*AGK*

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION

## ARBITRATION APPLICATION (L) NO.25878 OF 2026

ATUL GANESH KULKARNI

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Kotak Mahindra Bank Limited ... Applicant

Vs.

Maulin Niranjan Patel ... Respondent

WITH

## ARBITRATION APPLICATION (L) NO.25676 OF 2026

Kotak Mahindra Bank Limited ... Applicant

Vs.

Kaustubh Rajendra Kuwadia ... Respondent

WITH

## ARBITRATION APPLICATION (L) NO.25703 OF 2026

Kotak Mahindra Bank Limited ... Applicant

Vs.

Ziya Ur Rehman ... Respondent

WITH

## ARBITRATION APPLICATION (L) NO.25784 OF 2026

Kotak Mahindra Bank Limited ... Applicant

Vs.

N.V. Srinivas ... Respondent

Ms. Bijal Gogri i/by GNP Legal for the Applicant.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 28, 2026.

PRONOUNCED ON : NOVEMBER 4, 2026



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JUDGMENT:

1. Since all the four Arbitration Applications involve common questions of law and facts, they are being decided by this common judgment. For the sake of convenience, the facts of Arbitration Application (Lodging) No. 25878 of 2026 are being stated.

2. The main question which arises in this Application is whether there can be said to be no arbitration agreement between the Applicant Bank and the Respondent only because the Respondent has not put his physical or digital signature on the Credit Card Application. To decide this question, it will be necessary to look at Section 7 of the Arbitration and Conciliation Act, 1996. The terms of the Cardholder Agreement will have to be considered. The documents produced by the Bank to show that the Respondent had accepted those terms will be required to be examined.

3. At the beginning, it is necessary to make clear that the law does not say that every arbitration agreement must have the physical or digital signatures of both parties. Therefore, only because a signature is not found, it cannot be said that there is no agreement. But this does not mean that a Bank can prepare an agreement containing an arbitration clause and make it binding upon a person without showing that the person had accepted its terms. Some material must be there to show such acceptance. A person may accept the terms by doing some act, if the written agreement says that such act will amount to acceptance. In simple words, the consent of the parties must be found from some record. This is the main question which has to be considered here.



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4. According to the Applicant Bank, the Respondent had applied for a Credit Card facility through the Bank's digital process. The Bank says that when the Respondent made the application, Application ID 2224882017620 was generated. It says that the Respondent accepted the terms and conditions relating to the Credit Card, including the Most Important Terms and Conditions and the Cardholder Agreement. On this basis, the Bank issued Credit Card No. 000416644XXXXXX1165. This Card was connected with Account No. 00094065000006668909 and CRN No. 0000000000657252058. The case of the Bank is that the Respondent used the Credit Card and took the benefit of the facility for his personal use. The Bank says that statements of account were regularly sent to the Respondent. However, the Respondent did not pay the amount which became due. Therefore, the Bank is relying upon the Cardholder Agreement and the statement of account. According to the Bank, Clause 32 of the Cardholder Agreement contains an arbitration clause. Therefore, the disputes relating to the Credit Card facility are required to be referred to arbitration. The Bank has relied upon the affidavit of its authorised representative, Dattatray Jagtap, which is at pages 99 to 101 of the Application. In paragraph 2 of this affidavit, it is stated that the Respondent had obtained the Credit Card facility through digital mode and had agreed to and accepted the terms and conditions governing the facility, including the MITC and the Cardholder Agreement. The same thing is again stated in paragraph 5. It is stated that the Respondent had accepted the applicable terms and conditions through the digital process of the



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Bank. In paragraph 6, the Bank has stated that the use of the Credit Card facility by the Respondent can be seen from the statement of account. However, there is one important statement made by the Bank in paragraph 7 of the same affidavit. The Bank has admitted that the original digital application and the electronic record showing how the Respondent had accepted the terms and conditions are not available with it. According to the Bank, these records are with its earlier vendor. The agreement with that vendor has been terminated and the Bank is in the process of renewing its arrangement with the vendor. Therefore, the Bank has stated that it may require some time to obtain these records. It has kept open its right to produce these records when they become available.

