



Date of decision: 24th FEBRUARY, 2026

+ **ARB.P. 2061/2025**

Through: Mr. Rajiv Nayar, Sr. Advocate with
Mr Shivam Goel, Advocate.

VISHNU KUMAR SUREKA (HUF) & ORS.Respondents

Mr. Sudhir Nandrajog, Senior Advocate with Mr. Sachin Yadav and Mr. N.P. Singh, Advocates for R-4.

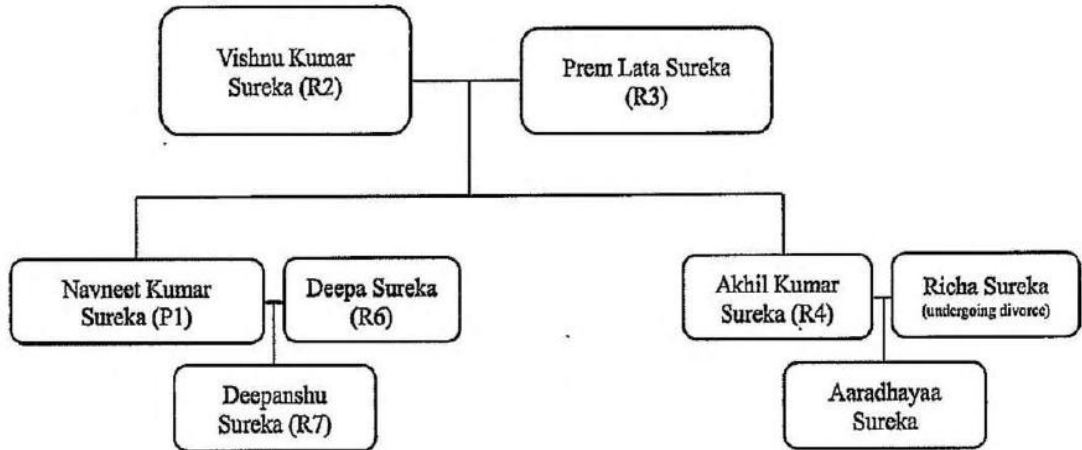
Mr. Anirudh Bakru and Ms. Sanya
Sharma, Advocates for R-6 and 7.

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

1. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as ‘the Arbitration Act’*), has been filed by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under a Memorandum of Understanding dated 04.05.2024 (*hereinafter referred to as “the MoU”*).



2. The dispute has primarily arisen between the members of the Surekha Family. Relationship of parties to the Petition are as under:



3. Respondent No. 2 is the patriarch of the Surekha Family. Respondent No. 3 is the wife of Respondent No. 2. Petitioner No. 1 is the elder son of Respondents No. 2 and 3. Respondent No. 4 is the younger son of Respondents No. 2 and 3. Respondents No. 6 is the wife of the Petitioner No.1 and Respondent No.7 is the son of Petitioner No. 1. It is stated that for decades, Sureka family conducted its businesses through multiple family-controlled companies and Hindu Undivided Families (**HUFs**), accumulating substantial movable and immovable assets. Petitioner No. 2 is an HUF of which Petitioner No. 1 (elder son) is the *karta*. Similarly, Respondent No. 2 (father) is the *karta* of Respondent No. 1/HUF and Respondent No. 4 (younger son) is the *karta* of Respondent No. 5/HUF.

4. It is stated that Surekha family collectively holds ownership, control and management of 34 companies, out of which 5 companies are listed and the remaining 29 companies are unlisted companies.



5. It is stated that from the year 2011, owing to the expansion of family businesses and the need for operational independence, discussions commenced among all family members to restructure and segregate control and management of the family enterprises between the two sons. It is stated that these discussions were facilitated by Mr. Anand Gupta, a close family elder, with the active participation and consent of Respondents No.2 and 3, and it was broadly agreed that Petitioner No.1 along with his HUF (Petitioner No.2), his wife (Respondent No.6) and son (Respondent No.7) would constitute one group (**Group A**), while Respondents No.2 and 3 along with Respondent No.4 and their HUFs (Respondents No.1 & 5) would constitute the other group (**Group B**). It is stated that during the course of these discussions, various proposals were exchanged and certain oral understandings were acted upon in parts which included resignations of some family members from boards of some of the companies and *inter se* transfer of shareholdings in some of the companies. It is stated that one such proposal was a draft family settlement dated 19.02.2022 circulated by Mr. Anand Gupta under which 39 companies were divided amongst Group A and B. Under the said Family Settlement 18 companies were given to Group A and 21 companies were given to Group B. However, it is stated that the said draft family settlement was never accepted or signed by any family member and was not treated as a concluded settlement. It is stated that though the Respondents later sought to rely upon it selectively, since the said settlement was an unsigned document, it was never given effect to.

