IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2068 OF 2025

Luxempire Realty Private Ltd.
a Private Limited Company incorporated
under the Companies Act, 2013
having its registered office at S.No. 271,
CTS, 4337, Plot No. 3,
Shrinidhar Nagar, Pune — 411003 ... Petitioner

vs

1. **Eminence Landmarks LLP**
   Limited Liability Partnership
   registered under the LLP Act, 2008
   having its registered office at
   Shop No. 1, Cindrella Apartments,
   601, Sachapir Street, Pune 411001.

2. **M/s Gagan Platinum Spaces LLP**
   a Limited Liability Partnership
   registered under the LLP Act,2008
   having its registered office at 15/B,
   Wellesley Court, Wellesley Road,
   near Lal Deval, Camp, Pune 411001.

3. **Mr. Sushil Ghanshyam Agarwal**
   having office at 15/B, Wellesley Court,
   Wellesley Road, near Lal Deval,
   Camp, Pune 411001.

4. **Mr. Alnesh Mohamadakil Somji**
   having office at 15/B, Wellesley Court,
   Wellesley Road, near Lal Deval,
   Camp, Pune 411001.

5. **Mr. Vishal Ghanshyam Agarwal**
   having office at 15/B, Wellesley Court,
   Wellesley Road, near Lal Deval,
   Camp, Pune 411001.

6. **M/s Gagan Ace Developers**
   Partnership Firm registered under
   the Partnership Act, 1932
   having its registered office at 15/B,
   Wellesley Court, Wellesley Road,
   near Lal Deval, Camp, Pune 411001.

7. M/s Gagan Ace Horizon
Partnership firm registered under the Partnership Act, 1932 having its registered address at 15/B, Wellesley Court, Wellesley Road, near Lal Deval, Camp, Pune 411001.

8. M/s Gagan Unnati Ventures AOP
a Joint Venture undertaking comprising of an Association of Persons having address at 15/B, Wellesley Court, Wellesley Road, near Lal Deval, Camp, Pune 411001.

9. Gagan I-Land Township Private Limited
a private limited company, having registered office at 15/B, Wellesley Court, Wellesley Road, near Lal Deval, Camp, Pune 411001. ... Respondents

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Mr. Venkatesh Dhond, Senior Advocate with Mr. Rohan Kelkar, Ms. Karishma Rao, Mr. Vivek Shetty, Mr. Cheryl Fernandes, Mr. Ankit Pal and Mr. Naman Nayyar i/b. AZB and Partners for Petitioner.

Mr. Darius Khambata, Senior Advocate with Mr. Rohaan Cama, Mr. Karan Rukhana, Mr. Kyrus Modi, Ms. Vidhi Shah, Mr. Hariprasad Shetty, Mr. Abhishek Srinivasan, Ms. Julius D'Souze and Mr. Pradeep Kumar for Respondent No.1.

Mr. Yash Jariwala for Respondent Nos.2 to 8.

Mr. Amir Arsiwala with Ms. Vaishnavi Dhure and Ms. Rashmi Jain for Respondent No.9.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE: 16 October, 2025

Judgment (Per G.S. Kulkarni, J.)

1. This judgment is divided into the following sections to facilitate analysis:-

Sections	Heading	Para Nos.
A	Prelude	3
B	Facts	4 to 21
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D	Submissions on behalf of Respondent No.1	34 to 54
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F	Analysis and Order.	67 to 130

2. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

A. Prelude:

3. Although short, however, interesting questions arise for determination in the present proceedings arising from the impugned order passed by the learned sole arbitrator by which a third party and a non-signatory to the arbitration agreement, who stands outside the applicability of the group of companies doctrine whether can be impleaded as a party/respondent in the arbitral proceedings between respondent no. 1-Eminence Landmarks LLP (for short "**M/s. Eminence**") and Respondent No. 2 - M/s. Gagan Platinum Spaces LLP (for short "**M/s. Gagan**"), being the principal parties in the pending arbitral proceedings. The second question which falls for determination is, whether considering the nature of the impugned order and the position in law, the present proceedings filed under Article 226/227 of the Constitution can be entertained to interfere in the orders passed by the arbitral tribunal.

B. Facts

4. The facts relevant to the adjudication of the present proceedings are as under: The petitioner – Luxempire Realty Private Ltd. is a private limited company engaged in the business of purchasing lands, in and around the city of Pune for residential and commercial development. The case of the petitioner is that it is a bonafide purchaser of the land, being plot no. 262 described in the Schedule to the Deed of Conveyance dated 29 March, 2024 entered between respondent no. 9 and the petitioner under the Sangamwadi Town Planning Scheme No. 3, situated at village Sangamwadi, Taluka Haveli, District Pune (for short "**the said land**").

5. M/s. Eminence is a Limited Liability Partnership engaged in the business of investment in real estate ventures. M/s. Gagan is a development firm, engaged in the real estate construction. On 25 February 2017, M/s. Eminence and M/s. Gagan entered into an Articles of Agreement, under which respondent no. 1 advanced a loan of ₹25 crores to M/s. Gagan for the purchase and development of the said land. Under the terms of the Agreement, M/s. Eminence was guaranteed a minimum assured return of ₹54 crores by 31 March 2020 ("the Guaranteed Sum").

6. It is undisputed that at the time of execution of the Articles of Agreement dated 25 February 2017, M/s. Gagan did not own the said land, which was then held by one "Classic Citi Investments Private Limited". In other words, M/s. Gagan had no right, title and interest over the said land. The understanding between the parties was that M/s. Gagan would acquire the said land by utilizing the funds advanced by M/s. Eminence.

7. On 1 September 2017, Classic Citi Investments Private Limited executed a

Sale Deed transferring the said property in favour of respondent no. 9 - Gagan I-Land Township Private Limited. M/s. Eminence contends that respondent no. 9 forms part of the same corporate group as M/s. Gagan - respondent no. 2 to 8 and that it had participated in or benefited from the Agreement, thereby being bound by its terms.

8. Owing to alleged defaults in the repayment of the guaranteed sums in September 2023, M/s. Eminence invoked the arbitration agreement, namely, clause no. 7, as contained in the Articles of Agreement dated 25 February, 2017 executed between M/s. Eminence and M/s. Gagan-respondent no.2 and initiated arbitration proceedings against respondent nos. 2 to 8 on 30 November, 2023.

9. Meanwhile, in December 2023, as the said land was offered for sale by respondent no. 9, the petitioner, an independent real estate company had expressed its intent to purchase the said land from respondent No. 9. In pursuance thereto, on 8 December 2023, the petitioner's advocate issued a public notice for investigating the title of the said land, so as to invite objections. In response thereto, by letter dated 21 December 2023, advocate for M/s. Eminence raised objections alleging that M/s. Eminence held a valid charge over the land.

10. M/s. Eminence also filed an application under Section 9 of ACA before the District Court at Pune, seeking reliefs/interim measures over the said land. By an order dated 22 December 2023, the learned District Judge granted ex-parte ad-interim relief restraining respondent no. 9 from creating any third party rights in respect of the said land.

11. On 27 December 2023, M/s. Eminence issued another public notice cautioning the public not to deal with the said land. Further, on 8 January 2024, M/s. Eminence also registered a "*lis pendens*" referencing to the proceedings filed under section 9 of ACA.

12. Although respondent No. 9 was a non-signatory to the Agreement, it was subsequently impleaded in the arbitration proceedings on 16 January, 2024.

13. By judgment and order dated 22 March 2024, the learned District Judge at Pune, dismissed the Section 9 application filed by M/s. Eminence, observing that there existed no registered document creating any charge upon the said land and that the claim of M/s. Eminence of a charge on the said land could not be accepted.

14. It is the petitioner's case that, upon dismissal of the said application, it was established that there was no subsisting encumbrance or restraint over the said property. Consequent thereto, the petitioner purchased the property from respondent no. 9 under a registered Deed of Conveyance dated 29 March 2024, for valuable consideration of ₹128 crores. The order passed by the learned District Judge was accepted by M/s. Eminence and/or was not assailed by respondent no. 1, as an appeal filed against the said order was withdrawn by M/s. Eminence. Thus, the orders passed on the Section 9 proceedings filed by M/s. Eminence attained finality.

15. Learned Arbitrator by an order dated 11 April, 2024 impleaded M/s. Eminence as a party-respondent to the arbitral proceedings.

16. On such backdrop, on 12 November 2024, M/s. Eminence filed an impleadment application before the learned sole arbitrator seeking to implead the petitioner as a party-respondent in the pending arbitration proceedings. It was contended that since the petitioner had purchased the property during the pendency of the arbitration, necessarily the petitioner was "claiming through or under" respondent no. 9 and, therefore, was a necessary party to the arbitral proceedings. On 12 December, 2024, the petitioner filed a reply to the application filed by M/s. Eminence for impleadment.

17. The petitioner opposed the application contending that it was in no manner whatsoever concerned with the arbitration *inter se* between M/s. Eminence and M/s. Gagan nor it was a party/signatory to the Articles of Agreement dated 25 February, 2017 containing the arbitration clause, as such, there did not exist any arbitration agreement between the petitioner and any of the respondents. The petitioner urged that it was an independent legal entity unconnected with the respondents, and that mere purchase of property could not be equated to any consent to any arbitral jurisdiction. The petitioner placed reliance on the decision of the Supreme Court in **Cox & Kings Ltd. v. SAP India Pvt. Ltd.**[1] to contend that the doctrine of "group of companies" or "through or under" cannot be invoked absent the express or implied consent, as remotestly there was no intention of the petitioner to subject itself to any arbitral adjudication between M/s. Eminence and M/s. Gagan.

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1 (2024) 4 SCC 1

18. It was also contended that the petitioner had no connection with the dispute between these respondents and had never given any consent, either express or implied to be bound by arbitration. Also, there was no question of any implied consent and more particularly considering the well established principles of privity of contract and party autonomy. It was next contended that mere knowledge of arbitral proceedings can by no stretch of imagination be equated with implied consent to be bound by the same. The petitioner also contended that the petitioner was not 'claiming through or under' respondent no.9, for the reason that if a party is claiming through or under a party, it must step into the shoes of another, in a subordinate, inferior or derivative capacity and cannot have independent standing of its own, which usually happens in cases of assignment, subrogation or novation. It was contended that this was not the case in the petitioner purchasing the property under the Deed of Conveyance dated 29 March 2024 from respondent no. 9, a registered agreement which was an independent contract far away from the privity of the finance agreement dated 25 February 2017 entered between M/s. Eminence and M/s. Gagan and subject matter of the arbitration. It was also contended by the petitioner that in the absence of any assignment or subrogation or novation, simplicitor purchase of any asset can never be regarded, to put the petitioner as a party 'claiming through or under' for the purpose of attributing privity for an agreement to arbitrate. It was next contended that the petitioner did not have any inferior right or title to the subject property, so as to be a necessary consenting party to the arbitral proceedings as the petitioner was an independent bonafide purchaser of the said land.

19. The petitioner also contended that there existed no charge or encumbrances on the said land and in fact, the learned District Judge in its order dated 12 November 2024 by rejecting the Section 9 ACA application clearly observed that there was no charge on the subject property, much less of there being any registered agreement of any charge, hence, the property was free from all encumbrances. It is further contended that although the order passed by the District Court rejecting the application under Section 9 of ACA was appealed before this Court, by an order dated 29 January 2025, the appeal was permitted to be withdrawn. Hence, by no stretch of imagination or by applying any legal principles, the petitioner could be impleaded as a party to the arbitral proceedings.

20. The learned Sole Arbitrator, by the impugned order dated 20 January 2025, allowed the impleadment application. The learned sole Arbitrator held that since the petitioner had purchased the subject property from respondent no. 9 during the pendency of the arbitration proceedings and with full notice of M/s. Eminence asserted charge and interest over the same, the Petitioner was "claiming through or under" Respondent No.9 and therefore was required to be impleaded as a party respondent to the arbitral proceedings. The learned sole Arbitrator observed that even though the sale was an outright transaction, the rights of the petitioner were derivative in nature, as the petitioner had acquired title and possession from a party already before the Tribunal in arbitral proceedings. Relying upon the decisions of the Supreme Court in **Cox & Kings Ltd.** (supra) and of the Karnataka High Court in **M/s Devtree Corp. LLP v. Bhumika North Gardenia**[2], the learned sole Arbitrator

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concluded that a subsequent purchaser of property *pendente lite*, with notice of the pending proceedings, would be bound by the arbitration agreement to the extent of the rights and obligations attached to the property. The learned sole Arbitrator further held that the issue of whether a valid and enforceable charge existed on the said property was a matter of trial, but in the interest of complete adjudication and to avoid multiplicity of proceedings, the petitioner's presence was necessary.

21. Aggrieved by the said order, the petitioner has filed this petition praying for setting aside of the impugned order, primarily on the ground that the learned Arbitrator lacked jurisdiction to bind a non-signatory who has not consented, expressly or impliedly, to be subjected to arbitration.

C. Submissions on behalf of the Petitioner

22. Mr. Dhond, learned senior counsel for the petitioner, in assailing the impugned order, has made the following submissions:

The Petitioner is a complete stranger to the arbitration agreement entered between "Eminence" and "M/s. Gagan Platinum" as the petitioner was neither a signatory to the Agreement dated 25 February 2017 nor the petitioner in any manner was connected, directly or indirectly, with any of the respondents. The petitioner is an independent legal entity with no commonality of shareholding, control, or management with the Respondents. The petitioner's only connection is that it was a bonafide purchaser of the subject land from respondent no. 9 - Gagan I-Land, which itself was admittedly a non-signatory to the arbitration agreement

and was not an original party to the arbitration but was later impleaded by the learned Arbitrator.

23. The learned Sole Arbitrator has grossly erred in holding that the petitioner could be impleaded on the erroneous footing that the petitioner was "claiming through or under" a party to the arbitration agreement. Such finding is contrary to the settled position in law and the decisions of the Supreme Court which have consistently held that an arbitration agreement, being a creature of contract, binds only those who have consented to be bound by it.

24. The impugned order proceeds on a fundamental misconception that a purchaser of property, by virtue of having derived title from the vendor, automatically becomes a person "claiming through or under" that vendor for the purposes of arbitration. Such reasoning conflates contractual privity with property ownership and ignores the principle that an obligation to arbitrate is not asset-linked. It was further submitted that the impugned order is passed in patent lack of jurisdiction, unjustly drags the Petitioner into unwarranted arbitral proceedings, thereby infringing its substantive right to freely enjoy the property purchased by it.