**5.** From the above, it is clear that the Bank has not produced the digital application or the electronic record showing the manner in which the Respondent had accepted the MITC or the arbitration clause. The Bank has only given the Application ID. It has not produced the screen which the Respondent is said to have seen and accepted. There is no record showing that the Respondent had clicked or given any confirmation accepting the terms. The electronic record showing how this acceptance was made is not placed before the Court. In the same manner, no physical application bearing the signature of the Respondent has been produced.

**6.** It is necessary to look at the statement of account produced by the Bank. The statement shows the Respondent as the cardholder. It refers to the Mojo Credit Card ending in 1165 and the related CRN. It shows the total amount due as Rs.5,46,655.34.



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However, the statement placed before the Court is only a summary statement. It shows the previous statement dues as Rs.5,46,655.34. It shows that there were no purchases during the current billing cycle. The individual transactions through which this outstanding amount was collected are not shown in this statement. Therefore, the statement does not give the complete details of the transactions made through the Credit Card. The above circumstances show that the Bank has not produced the main digital record which could show acceptance of the terms by the Respondent. But the matter cannot be decided only because this record has not been produced. The terms of the Cardholder Agreement will have to be considered. In this connection, Clause 1.2 of the Cardholder Agreement explains the meaning of the word "Applicant". It includes:

> "(i) any person who has signed the Kotak Mahindra Bank Credit Card application form (ii) any person who has signed or used the card."

7. Clause 2.1 of the Cardholder Agreement provides as follows:

> "The Cardholder understands that signing the Credit Card application form and/or applying online for the Card and/or applying through e-mail for the Card and/or signing on the reverse of the Card and/or using the Card constitutes acceptance of the Terms and Conditions of the Cardholder Agreement as amended from time to time by the Bank, at its sole discretion."

8. If Clause 2.1 is read in a simple way, it shows that the Bank has recognised different methods by which a Cardholder can accept the terms of the Cardholder Agreement. One method is by



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signing the application form. Another method is by making an online application. Making an application through e-mail is recognised. The clause says that signing on the reverse side of the Card or using the Card will mean acceptance of the terms and conditions. Thus, according to the terms prepared by the Bank, putting a physical or digital signature on the application is not the only way of accepting the terms. The Bank has stated that even use of the Card will mean acceptance of the Cardholder Agreement. This part of the agreement has to be given its proper meaning. The Bank cannot rely upon other clauses of the Cardholder Agreement and ignore Clause 2.1. If the Bank says that the Respondent had used the Credit Card, such use will have to be considered along with the written term which says that use of the Card amounts to acceptance of the agreement. Clause 32.2 of the Cardholder Agreement says that disputes arising out of or relating to the agreement will be referred to arbitration under the Arbitration and Conciliation Act, 1996. It says that Mumbai will be the venue of arbitration. Clause 32.3 provides that Clause 32 will continue to remain in force even after the Cardholder Agreement is terminated. Therefore, if the Respondent had accepted the Cardholder Agreement by any of the methods stated in Clause 2.1, the arbitration clause contained in Clause 32 would become part of the terms accepted by him.

**9.** Therefore, the question is not limited to whether the Respondent had signed the application form or not. The real question is whether there is sufficient material to show, at least prima facie, that the Respondent had applied for or used the Credit



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Card and, in that manner, accepted the Cardholder Agreement as stated in Clause 2.1. It is true that the original digital application has not been produced. This is an important circumstance. But this circumstance cannot be considered separately from the other material produced by the Bank. All the material will have to be considered together.

**10.** The legal position on this question has been explained by the Supreme Court in *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd.*, (2015) 13 SCC 477. In paragraph 12, the Supreme Court observed:

> "There may not be any dispute with regard to the settled proposition of law that an agreement even if not signed by the parties can be spelt out from correspondence exchanged between the parties. However, it is the duty of the court to construe correspondence with a view to arrive at the conclusion whether there was any meeting of mind between the parties which could create a binding contract between them. It is necessary for the court to find out from the correspondence as to whether the parties were ad idem to the terms of contract."

**11.** The above observation makes it clear that an agreement does not become non-existent only because it has not been signed. The Court has to look at the material available and find out whether the parties had agreed to the terms. In paragraph 13 of the same judgment, the Supreme Court referred to *Rukmanibai Gupta v. Collector*, (1980) 4 SCC 556, and quoted the following observation from paragraph 6 of that judgment:



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> "Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement."