6. It is stated that until early 2024, the entire family continued to reside together at the family farmhouse at Rajokri. It is stated that on 14.02.2024,



differences arose between the family members, when Respondent No.4, who was separated from his wife and litigating against her, brought his secretary to the family home, resulting in irreconcilable discord between the brothers and the Petitioner No.1 shifted out of the ancestral residence with his wife and son.

7. It is stated that in early 2024, with the consent of all family members including Respondents No.2 and 3, a comprehensive oral family settlement was finally arrived which was formally recorded in the Memorandum of Understanding dated 04.05.2024 (*hereinafter referred to as the 'MoU'*), under which 34 family-held companies were divided between two groups, described in the MoU as Group A and Group B. Under the said MoU, Mauria Udyog Limited and 16 other companies mentioned in Group A were given to the Petitioner No.1, his HUF, his wife and son, who were described as "*parties to the first part*" of the MoU. While the remaining companies, including Jotindra Infrastructure Limited, Veshnodevi Properties Private Limited and 15 other companies mentioned in Group B were given to Respondents No.4 and 5, who were described as "*parties to the second part*" of the MoU. It is pertinent to mention that Respondent No.3 was a witness to the MoU dated 04.05.2024. It is also pertinent to mention that Respondent Nos. 1, 2 and 3 are not signatories to the MoU dated 04.05.2024.

8. Clause 7 of the MoU contains an arbitration clause which provides that all disputes arising out of or in connection with the MoU, including its existence, validity, and interpretation, shall be referred to arbitration and the seat of Arbitration shall be in New Delhi. A perusal of Clause 10 of the MoU shows that the said MoU is subsequent to the part family settlement



entered into by the parties and that the contents of the MoU are in line with the part family settlement. However, there is ambiguity as to which family settlement was being referred to in the MoU as the date of the family settlement is not mentioned in the said Clause of the MoU because as per the parties, a number of attempts were made between the parties to settle the disputes and various proposals were exchanged between the parties.

9. It is stated that pursuant to the execution of the MoU dated 04.05.2024, the parties have acted upon the same. Respondent No.3 resigned from the directorship of Mauria Udyog Limited. It is stated that Respondent No.2, acting as *karta*, executed gift deeds dated 10.04.2024 and 28.08.2024 transferring shares of several companies, including 3,33,000 shares of Mauria Udyog Limited, to the son of Petitioner No.1. Further, Petitioner No.1 and his wife exited from key management positions in companies allotted to the other group, including Jotindra Infrastructure Limited. It is stated that multiple *inter se* transfers of shareholding and resignations were effected during 2024 and early 2025, demonstrating that the MoU was treated as binding and acted upon.

10. It is stated that Respondent No.4 resiled from the settlement and began acting dishonestly by instigating litigation and criminal complaints. It is stated that on 25.11.2024, a complaint was lodged by Jotindra Infrastructure Limited before the Cyber Cell, Faridabad. It is stated that the said complaint was later closed. It is stated that on 29.06.2025, Respondents No.2 and 3 lodged a criminal complaint against Petitioner No.1 alleging forgery and illegal removal from companies, leading to registration of FIR No.386/2025 dated 22.07.2025. It is stated that the said FIR is presently



11. It is stated that from 15.08.2025 onwards, Respondent No.2, acting as *karta* of the HUF and allegedly in collusion with Respondent No.4, began selling HUF-held shares of Mauria Udyog Limited in violation of the MoU dated 04.05.2024, causing a substantial decline in share value of the said company. It is stated that this compelled Petitioner No.1 to file OMP(I)(COMM) 404/2025, before a co-ordinate Bench of this Court, wherein *vide* order dated 25.09.2025, this Court restrained Respondents No.1 to 3 from selling, alienating, transferring and/or creating third party rights in respect of their shareholding in Mauria Udyog Limited.

12. It is stated that Respondents No.1, 2 & 3 also initiated proceedings against the Petitioner No. 1, Respondents No. 6 and 7 by filing a Company Petition bearing CP No.149/241-242/ND/2025, before the NCLT, alleging oppression and mismanagement of one of the family-held companies i.e., Veshnodevi Properties Pvt. Ltd, by the Petitioner No.1 herein. It is stated that in the said Petition before the NCLT, the Respondents No.1, 2 & 3 relied on the unsigned draft family settlement dated 19.02.2022.