25. The learned Sole Arbitrator has misapplied the expression "claiming through or under" occurring in Section 8 of the ACA. The said expression, as held by the Supreme Court in **Cheran Properties Ltd. v. Kasturi & Sons Ltd.**[3], refers to situations such as assignment, subrogation, or devolution of contractual rights, instances where a person derives not merely title to the property, but a derivative

3 (2018) 16 SCC 413

contractual interest in the arbitration agreement itself. A purchaser like the petitioner, being the beneficiary of an outright sale, enjoying full and independent ownership of the property, cannot by any stretch of legal reasoning can be said to be claiming in a derivative or subordinate capacity. In such context, reliance is placed on the decision of the Supreme Court in **Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd.**[4]wherein the Supreme Court reiterated that party consent and autonomy forms the bedrock of arbitration, and that non-signatories can be bound only on limited, recognized bases such as agency, assignment, or estoppel. In the absence of such circumstances, compelling a non-signatory to arbitrate violates the doctrine of privity of contract and the constitutional principle of freedom to choose one's forum.

26. The Constitution Bench decision of the Supreme Court in **Cox & Kings Ltd.** (supra) has reiterated the principle that consent forms the cornerstone of arbitration and that mere commercial or legal relationships between a signatory and a non-signatory do not suffice to infer consent. The Supreme Court clarified that only in limited circumstances, such as assignment, succession, or novation could a person be said to be "claiming through or under" another party. Also, the recent decision of the Supreme Court in **ASF Buildtech Pvt. Ltd. v. Simplex Projects Ltd. & Ors.**[5], in essence, reiterates the legal position laid down in **Cox and Kings Ltd.** (supra). Further the decision of the Supreme Court in **Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd. & Ors.**[6], fully supports the petitioner's case.

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4 (2022) 8 SCC 42

5 [2025 INSC 616]

6 Civil Appeal No. 5297 of 2025.

27. The learned sole Arbitrator's finding that the petitioner's rights are "derivative" in nature is self-contradictory and contrary to the very concept of an outright sale. Once the petitioner purchased the property for valuable consideration, the petitioner's title became absolute and independent of its vendor. It is submitted that the conclusion that such ownership constitutes an "assignment" or "subrogation" of contractual rights under the arbitration agreement is legally unsustainable.

28. The learned sole Arbitrator's reasoning effectively redefines settled legal tenets and the principles on the doctrine's of assignment, subrogation, and novation, and conflates the arbitral power of impleadment with the power of a civil court under Order I Rule 10 of the Code of Civil Procedure, 1908. The arbitrator's jurisdiction being purely contractual, it cannot be enlarged by equitable considerations of convenience or completeness of adjudication.

29. The learned sole Arbitrator's reliance on the petitioner's knowledge of the pending proceedings or the alleged charge claimed by respondent no. 1, cannot substitute for consent of the petitioner for arbitration, as knowledge of a pending dispute does not amount to agreement to arbitrate. Similarly, invocation of Section 40 of the Transfer of Property Act orKapur Section 91 of the Indian Trusts Act is wholly misplaced, as those provisions govern equitable obligations in property law, not jurisdictional consent in arbitration.

30. The finding that the petitioner's purchase of the said land *pendente lite*

creates as an implied consent to arbitrate is wholly untenable. A *lis pendens* purchase may attract civil consequences as to priority or notice, but it cannot, by any legal fiction, constitute consent to a private dispute resolution forum. To hold otherwise would, in effect, permit an arbitral tribunal to impose jurisdiction on any transferee of property, which would be contrary to both contract law and the constitutional guarantee of legal remedy before a competent forum, apart from many other legal and constitutional rights which are equally relevant when an unwarranted arbitration is being forced on the petitioner.

31. It is therefore submitted that the impugned order is perverse on its face and discloses a patent lack of inherent jurisdiction. The learned Arbitrator has exercised a power that does not exist in law, compelling a non-signatory to arbitration without its consent. It is urged that the decision squarely falls within the exceptions recognized by the Supreme Court where interference under Articles 226/227 is justified, namely: (i) where there is a patent lack of jurisdiction; (ii) where the order is perverse on its face; or (iii) where a party is left remediless under the statute.

32. Reliance is placed in such context on the decisions in **Punjab State Power Corporation Ltd. v. EMTA Coal Ltd.**[7], **Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.**[8], **Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Ltd.**[9], **Kelvin Air Conditioning and Ventilation System Private Ltd. v. Triumph Realty Pvt. Ltd.**[10], **Godrej Sara Lee Ltd. v. Excise and Taxation Officer-**

7 (2021) 11 SCC 713

8 (2022) 1 SCC 75

9 2023 SCC OnLine Del 5292

10 2024 SCC OnLine Del 7137

cum-Assessing Authority & Ors.[11] and **Tamil Nadu Cements Corporation Ltd. v. Micro and Small Enterprises Facilitation Council & Anr.**[12] to submit that this Court's jurisdiction under Article 226/227 can be invoked where an arbitral order suffers from patent lack of jurisdiction or fundamental perversity.

33. In conclusion, it is submitted that the impugned order passed by the learned sole arbitrator: (i) disregards the doctrine of privity and party autonomy; (ii) misapplies the concept of "claiming through or under"; (iii) extends arbitral jurisdiction to a non- signatory without any legal foundation and (iv) the learned Arbitrator has committed a manifest jurisdictional error, rendering the impugned order liable to be quashed and set aside.

D. Submissions on behalf of respondent no. 1

34. Mr. Khambata, learned senior counsel for respondent no. 1 in opposing the petition and in supporting the impugned order, has made the following submissions:

At the threshold, it is submitted that the present writ petition is not maintainable in view of the self-contained nature of the ACA. It is submitted that the impugned order passed by the learned Sole Arbitrator is well within the scope of Section 16 of the Act, which embodies the doctrine of *kompetenz-kompetenz*, empowering the arbitral tribunal to rule on its own jurisdiction, including on questions as to whether a party is bound by or falls within the ambit of the

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11 (2023) SCC OnLine SC 95

12 2025 SCC OnLine SC 127

arbitration agreement.

35. The Supreme Court in *Cox & Kings Ltd.(supra)* has categorically recognized that non-signatories, in appropriate cases, may be bound by arbitration agreements either on the basis of implied consent or as persons "claiming through or under" a signatory. The Court held that consent may also be inferred from the conduct of parties and that derivative rights arising by way of assignment, subrogation, or novation are recognized exceptions to the doctrine of privity.

36. The learned Sole Arbitrator, in the present case, has concurrently found that the petitioner falls within both such recognized categories. Firstly, the petitioner, having purchased the subject property "*pendente lite*" and with full knowledge of the arbitration proceedings, has impliedly consented to be bound by the arbitral process. Secondly, by deriving title to the property from Respondent No. 9, which is itself a party to the arbitration, the Petitioner is "claiming through or under" such entity. In such context, reliance is placed on the judgment of the Division Bench of the Karnataka High Court in *Devtree Corp. LLP (supra)* wherein the Court held that a purchaser of property from a person bound by an arbitration clause is equally bound by such clause, since the benefits and burdens of the transaction flow with the property. It is submitted that the facts in that case are materially identical to the present matter.

37. The question whether a non-signatory can be treated as a party to an arbitration agreement is inherently jurisdictional and, therefore, falls squarely within the competence of the arbitral tribunal under Section 16 of the ACA. The

principle of *kompetenz-kompetenz*, mandates that the arbitral tribunal shall be the first authority to decide questions relating to its own jurisdiction. In support of this submission, reliance is placed on **Vidya Drolia v. Durga Trading Co**.[13] and **Cox & Kings Ltd.** (supra), to contend that the Supreme Court has observed that complex jurisdictional issues particularly those involving multi-party disputes and non-signatories are best left for the arbitral tribunal to decide, with appropriate safeguards of natural justice. Further in **Ajay Madhusudan Patel v. Jyotrindra S. Patel**[14], the Supreme Court, while considering a similar challenge has expressly held that the determination of whether a non-signatory is a veritable party to the arbitration agreement must be left to the arbitral tribunal in view of the factual complexity and doctrinal considerations involved. Also reliance is further placed on the judgment of this Court in **Cardinal Energy and Infrastructure Pvt. Ltd. v. Subramanya Construction & Development Co. Ltd.**[15] wherein it was held that even if the question of impleadment of a non-signatory is not raised at the referral stage, the arbitrator has jurisdiction to decide such issue under Section 16 of ACA. The Court clarified that any decision taken by the arbitral tribunal on the issue of impleadment can be challenged subsequently under Section 34 of the ACA.

38. It is next contended that the present writ petition is misconceived as it seeks to bypass the statutory mechanism under Sections 16(5) and 16(6) of the ACA. The Petitioner, having submitted to the jurisdiction of the arbitral tribunal and filed its written submissions before the learned Arbitrator, cannot now invoke writ

13 (2021) 2 SCC 1

14 (2025) 2 SCC 147

15 2024 SCC OnLine Bom 964

jurisdiction to challenge an interlocutory determination.

39. The Arbitration Act is a self-contained and exhaustive code, as reaffirmed by the Supreme Court in **Interplay Between Arbitration Agreements under the Arbitration Act, 1996 and Stamp Act, 1899**[16] and that all questions relating to the existence, validity, and scope of an arbitration agreement must be resolved strictly in the manner prescribed therein.

40. An intervention under Articles 226 and 227 of the Constitution is impermissible in light of the consistent line of authority beginning with **SBP & Co. v. Patel Engineering Ltd.**[17] and reiterated in **Deep Industries Ltd. v. ONGC Ltd.**[18] and **Bhaven Construction** (supra). An arbitral order passed under Section 16 of the ACA, can only be exercised in the narrowest of cases where the order suffers from a patent lack of inherent jurisdiction or is rendered in bad faith as also held in **Bhaven Construction** (supra) and **Punjab State Power Corporation Ltd.** (supra). The Supreme Court has thus held that interference by writ courts against interlocutory orders passed in arbitration should be exercised only in cases of patent lack of jurisdiction or bad faith.

41. The present case does not fall within such exceptional category. The Arbitrator was acting squarely within his statutory competence under Section 16 of ACA, and there is no allegation of bad faith or perversity. If the petitioner is aggrieved by the final order, it has an alternate remedy under Section 34 of ACA to

16 (2024) 6 SCC 1
17 (2005) 8 SCC 618
18 (2020) 15 SCC 706

challenge the same.

42. The petitioner's contention that the learned Arbitrator lacked "inherent jurisdiction" is misconceived. The power to decide whether a person is a party to the arbitration agreement is intrinsic to the arbitral tribunal's jurisdictional determination. Hence, even an erroneous exercise of such power cannot be equated with the absence of jurisdiction.

43. Reliance is also placed on the decision of the Division Bench of this Court in **Hindustan Petroleum Corporation Ltd. v. Om Construction**[19], wherein it was held that the High Court should not interfere with orders passed by arbitral tribunals unless the order suffers from a patent lack of jurisdiction, a standard that is "so manifest as to require no argument."

44. In conclusion, it is submitted that this petition is an attempt to circumvent the statutory framework of the Arbitration Act and prematurely invite interference under Article 226/227 proceedings. The Arbitrator's order is a reasoned order, which is passed within jurisdiction and if the petitioner has any grievance, it can pursue the alternate remedy as permissible in law.

45. For all the aforesaid reasons, it is submitted that the writ petition is devoid of merit and is liable to be dismissed as not maintainable.

46. The phrase "patent lack of inherent jurisdiction" is explained by the Supreme Court to mean a situation where the order is so perverse that the only

19 2023 SCC OnLine Bom 2219

possible conclusion is that the tribunal acted wholly without authority, i.e., in a manner "wholly foreign to its jurisdiction." It is submitted that this is not such case, as Section 16 of the ACA expressly empowers the arbitral tribunal to rule upon its own jurisdiction, including questions concerning the existence or validity of the arbitration agreement and whether a particular party is bound thereby.

47. The petitioner's submission that the Arbitrator lacked inherent jurisdiction to decide whether a non-signatory is a party to the arbitration agreement is fundamentally erroneous. The jurisdiction to decide that question itself arises from Section 16 of ACA, which enshrines the principle of *kompetenz-kompetenz*. Therefore, the Arbitrator by ruling on whether the petitioner could be impleaded was acting within his jurisdictional competence. The correctness of that decision, even if debatable, would constitute at the best an "error within jurisdiction" and not an "error of jurisdiction." In this regard, reliance is placed on **Cox & Kings Ltd.** (supra), **Vidya Drolia** (supra), in **Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899** (supra), **Akash Automobiles v. Mahindra & Mahindra Ltd.**[20] and **Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.**[21] which according to respondent no.1 reaffirms that the arbitral tribunal has the inherent authority to determine its own jurisdiction in respect of non-signatories, including whether they are "claiming through or under" a party to the arbitration agreement.

48. The petitioner's understanding of "inherent jurisdiction" conflates two

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20 2022 SCC OnLine Bom 8437

21 (2020) 2 SCC 455

distinct concepts — the tribunal's competence to decide jurisdictional facts, and the correctness of the tribunal's ultimate conclusion on such facts. It is submitted that the former is a matter of authority, while the latter concerns the merits of Tribunal's reasoning. The learned senior counsel relied on **M.L. Sethi v. R.P. Kapur**[22], to submit that where a tribunal is competent to enter upon an inquiry, any error made in deciding the issue would be an error within the jurisdiction and not the one that vitiates its authority.

49. The arbitral tribunal's power under Section 16 of the ACA is neither conditioned upon a prior reference under Sections 8 or 11 of ACA nor upon any *prima facie* finding by a Court as to whether non-signatory is a veritable party. It is contended that this principle was recognized in **SBP & Co.** (supra) and reaffirmed in **Ajay Madhusudan Patel** (supra), where the Supreme Court referred the parties to arbitration without recording any *prima facie* finding on the status of non-signatory, leaving that issue entirely to the tribunal.

50. The definition of "party" under Section 2(h) read with Section 7 of the Act is wide enough to include persons who, though not signatories, are claiming through or under a party. This interpretation has been approved in **Cheran Properties Ltd.** (supra) and **Cox & Kings Ltd.** (supra), where the Court clarified that the phrase "persons claiming through or under" is a legislative recognition of the doctrine that besides the parties, every person whose capacity or position is derived from a party is bound by the arbitration agreement.

51. In the present case, the petitioner purchased the subject property during the

22 (1972) 2 SCC 427

pendency of the arbitral proceedings with full knowledge of the pending disputes and *lis pendens* notices. It is urged that such a purchaser is a subsequent transferee with notice and in law, a representative-in-interest of the transferor party. Reliance is placed on **Raj Kumar v. Sardari Lal**[23], **Saila Bala Dassi v. Nirmala Sundari Dassi**[24] and **Amit Kumar Shaw v. Farida Khatoon**[25], to contend that a *lis pendens* transferee is treated as a person "claiming under" the transferor and is bound by the outcome of the proceedings.