**12.** The principle coming from these observations is that the Court has to find out what the parties had intended. The Court need not insist upon only one particular form of agreement when the law recognises other ways by which an agreement can be recorded. But this does not mean that consent of a party can be assumed without any material. There must still be some record from which it can be seen that the parties had agreed that their disputes would be referred to arbitration. In paragraph 14 of *Govind Rubber*, the Supreme Court reproduced Section 7 of the Arbitration and Conciliation Act, 1996. The relevant provision reads as follows:

> "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 which provide a record of the



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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."

**13.** If Section 7 is read, it can be seen that a signed document is one method by which an arbitration agreement can be recorded. But the law does not say that this is the only method. Section 7(4)(b) recognises an exchange of letters or other means of telecommunication, provided they give a record of the agreement. Section 7(4)(c) recognises an exchange of statements of claim and defence where one party says that an arbitration agreement exists and the other party does not deny it. Section 7(5) recognises a situation where a written contract refers to another document containing an arbitration clause and, by such reference, that clause becomes part of the contract.

**14.** The Supreme Court explained this position in paragraph 15 of *Govind Rubber* in the following words:

"A perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (b) and (c) of Section 7(4) would show that a written document which



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> may not be signed by the parties even then it can be arbitration agreement. Section 7(4)(b) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement."

**15.** The Supreme Court has made a clear difference between the requirement that an arbitration agreement must be in writing and the requirement of a signature. The agreement must be in writing. This is compulsory. But it is not necessary that it must have the signatures of the parties in every case. What is necessary is that there must be some written record showing that the parties had agreed to the terms.

**16.** In paragraph 16 of *Govind Rubber*, the Supreme Court has explained this position:

> "On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem



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> between the parties. Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act."

**17.** The above observation is relevant to the present matter. The Supreme Court has recognised that, in the present time, agreements can be made through electronic methods and standard terms and conditions. A person may accept such terms even without signing a printed document. However, the Supreme Court has made it clear that the identity of the parties must be established and there must be a record of the agreement. Both these requirements have to be satisfied. Only because the Bank has prepared a document containing an arbitration clause, it cannot automatically become binding upon the Respondent. There must be some material connecting the Respondent with that document and showing that he had accepted its terms.

**18.** In paragraph 17 of *Govind Rubber*, the Supreme Court observed:

> "We are of the opinion that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it."

**19.** This principle has to be kept in mind while deciding the present matter. If the parties have agreed to refer their disputes to arbitration, the Court should not reject such agreement by insisting upon a form which the law does not require. But the Court cannot create an arbitration agreement on behalf of the parties when there is no material showing their consent. The intention of the parties has to be found from the documents and their conduct. The



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Court cannot put its own intention in place of the intention of the parties.

**20.** The facts of *Govind Rubber* need to be noticed. In that case, there was a sales contract containing the terms of the transaction. The appellant had issued a purchase order and had requested a change in the payment terms. This request was accepted. The Supreme Court considered an e-mail dated 27 August 2008, by which the appellant had acknowledged the change in the payment terms. Thus, actual correspondence between the parties was available. The conduct of the appellant was according to the sales contract. It was in these circumstances that the Supreme Court held in paragraph 23:

> "It is clear that for construing an arbitration agreement, the intention of the parties must be looked into. The materials on record which have been discussed hereinabove make it very clear that the appellant was prima facie acting pursuant to the sale contract issued by the respondent. So, it is not very material whether it was signed by the second respondent or not."

**21.** The facts in *Govind Rubber* are not the same as the facts of the present case. In that case, correspondence and an e-mail showing the conduct of the parties were available before the Court. Here, the Bank has not produced the digital application or the electronic record showing that the Respondent had accepted the terms. However, the principle laid down in *Govind Rubber* is not limited only to correspondence between commercial parties. Paragraph 16 of that judgment refers to internet purchases, tele purchases, ticket bookings and standard form contracts. Therefore,



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the same principle can apply to a Credit Card facility. But the identity of the cardholder and some record showing acceptance of the terms must be available, at least prima facie.