13. It is stated that faced with continued non-compliance and denial of obligations under the MoU dated 04.05.2025, the Petitioners invoked the arbitration clause by sending a notice dated 25.09.2025 under Section 21 of the Arbitration Act, calling upon the Respondents to concur in the



15. It is the case of the Petitioner that non-signatories to the MoU have been impleaded as parties to the present Petition for the reason that Respondents No. 2 & 3 were not strangers to the MoU but were actively and directly involved in facilitating negotiations to arrive at a settlement and execution of the MoU dated 04.05.2024. It is the case of the Petitioner that Respondent No.2, being the patriarch and *karta* of the HUF, played a facilitative and approving role, while Respondent No.3 was fully aware of and consented to the arrangement and has signed the MoU as a witness, thereby acknowledging the terms recorded therein. The Petitioner has further pleaded that the so-called non-signatories have acted upon and derived direct benefits under the MoU, including but not limited to, by resigning from directorships, executing gift deeds, transferring shares, exiting from management and promoter positions, and permitting *inter se* transfer of control of companies strictly in furtherance of the settlement recorded in the MoU and since the non-signatories, have accepted and enjoyed the benefits of the MoU, they cannot deny its binding nature, including the arbitration clause contained in the MoU. It is also stated that



Respondent No.1 and Respondent No.5, which are HUFs, are not separate juristic entities, and that any agreement entered into by the *karta* is *ipso jure* binding upon the HUF.

16. The Petitioner has further relied upon the admissions and conduct of Respondents No.1 to 3 in parallel proceedings, including their reliance upon the alleged family settlement before the NCLT and admissions in pleadings filed before this Court in OMP(I)(COMM) 404/2025, wherein it is stated that the family settlement dated 19.02.2022 and the MoU dated 04.05.2024, have been acted upon and, therefore, they cannot dispute the arbitrability of the disputes which have arisen from the MoU dated 04.05.2024. It is stated that before the NCLT, it was the case of the Respondents No.1, 2 & 3 that the family settlement dated 19.02.2022 was executed for division and control of the family properties. It is, therefore, the case of Petitioner that both – the family settlement dated 19.02.2022 and the MoU dated 04.05.2024 have to be taken as a composite arrangement and, therefore, the parties to the family settlement dated 19.02.2022, even though it was unsigned, are veritable parties to the MoU dated 04.05.2024. It is also stated that the MoU is in the nature of a family settlement which is governed by special equities and that exclusion of certain family members on the pretext of non-signatory status would lead to fragmentation of disputes and defeat the very object of the settlement.

17. When the matter came up for hearing for the first time, all the parties were represented before this Court and detailed arguments were heard from all the parties on the issue as to whether all the parties can be referred to arbitration proceedings or only signatories to the MoU be referred to the



arbitration proceedings where the Petitioner will file an application under Order I Rule 10 of the CPC seeking impleadment of the non-signatories as parties to the arbitral proceedings and the same be left to be decided by the learned Arbitrator.

18. Learned Senior Counsel appearing for the Petitioner contends that the MoU dated 04.05.2024 mentions about a partial family settlement arrived amongst the Surekha family. He states that it is not disputed that since 2011, family discussions were going on for division of the companies. He states that discussions included the entire family, i.e. the Petitioners and the Respondents and Mr. Anand Gupta, who is the *fufa* of the Petitioner No.1. He states that during the discussions, two groups were formed, namely, Group A & Group B. He states that Group A comprised of the Petitioner No.1 & Respondents No.6 & 7 and Group B comprised of the Respondent No. 1, Respondent No. 2, Respondent No. 3, Respondent No. 4 and Respondent No. 5. It is stated that since 2011 numerous draft settlements were exchanged by the parties and the draft family settlement dated 19.02.2022 is one such draft settlement and part of the family settlement was arrived at in the year 2024, which was recorded in the MoU dated 04.05.2024. He states that the MoU categorically records that the companies which are a part of the MoU will be divided into two groups and parties of each part will give away their control of the companies which will be allotted to the other group. He states that steps have been taken in that direction. He states that Respondents No.2 & 3 have a very important role in the execution of the MoU and, therefore, they are necessary parties to the MoU even though they are non-signatories to the MoU. He further states