52. Reliance is placed upon on **Jagan Singh v. Dhanwanti**[26] and **Krishnaji Balwankar v. Anusayabai Sidram Gulbile**[27], to submit that a *lis pendens* notice continues during the period of limitation for appeal, and hence the petitioner's purchase, being immediately after the dismissal of Application under Section 9 of ACA, was subject to the pending proceedings. Accordingly, it is contended that the Arbitrator's finding that the petitioner was "claiming through or under" respondent no. 9 and had impliedly consented to the arbitration was both plausible and legally sustainable.

53. Lastly, it is submitted that even assuming the Arbitrator erred in his interpretation of "claiming through or under," such an error would not justify interference under Article 226 or 227, as it would, at the most, constitute an error within jurisdiction. The petitioner has the statutory remedy under Section 34 of the ACA and entertaining this petition would amount to permitting a collateral

23 (2004) 2 SCC 601
24 AIR 1958 SC 394
25 (2005) 11 SCC 403
26 (2012) 2 SCC 628
27 AIR 1959 Bom 475

challenge contrary to the legislative scheme.

54. On the above basis, it is urged that there is no perversity or patent lack of jurisdiction in the impugned order, and hence the present petition is liable to be dismissed.

E. Petitioner's Submissions in rejoinder

55. In reply to the submissions on behalf of M/s. Eminence-respondent no. 1, Mr. Dhond has controverted the submissions as urged on behalf of M/s. Eminence to submit that such submissions proceed on an erroneous understanding of the expression "patent lack of inherent jurisdiction" and the limits of the arbitral power under Section 16 of the ACA.

56. It is submitted that respondent no. 1's attempt to equate "inherent jurisdiction" with "subject-matter jurisdiction" is misconceived. If such submission is accepted, would go contrary to the decisions rendered by the Supreme Court in *Deep Industries Ltd. (supra)* and *Punjab State Power Corporation Ltd. (supra)*, as the said decisions of the Supreme Court recognize that an arbitral order rejecting the plea of jurisdiction under Section 16 of ACA is amenable to judicial review if it suffers from a patent lack of inherent jurisdiction. If "inherent jurisdiction" were to be confined merely to the nature of the dispute, no arbitral order could have been challenged, as an arbitrator always has the power to decide whether it has jurisdiction.

57. The correct test for determining "patent lack of inherent jurisdiction" involves twofold inquiry: (i) what, in substance, is the matter that the arbitrator has

decided; and (ii) whether, on the undisputed facts and settled law, the arbitrator had the power to render such a decision. Where the arbitrator's decision has the effect of conferring upon itself jurisdiction that the law does not permit such as by compelling a non-signatory, who has never consented to arbitration, to become a party to the arbitration agreement, the order necessarily suffers from a patent lack of inherent jurisdiction.

58. In the present case, the learned Arbitrator has made the petitioner a party to the Arbitration Agreement entered between M/s. Eminence and M/s. Gagan, rather than merely joining it to the arbitration proceedings. It is submitted that such an act is beyond the competence conferred by Section 16 of the ACA. The arbitrator's jurisdiction lies exclusively in party consent as embodied in the Arbitration Agreement within the meaning of Section 7 of ACA. If such consent is absent, the arbitrator has no power to bind a third party to the arbitration proceedings.

59. In support of the submissions, reliance is placed on the recent judgment of the Supreme Court in **Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd.**[28], wherein the Court has held that the arbitral tribunal's power to exercise jurisdiction over a person arises only when that person has consented to be bound by an arbitration agreement in accordance with Section 7 of the ACA. The Court clarified that it is only upon such consent that the arbitrator acquires the "source of jurisdiction" to make an award binding upon that person. Hence, when there is no consent, any order impleading a non-signatory would amount to a jurisdictional

28 2025 SCC OnLine SC 806

usurpation.

60. Respondent No.1's invocation of the doctrine of *lis pendens* is wholly misplaced. The doctrine under Section 52 of Transfer of Property Act, 1882, operates only in respect of a particular proceeding and cannot, by itself, confer jurisdiction upon an arbitral tribunal. The *lis pendens* referred to by the respondent arose only from the proceedings under Section 9 of the ACA, which have been dismissed with finality. There is no notice of *lis pendens* in relation to the arbitral proceedings themselves, nor one can be implied.

61. It is submitted that even assuming that the petitioner was a *lis pendens* transferee, the status would not render it a "person claiming through or under" within the meaning of Section 8 of the ACA. As explained in *Cox & Kings Ltd. (supra)*, "claiming through or under" formulation is a consent-based construct and applicable only where the non-signatory's rights are derivative of a signatory's contractual rights under the arbitration agreement, such as in cases of assignment, novation, or succession. The petitioner having purchased the property through an independent, outright sale, neither derives any contractual right from respondent no. 9 nor steps into its shoes.

62. It is further contended that argument of respondent no. 1 that the petitioner had failed to contest the Arbitrator's inherent jurisdiction is factually incorrect. The reply of the petitioner before the arbitral tribunal specifically asserted that there existed no arbitration agreement between the parties and that it was not a signatory thereto and the Arbitrator lacked jurisdiction to implead it. The Petitioner's

participation before the Arbitrator was solely to object to jurisdiction and cannot be treated as acquiescence.

63. It is also submitted that respondent no. 1's suggestion that the petitioner ought to have approached this Court immediately upon receipt of the impleadment application misconceives the law. The petitioner could have invoked writ jurisdiction even before filing its reply and the fact that it chose to contest jurisdiction before the Arbitrator first cannot, in law, deprive it of the right to challenge a patently jurisdictional order subsequently.

64. Learned senior counsel submits that respondent no. 1's contention that "persons claiming through or under" are bound irrespective of consent are contrary to the ratio of **Cox & Kings Ltd.** (supra) and **Adavya Projects** (supra), both of which reaffirm that consent, express or implied, remains the touchstone of arbitral jurisdiction. A non-signatory can only be impleaded if its rights are purely derivative of a signatory's contractual rights under the arbitration agreement - a condition not satisfied in the present case.

65. The petitioner further submits that the invocation of the phrase "veritable party" by respondent no. 1 is inapposite. The petitioner has no involvement in the negotiation, execution, or performance of the underlying contract containing the arbitration clause, nor has it derived any benefit therefrom. As recognized in **Cox & Kings** (supra), participation in the performance of the underlying contract is the most important factor indicating consent.

66. Lastly is submitted that by compelling a complete non-signatory to submit

to arbitration without any basis in consent, the impugned order suffers from a patent lack of inherent jurisdiction. The arbitral tribunal has, in effect, arrogated to itself the power to create contractual privity where none exists, contrary to the fundamental tenets of arbitration law. The petitioner, therefore, reiterates that the present writ petition is both maintainable and meritorious, and that the impugned order deserves to be quashed and set aside.

F. Analysis

67. We have heard learned counsel for the parties. We have also perused the record.

68. At the outset, the following questions would arise for our determination in the present proceedings:-

i. Whether in the facts of the case, this writ petition under Articles 226 and 227 of the Constitution of India is maintainable and can be entertained to interfere in the impugned orders passed by the arbitral tribunal?

ii. In the facts of the case, whether the learned sole arbitrator in passing the impugned order, directing the petitioner to be impleaded as a party respondent, has acted in patent lack of inherent jurisdiction, so as to foist an unwarranted arbitration on the petitioner?

69. We now delve on the first issue as to whether the petitioner is justified in law to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. This question has arisen for determination as an objection is

raised by Mr. Khambata on behalf of M/s. Eminence on two fold grounds, firstly that the petitioner has an alternative remedy to challenge the impugned order in the manner as provided under Section 16(6) of the ACA i.e. in the proceedings which can be filed under Section 34 of the ACA challenging the award, in the event the petitioner stands aggrieved by the award. The next submission of Mr. Khambata is that the ACA is a code in itself which provides remedies for challenge to an order passed by the arbitral tribunal under the provisions of the ACA. It is submitted that in the present case the impugned order is passed by the arbitral tribunal on the application filed by M/s. Eminence for impleading of the petitioner as a party respondent, on the principles of *kompetenz-kompetenz*, recognized under Section 16 of ACA which empowers the arbitral tribunal to decide its own jurisdiction in passing such order. It is Mr. Khambata's submission that once the impugned order draws its foundation on the applicability of Section 16, necessarily the remedy as provided under sub-section(6) of Section 16 of ACA, is the only remedy available to the petitioner and not otherwise. It is also his submission that the extraordinary jurisdiction under Article 226/227 of the Constitution cannot be invoked for such reliefs. In supporting such contention, Mr. Khambata has placed reliance on several decisions and more particularly, the decisions of the Supreme Court in **Deep Industries Ltd. v. ONGC Ltd.** (supra) and the decision of the Supreme Court in ***Bhaven Construction*** *(supra)*. Also reliance is placed on the decision of ***SBP & Co.*** *(supra)*. On the other hand responding to Mr. Khambata's submission, Mr. Dhond has submitted that considering the settled principles of law as laid down by the Supreme Court on the permissible limits of the courts, to

exercise jurisdiction under Articles 226/227 of the Constitution in arbitral proceedings, this Writ Petition is certainly maintainable, and the petitioner would be entitled for a writ of this Court on the ground that the impugned order is passed by the Tribunal in inherent lack of jurisdiction. It is his submission that the petitioner could not be dragged into unwarranted arbitral proceedings and/or is required to defend such proceedings awaiting the final outcome of the proceedings, which can only be in the form of an arbitral award. It is his contention that foisting of an arbitration/litigation, under the orders passed by the Tribunal which is governed by the ACA, is violative of the substantive legal rights of the petitioner to freely and / or unrestrictedly enjoy the subject land purchased by the petitioner, under a valid Deed of Conveyance, executed strictly in accordance with law. It is his submission that by petitioner's impleadment, the property being dragged into the unwarranted litigation itself is a fetter or a restriction, amounting to violation of such basic legal right of the petitioner including recognised by the Constitution. Such embargo on the Petitioner's property, being dragged into litigation, would also adversely affect the rights of the petitioner to carry on its business activities, as permissible in law and under the Companies Act, 2013. The following discussion would aid our conclusion.

70. In **Deep Industries Limited vs. Oil and Natural Gas Corporation Limited**[29], the Supreme Court was concerned with a question relating to the High Court exercising jurisdiction under Article 226 of the Constitution when it comes to matters that are decided under the ACA. The proceedings before the High Court

29 (2020) 15 SCC 706

under Article 226 of the Constitution challenged an order passed by the City Civil Court on an appeal filed under Section 37 of the ACA arising from an interim order, passed under Section 17 of the ACA by the arbitral tribunal. In such proceedings, the High Court referred to a preliminary objection raised on behalf of the petitioner that the petition filed under Article 227 should be dismissed at the threshold as it did not raise any jurisdictional issue. The High Court allowed the writ petition. The Supreme Court considering the provisions of Sections 5 and 37 of the ACA, held that Article 227 being a Constitutional provision remained untouched by the *non- obstante* clause ordained by Section 5 of the ACA. It was observed that though petitions can be filed under Article 227, against judgments allowing or dismissing first appeals under Section 37 of the ACA, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as discussed by the Supreme Court so that interference is restricted to orders that are passed which are patently 'lacking in inherent jurisdiction.' The following observations as made by the Court are required to be noted which read thus:-

> "17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdicion."
>
> (emphasis supplied)

71. We may also observe that the facts before the Supreme Court in **Deep Industries Ltd. v. ONGC Ltd.** (supra) are certainly at variance including on the nature of the order which had fallen for consideration before the writ court. However, the decision would assume significance in the declaration of law that it is permissible for the High Court to exercise writ jurisdiction in the categories of cases as set out in paragraph 17 of the said decision namely in cases where the arbitral tribunal passes order patently lacking inherent jurisdiction.

72. In **Bhaven Construction vs. Executive Engineer (supra)** recognizing the powers of the High Court to issue directions, orders or writs under Article 226 the Supreme Court held it to be a basic feature of the Constitution which cannot be curtailed by Parliamentary legislation. The Supreme Court held that such power needs to be exercised by the High Court in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith". The following observations of the Supreme Court are required to be noted which read thus:-

> "18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAS, this Court referred to several judgments and held: (SCC p. 343, para 11)
>
> > "11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/ or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an

> altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."
>
> (emphasis supplied)

> It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptonal ranity, wherein one party is left remediless under the statute or a clear ("bad faith" shown by one of the parties. This high standard set by this Court in forms of the legislative intention to make the arbitration fair and efficient."
>
> (emphasis supplied)

73. It is thus clear, that it is not an absolute proposition in law that Writ Petitions under Article 226/227 cannot be entertained in interfering with orders passed by the arbitral tribunal when the arbitral tribunal is patently lacking inherent jurisdiction or passes orders with patent lack of jurisdiction. No adjudicatory process governed by such statute can lead to a patent miscarriage of justice or a manifest injustice on non-consenting parties, the principle being rules of party autonomy are paramount and not the convenience of a litigating party, when it comes to arbitration proceedings, the nature of it is purely voluntary.

74. In the present case on behalf of M/s. Eminence it is urged that the petitioner needs to take recourse to the provisions of Section 34 of the ACA in view of the provisions of Section 16(6) of the ACA to challenge the impugned order that is a remedy at the conclusion of the arbitral proceedings namely after an award is declared. In other words, neither this petition is maintainable or should be entertained. In such context we refer to the decision of the Supreme Court in M/s.

Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.[30] in which considering the challenge to an order passed by the High Court dismissing the writ petition filed by the appellant therein and relegating the appellant to a remedy of statutory appeal, one of the questions which had arisen for consideration of the Supreme Court was whether the High Court was justified in declining to interfere on the ground of availability of an alternative remedy of a statutory appeal, which the appellant had not pursued. In such context, the Supreme Court examined the issue in regard to powers conferred on the High Courts under Article 226 of the Constitution and more particularly, when the High Court held the writ petition as not maintainable, merely as an alternative remedy was provided by a relevant statute, was not pursued by the parties desirous of invocation of the writ jurisdiction. The Supreme Court held that power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. It was held that Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. It was observed that the mere fact that the petitioner before the High Court, in a given case, having not pursued an alternative remedy available to him, cannot mechanically be construed as a ground for dismissal of the writ petition, as it is axiomatic that the High Courts have a discretion whether to entertain a writ petition or not. It was observed that one of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ

30 2023 SCC OnLine SC 95

petition, where an effective and efficacious alternative remedy is available, and mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". It was observed that in long line of decisions, the Supreme Court has held that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. It was observed that the "entertainability" and "maintainability" of a writ petition are distinct concepts, and distinction between the two ought not to be lost sight of. In such context it was observed that the objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the Courts would be rendered incapable of even receiving the *lis* for adjudication. It was held that on the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. Considering the principles in this regard, in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others**[31] carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it, not having availed the alternative remedy provided by the statute. The following observations as made in **Godrej Sara Lee Ltd. (supra)** are required to be noted:-

> "4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ

31 (1998) 8 SCC 1

> petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

75. In **Serosoft Solutions Pvt. Ltd. vs. Dexter Capital Advisors Pvt. Ltd.**[32], the parties before the Court were parties in a pending arbitration. The question for consideration of the Supreme Court was whether the High Court correctly

32 2025 SCC OnLine SC 22

exercised its supervisory jurisdiction under Article 227 in granting the respondent/claimant one more opportunity to cross-examine the appellant's witness despite the appellate tribunal rejected such prayer. In considering such issue, the Supreme Court examined the question of maintainability of the writ petition. The Supreme Court referring to the decision of **Kelvin Air Conditioning and Ventilation System Pvt. Ltd. vs. Triumph Reality Pvt. Ltd.** held that interference under Articles 226/227 is permissible only if the order is completely perverse that the perversity must stare in the face and that the High Court needs to record reasons as to why the arbitral tribunal's order is perverse.

76. We may also refer to the decision of the Supreme Court in **M/s Tamil Nadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council and Anr.**[33] in which the issue which fell for consideration of the Supreme Court was whether a writ petition under Article 226 of the Constitution of India would be maintainable against an order passed by the Micro and Small Enterprises Facilitation Council in exercise of power under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, which is a power to make a reference to arbitration. It is in such context the Court considering the position in law, in regard to exercise of jurisdiction by the Court under Article 226 of the Constitution reiterated the following principles in regard to jurisdiction of the High Court:

> "13. The access to High Courts by way of a writ petition under Article 226 of the Constitution of India, is not just a constitutional right but also a part of the basic structure. It is available to every citizen whenever there is a violation of their constitutional rights or even statutory rights. This is an inalienable right and the

33 2025 SCC OnLine SC 127

rule of availability of alternative remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle applied by the High Courts as a form of judicial restraint and refrain in exercising the jurisdiction. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and cannot be restricted or circumscribed by a statute. It has been well settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies -i) where there is a violation of principles of natural justice or fundamental rights; ii) where an order in a proceeding is wholly without jurisdiction; or iii) where the vires of an Act is challenged. Noticeably, the MSEFC as a statutory authority performs a statutory role and functions within the four corners of the law.

14. Following the aforesaid dictum, this Court in Harbanslal Sahnia v. Indian Oil Corporation 12, had taken notice of the fact that the High Court had referred to the arbitration clause which the writ petitioner could take recourse to, to hold that the rule of exclusion of writ jurisdiction is a rule of discretion and not of compulsion. In appropriate case, in spite of availability of alternative remedy, the writ courts can exercise its jurisdiction at least in three contingencies, as referred to above. In the facts of the said case, this Court interfered observing that there were peculiar circumstances as the dealership had been terminated on an irrelevant and non-existence cause. Therefore, there was no need to drive the parties to initiate arbitration proceedings. Following the judgments in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Harbanslal Sahnia (supra), this Court in Radha Krishan Industries v. State of Himachal Pradesh[1] laid down the following principles:

> "27. The principles of law which emerge are that:
>
> 27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
> 27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power_of the High Court is where an effective alternate remedy is available to the aggrieved person.
>
> 27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.
>
> 27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.
>
> 27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.
> 27.6. In cases where there are disputed questions of fact, the High

> Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."
>
> **15. Thus, it would be true to say that the existence of the statutory remedy does not affect the jurisdiction of the High Court to issue a writ. Nevertheless, the writ jurisdiction being discretionary by policy, the writ courts generally insist that the parties adhere to alternative statutory remedies, as this reinforces the rule of law. However, in exceptional cases, writ jurisdiction can still be exercised as a power to access the court for justice and relief. It is in this context, that a Constitution Bench of five Judges way back in 1954 in Himmatlal Harilal Mehta v. State of Madhya Pradesh had observed that the principle that the High Court should not issue is a prerogative writ when an alternative remedy is available may not apply when the remedy under the statutes is onerous and burdensome in character, .. … .. …"**
>
> **(emphasis supplied)**

77. In **Unitech Limited and Others vs. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors.**[34] the Supreme Court in the context of an arbitration agreement existing between the parties, upheld the interference of the learned Single Judge of the Telangana High Court in the proceedings of Article 226 of the Constitution in a contractual dispute, observing that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. It was held that the High Court having regard to facts of the case, had a discretion to entertain or not to entertain a writ petition. It was also held that the Courts have self imposed certain restrictions in exercise of the power, however it was well settled that the jurisdiction under Article 226 of the Constitution cannot be ousted only on the basis that the dispute pertains to the contractual arena. It was also held that the presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases and it

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34 (2021) 16 Supreme Court Cases 35

needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

78. We may observe that in paragraph 45 of the decision of the Constitution Bench in **SBP & Company Vs. Patel Engineering Ltd.**[35] as relied on behalf of M/s. Eminence would be required to be read in the context, being applicable to the parties to the arbitration agreement and the proceedings *inter-se* between such parties who subject themselves to arbitral tribunal, being a creature of the contract as observed by the Supreme Court in paragraphs 45 and 46. In any event, these observations are required to be read in the context of the controversy which had fell for consideration of the Supreme Court in regard to the nature of the order passed under Section 11(6) of the ACA, namely whether such power as conferred on the Chief Justice of High Court or the Chief Justice of India, was an administrative power or a judicial power. The observations therefore, are not akin to the observations made by the Court in paragraph 17 of the *Deep Industries Ltd.* (supra) and further the Constitution Bench of the Supreme Court in *Central Organization for Railway Electrification vs. ECI SPIT SMO MCML (JV), a Joint Venture Co.*[36] (supra)

79. In view of the aforesaid position in law we may observe that the decisions of this Court relied on behalf of M/s. Eminence, which are prior to the authoritative pronouncement of the Supreme Court, be not discussed.

35(2005)8 SCC 618
36(2025) 4 SCC 641

80. Considering the aforesaid position in law, as applicable to the facts of this case, we are not persuaded to accept Mr. Khambata's submission that once the arbitral tribunal is empowered to rule on its own jurisdiction including on the objection with respect to existence or validity of the arbitral agreement, the only remedy to assail such orders is as provided under Section 16(6) i.e.; to challenge such issue in challenging the arbitral award under Section 34 of the ACA for the reason that this is the only remedy available to the petitioner to assail the jurisdictional orders passed under Section 16. This, in our opinion, can be accepted to be true in the case of pure jurisdictional issue being adjudicated by the arbitral tribunal inter-se the original parties to the arbitration, and not in a situation in hand namely of a 'third party' like the petitioner, being sought to be impleaded and foisted with the arbitration. The reason being adhering to the principles of party autonomy which is the very foundation of an arbitration, it becomes a very serious issue of jurisdiction of the arbitral tribunal not to the parties inter-se but qua a non consenting and a non signatory to the arbitral proceedings. This is something which goes to the very root of the arbitral jurisdiction affecting the very sanctity of the arbitral proceedings. The policy of law would not recognize an unwarranted rigour of trial / litigation being imposed on a party who is totally alien not only to the arbitration agreement but also to the subject matter of arbitration. In our opinion, Section 16 needs to be purposively construed. There ought not to be a straight jacket application of section 16 in this situation. Its application inter-se between the parties to the arbitration agreement is certainly different qua the non consenting third parties. Thus, the rigours of the provisions of sub-section (6)

of Section 16 of the ACA would be required to be applied only to the parties to the arbitral proceedings and/or who are necessarily parties to the arbitration agreement. This would also include such parties who could be impleaded by application of the principle of Group of Companies doctrine. If such meaning is not attributed to section 16 on its holistic reading which recognizes the doctrine of ***kompetenze-kompetenze*** qua the parties to the arbitration, it may result in patent misuse of the arbitral proceedings, by parties bringing within the purview of arbitration, such parties which are inherently alien to the arbitral proceedings.

81. If the contentions as urged on behalf of M/s. Eminence are to be accepted, such third party and / or non signatory to the arbitration agreement would be compelled to fall in an absurd position, to bring about a situation that such order of impleadment would continue to govern and hold the field, till the arbitral proceedings are concluded in the declaration of an award. Such situation is also that in all probability it would encompasses an unwarranted and/or a mandatory contest being required to be lodged and pursued by such third party, for the reason of such party who is outside the arbitration agreement and who does not accept the arbitral jurisdiction by virtue of being made a party to the arbitral proceedings. Thus, it is difficult to conceive that the remedy under Section 16(6) needs to be foisted as a rigid and inflexible formula qua parties who are wholly alien/ foreign to the arbitral proceedings, so as to leave them to suffer the whole trial of arbitration, and in such circumstances the recourse to a remedy of challenging such order in proceedings of a Writ Petition under Article 226/227 of the Constitution, be not recognized. The law ought not to operate in such restrictive framework when it comes to rights of

parties who legally are not the parties to the arbitration agreement and in regard to whom consent to arbitration cannot be inferred.

82. In our opinion, it is not the rule of law that when parties who are unconnected with the arbitral dispute, arbitration can at all be foisted by enlarging the scope of the arbitral jurisdiction different from the one conferred by the parties. Unscrupulous litigants to gain undue advantage may resort to such practices to array parties alien to the arbitral proceedings. It is for such reason, interference in the peculiar cases and in regard to the orders which are passed by the arbitral inherently lacking jurisdiction or which are patently illegal qua a third party certainly would deserve interference under Article 226/227 which is a constitutional remedy unaffected by the provisions of Section 5, Section 16(6) and Section 34 of the ACA.

83. It is well settled that the Constitutional provision which itself is the basic structure of Constitution, would remain sacrosanct and unaffected by the statutory law and in the present context the provisions of Section 5 read with Section 16(6) and Section 34 of ACA. It is thus imperative that in such category of cases, the Court follow such principles, however with extra caution as held by the Supreme Court, when it comes to interference in the orders passed by the arbitral tribunal, recognizing the principle that the ACA is code by itself. This however would not mean that the arbitral tribunal would have *carte blanche* to pass orders, or that it exercises jurisdiction which it inherently lacks. Inherent lacking of jurisdiction qua the proceedings *inter se* between the parties to arbitral agreement cannot be

confused to mean that sanctity of such jurisdiction needs to be recognized qua third parties to an arbitration, to one who is a non signatory to the arbitration agreement and a person totally alien to the arbitral proceedings i.e. a party which is out of the purview of the applicability of the Group of Companies doctrine, and/or when a party does not satisfy that such person is claiming through or under a party to the arbitration agreement. Thus, although an arbitral tribunal may wield jurisdiction qua the parties to arbitral proceedings, however the moment it exercises jurisdiction, qua non-parties to the arbitration agreement and/or non consenting parties as discussed hereinabove, (excepting the applicability of Group of Companies doctrine or consenting third party) the arbitral tribunal entrenches on the principles of party autonomy which is the basic jurisdictional issue emanating from the arbitration agreement. Such order in our opinion would be an order passed in inherent and patent lack of jurisdiction, deserving interference in exercise of power under Article 226 / 227 of the Constitution.

84. The aforesaid observations are premised on the foundational factors which govern the arbitral proceedings namely party autonomy, a valid arbitration agreement between the parties, whereunder the parties submit to the jurisdiction of the arbitral tribunal. In such context impleadment of a party which stands outside the purview of the basic essentials of a valid arbitration agreement existing between the arbitrating parties, and who has no connection whatsoever, either with any of the parties to the arbitral proceedings under the arbitration agreement or in relation to the subject matter of arbitration, the arbitral tribunal necessarily and inherently would lack jurisdiction to bring such third party within the purview of the arbitral

proceedings in adjudication of disputes by the arbitral tribunal as referred by the parties to the arbitration agreement.

85. In the light of the above discussion, in the context of the first question, some of the undisputed facts are required to be taken into consideration.

The arbitration proceedings in question before the learned sole arbitrator are primarily proceedings between M/s. Eminence (Respondent no. 1) and M/s. Gagan (Respondent no. 2). The dispute between M/s. Eminence and M/s. Gagan has arisen under the Articles of Agreement dated 25 February 2017 in which M/s. Gagan has been described as a 'developer' and M/s. Eminence is described as the 'Investor'. For such reason, the only parties to the Articles of Agreement were the Claimant-M/s. Eminence and M/s. Gagan, being parties/signatories to the Articles of Agreement dated 25 February, 2017. We may also observe that M/s. Gagan, being a registered partnership firm under the Limited Liability Partnership Act, 2008, is being sued by M/s. Eminence , also through respondent nos.3 to 5, who are the partners of M/s. Gagan. Further, respondent nos.6 to 8 are impleaded as respondents in the arbitral proceeding, in their capacity as guarantors for the sum borrows by M/s. Gagan from M/s. Eminence. Respondent No.9, who was the seller of the property in question to the petitioner, later on came to be impleaded as a party to the arbitral proceedings. We do not intend to delve on the other parties being impleaded by M/s. Eminence as it is not an issue falling for our consideration in the present proceedings.

86. Thus, the principal parties to the Articles of Agreement dated 25 February

2017 under which disputes and differences have arisen are M/s. Eminence and M/s. Gagan who were the competing parties before the arbitral tribunal in terms of the arbitration agreement as contained in Clause 7 of the said agreement, being the basic source of jurisdiction of the arbitral tribunal as conferred on it by M/s. Eminence and M/s. Gagan, who are the only parties to the arbitration agreement. Clause 7 being the Arbitration Agreement reads thus:

> "All disputes and differences whatsoever arising out of or touching these presents or any clause or thing herein contained including the performance of the respective obligations of each of the Parties hereto during the subsistence of this Agreement, shall be referred by the Parties hereto to in accordance with the provisions of the Arbitration & Conciliation Act, 1996 to three Arbitrators, one to be appointed by each party and which two Arbitrators shall appoint a third Arbitrator as the presiding Arbitrator and any decision of the majority of the said Arbitrators made on the point of reference to them shall be final and binding on the Parties thereto."