**22.** The next question is how far this Court is required to examine the matter while deciding an Application under Section 11 of the Arbitration Act. The Bank has relied upon *A.P. Power Generation Corpn. Ltd. v. Tecpro Systems Ltd.*, (2026) 3 SCC 491. In paragraph 13, the Supreme Court explained that the enquiry of the Court under Section 11(6-A) is limited to finding out whether an arbitration agreement exists. The Supreme Court noticed that under Section 16, the Arbitral Tribunal has the power to decide objections relating to its own jurisdiction and the existence and validity of the arbitration agreement. In paragraph 14, the Supreme Court held:

> "The legislative policy under the 1996 Act strongly favours minimal judicial intervention at the pre-arbitral stage. A long line of precedents, such as Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd, (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , the Constitution Bench decision in Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1] , and SBI General Insurance Co. Ltd. v. Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567] have authoritatively settled that the enquiry under Section 11 is confined to a prima facie determination of the existence of an arbitration agreement and no further. The referral court is required to undertake only a prima facie determination of the existence of an



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> arbitration agreement [Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., (2025) 2 SCC 192 : (2025) 1 SCC (Civ) 47] , and refrain from entering into contentious factual or legal issues related to authority, capacity, arbitrability, maintainability, or merits of claims."

**23.** The above principle means that this Court is not required to conduct a full trial while deciding an Application under Section 11. This Court need not finally decide whether every transaction made through the Credit Card was authorised, whether the amount claimed by the Bank is correct, or whether the Respondent is liable to pay the amount demanded. These matters can be considered by the Arbitral Tribunal on the basis of evidence. But the limited nature of the enquiry does not mean that the Court should accept whatever the Bank says without looking at the documents. The Court must still examine whether there is material which shows, at least prima facie, that an arbitration agreement exists. In paragraph 17 of *A.P. Power Generation*, the Supreme Court stated:

> "Beyond the prima facie enquiry, it should be the discipline of the referral court to refrain from undertaking a detailed enquiry on basis of evidence to arrive at a finding of fact in the nature of a "proof"."

**24.** The Supreme Court thereafter referred to paragraphs 165 to 167 of *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*, (2024) 6 SCC 1. In paragraph 165, the Supreme Court explained that the word "examination" used in Section 11(6-A) means a prima facie examination. The existence of the arbitration agreement has to be considered with reference to Section 7. It was explained that



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formal validity includes the requirement that the agreement must be in writing. The other questions relating to its actual existence and validity can be decided by the Arbitral Tribunal under Section 16. Paragraph 166 of *Interplay* is important in this connection. It states:

> "The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can be gauged from the plain language of the statute."

**25.** Paragraph 167 states:

> "Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry."

**26.** These observations have to be read together. The Court should not conduct a mini-trial. But at the same time, it has to look at the dealings between the parties and examine whether an arbitration agreement exists. The party relying upon the



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arbitration agreement has to place some material before the Court. A mere statement that an agreement exists will not be sufficient in every case. The Court has to see whether there is some written record showing that the parties had agreed to refer their disputes to arbitration.

**27.** The Bank has relied upon these principles and has argued that this Court should not make a detailed enquiry into the manner in which the Respondent accepted the terms through the digital process. This argument is correct to the extent that this Court is not required to finally decide whether every digital record is genuine or whether the Bank's claim is correct. However, before asking the Court to refer the dispute to arbitration, the Bank must show some material which prima facie establishes that an arbitration agreement exists. The limited enquiry under Section 11 cannot be used as a reason to avoid the requirement of Section 7.

**28.** When these principles are applied to the present case, the first circumstance which requires consideration is that the Bank has produced the written Cardholder Agreement. The arbitration clause is contained in Clause 32.2. The Bank has produced the MITC containing Clause 2.1. This clause does not say that only a signature on the application can amount to acceptance. It provides that making an online application, applying through e-mail, signing on the reverse of the Card or using the Card will amount to acceptance of the terms and conditions. Therefore, the written terms themselves recognise that the Cardholder may accept the agreement by his conduct, namely, by using the Credit Card.



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**29.** The second circumstance is that the Credit Card and the account are connected with the name of the Respondent. The statement of account refers to the Respondent, the Credit Card ending in 1165 and the CRN relating to the facility. It shows an outstanding amount of Rs.5,46,655.34. It shows that this amount was carried forward as the previous statement dues. It is true that the copy produced before the Court does not show the individual transactions. Even then, it is a statement maintained by the Bank in relation to the very Credit Card which, according to the Bank, was issued to the Respondent.