that Pursuant to and in furtherance of the settlement recorded in the MoU, Respondent No.3 resigned from the directorship of Mauria Udyog Limited on 04.10.2024, thereby vacating management and control in favour of the group of Petitioner No.1. Similarly, Respondent No.2, acting in his capacity as *karta* of Vishnu Kumar Sureka HUF and with full knowledge of the MoU, executed gift deeds dated 10.04.2024 and 28.08.2024 thereby transferring shares of multiple companies, including 3,33,000 shares of Mauria Udyog Limited, to the son of Petitioner No.1. He states that these steps were taken to give effect to the division of control contemplated under the MoU. He states that these acts, taken cumulatively, demonstrate that the Respondents No.1, 2 & 3 not only permitted but actively facilitated the realignment of shareholding, exit from management, and transfer of effective control of multiple companies exactly in the manner contemplated in the MoU, and that they simultaneously received the corresponding benefits of exclusive control over companies falling to their share and, therefore, the conduct of the Respondents No.2 & 3, who are non-signatories to the MoU, shows that they have also acted in furtherance of the MoU and, therefore, they are necessary parties to the arbitration proceedings.

19. Learned Counsel for the Petitioner has placed reliance on the Judgment of the Apex Court in Ajay Madhusudan Patel v. Jyotrindra S. Patel, (2025) 2 SCC 147, wherein the Apex Court had referred all the parties to the arbitration and had left it to the discretion of the Arbitrator as to who all should be made party to the arbitral proceedings. Attention of this Court has been drawn to paragraph No.91, 92 & 93 of the said Judgment to contend that it should be open for the learned Arbitrator to take a decision as



to who all should be a part of the arbitral proceedings and this Court should not decide on the said issues at this juncture. Relevant portions of the said judgment reads as under:

“91. A detailed examination of numerous disputed questions of fact are imperative in deciding whether the SRG Group participated in the negotiation and performance of the underlying contract and can be bound by the arbitration agreement. At the cost of repetition, we may state that under our limited jurisdiction afforded under Section 11(6) of the 1996 Act we should not conduct a mini trial and delve into contested or disputed questions of fact. This has been categorically laid down in several decisions of this Court including Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] Further, it is also the case of the SRG Group that a dual test needs to be satisfied before it is compelled to be a party to the present arbitration proceedings i.e.:

(a) SRG Group should be shown to have agreed to the underlying contract, and

(b) SRG Group should also be shown to have agreed to be bound by the arbitration agreement.

We are of the considered view that the same requires a much more detailed examination of the evidence that may be adduced by the parties which can only be gone into by the Arbitral Tribunal.



92. Therefore, considering the complexity involved in the determination of the question whether the SRG Group is a veritable party to the arbitration agreement or not, we are of the view that it would be appropriate for the Arbitral Tribunal to take a call on the question after taking into consideration the evidence that may be adduced by the parties before it and the application of the legal doctrine as elaborated in the decision in Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] .

93. We also prima facie find force in the contention of the petitioner AMP Group that the nomenclature of the agreement is not determinative of its character as held by this Court in Sasan Power [Sasan Power Ltd. v. North American Coal Corpn. (India) (P) Ltd., (2016) 10 SCC 813 : (2017) 1 SCC (Civ) 216] . Therefore, the fact that the underlying contract is called the “Family Arrangement Agreement” by itself may not preclude the impleadment of the SRG Group in arbitration.”

20. Learned Counsel for the Petitioner further states that Respondents No.2 and 3 have become veritable parties to the MoU despite being non-signatories as they have voluntarily acted upon the settlement in terms of the MoU dated 04.05.2024 and have drawn substantial, direct, and tangible benefits under the said MoU, including by resigning from management, permitting transfer of control of companies, and executing and witnessing gift deeds transferring shareholding in furtherance of the division recorded in the MoU. He states that Respondent No.2, being the patriarch and *karta* of the HUF, not only facilitated and approved the settlement but also performed obligations arising therefrom, while Respondent No.3 attested the



Page 13 of 30



segregation of family control and ownership. He, therefore, states that the Respondents No.1, 2 & 3 cannot approbate the 2022 settlement for deriving benefits or for proceedings before other forums while disowning the MoU and its arbitration clause, as the transactions are inseparable, interdependent, and inextricably intertwined. He, therefore, states that the disputes must be referred to arbitration in terms of the arbitration clause contained in the MoU, failing which the very object of a composite family settlement would be defeated.