87. After noting the arbitration agreement, it will also be imperative to consider as to what is the nature of the Articles of Agreement dated 25 February 2017 under which disputes have arisen between the arbitrating parties (M/s. Eminence and M/s. Gagan) as gathered from its various clauses. As noted hereinabove under the Articles of Agreement dated 25 February, 2017, M/s. Gagan has been described as a "Developer/Promoter" and M/s. Eminence has been referred as the "Investor", thus, it is clearly a finance agreement. The following recitals in the Articles of Agreement would make clear the intention of the parties:

> “WHEREAS the Developer/Promoter has negotiated to buy a hotel property currently running under the name and style of "Sun and Sand Hotel" (hereinafter referred to as "the Hotel") including development rights of all that piece and parcel of land bearing Plot No. 262 on Survey N”o. 23. admeasuring 49,500sq ft (approx), situated at Bund Garden Road, Pune, 411001, within the limits of Pune Municipal Corporation, Taluka Haveli. District Pune and hereinafter, for the sake of brevity and convenience, cailed

and referred to as "the Said Property" and more particularly described in the schedule hereunder;

AND WHEREAS the Developer/Promoter is desirous of demolishing the said hotel and constructing a multistoried building/s/project on the said property and therefore need funds for the same to fulfill their requirements and for smooth construction and completion of the project. The Developer/Promoter approached the Investor with the proposal and requested to invest in this project to the extent of Rs. 25,00,00,000/- (Rupees Twenty Five Crores only). The Developer/Promoter have shown their presentations and explained the scheme to the Investors. Being impressed with the scheme and due to attractive returns with an assurance of attractive assured returns there from the Investor has shown their interest in the said scheme and being satisfied with attractive and scheme has agreed to invest an amount of Rs. 25,00,00,000/- (in word Rs. Twenty Five Crores only) in the said project on the terms and conditions enumeraled herein;

AND WHEREAS M/s Gagan Ace Developers, M/s Gagan Unnati Ventures (AOP) and M/s Gagan Ace Horizon as well as the partners of the Promoter/Devolopar LLP in their personal capacities agreed to stand as Guarantors jointly and severally for and on behalf of the Developer/Promoter.

AND WHEREAS had not M/s Gagan Ace Developers, M/s Gagan Unnati Ventures (AOP) and M/s Gagan Ace Horizonas as well as the partners of the Promoter/Developer LLP in their personal capacities agreed to stand as Guarantors jointly and severally in favour of the Investors regarding the benefits assured and as stated hereunder in these presents, the Investor would not have agreed to invest any amount to the Developer/Promoter.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as under:

1. On or before the execution of these presents, the Investor has paid the Developer/Promoter an amount of Rs. 6,00,00,000/- (Rupees Six Crores only) in the following manner:

Sr. No.	Date	Drawn in the name of the bank	Cheque No.	Amount (Rs.)
1.	18.02.2017	Axis Bank, Aundh Branch	223904/ 223903	Rs. 6,00,00,000/-
Total				Rs. 6,00,00,000/-

[The receipt of which the Developer/Promoter acknowledges, releases, discharge and acquits the Investor there from).

2. The balance amount of Rs. 19,00,00,000/- (Rupees Nineteen Crores only) will be paid by the Investor to the Developer/Promoter on or before 28th February, 2017.

3. The Investor may, at its discretion, cancel the deal on or before 28th February, 2017 and the Developer/Promoter shall refund Rs. 6,00,00,000/- (Rupees Six Crores only) to the Investor by 1st March, 2017. Time being the essence, in the event of delay, the same shall be payable with interest at the

rate of 18% p.a, compounded monthly from the date it is payable by the Promoter/Developer. Delay beyond the said date shall entitle the investor lo, in addition to the said amount and interest as aforesaid, a charge on all the assets of the Developer/Promoter.

4. In case the Developer/Promoter fails to finalize the deal of said property by entering into a legally enforceable contract and execute necessary documents in that respect in favour of the Developer/Promoter by 31st March, 2017, then the amount of Rs. 25,00,00,000/- (Twenty Five Crores only) or actual amount paid by the Investor shall be repaid to Investor by 30th April, 2017 together with interest at the rate of 18% p.a. compounded monthly from the date it is paid to the Promoter/Developer. Delay beyond the said date shall entitle the investor to, in addition to the said amount and interest as aforesaid, a charge on all the assets of the Developer/Promoter.

5. The Developer/Promoter has agreed to perform its duties and responsibilities as mentioned herein:

5.1 The Developer/Promoter shall take permissions /NOC/clearances required for the development of the abovementioned project on the said property. The Investor shall not be liable in case of any default in the same by the Developer/Promoter.

.....

5.7 The Developer/Promoter may borrow money for buying the said Hotel and may also take construction finance. Any borrowing other than that stated in these presents shall require the prior written consent of the Investor, and in all cases whatsoever where the borrowing is from a bank, the second charge on the said properly shall be of the Investor herein, till the entire amount as per the terms of the said contract is paid to the Investor, first charge being that of the bank from whom the Developer/Promoter may lake loan for the above mentioned project.

5.8 The Developer/Promoter guarantees Rs. 360,00,00,000/- (Rupees Three Hundred Sixty Crores Only) that shall be earned as a minimum gross revenue through the transfer of 2,00,000 sq. ft. saleable area from the whole project. The Developer/ Promoter guarantees to pay 15% of total gross revenue or minimum sum of Rs.54,00,00,000/- (Rupees Fifty Four Crores only) to Investor as stated below and bind itself to observe below agreed timelines:

Sr. No.	Revenue to be realized and to be shared with Investor	Percentage	Minimum Guaranteed Amount (Rs.)
1.	by 31st March, 2018	12%	6,48,00,000/-
2.	by 31st March, 2019	45%	24,30,00,000/-
3	By 31st March, 2020	100%	54,00,00,000/-

Time for payment shall always be of the essence, failure to achieve any of above timelines shall result in interest on delayed payment @ 12% p.a. compounded monthly and shall entitle the Investor to exercise its

right on collateral.

6. The Developer/Promoter shall commence the abovementioned project on 1st April 2017 and shall realize full gross revenue of the project within 36 months, i.e., by 31st March, 2020. However, the Developer/Promoter will have a reasonable extension, not exceeding 6 months, over the period of 36 months if Rs. 288,00,00,000/- (Rupees Two hundred and Eighty Eight Crores only) by way of gross revenue is collected / realized by 31st March 2020 and the 15% thereof as assured is paid to Investor or credited to the account of the Investor. Failure to achieve timelines and/or performance shall entitle the Investor to exercise its right on collateral or can acquire units in project at 40% discount against amount outstanding. For the calculation of units price in project, average of sale prices of transactions of last 6 months shall be taken into account. The minimum sale price of units shall be fixed by the Developer/Promoter in consultation with the Investor and the same may be revised from time to time.

...

8. The nature of the arrangement contained herein is such that the Developer/Promoter has created a right/interest of the Investor in the said project wherein the Developer/Promoter is under an obligation to share gross revenue as per the terms of this Agreement. However, the Parties hereto have, out of abundant caution, stamped these presents as per the provisions of Maharashtra Stamp Act, 1958.

(emphasis supplied)

88. It is well settled that the intention of the parties in any agreement is required to be gathered from the holistic reading of the agreement. In such context, from the reading of different clauses of the said Articles of the Agreement, it is clear that it is an agreement dealing with finance being provided by M/s. Eminence to M/s. Gagan for a proposed project to be undertaken by M/s. Gagan in respect of the land in question. However, from the clauses, which we have noted herein above, it clearly appears that it was not the intention of the parties that any charge be created in respect of the land in question in favour of M/s. Eminence, which is clear from the reading of Clause (4) (supra), inasmuch as the consequence of failure on the part of M/s. Gagan to finalize the deal of the said property by 31 March, 2017, the obligation on M/s. Gagan to return the amount of Rs.25 Crores as obtained from

M/s. Eminence in a manner as set out in Clause (4) clearly shows that the Articles of Agreement was a pure Finance/Investment Agreement and not an Agreement creating any interest in the land/property in favour of M/s. Eminence.

89. The finance as provided by M/s. Eminence was proposed to be utilized for the project. At the relevant time in regard to the land in question, there was not a vestige of rights in respondent no.2 -M/s. Gagan, hence a remotest right of M/s. Eminence in the said land could at all be recognized on the face of the Articles of Agreement. In other words, if M/s. Gagan itself did not possess any right in respect of the said land on the date of the Articles of Agreement, as to how any third parties to the said contract, having no privity to arbitration, could at all be conceived to do anything with any dispute under the said agreement. Thus, there was no question of any rights of M/s. Eminence qua the land being recognized under the Articles of Agreement as on the date of the said agreement, there was none. When this was the clear position, the Articles of Agreement dated 25 February, 2017 could not be construed to be an agreement in relation to the property. In fact, the articles of agreement provided for sufficient mechanism in the event M/s. Gagan could not finalize the deal to purchase the property and the consequence was only return of money as agreed in Clauses (3) and (4). The Agreement in Clause (5) provided for the consequence in the event the property was to be acquired by M/s. Gagan and if the same was to be developed by M/s. Gagan. A plain reading of Clause (5) of the agreement therefore makes it clear that the rights were confined only to recovery of money and it is in that context, Clause 5.7 was required to be read only in the event the rights in the property were to

accure and/or crystallize in favour of M/s. Gagan.

90. This apart, as seen from Clause 5.8, time for payment was agreed between the parties to be the 'essence of the contract' and failure to achieve any of the timelines as agreed between the parties was to result in the interest burden on delayed payment, at the rate of 12% per annum compounded monthly and to such an extent, the entitlement of M/s. Eminence to exercise its rights on collateral. In our clear opinion, Clause 5 from (5.1 to 5.19) and Clauses 6 and 8, in no manner would go to show that the articles of agreement created any right in favour of M/s. Eminence on the subject property and/or that the articles of agreement was not a Finance Agreement but in fact an Agreement in relation to the property as rightly concluded in the section 9 proceedings. Any other reading of the agreement would amount to violation of the other terms and conditions of the Agreement, which appears to be plain and unambiguous. Neither the arbitral tribunal nor the Court could attribute any meaning, which is alien to what has been explicitly agreed between the parties. However, the arbitral tribunal clearly has proceeded to rewrite the Articles of Agreement, rather than proceeding on the main attributes of the clauses of the agreement. It is not the jurisdiction of the arbitral tribunal to fill up lacunae different from what was plainly inferred from the aforesaid clauses of the Articles of Agreement dated 25 February 2017. In our opinion, in a very peculiar manner and on the basis of something which was in the teeth of the rights of a third party to the arbitration in dealing with the rights of such third party and its property. The following reasons as furnished by the arbitral tribunal would demonstrate as to how the considerations which are not relevant have weighed with

the learned arbitrator to bring the petitioner within the purview of the arbitration agreement in the absence of the petitioner consenting to arbitration:-

> "25. It may be true that as per Clause 4 of the Articles of Agreement, in case Respondent No. 1 was not able to purchase the subject property by 31/03/2017, the Claimant was to be entitled to repayment of the monies advanced under the Agreement along with interest @ 18% p.a. and it is undisputed that the scheduled property was bought by Respondent No.8 well after 31/03/2017, i. e. on 01/09/2017. However, on that count the submission advanced by learned senior counsel for Respondent that by operation of the provisions of the Agreement, the Claimant is having only a money claim against the Gagan for recovery of the monies advanced under the Agreement and Claimant is not entitled to assert any right or interest in the scheduled property, cannot be accepted in view of the letter dated 20/02/2023 written by Respondent no.8 to the Claimant, under which Respondent no.8 had created rights in favour of the Claimant over the construction to be carried out on subject property by undertaking to allot certain area of constructed premises in the scheme known as "Gagan Commerce Center" a project to be developed on the subject property. Therefore, the fact that Claimant has got certain enforceable rights against the property both by virtue of Articles of Agreement dated 25/02/2017 and by this letter issued by Respondent no.8 cannot be prima facie disputed."

91. The aforesaid observations cannot be accepted in the first place to infer any involvement of the petitioner who is totally a third party to the arbitral proceedings nor does it create any binding arbitration agreement under which the petitioner could be said to have subjected itself to arbitration. Most importantly the letter under reference dated 20th February 2023 addressed by respondent No. 9, prior to the order passed by the learned District Judge (dated 22nd March 2024) and prior

to the Deed of Conveyance dated 29th March 2024 as entered between respondent No.9 and the Petitioner could never create any privity of any nature between the claimant/M/s. Eminence and the petitioners. Moreover such letter could not have been the foundation even for respondent No.9 to have any privity with M/s. Eminence, much less with the petitioner, considering that the very letter was subject matter of consideration in the Section 9 proceedings on which the learned District Court did not accept the case of M/s. Eminence of any charge being created. Be that as it may, the findings on such letter as rendered by the learned District Judge infact had attained finality, hence, it was not the correct approach on the part of the learned sole arbitrator to brush aside such findings of the learned District Judge on M/s. Eminence having no charge or interest in the said land, and come to a different finding. Once the position on record was to the effect that such finding was accepted by M/s. Eminence, there was no question of such finding being reopened in the arbitration proceedings and that too in an application for impleadment of a third party, who was foreign to the arbitral proceedings.