**30.** The third circumstance is the affidavit of the authorised representative of the Bank. In paragraphs 2, 5 and 6 of the affidavit, he has stated on oath that the Respondent obtained the Credit Card facility through the digital process of the Bank, accepted the terms and conditions and used the facility. The affidavit gives the Application ID and refers to the statement of account. These statements have not been made only in the Arbitration Application. They have been repeated on oath in the supporting affidavit. The Court has considered the fact that the Bank has not produced the electronic record showing acceptance of the terms. The Bank has explained that the records are with its earlier vendor and that the agreement with the vendor has been terminated. This explanation may show why the Bank is unable to produce those records at present. But this explanation cannot prove that the Respondent had given his consent. The Bank cannot establish an arbitration agreement only by saying that the electronic records are with a vendor and may be produced later.



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The Bank has to rely upon the material which is placed before the Court. However, the Bank's case is not based only on the Application ID or on the statement that the digital records may be produced later. The Bank has relied upon Clause 2.1 of the written Cardholder Agreement and the statement of account relating to the Respondent's Credit Card. Clause 2.1 says that use of the Card amounts to acceptance of the Cardholder Agreement. The authorised representative of the Bank has stated on oath that the Respondent used the Card. The statement of account, though it does not give the detailed transactions, shows an outstanding amount against the same Card and account. When all these materials are considered together, they give prima facie support to the Bank's case that the Credit Card facility was obtained and used by the Respondent.

**31.** It is true that the statement of account does not show the individual transactions. For this reason, the statement cannot decide the final liability of the Respondent. The Bank may have to produce the detailed statement, transaction records and other supporting documents before the Arbitral Tribunal. But at this stage, while considering the Application under Section 11, the Court is not deciding the amount payable or whether every entry in the statement is correct. The limited question is whether there is prima facie material to show that the Respondent accepted the written Cardholder Agreement containing the arbitration clause. For this limited purpose, the statement of account, the affidavit of the authorised representative and Clause 2.1, when read together, are sufficient. The Court is aware that the statement made by the



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Bank that the Respondent used the Card does not finally prove that every transaction was made by the Respondent or with his authority. The Respondent will be free to raise before the Arbitral Tribunal any objection regarding issue of the Card, its delivery, its actual use, unauthorised transactions, correctness of the account or applicability of the terms and conditions. The Bank will have to prove these matters by producing proper evidence. Nothing stated in this order will prevent the Respondent from raising such objections before the Tribunal.

**32.** It is necessary to notice the stand of the Respondent as stated in the Application. In paragraph 16, the Bank has stated that after the statement of claim and the application under Section 17 were served by e-mail, the Respondent objected to the appointment of the proposed sole arbitrator. He did not agree to the name suggested by the Bank. This shows that the Respondent did not agree to the appointment of that particular arbitrator. However, this objection does not mean that the Respondent has denied the existence of an arbitration agreement. At the same time, it cannot be treated as an admission by the Respondent that such an agreement exists. No separate statement of claim and defence, or written defence by the Respondent denying the existence of the Cardholder Agreement, has been placed before this Court. Therefore, Section 7(4)(c), which refers to an exchange of statements of claim and defence, cannot be applied only because the Respondent sent an e-mail objecting to the proposed arbitrator. The finding in the present case is not based on any admission by the Respondent under Section 7(4)(c). It is based on the written



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Cardholder Agreement, Clause 2.1 of that Agreement, the statement of account and the affidavit filed by the Bank.

**33.** The Bank has relied upon the RBI material relating to digital lending. It has submitted that the Credit Card facility was provided through a digital process. The Bank has stated that the amount claimed is public money and that non-payment of such dues affects the interest of the Bank and the public at large. These submissions have been considered. The regulatory directions relating to digital lending may regulate the manner in which a Bank carries on its digital lending activities. They may explain the use of digital methods. But these directions by themselves cannot prove that a particular customer accepted a particular arbitration clause. The existence of the arbitration agreement must still be examined under Section 7 of the Arbitration Act. In the same way, only because the Bank says that public money is involved, the requirement of consent cannot be ignored. An arbitration agreement must come from an agreement between the parties.