21. Learned Counsel appearing for the Respondents No.6 & 7 have supported the case of the Petitioner.

22. Learned Senior Counsel appearing for the Respondents No.1, 2 & 3, who are non-signatories to the MoU, vehemently opposes the submissions made by the learned Senior Counsel for the Petitioner. He states that non-signatories to the MoU cannot be referred to arbitration as the MoU was solely and exclusively entered into between the Petitioners and Respondents No.6 & 7 on the one side and Respondents No.4 & 5 on the other side. He states that a reading of the MoU does not reveal or contemplate division of the family or HUF assets, transfer or alienation of shares or any disposition of the HUF property and that the Petitioners are only trying to expand the scope of the MoU. He states that Respondents No.1,2 & 3 are complete strangers to the MoU and in the absence of privity of contract, Respondents No.1, 2 & 3 cannot be forced to submit themselves to arbitration as they are non-signatories to the MoU. He states that the family settlement dated 19.02.2022 is an unsigned document and since the said settlement is not a part of the MoU, Respondents No.1, 2 and 3 cannot be made part of arbitral



proceedings. He further states that Clause 10 of the MoU is extremely vague.

23. Learned Counsel for the Respondents No.1, 2 & 3 states that the fact that Respondents No.2 & 3 have relied on the family settlement dated 19.02.2022 in the proceedings before the NCLT actually augments the stand of the Respondents No.2 & 3 that they are party to the family settlement and not a party to the MoU. He also states that there are a few companies which are a part of the family settlement but not a part of the MoU. He also states that the Petitioners are taking a contrary stand while on the one hand they are saying that the family settlement was no signed but on the other hand they are relying on the same family settlement to contend that it should be read as a part of the MoU and this is being done only to make the non-signatories to the MoU as a party to the arbitral proceedings and the same ought not be accepted. He states that while the Petitioner seeks to bind Respondents No. 1 to 3, who are admittedly non-signatories to the MoU by invoking a purported oral "family arrangement" of early 2024, the Petitioner has simultaneously and unequivocally denied the existence and binding nature of the Family Settlement dated 19.02.2022. He states that the said settlement was merely a draft and was never accepted, and, therefore, the Petitioner has extinguished the very foundation on which any attempt to bind the Respondents could rest. He states that the Petition, premised on shifting stands and unsubstantiated assertions of oral arrangements, is thus legally untenable and seeks to subject the Respondents to arbitral proceedings in the absence of any valid jurisdiction. He further states that the Petitioner's entire attempt to compel the non-signatory Respondents to



24. He further states that the MoU dated 04.05.2024, which contains the arbitration clause relied upon by the Petitioner No.1, was admittedly executed solely by the two brothers, the Petitioner No.1 and Respondent No.4 and in the absence of the 2022 Settlement as an overarching "umbrella



agreement," there exists no contractual or legal nexus connecting the parents or the HUF to the MoU executed between the sons. He states that the Petitioner's denial of the 2022 Settlement is strategic and opportunistic, motivated solely by the fact that the Settlement contained an express recital excluding HUF assets and personal assets of the parents from the division. He states that by misrepresenting the 2022 family settlement as a "draft," the Petitioner seeks to circumvent this exclusion clause and wrongfully target the HUF's shareholding, which is a clear attempt to subvert both the law and the legitimate rights of the HUF.

25. Heard learned Counsel appearing for the Parties and perused the material on record.

26. The facts of the case reveal that Petitioner No.1 and Respondent No.4 are the children of Respondent Nos.2 and 3. There is a discord between the two brothers and the members of the family. In the Family Settlement, the companies have been divided between Group-A and Group-B. Parents, who are Respondent Nos.2 and 3, are supporting the case of Respondent No.4. The Petitioner No.1, his wife (Respondent No.6) and his son (Respondent No.7) along with Petitioner No.2 (HUF) are now in one group which is Group-A. Parents (Respondents Nos.2 and 3) and their younger son (Respondent No.4) along with their respective HUFs, i.e., Respondent No.1 & 5, are now in the other group, which is Group-B. It is also admitted that there are about 39 companies in the family which are subject matter of this petition were on other side, wherein 18 companies were assigned to Group-A and 21 companies were assigned to Group-B. The dispute is regarding division of companies between the two groups.



27. A Memorandum of Understanding (MoU) dated 04.05.2024 was also entered into between the Parties wherein Petitioner No.1, his wife (Respondent No.6) and his son (Respondent No.7) and the HUF belong to Petitioner No.1 were described as “*parties to the first part*” in the MoU and Respondent No.4 and the HUF of Respondent No.4 were described as “*parties to the second part*” in the MoU. In the MoU, 17 companies have been assigned to parties to the “*first part*” and 17 companies have been assigned to parties to the “*second part*”. A few companies which were part of the Family Settlement were not included in the MoU. The MoU contains an arbitration clause, however, the draft Family Settlement does not contain arbitration clause.