92. On the aforesaid backdrop, we need to consider that in the contractual scheme *subjecta materia*, of the arbitral proceedings, the basis for the arbitral dispute, as to what is the legal placement insofar as the petitioner is concerned. It appears to be not in dispute that the petitioner had become the owner of the subject property by virtue of Deed of Conveyance dated 29 March 2024, executed between the petitioner and respondent no. 9. The Deed of Conveyance was registered with the Sub-Registrar of Assurances. It is not in dispute that the Deed of Conveyance of the subject property is a transaction which is independent and in

no manner whatsoever connected with the Investment Agreement in question and subject matter of arbitral adjudication, namely, the articles of agreement dated 25 February, 2017. Also the Deed of Conveyance was legal, valid and subsisting, which transferred corporeal rights of the property in favour of the petitioner free from all encumbrances whatsoever and that such conveyance operated in *rem* being not assailed by any party in any proceedings of any competent jurisdiction, much less any injunction operating against the petitioner from asserting any benefit, claim or rights in respect of the subject property being conveyed to the petitioner such the Deed of Conveyance. The following covenants in the Deed of Conveyance in this regard are required to be noted:

> "1. The title of the Seller to the Property is clear and marketable, and free from all encumbrances, litigations, claims and doubts. The Seller legally and beneficially owns and otherwise has full, exclusive, and legally enforceable rights and title to own, use, transfer, sell or otherwise dispose of the Property;
> .....
>
> 4. The Seller has validly and legally acquired the said Property, and the Seller is in quiet, vacant, and peaceful possession of the Property;
>
> .....
>
> 9. Neither the Seller nor anyone on its behalf has created any third party rights in respect of the Property or any part thereof. Further, no person has any right, title, claim and/or interest of any nature whatsoever in respect of the Property or any part thereof whether by way of sale, mortgage, lien, charge, gift, lease, trust, tenancy, possession, occupation or otherwise howsoever;
> .....
>
> 13. There are no encroachments, trespassers, tenants, occupants, or licensees on the Land or any part thereof;
> .....
> 15. The Land is contiguous and is of freehold tenure. There are no remarks or reservations of any restricted tenure or any other such remarks or reservations reflecting any restrictive tenures/restrictive covenants in the revenue records pertaining to the Land;
>
> ...
> 19. No notices, claims or demands from any Governmental Authority or any other local body or authority or under any law including, but not limited to the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013, the Epidemic Diseases Act or Land Acquisition Act or Town Planning laws or Tenancy and Agricultural laws or Municipal Acts/laws or the Defence of India Acts, the Maharashtra Land Revenue Code, 1966 or any environmental laws or any other legislative enactments / rules, government ordinances, orders or notifications for requisition and/or acquisition of the Land or any part thereof have been received by the Seller in respect of the Land or any part thereof which may, in any manner, affect the title of the Seller to the Property or any part thereof or which may, in any manner, affect development and marketing of the Property as contemplated herein or which may in any manner affect the development potential of the Property;

20. No event, fact, condition, change, development, or effect, pending or threatened litigation, investigation or proceeding has occurred which may adversely affect the Property or the rights of the Purchaser to deal with the Property or which may adversely affect the legality, validity, binding nature, or enforceability of this Deed;

21. The Property or any part thereof is not subject matter of any litigation or proceedings including any proceedings under the Income Tax Act, 1961 as contemplated under Section 281 of the Income Tax Act, 1961 and/or Section 81 of the Goods and Services Tax Act, 2016, having an impact on the Land) in any court or tribunal or arbitration or revenue proceedings or quasi-judicial proceedings nor are there any prohibitory order, attachment, acquisition, requisition on the Property/Land or any part thereof either before or after judgment or in custody/symbolic or physical possession of the Court Receiver and there is no money decree passed against the Seller / Land;
.....

23. There is no injunction or status quo order or any order of demolition or any other order, notices, demands passed/ issued/ filed by any authority or any third party against Seller and/or their predecessor/s in title, which may, in any manner, affect the title of the Seller to the Property or any part thereof or which may, in any manner prohibit or restrict the Seller to enter into this Deed;
....

28. The Seller has not entered into any agreement to sell or lease, license or any kind of transfer and/or an agreement for grant of development rights and/ or any other deeds, documents and/or writings for creation of any third-party rights in respect of the Property or any part thereof;
.....

33. The Property is not affected by the provisions of Maharashtra Inferior Village Watan Abolition Act, 1959 and Seller has not received any notice/s under the provisions of the aforesaid act against any claims to the said Land or any part thereof;
.....

43. The Seller has good right, full power, and absolute authority to execute this Deed and execution of this Deed shall not be in violation of applicable laws, the memorandum and association or articles of association of the Seller or any contract, document or writing to which the Seller is a party."

93. A cumulative reading of the Clauses of the Deed of Conveyance would indicate that the petitioner is in disputedly the owner of the subject property free from all encumbrances, litigation, claims and doubts and the legally enforceable rights and title to own, use, transfer or otherwise dispose of the property stand vested in the petitioner as conveyed to the petitioner by the seller-respondent no. 9. This is the legal position as on 29 March 2024. In the context of the jurisdiction authority of the arbitral tribunal qua the petitioner, if the rights *inter se* between M/s. Eminence(claimants) and M/s. Gagan subject matter of the arbitral proceedings are juxtaposed with the rights *inter* se between the petitioner and respondent no. 9, subject matter of 'Deed of Conveyance' dated 29 March, 2024, it is quite clear that there was no legal nexus or bearing of any nature which could establish any jurisdiction or causation in so far as the petitioner was concerned, in regard to the rights of M/s. Eminence being asserted under the Articles of Agreement dated 25 February 2017 and more particularly when respondent no. 9 itself was not a party to the said articles of agreement.

94. It is in the aforesaid context, the primary claim of M/s. Eminence in the arbitral proceedings would be required to be considered including to note the relevant statements as made in the Statement of Claim. The following paragraphs in the Statement of Claim would make the position clear on the nature of claim and the subject land is concerned:

> "17. The Claimant submits that as regards the Respondent No. 2 to 7, the said notice dated 25.03.2023 was not only invoking the arbitration clause but also a notice of 30 days for payment of the defaulted amount in terms of the Deed of Guarantee and the Indemnity Bond, which in any case the Respondent Nos. 2 to 7 have defaulted in making the payment and have breached their

undertakings. The Respondent Nos. 2 to 7 are jointly and severally liable for repayment of the outstanding dues along with the Respondent No.1.

18. The Claimant thereafter filed an Arbitration Petition bearing No. 152/2023 u/s 11 of the Arbitration and Conciliation Act 1996 before the Hon'ble High Court of Judicature at Bombay. The Hon'ble High Court by its Order dated 30/11/2023 has appointed the Sole Arbitrator for adjudication of the disputes.

19. **Particulars of Claim:**

The Claimant submits that as per the Articles of Agreement 25th February 2017 the Respondent No.1 had to pay an amount of Rs.54,00,00,000/- (Rupees fifty four crores) by 31 March 2018 failing which the Respondent No.1 has undertaken to pay interest on the delayed payment @12% p.a. compounded monthly. The Respondent No.1 has made a paltry repayment of Rs.1,30,00,000/- (Rupees one core thirty lacs only). Thus, after deducting this amount repaid by the Respondent No.1, the amount repayable by the Respondent No.1 is as under:-

i.	Amount payable as on 31.03.2020 as per the terms of Articles of Agreement dated 25.02.2017	Rs.54,00,00,000/-
ii.	Amount actually received as on 31.03.2020	Rs.1,30,00,000/-
iii.	Thus, amount actually receivable as on 31.03.2020 after deducting the amount received	I-ii = Rs.52,70,00,000/-
iv.	Interest at the rate of 12% p.a. compounded monthly from 01.04.2020 till 7 January, 2024, i.e., till the date of filing the Claim Petition.	**Rs.29,95,17,388.58** The details of calculation on interest is annexed hereto as **Annexure 'V'**
v.	Total Amount Claimed	iii + iv = **Rs.82,65,17,388.58** **Rupees eighty two crores sixty five lakhs seventeen thousand three hundred eighty eight and fifty eight paise.**

Thus, the Claimant submits that as on the date of filing of the Claim Petition an amount of Rs.82,65,17,388.58 (Rupees eighty two crores sixty five lakhs seventeen thousand three hundred eighty eight and fifty eight paise) is liable to be paid by the Respondent No.1 to 7 with future interest thereon till the date of repayment.

20. The cause of action for the present claim is as stated above. The cause of action for filing of the present claim first arose on 31.03.2020 when the Respondent No.1 failed to return the investment of the Claimant as undertaken

in the Articles of Agreement dated 25.02.2017. It further arose on 20.02.2023 and 9.03.2023 when the Respondents addressed letters promising to comply with their undertaking and liabilities to pay the debt. It further arose on 25.03.2023 when the Claimant issued the notice dated 25.03.2023 and Respondents inspite of its receipt, opted to remain silent. The cause of action is a continuous one and thereafter arising day by day.

21. The Respondent No.1 in the Articles of Agreement dated 25.02.2017 has undertaken to pay to the Claimant an amount of Rs. 54,00,00,000/- by 31.03.2020. The Respondent No.1 has on 20.02.2023 addressed a letter to the Claimant reiterating that the documents executed by it are valid and subsisting and further promised to pay the debt in whole. The Respondent Nos. 2 and 5 to 7 have also addressed a letter dated 9.03.2023 confirming the issuance of the letter dated 20.02.2023 by the Respondent No.1 and reiterated that their respective liability also stands confirmed and extended and promised to pay the debt. The Claimant has invoked the arbitration by its notice dated 25.03.2023 which has been received by the Respondents on 28.03.2023. Also, as pleaded in the above paras there has been intermittent repayment of some small amounts by the Respondent No. 1 and also balance confirmation letters executed from time to time. Thus, the arbitration proceedings is commenced well within the period of limitation.

22. The Articles of Agreement dated 25.02.2017 entails an Arbitration clause. The Claimant has invoked the arbitration by its notice dated 25.03.2023. The Hon'ble High Court of Judicature of Bombay by its order dated 30.11.2023 has appointed the Learned Arbitrator. The claim of the Claimant is within the ambit of arbitration. Hence the Learned Arbitrator has jurisdiction to try and entertain the present claim.

23. The Claimant states that a Public Notice was issued by M/s. AZB and Partners in the daily newspaper Times of India dated 8.12.2023 stating that they are investigating the title of the said Sun and Sand property. A copy of the public notice dated 8.12.2023 has been annexed and marked hereunder as Annexure 'W'. The Claimant immediately has preferred a Civil Miscellaneous Application bearing No. 1177 of 2023 before the Hon'ble Commercial Court, Pune under Section 9 of the Arbitration and Conciliation Act, 1996 restraining M/s. Gagan I-Land Township Pvt. Ltd. from i.e. the Respondent No.8 creating third party rights and the Hon'ble Court by its Order dated 22.12.2023 has granted ad interim ex parte reliefs. The copy of the said order is annexed herewith and marked hereunder as Annexure 'X'.

(entered by amendment of the statement of claim)

23(a): The Claimant submits that the Claimant on 27/12/2023 issued a Public Notice in the daily newspaper Times of India stating that the scheduled property is the subject matter of the Civil M.A. No. 1177/2023 related to the arbitration proceedings. Further the Claimant has even registered a Lis Pendens notice dated 08/01/2024 registered with the Sub Registrar of Assurances, Haveli No.11 at Serial No.563/2024 giving details of the Arbitration Proceeding and the charge of the Claimant over the schedule property. However, pending the order on the impleadment application of Respondent No. 8, the Respondent No. 8 as informed by its email dated 10/04/2024 addressed to the Sole Arbitrator and even to the Claimant, that it has allegedly conveyed the scheduled property to Luxempire Realty Private Limited by a

Deed of Conveyance dated 29/03/2024 registered with the office of Sub-Registrar of Assurances, Haveli No. 23 at Serial No.7678/2024. The said transfer is made by Respondent No. 8 with intent to defeat the claim of the Claimant. The purchaser Luxempire Realty Private Limited has purchased the same with the due notice of the Claimant's charge. The alleged conveyance is not in good faith and the scheduled property has been intentionally undervalued. In any case the purchaser has purchased the property subject to the charge and claim of the Claimant over the scheduled property and the Claimant is entitled in law to enforce its rights over the scheduled property for satisfaction of its claim in the arbitral award. The transaction so entered is hit by section 53 of Transfer of Property Act.

23(b): In any event the Claimant submits that the Respondent No. 8 by its letter dated 20/02/2023 created rights in favor of the Claimant over the construction to be carried out on scheduled property by undertaking to allot certain area of constructed premises in the scheme known as "Gagan Commerce Center" project on the schedule property. The Respondent No. 8 has obtained the building plan sanctioned from the Pune Municipal Corporation vide Commencement certificate bearing number CC/2112/17. The said project is also registered under RERA. The letter so issued by the Respondent No. 8 is in the capacity of a promoter as defined under RERA as well as The Maharashtra Ownership Flats Act, 1963. A Promoter is statutorily bound to discharge the obligations created. Luxempire Realty Private Limited, being a developer and entered into the shoes of the Respondent No. 8 as a promoter in a RERA approved project, is duly bound by the obligations of the earlier promoter, the liabilities and charge created and cannot feign ignorance of the same. either in law or equity.

24. The Claimant therefore prays that:

(a) By an award, The Respondent No. 1 to 7 be ordered jointly and severally to pay the Claimant its claim of Rs. Rs.82,65,17,388.58 (Rupees eighty two crores sixty five lakhs seventeen thousand three hundred eighty eight and fifty eight paise) as detailed in para 19 above, together with future interest thereon at 18 per cent per annum with monthly rests, from the date of filing the Claim Petition, till payment and realization of the entire decretal dues;

b) It be declared that Gagan I-Land Township Private Limited i.e. the Respondent No.8 being part of the group companies of the Respondent No.1 to 7 is also liable to pay the claim of the Claimant as prayed in prayer clause (a) and it be ordered to pay the same jointly and severally with the Respondent nos. I to 7 and it be declared that the Claimant is having a charge on the property mentioned in the Schedule above and that it can be enforced in the execution proceeding for satisfaction of the award and order be passed for attachment and sale of the same;

(c) The Respondent Nos. 1 to 7 be further directed to pay the Claimant the costs of arbitration and the expenses incurred by the Claimant in enforcing its claim;

(d) Such further and other reliefs which the Claimant may pray for from time to time and this Learned Arbitrator deems just and proper in the circumstances of the case be passed in favour of the Claimant.

(e) Any other order in the interest of justice in favour of the Claimant be passed."

(emphasis applied)

95. Thus from the reading of the aforesaid case of M/s. Eminence in the Statement of Claim, it is clear that the principal relief was for recovery of amount of Rs.82,65,17,388.58 and an independent relief was prayed for against respondent no. 9 merely on the ground that it is a group company and is also liable to satisfy the claim of M/s. Eminence in prayer clause(a) and be ordered to pay the same jointly and severally with the other respondents. Further a declaration in such context was sought for that M/s. Eminence is having charge on the subject property which can be enforced in satisfaction of the award for which an order be passed for attachment and sale of the same.

96. From a bare reading of prayer clause(b) (supra) of the Statement of Claim, it is clear that prayer clause (b) is nothing less than a prayer for recovery of the amounts subject matter of prayer clause (a) from other respondents, which includes respondent no. 9 and in the event, the claim as made by M/s. Eminence succeeds, the amounts be recovered from the subject property only on determination of the issue that M/s. Eminence has charge on the said land/property.