**34.** The earlier order dated 7 October 2026 recorded that the main document showing acceptance by the Respondent had not been produced. Therefore, the Bank was directed to produce a copy of the application showing the physical or digital signature of the Respondent. That direction was made on the basis of the material which was then available before the Court. However, after considering Section 7 and the Cardholder Agreement as a whole, it is necessary to make clear that a physical or digital signature is not the only method of acceptance recognised by law. The earlier direction to produce a signed application cannot be understood to



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mean that an arbitration agreement can never exist unless such signature is produced. As explained by the Supreme Court in *Govind Rubber*, an agreement may be established through another written record showing the consent of the parties.

**35.** In the present case, the Bank has not produced the signed application or the digital audit trail. However, Clause 2.1 of the Cardholder Agreement provides that use of the Card amounts to acceptance of its terms. The Bank has produced a statement of account connected with the Respondent and the particular Credit Card. Its authorised representative has stated on oath that the Respondent obtained and used the facility. After considering all these materials together, the Court finds that there is prima facie material to show that the Respondent accepted the Cardholder Agreement by using the Credit Card. Therefore, the absence of a physical or digital signature on the application does not prevent the Bank from seeking reference of the dispute to arbitration. This finding does not mean that the Bank is free from its duty to prove the complete facts before the Arbitral Tribunal. The Bank has stated that the original digital records are with its vendor. The Arbitral Tribunal may require the Bank to produce those records, the complete transaction history, the record showing delivery and activation of the Card and any other relevant material. If the Bank does not produce such records even when it is asked to do so, the Tribunal will be free to consider the effect of such failure. This Court is not giving any final finding about the amount due or the liability of the Respondent for each transaction.



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**36.** The Supreme Court, in paragraph 19 of *A.P. Power Generation*, has again stated that once the Court referring the matter to arbitration is satisfied that an arbitration agreement prima facie exists, a detailed examination of the evidence must be left to the Arbitral Tribunal. The same approach is required in the present case. This Court has examined the written agreement and the material available only to the extent required to find out whether an arbitration agreement prima facie exists. Any examination of the digital process and the individual transactions would go beyond the limited enquiry required under Section 11. After considering the entire material, the Court holds that only because the Credit Card Application does not bear the physical or digital signature of the Respondent, it cannot be held that no arbitration agreement exists. Section 7 does not say that a signature is the only method by which consent can be recorded. In the present case, Clause 2.1 of the Cardholder Agreement recognises use of the Card as acceptance of the agreement. The statement of account and the affidavit of the Bank's authorised representative provide prima facie material showing such use. Therefore, Clause 32.2, which contains the arbitration clause, is prima facie shown to form part of the agreement governing the Credit Card facility.

**37.** The Court accordingly records a finding that, for the purpose of Section 11 of the Arbitration and Conciliation Act, 1996, a prima facie arbitration agreement exists between the Applicant Bank and the Respondent. However, the questions regarding genuineness of the digital application, actual use of the Credit



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Card, authority for the individual transactions, correctness of the statement of account and the amount payable are left open for decision by the Arbitral Tribunal under Section 16 of the Act. The Respondent will be free to raise all these objections before the Tribunal. The Tribunal shall decide them independently after considering the pleadings and the evidence produced before it.

38. In the aforesaid circumstances, the present Application under Section 11 of the Act, is deserved to be disposed of in terms of the following order:

A) Mr. Shadab Jan, Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences arising between the Applicants and the Respondents in relation to the cardholder Agreement Agreement in each of the four Arbitration Application, including the claims and counterclaims arising therefrom;

Office Address:- 1701, OneInfinity, Cawasji Patel Street, Fort, Mumbai – 400 001.

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B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;



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C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the



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Tribunal in relation to costs.

39. All questions relating to the genuineness of the digital applications, actual use of the Credit Cards, authority for the individual transactions, correctness of the statements of account and the amounts claimed by the Applicant Bank are expressly kept open. The respective Respondents shall be at liberty to raise all such objections before the Arbitral Tribunal. The Arbitral Tribunal shall decide the same independently, in accordance with law and on the basis of the pleadings and evidence placed before it.

40. The findings recorded in the common judgment are only for the limited purpose of deciding the Applications under Section 11 of the Arbitration and Conciliation Act, 1996. They shall not be treated as final findings on the merits of the claims or the defences of the parties.

41. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)



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