28. Alleging that Respondent No.4 and the Parents i.e., Respondent Nos.2 & 3 have not complied with their obligations under the MoU which contains an arbitration clause, a notice under Section 21 of the Arbitration Act was sent by the Petitioners to the Respondents invoking arbitration on 25.09.2025 which has been replied to by Respondent Nos.2 & 3 stating that they are not parties to the MoU and, therefore, not bound by the arbitration clause which led to the filing of the present petition by the Petitioners.

29. The question which arises for consideration is whether non-signatories to the MoU, which contains an arbitration clause, can also be referred to arbitration or not. The said question has been first answered by a Bench of five Judges of the Apex Court in Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 wherein the following questions were answered by the Apex Court:



“5.1. (a) Whether the Group of Companies doctrine should be read into Section 8 of the Act or whether it can exist in Indian jurisprudence independent of any statutory provision;

5.2. (b) Whether the Group of Companies doctrine should continue to be invoked on the basis of the principle of “single economic reality”;

5.3. (c) Whether the Group of Companies doctrine should be construed as a means of interpreting implied consent or intent to arbitrate between the parties; and

5.4. (d) Whether the principles of alter ego and/or piercing the corporate veil can alone justify pressing the Group of Companies doctrine into operation even in the absence of implied consent.”

30. The conclusion of the majority Judgment authored by the then Chief Justice of India, Dr. D.Y. Chandrachud in the Cox & Kings Ltd. (supra) reads as under:

“170. In view of the discussion above, we arrive at the following conclusions:

170.1. The definition of “parties” under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;



170.3. *The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;*

170.4. *Under the Arbitration Act, the concept of a “party” is distinct and different from the concept of “persons claiming through or under” a party to the arbitration agreement;*

170.5. *The underlying basis for the application of the Group of Companies doctrine rests on maintaining the corporate separateness of the group companies while determining the common intention of the parties to bind the non-signatory party to the arbitration agreement;*

170.6. *The principle of alter ego or piercing the corporate veil cannot be the basis for the application of the Group of Companies doctrine;*

170.7. *The Group of Companies doctrine has an independent existence as a principle of law which stems from a harmonious reading of Section 2(1)(h) along with Section 7 of the Arbitration Act;*

170.8. *To apply the Group of Companies doctrine, the Courts or tribunals, as the case may be, have to consider all the cumulative factors laid down in *Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd.*, (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80]. Resultantly, the principle of single economic unit cannot be the sole basis for invoking the Group of Companies doctrine;*

170.9. *The persons “claiming through or under” can only assert a right in a derivative capacity;*



170.10. *The approach of this Court in Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] to the extent that it traced the Group of Companies doctrine to the phrase “claiming through or under” is erroneous and against the well-established principles of contract law and corporate law;*

170.11. *The Group of Companies doctrine should be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements;*

170.12. *At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement; and*

170.13. *In the course of this judgment, any authoritative determination given by this Court pertaining to the Group of Companies doctrine should not be interpreted to exclude the application of other doctrines and principles for binding non-signatories to the arbitration agreement.*

171. *We answer the questions of law referred to this Constitution Bench in the above terms. The Registry shall place the matters before the Regular Bench for disposal after obtaining the directions of the Chief Justice of India on the administrative side.”*

(emphasis supplied)

31. The aforesaid conclusion indicates that the debate then further extended to the issue as to whether the Arbitral Tribunal can decide the issue



as to whether the non-signatories can be impleaded in the arbitration proceedings or not or only should the reference Court can decide as to whether non-signatories to the Agreement can be referred to arbitration.

32. A Co-ordinate Bench of this Court in Arupri Logistics (P) Ltd. v. Vilas Gupta, **2023 SCC OnLine Del 4297**, has taken a view that Arbitral Tribunal does not have the power under Order I Rule 10 of CPC to implead the non-signatories as part of the arbitration proceedings by observing as under:

*“92. As was held hereinbefore, the AT owes its origin principally to well recognised and identifiable sources. The principal source would be the agreement in terms of which parties may have resolved for all disputes being referred to an AT and thus choose a forum falling outside the circuit of national courts and the ordinary hierarchy of judicial authorities. The other would be rules framed by a body where the agreement contemplates institutional arbitration. Last but not the least would be the statutory laws framed by countries which are intended to govern and regulate ATs’. The agreement, institutional rules or national statutes would thus constitute the code or the body of laws specifying the powers that may be available to be exercised by the AT. As was pertinently observed by **Redfern and Hunter**, parties cannot by agreement invest powers upon an AT which are otherwise reserved to be exercised by courts and judicial institutions created by the State.*