97. It may be stated that the assertion of M/s. Eminence's charge on the property in the present circumstances was an issue requiring consideration, only after the principal claim of M/s. Eminence was to succeed, for the recovery of amounts. This would be in the realm of recovery and execution and not otherwise. The reason also being that there was no document whatsoever, which the law

would recognize, for the arbitral tribunal to consider that there is a direct charge of M/s. Eminence over the subject land / property so as to form the subject matter of the arbitral proceedings. This is also not the case of M/s. Eminence. Notably, prayer clause (b) in the Statement of Claim as asserted on behalf of the petitioner is made on the backdrop of M/s. Eminence having failed to succeed in the proceedings filed under section 9 of the Arbitration and Conciliation Act before the District Court at Pune where an identical issue in regard to an alleged charge of M/s. Eminence on the subject property was raised in support of its prayer for injunction. In such context, the contention of M/s. Eminence that there is a charge on the subject property came to be outrightly rejected by the District Court when it made the following observations:

> "48) Having heard above referred submissions of both parties and the fact that admittedly there is no document in writing and that too registered which would create a charge upon the scheduled property of applicant. Apart from the controversy whether charge can only be created by registered instrument or not, the question comes if the scheduled property has been purchased in the name of respondent no.8 company and no where respondent no.8 has executed any document in favour of applicant which would show that charge of applicant is created on scheduled property. So, in absence of the same, I find that the claim of applicant regarding creation of its charge over scheduled property cannot be accepted.
>
> 57) On the contrary learned advocate for the pondent no.8 has submitted that infact there is no specific pleadings in the application regarding principle of up of Companies theory In order to bring the concept Group of Companies theory then there has to be express sent of respondent no.8 to include it in the area of mer companies ie, company of applicant and respondent 1. Amongst all parties except respondent no.8 all maining parties are LLPs. So, in absence of two or more panies or group, there cannot be theory of Group of mpanies. So, by this angle also the applicant cannot any right over the scheduled property and further to ain the respondent no.8 from dealing with the said property.
>
> **62) Here, the case in hand the applicant could not make out the case by which the conduct of respondent no.8 i.e. non-signatory party of which would show its consent for bind it by arbitration agreement. Therefore, in view of above discussed factual and legal aspects of the matter, I am of the view that the applicant could not make out prima facie case nor balance of convenience does lie in its favour. Therefore, ultimately there is no question to cause irreparable**

> loss to it. Even if applicant sustain loss then it can be compensated in terms of money, so said so called monetary loss could not be said to be irreparable. Thus, it is needless to mention that the applicant is not entitled to have discretion in its favour so as to grant relief of interim measures. In the result, I pass the following order.
>
> ORDER
>
> Application is rejected."
>
> (emphasis supplied)

98. It is after such order dated 22 March 2024 was passed by the District Court under Section 9 of the Arbitration and Conciliation Act, a Statement of Claim came to be filed by M/s. Eminence on 6 September 2024 and significantly against M/s. Gagan (respondent No.2), its partners and other respondents. Respondent no. 9 later on came to be impleaded.

99. Thereafter, on 20 November, 2024, M/s. Eminence filed an application to implead the petitioner as a party-respondent on the primary ground that the petitioner has purchased the subject property from respondent no. 9(original respondent no.8 in the arbitral proceedings), during the pendency of the proceedings and being fully aware of the interest of M/s. Eminence and there being no charge of M/s. Eminence over the said land. The said application was opposed by the petitioner by filing an affidavit *inter alia* contending that the petitioner was not a party, nor a signatory to the articles of agreement dated 25 February, 2017 executed between M/s. Eminence and M/s. Gagan, which contained the arbitration agreement. It was contended that the petitioner was also not forming part of 'Group of Company' of M/s. Gagan. The petitioner hence contended that the petitioner being an independent and distinct legal entity has no concern with any of the respondents in the arbitral proceedings. It was hence contended that the

principle of 'Group of Companies' as evolved by the Supreme Court in *Cox and Kings Ltd. (supra)* also could not be made applicable to it.

100. In the impugned order, the learned sole arbitrator has held that by purchasing the subject property from respondent no. 9 the petitioner has stepped into the shoes of respondent no. 9, and thus was 'claiming through or under' respondent no. 9 in respect of the possession/ownership and the development of the subject property. How could this be when it was undisputed that the petitioner had derived its right and title to the subject property from respondent no. 9 which was not a party to the arbitration agreement and more particularly away from what was held by the Supreme Court in paragraph 135 in *Cox and Kings Ltd. (supra).* Such deed of conveyance in no manner amounted to an assignment and novation to infer that the petitioner to be the assignee of the property or of the rights in such property so as to become a necessary party to the arbitral proceedings. The other relevant observations as made by the learned sole arbitrator in allowing the application of M/s. Eminence are required to be noted, which reads thus:

> "13. In the present case, though it is true that the proposed Respondent has purchased the subject property by an outright sale and thus being the owner of the property and does not exercise any inferior rights to Respondent No. 8, the fact remains that the rights of proposed Respondent are 'derivative' as it has derived its title, Ownership and possession to the subject property through Respondent no.8 and is thus "claiming through and under" Respondent 8.
>
> 14. Section 8 of the Arbitration & Conciliation Act 1996 clearly recognizes that an arbitration can be invoked, not only by a party to the arbitration agreement but also by a party 'claiming through or under such party'. Hence, if a party claiming through or under a party to the arbitration agreement can invoke the arbitration, applying the same principle, such party can be joined in the arbitration proceeding also, even in the absence of being a signatory or a party to the arbitration agreement. This is exactly recognised by the Hon'ble Karnataka High Court in **M/s Devtree Corp. LLP vs. M/s Bhumika North Gardenia** (M.F.A. No.2978 of 2024), relied upon by learned counsel for Claimant. In the said case the application was filed for impleading subsequent

transferee of a property, who was a non-signatory to the arbitration agreement. While allowing such application Hon. High Court has considered various legal aspects as under:

> *"15. On a reading of Section 8(1) extracted above, it is evident that not only a party to the arbitration agreement but also a person claiming through or under a party can apply to refer the matter to arbitration if a proceeding is brought before judicial authority. This provision expressly recognises the right of the "party or anyone claiming through or under him" to the agreement to seek the resolution of a dispute through arbitration. If a party or a person claiming through or under a party to an arbitration agreement can apply to refer the matter to arbitration, the converse also applies, i.e., anyone claiming through or under the party to the arbitration agreement can be subjected to the jurisdiction of the Arbitral Tribunal.*
>
> *16. The agreement dated 16.10.2020 contains a binding arbitration clause. The appellant/purchaser being the assignee, steps into the shoes of the vendors of the agreement dated 16.10.2020, and takes the properties from vendors with all rights and obligations attached to them. The transferee is not bound by the obligations only if the person in whose favour the obligations exist, agrees to waive such obligations. No such waiver is claimed or asserted by the appellant.*
>
> *17. During the course of the hearing, an important question was posed by my esteemed sister as to what would be the consequence in case, the proceeding to enforce the obligations under the agreement dated 16.10.2020 against the vendors, ends in an award in favour of the respondent. The learned Senior counsel for the appellant submitted that such an award does not bind the appellant. Said contention is not tenable. Since the sale transaction in favour of the appellant during the pendency of Section 9 proceeding is subject to the outcome of Section 9 proceeding, and said proceeding being a step-in-aid to the proceeding to be initiated before the Arbitral Tribunal, the appellant who is a lite purchaser during Section 9 proceeding cannot be permitted to say the award does not bind him. Accepting such contention in effect amounts to unilateral termination of the 'arbitration agreement' and consequently renders the award of the Tribunal as unenforceable. It will also defeat the very object behind Section 8 of the Act of 1996.*
>
> *18 For the reasons assigned above, this Court is of the view that the appellant Company being a person who is not a party to the arbitration agreement, and being the purchaser of the properties from a person who is a party to the arbitration agreement, is bound by the arbitration clause binding on its vendor. It is not open to the appellant to contend that the arbitration agreement which is binding on its vendors is not binding on the appellant on a specious plea that it is not a signatory to the arbitration agreement."*

15. These observations of the Karnataka High Court perfectly apply to the facts of the present case. Proposed Respondent having purchased the property from Respondent no.8 during pendency of this arbitration proceeding, knowing

> fully well Claimant's interests over the said property and thus 'claiming through or under Respondent no.8 cannot contend that as it was not signatory to the arbitration agreement, it cannot be made party to this proceeding. It will be against the spirit of section 8 of the Arbitration & Conciliation Act 1996.
>
> 16. There is also substance in the submission of learned counsel for Claimant that in case of substitution, even if it is partial, fresh consent is not required. Such consent can be explicit or can be implicit, as can be inferred from the facts of the case. When the case made out against proposed Respondent is of 'claiming through or under Respondent no.8' the question of seeking its fresh consent to arbitration agreement does not arise in as much as the consent has already been given by Respondent nos. 1 to 8.
>
> 19. Even otherwise, such implicit consent on the part of the proposed Respondent to the arbitration proceeding can be inferred as proposed Respondent has purchased the subject property knowing fully well about the pendency of this arbitration proceeding and about the rights which Claimant was seeking against the subject property and also about liabilities which Respondent no.8 has towards Claimant qua the subject property. It is a matter of record that proposed Respondent has, inspite of the Objection Notice dated 21" December 2023 and the Public Notice dated 27th December 2023 issued by the Claimant and the notice of Lis Pendens dated 08 January 2024 registered by the Claimant, purchased the subject property, that too within two days of the order u/s 9 of the A& C Act 1996 being uploaded, thereby indicating that proposed Respondent was also aware of the said proceeding. Hence one can easily infer that proposed Respondent has thus given implied consent for its impleadment in this arbitration proceeding.
>
> 33. To sum up, therefore it has to be held that to prevent the ends of justice being defeated, it is necessary to implead proposed Respondent in this arbitration proceeding, who is 'claiming through and under Respondent No.8' and holding the subject property, to which are annexed the obligations and interests created in favour of Claimant. Hence the Application needs to be allowed.
>
> (emphasis supplied)

101. It is difficult for us to accept the aforesaid reasoning as made by the learned sole arbitrator for more than one reason. The first and foremost being that in reaching to the aforesaid conclusion, some fundamental and patent errors of jurisdiction appear to be apparent. **Firstly**, respondent no. 9 was exclusively the owner of the subject property as purchased by the petitioner under the Deed of Conveyance dated 29 March, 2024. The legal consequences brought about by the Deed of Conveyance was that the subject property vested in the petitioner free

from all encumbrances as discussed hereinabove. There was no fetter whatsoever on the petitioner enjoying all rights in respect of the subject property. It is not the case that respondent No.9 (respondent No.8 in the arbitral proceedings) had subjected itself to the jurisdiction of the arbitral tribunal or had accepted to be governed by under the arbitration agreement between M/s. Eminence neither expressly or by implication. Thus, there was no question of the petitioner claiming through or under respondent No.9. There is no question of any implicit consent contrary to the documents on record and the judicial adjudication in the section 9 proceedings.

102. We may observe that the learned Sole Arbitrator was guided by the decision of the Karnataka High Court in M/s. Devtree Corp LLP, however, the facts in the present case were wholly different from what had fell for consideration of the Karnataka High Court in M/s. Devtree Corp. LLP. (supra), for such reasons, it is difficult to accept the reasoning of the arbitral tribunal that there was a legal bearing or any intrinsic co-relation between the articles of agreement dated 25 February, 2017and the Deed of Conveyance dated 29 March, 2024 to the effect that the subject property in any manner was available for satisfying the debts due and payable by M/s. Gagan to M/s. Eminence. To read the Deed of Conveyance, to be recognizing any charge of M/s. Eminence on the subject property was reading something contrary to the express clauses of the Deed of Conveyance. **Secondly**, there was no embargo whatsoever on respondent no. 9 to convey the subject property in favour of petitioner, which was conveyed under the Deed of Conveyance dated 29 March, 2024. It was not the case that M/s. Eminence has

pleaded a case of transfer of property in favour of the petitioner by respondent no. 9 to be a fraudulent transfer in terms of what has been defined under Section 53 of the Transfer of Property Act. In any event, such a plea could not have been taken, as respondent no. 9 by itself was not a debtor of M/s. Eminence having any independent obligation towards M/s. Eminence under the articles of agreement dated 25 February, 2017. In such event, by application of Section 53(1) of Transfer of Property Act,1882, the rights of the petitioner as transferees in good faith and for consideration stood unaffected. Also, no independent suit was instituted by M/s. Eminence against the petitioner asserting any such rights and/or obtaining any prohibitive orders for obvious reasons of there being no privity. It appears that a belated decision was taken to move an application before the learned sole arbitrator to implead the petitioner as a party-respondent. For reasons which are far from any contractual privity and/or for commercial reasons.

103. **Thirdly**, it is not a case that M/s. Eminence was not aware of such rights in regard to the subject land being created in favour of the petitioner and more particularly, under the Deed of Conveyance dated 29 March, 2024, as M/s. Eminence took its chance in asserting similar contentions in the proceedings of Civil Miscellaneous Application No. 1177 of 2023 filed under Section 9 of the ACA before the Commercial Court on 22 December, 2023, in which M/s. Eminence specifically asserted charge on the subject property and sought an injunction against respondent no. 9, that respondent no. 9 be restrained from dealing with, selling or creating any third party rights whatsoever in respect of the subject property, which was described in the schedule set out in paragraph 17 of the

Civil Miscellaneous Application. The Civil Miscellaneous Application was finally rejected by an order dated 22 March, 2024 passed by the learned District Judge-2, Pune whereby the entire case of M/s. Eminence that it had a charge on the subject property after being elaborately dealt was rejected by such order dated 22 March, 2024 passed by the learned District Judge. It is only after such order was passed, when there was no embargo of any pending litigation, the sale of the property in favour of the petitioner was finalized. Thus, at any point of time since the filing of the Civil Miscellaneous Application under Section 9 of the ACA before the Court of learned District Judge at Pune on 22 December, 2023 and till the decision of the said Application on 22 March, 2024, M/s. Eminence was not only aware but also pursued its cause against respondent no. 9 to involve the subject property for payment of its dues. However, M/s. Eminence failed in such proceedings. Even the appeal filed under section 37 of the ACA challenging the orders passed by the learned District Judge rejecting the application filed under Section 9 of ACA by M/s. Eminence was withdrawn. After about eight months of such transfer of the said land in favour of the petitioner, M/s. Eminence moved an application to implead the petitioner as a party respondent, is also something, which as rightly contended on behalf of the petitioner was a relevant factor.

