dispute*" against other identified directors before an arbitrator, would tomorrow be forced to refer his disputes for arbitration with another new and changed director, which was appointed in the General Meeting, without the consent of the erstwhile director. In the instant case as well, respondent no. 3 for instance, who has been a director of the Company since 1992 is now being forced into arbitration with the petitioner who became a director of the company on 31.08.2021. Accepting such a clause as referring parties to binding arbitration under the Act would lie ill of business efficacy, as also the parties' intent.

68. Before concluding, it may be observed that while construing a contract, the Court proceeds with the sole objective of discovering the intent of the parties. The merits or demerits of the contract, or the wisdom of the parties are not questions of concern or relevance. While interpreting the intent to arbitrate, certain degree of circumspection is warranted, as an incorrect or sweeping finding on the intent to arbitrate could effectively deprive the un-intending party from redressing its grievance before the primary judicial fora of the country and would, further, relegate such a party to a private adjudicatory mechanism which it may not have agreed to. Thus, the intent must be clearly made out, either from explicit terms, or from an unavoidable, inescapable and principled inference from the terms of the contract.

69. In light of the discussion above, it is clear that the document purportedly containing the arbitration clause, is not signed by the petitioner

and, therefore, falls foul of Section 7(4)(a) of the Act. Further, the petitioner being a mere managing director, without being a member of the Company, in any case, is not a party to the AoA, which contains the alleged arbitration clause, and thus the requirement of Section 7(1) read with Section 2(1)(h) of the Act is also not satisfied. Also then, Clause 30A of the AoA, does not evince an intention to arbitrate as per the provisions of the Arbitration Act. There is, therefore, no "*arbitration agreement*" in terms of Section 7 of the Arbitration Act, on the basis of which, interim reliefs can be sought by the petitioner under Section 9 of the Act. Resultantly, the present petition under Section 9 of the Act is found to not be maintainable.

IV. ORDER

70. The present petition is dismissed. Pending applications, if any, stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 15, 2026
aks