93. What needs to be emphasised is that an AT cannot arrogate to itself powers which are neither conferred by the statute or the rules which govern the arbitration nor can it take recourse to inherent powers, which as has been found hereinabove, are acknowledged to inhere in courts and judicial



authorities only. The AT, cannot, therefore, expropriate for itself powers which are vested solely in judicial institutions. It remains bound by the provisions of the statutes which prevail and which in this case undisputedly is the Act. In the absence of a power of impleadment having been conferred upon the AT in terms thereof, it would have no authority or jurisdiction to join or implead parties to the proceedings. The Court has already found that the power to implead cannot be sustained or traced to Sections 16 or 17 or 19 of the Act. In fact, the Act incorporates no provision which could be even remotely considered as being liable to be read as being the repository of the power of the AT to implead.

94. The Act, wherever it was intended to expand the meaning to be ascribed to the word “party” has done so by introducing specific provisions in that respect. Even where such recourse was taken, the power has come to be conferred upon a judicial authority. If the AT were recognised to have the authority to invoke the alter ego or group of companies principles, it would undoubtedly result in the Court recognising a power vesting in the AT to compel the presence of a party who had never, at least ostensibly, agreed or conceded to its jurisdiction or authority to decide. Such a party would necessarily be one who had not even made party to the proceedings by the referral court. This would clearly result in the AT seeking to exercise authority over a party and compelling it to join the proceedings even though it may have never been ad idem on disputes being resolved by way of arbitration. This would not only result in the AT travelling far beyond the contours of the arbitration agreement but negate against the fundamental tenet of arbitration which is founded on consensus and agreement. The Court for all the aforesaid reasons, thus, finds itself unable to countenance the position as taken by the Sole Arbitrator in the present case.”



33. The aforesaid judgment indicates that only the Referral Court alone has the power to decide the issue as to whether non-signatories to the Agreement can be referred to arbitration or not. However, the judgment of Arupri Logistics (P) Ltd (supra) has been impliedly overruled by the Apex Court in ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd., (2025) 9 SCC 76 wherein the Apex Court has taken a view that there is no inhibition in the scheme of Arbitration Act which precludes the Arbitral Tribunal from impleading non-signatories to the arbitration proceedings. In the said Judgment, the Apex Court after taking into account the judgment of Cox & Kings Ltd. (supra) and other judgments has observed as under:

“141. What can be discerned from the above is that the recourse to doctrine of implied powers would be permissible, if without it, it is impossible to effectuate a final power, and such exercise of implied power would effectuate and advance the object of the legislation.

142. Cox & Kings (1) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] has elaborately acknowledged the unique complexities posed by contemporary business transactions to the traditional framework of arbitration. Historically, arbitration gained prominence in the context of straightforward and linear bilateral transactions under the mercantile system of law. While over the past century, the nature of modern commercial transactions has undergone a profound transformation with the involvement of multifaceted obligations between multiple parties and complex contractual structures more sophisticated than the linear parent-subsidiary type of organisation, that has rendered the traditional dyadic paradigms of



business obsolete, particularly in areas such as construction contracts, financing transactions, reinsurance contracts, the framework of arbitration has, to a significant extent remained unchanged, leading to a mismatch between procedural form and commercial substance.

143. *For arbitration to remain a viable and effective alternative mechanism for dispute resolution, it is imperative to ensure that commercial reality does not outgrow this mechanism. The mechanisms of arbitration must be sufficiently elastic to accommodate the complexities of multi-party and multi-contract arrangements without compromising foundational principles such as consent and party autonomy. The approach of courts and Arbitral Tribunal in particular must be responsive to the emerging commercial practices and expectations of the parties who submit themselves to it.*

144. *It was in this backdrop and the emerging best international practices that Cox & Kings (1) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] recognised the applicability of the “Group of Companies” doctrine and other principles of determining mutual consent, to bind even non-signatories to the arbitration agreement as parties, as long as they were a veritable party and found to have impliedly consented to such agreement. The legal basis of these principles was traced to not only the object of the 1996 Act, but to the substantive provisions of Section(s) 2(1)(h) and 7 thereto. However, mere recognition of these principles which ultimately seek to make the Indian arbitration law more responsive to the contemporary requirements, would be a farce, if the power to actually effectuate such principles, is not recognised, merely due to the absence of any explicit*



provision in this regard. We are of the considered opinion, that recognition of the power of joinder or impleadment of a non-signatory by an Arbitral Tribunal is a necessary intendment of the express provisions of Section(s) 2(1)(h) and 7 and the overall scheme and object of the 1996 Act as well as the fundamental canons of the law of arbitration of providing an effective alternative dispute resolution mechanism.

145. Thus, even in the absence of an express provision in the 1996 Act empowering the Arbitral Tribunal to implead or join a party who is otherwise bound by the arbitration agreement, the Arbitral Tribunal does possess such power by virtue of the doctrine of implied powers, as long as the same is in tandem with the scheme of the 1996 Act i.e. as long as the parties had either expressly or impliedly consented to the arbitration agreement as held in *Cox & Kings (1)* [*Cox & Kings Ltd. v. SAP (India) (P) Ltd.*, (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680].”

(emphasis supplied)

34. What, therefore, transpires is that the Arbitral Tribunal has definitely the power to take a decision as to whether the non-signatories can be impleaded as a party to the arbitration proceedings or not.

35. The issue is as to whether this Court should send all the parties to the Tribunal for taking a decision as to who should be parties to the arbitration proceedings or this Court should only send the parties to MoU to arbitration, leaving the parties to approach the Tribunal by filing applications for impleadment of non-signatories to the MoU.



36. The facts of the present case reveal that after the acrimony was broken out within the family, there have been attempts to bring out a settlement which resulted in the first draft Family Settlement dated 19.02.2022 wherein companies were divided which some members of the family deny that it was signed. An MoU dated 04.05.2024 was also entered into between the Parties wherein Petitioner No.1, his wife (Respondent No.6) and his son (Respondent No.7) and the HUF belong to Petitioner No.1 were described as “*parties to the first part*” in the MoU and Respondent No.4 and the HUF of Respondent No.4 were described as “*parties to the second part*” in the MoU. Though Respondent Nos.2 and 3 are not signatories to the MoU, however, Respondent No.3, who is the mother, is witness in the MoU. It is, therefore, cannot be said that the family was oblivious to the MoU and did not participate in the MoU. There is material to show that the MoU has been acted upon inasmuch as Respondent No.3/mother, who is the witness in MoU, has resigned from Mauria Udyog Limited which has been assigned to Group-A which belongs to Petitioner No.1. There is also material to show that the Respondent No.2/father, though not a signatory to the MoU, has executed Gift Deeds and transfer share of certain companies, including the share of Mauria Udyog Limited to Respondent No.7, son of Petitioner No.1, and the Petitioner No.1 and his wife (Respondent No.6) have exited from management positions in companies assigned to Group-B which belongs to Respondent No.4.

37. The one of the tests laid down by the Apex Court in Cox & Kings Ltd. (supra) regarding as to when non-signatories to the Arbitration Agreement can also be bound by the Arbitration Agreement is the conduct of the non-



signatory parties could be an indicator of their consent to be bound by the Arbitration Agreement.

38. Though the Respondents have raised a number of objections as to why they should not be bound by the Arbitration Agreement of the MoU, however, none of the objections raised by them deny the existence of Arbitration Agreement in the MoU which has been invoked by the Petitioners in the present case and, therefore, the existence of the *prima facie* Arbitration Agreement between the parties as stipulated under Section 11 of the Arbitration Act stands satisfied.

39. The present case deals with the dispute between the members of the same family i.e., Petitioner No.1, his wife (Respondent No.6) and his son (Respondent No.7) on one side and the Parents (Respondents Nos.2 and 3) and their younger son (Respondent No.4) on the other side. The issue is, therefore, complex in nature.

40. In view of the above, this Court is inclined to adopt the method as adopted by the Apex Court in ASF Buildtech (P) Ltd. (supra) and Ajay Madhusudan Patel (supra) that when complex issues on facts arise regarding the question as to whether non-signatory parties would be liable to the Arbitration Agreement or not, it would be appropriate for the Arbitral Tribunal to take a call on the said question after taking into consideration the evidence adduced by the parties before it and after taking into account the application of legal doctrine as elaborated by the Apex Court in Cox & Kings Ltd. (supra).



41. Accordingly, Justice Sanjeev Khanna, Former Chief Justice of India, (Mob. 9818123334) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

42. The Arbitrator will take a decision based on the evidence adduced by all the Parties as to whether who should be or should not be the party to the Arbitration proceedings.

43. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

44. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

45. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

46. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

47. It is made clear that all the observations made in the present case only pertain to determine the complexities of the facts regarding the question as to whether non-signatory parties would be liable to the Arbitration Agreement or not and the same cannot be treated as any conclusive view of the case.



48. The Petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 24, 2026

Rahul/S. Zakir/SM