104. **Lastly**, the primary prayer of M/s. Eminence in its arbitral claim as clearly seen, is for recovery of money, and the assertions in regard to the subject land are on the premise of there being a charge as clear from prayer clause (b), which in fact is a plea in execution becoming relevant only when the principal claim as made by M/s. Eminence succeeding. This clearly indicates that the said land in no manner

whatsoever was subject matter of arbitration and if the same was not to be the subject matter of arbitration, under what legal obligation the petitioner could be impleaded as a necessary or proper party to the arbitral proceedings cannot be understood. This more importantly recognizing the well-settled principles that the plaintiff is not obliged to implead a person as a defendant in the suit against whom no relief is sought. A bare perusal of the reliefs in the statement of claim clearly shows that no relief is prayed for against the petitioner which itself is a legal entity when a charge is asserted against the petitioner's property.

105. On a plain reading of the Statement of Claim, it is thus clear that *per se* no relief is sought against the petitioner. A relief being claimed on the subject property and in the manner in which prayer clause (b) is couched, cannot be accepted to mean that any right of M/s. Eminence against the petitioner is explicitly asserted much less prayed for. Even considering the position as falling under the provisions of Order 1 Rule 3 of the Code of Civil Procedure, it is well-settled that the object of the rule is to bring on record all the persons who are parties to the disputes relating to the subject matter, so that the disputes may be determined in their presence at the same time, without any protraction, inconvenience and the multiplicity of the proceedings may be avoided (see : **Anil Kumar Singh vs. Shiv Nath Mishra**[37]). It is further well settled that a party may be added as a defendant in the suit, provided the party has a legal interest in the subject matter of the litigation, i.e., legal interest not as distinguished from an equitable interest, but an interest which the law recognizes. A person who would

37 (1995) 3 SCC 147

be indirectly or commercially affected by the result of the litigation cannot be impleaded as a party.

106. Thus, considering all such eventualities and the legal consequences which were brought about in not only the Court proceedings, but also, by the documents in relation to the said land/property, which we have discussed in detail, we are not persuaded to accept that merely because the petitioner purchased the subject property, it would become a necessary party to the arbitral proceedings. We are, therefore, of the opinion that the contentions as urged on behalf of the petitioner needs to be accepted.

107. Having made the aforesaid observations, we now consider as to why the case of M/s. Eminence as urged by Mr. Khambata has not persuaded us to take a different view. Mr. Khambata has primarily contended that the petitioner having purchased the property with open eyes during pendency of the arbitration proceedings, has "impliedly" consented to be bound by the arbitral process, and secondly, while deriving title to the property from respondent No.9, the petitioner is claiming 'through or under' respondent No.9, are the factors which necessitated impleadment of the petitioner as a party to the arbitral proceedings. In our opinion, in the facts of the case such proposition is not well founded for the reasons which we have discussed hereinabove, and more particularly M/s. Eminence having failed before the Court of competent jurisdiction, in the Section 9 proceedings in not succeeding to restrain respondent No.9 from dealing with the subject property. This more particularly, on the backdrop of the case of M/s. Eminence of the charge

on the said land having failed. If such argument of Mr. Khambata is to be accepted, it creates two fold consequences, firstly that the orders of the District Judge in adjudicating the Section 9 proceedings as instituted by M/s. Eminence asserting charge or any other legal rights on the subject property having failed, are required to be wholly discarded. This more particularly when the case of M/s. Eminence is only of a charge on the said land as clearly seen from the prayer (b) as made in the statement of claim. It can never be that the orders passed by the Court do not create any legal consequence. In the present case, the legal consequence was to the effect that Court itself recognized that there was no embargo whatsoever on respondent No.9 dealing with said property and in such context a clear finding was recorded by the learned District Judge that there was no charge on the subject property created in favour of M/s. Eminence. Secondly, this position would never bring about a situation, that merely because the subject land was purchased by the petitioner under a Deed of Conveyance dated 29 March 2024, from respondent No.9, any legal consequence of the petitioner claiming through or under M/s. Eminence (respondent No.2) was brought about. This irrespective of what has been clearly prayed for in prayer clause (b) of the Statement of claim. Thus, on both these counts such contention of Mr. Khambata cannot be accepted.

108. It appears that such contention as urged by Mr. Khambata relying on the decision of the High Court of Karnataka in *M/s. Devtree Corp LLP (supra)* as also referred by the learned sole arbitrator in passing the impugned order, is clearly not applicable in the facts of the present case, inasmuch as, in the said case the agreement of sale between the respondent and vendors had taken place during the

pendency of the Section 9 proceedings. Such proceedings were filed on 31 July 2023, and during the pendency of the said application, on 20 December 2023 the appellant had purchased the property subject matter of dispute from the vendors of the respondent in the proceedings. On 2 January 2024, the Section 9 Court passed an order against the vendors restraining them from alienating the scheduled property. It is in these circumstances, the High Court applying the principles of law as laid down by the Constitution Bench in *Cox & Kings Ltd. (supra)* referring to the specific terms of the agreement, applying the doctrine of *lis pendens* held that the appellant purchaser being assignee had stepped into the shoes of the vendors of the agreement had taken the property from the vendors with all rights and obligations attached to them. The Court also held that the said transaction in favour of the appellant which was executed during the pendency of the Section 9 proceedings was subject to the outcome of the Section 9 proceedings and such proceedings being a step-in-aid to the proceeding to be initiated before the Arbitral Tribunal. These are the circumstances completely different to the facts of the present case, in which, the subject property is admittedly conveyed / sold in favour of the petitioner after the final order is passed on Section 9 proceeding, as noted hereinabove. Insofar as the principles of law as laid down by the Constitution Bench of the Supreme Court in *Cox & Kings Ltd. (supra)* in relation to impleadment of non-signatories to the arbitration agreement in the arbitral proceedings, are concerned, we advert to the same little later.

109. Insofar as the contentions as urged by Mr. Khambata in regard to the principles of law on impleadment of non-signatories to the arbitration agreement

as a party to the arbitral proceedings, we shall advert to the same in the following discussion.

The position in law in respect of impleading a non-signatory to the arbitration agreement as a party to the arbitral proceedings

110. This question need not detain us inasmuch as the principles on such question are no more *res integra* in view of the authoritative pronouncement of the Supreme Court, in *Cox & Kings Ltd. (supra).* The Supreme Court in this decision examined whether the Arbitration Act allows joinder of non-signatory to an arbitration agreement, as a party, and whether Section 7 of the Arbitration Act allows for determination of an intention to arbitrate on the basis of the conduct of the parties. Considering the definition of the term 'party' as defined under Section 2(1)(h) of the ACA to mean a party to an arbitration agreement, and further the term 'arbitration agreement' being defined under section 2(1)(b) to mean an agreement referred to in Section 7, the Court observed that Section 7 lays down the essential elements of a valid and binding arbitration agreement. It was held that an arbitration agreement, being a creature of contract, as held by the Supreme Court in *Bhaven Construction (supra)*, was based on the consent of parties to submit their disputes to an alternate dispute resolution mechanism. It was observed that generally, a party to an arbitration agreement is determined on the basis of persons or entities who are signatories to the arbitration agreement or the underlying contract containing the arbitration agreement. It was observed that however, over the past two decades the law on joinder of non-signatory parties has evolved substantially. The evolution was roughly classified into two stages: before *Chloro Controls (supra)* and the development of law after *Chloro Controls(supra)*, and the

contemporary jurisprudence in that regard in the foreign jurisdiction. The Constitution Bench considering the principles of "*consent as basis for arbitration*" and principle of "*party autonomy*" being paramount in adjudication of disputes, in arbitral proceedings and that the arbitration agreement being a creature of a contract involving the doctrine of privity and the binding effect created under such agreement on the parties, held that it is generally an accepted legal proposition that "*arbitration is a matter of contract*" and a party cannot be subjected to submit any dispute to arbitration, which it has not agreed, so to submit. It is held that since "consent forms the cornerstone of arbitration", a non-signatory cannot be forcibly made a "party" to an arbitration agreement as doing so would violate the sacrosanct principles of '*privity of contract*' and '*party autonomy*'. Further it was held that however, in case of multi-party contracts, the Courts and tribunals are often called upon to determine the parties to an arbitration agreement. It was held that the decisive question before the Courts or tribunals is whether a non-signatory consented to be bound by the arbitration agreement and to determine whether a non-signatory is bound by an arbitration agreement, the Courts and tribunals apply typical principles of contract law and corporate law, and that the legal doctrines provide a framework for evaluating the specific contractual language and the factual settings to determine the intentions of the parties to be bound by the arbitration agreement. The following observations made by the Constitution Bench in the majority decision are paramount which need to be applied in determination of the issue in regard to non-signatory being impleaded as party to the arbitral proceedings:-

Arbitration Agreement

I. Consent as the basis for arbitration

62. Arbitration is an alternative dispute resolution mechanism where parties consensually decide to submit a dispute between them to an arbitral tribunal to the exclusion of domestic courts. Arbitration provides a neutral, efficient, and expert process for dispute resolution at a single forum whose decision is final and binding on the parties. **The principle of party autonomy underpins the arbitration process as it allows the parties to dispense with technical formalities and agree upon substantive and procedural laws and rules applicable to the merits of the dispute. Party autonomy allows the parties to choose the seat of arbitration, number of arbitrators, procedure for appointment of arbitrators, rules governing the arbitral procedure, and the institution which will administer the arbitration.** An arbitration proceeding is broadly divided into two stages: The first stage commences with an arbitration agreement and ends with the making of an arbitral award. The second stage pertains to the enforcement of the arbitral award.

63. Consent forms the cornerstone of arbitration. An arbitration agreement records the consent of the parties to submit their disputes to arbitration. A two-Judge Bench of this Court in Bihar State Mineral Development Corporation v. Encon Builders (I) Pvt. Ltd. 47 laid down four essential elements of an arbitration agreement:

> **(i) There must be a present or a future difference in connection with some contemplated affair.**
> **(ii)The parties must intend to settle such difference by a private tribunal.**
> **(iii)The parties must agree in writing to be bound by the decision of such tribunal.**
> **(iv) The parties must be ad idem.**

68. Being a creature of a contract, an arbitration agreement is also bound by the general principles of contract law, including the doctrine of privity. The doctrine of privity means that a contract cannot confer rights or impose liabilities on any person except the parties to the contract. This doctrine has two aspects: first, only the parties to the contract are entitled under it or bound by it; and second, the parties to the contract cannot impose a liability on a third party. As a corollary, a third party cannot acquire rights and entitlements under a contract. In M C Chacko v. State Bank of Travancore, this Court held it as a settled principle of law that a person who is not party to a contract cannot enforce the terms of the contract, subject to certain well-recognised exceptions such as trust, family arrangement, and assignment. The principle that only the parties to an arbitration agreement are either bound or benefited by such an agreement is fundamental to arbitration. This principle is uniformly reflected in international arbitration conventions as well as the Arbitration Act. For instance, Section 7 of the UNCITRAL Model Law defines an arbitration agreement as "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." (emphasis supplied)

69. It is a generally accepted legal proposition that arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which they have not agreed so to submit. Since consent forms the cornerstone

of arbitration, a non-signatory cannot be forcibly made a "party" to an arbitration agreement as doing so would violate the sacrosanct principles of privity of contract and party autonomy. However, In case of multi-party contracts, the courts and tribunals are often called upon to determine the parties to an arbitration agreement.

II Parties to Arbitration Agreement

70. The general method to figure out the parties to an arbitration agreement is to look for the entities who are named in the recitals and have signed the agreement. The signature of a party on the agreement is the most profound expression of the consent of a person or entity to submit to the jurisdiction of an arbitral tribunal. However, the corollary that persons or entities who have not signed the agreement are not bound by it may not always be correct. A written contract does not necessarily require that parties put their signatures to the document embodying the terms of the agreement.54 Therefore, the term "non-signatories", instead of the traditional "third parties", seems the most suitable to describe situations where consent to arbitration is expressed through means other than signature. A non-signatory is a person or entity that is implicated in a dispute which is the subject matter of an arbitration, although it has not formally entered into an arbitration agreement. The important determination is whether such a non-signatory intended to effect legal relations with the signatory parties and be bound by the arbitration agreement. There may arise situations where persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may intend to be bound by the terms of the agreement. In other words, the issue of who is a "party" to an arbitration agreement is primarily an issue of consent.

73. The above exposition gives rise to the inference that in case of an implied contract, the question revolves around the determination of the consent of the parties to be bound by the terms of the contract. Such determination is manifested through the acts or conduct. The theory of implied contract by conduct has also been accepted by this Court. In Haji Mohammed Ishaq v. Mohamad Iqbal, the plaintiff supplied tobacco to the defendant. Although there was no express agreement between the parties, the defendant accepted the goods, but allegedly failed to clear the outstanding dues despite repeated demands raised by the plaintiff. A Bench of three Judges of this Court observed that the conduct of the defendants in accepting the goods and not repudiating any of the demand letters raised by the plaintiff "clearly showed that a direct contract which in law is called an implied contract by conduct was brought about between them." Under the Indian contract law, it is posited that actions or conduct can be an indicator of consent of a party to be bound by a contract. This also applies to an arbitration agreement considering the fact that it is a creature of contract. However, an arbitration agreement also has to meet the requirements laid down under the Arbitration Act to be valid and enforceable.

84. It is presumed that the formal signatories to an arbitration agreement are parties who will be bound by it. However, in exceptional cases persons or entities who have not signed or formally assented to a written arbitration agreement or the underlying contract containing the arbitration agreement may be held to be bound by such agreement. As mentioned in the preceding paragraphs, the doctrine of privity limits the imposition of rights and liabilities

on third parties to a contract. Generally, only the parties to an arbitration agreement can be subject to the full effects of the agreement in terms of the reliefs and remedies because they consented to be bound by the arbitration agreement. Therefore, the decisive question before the courts or tribunals is whether a non-signatory consented to be bound by the arbitration agreement. To determine whether a non-signatory is bound by an arbitration agreement, the courts and tribunals apply typical principles of contract law and corporate law. The legal doctrines provide a framework for evaluating the specific contractual language and the factual settings to determine the intentions of the parties to be bound by the arbitration agreement.

85. Gary Born suggests that the legal theories and doctrines provide a basis for determining the real intent of parties to be bound by an arbitration agreement. Therefore, it is incorrect to use terminologies such as 'extension' of an arbitration agreement to non-signatories or 'third parties':

> "Judicial case law and commentary on international arbitration sometimes make reference to the "extension" of an arbitration agreement to non-signatories, or to "third parties" on the basis of one or more of the foregoing theories. These expression are inaccurate, in that they imply that an entity which is not a party to an arbitration agreement is nonetheless subject to that agreement's effects, by virtue of something other than the parties' consent. Contrary to the references to "extension" or "third parties", most of the theories […] provide a basis for concluding that an entity is in reality a party to the arbitration agreement – which therefore does not need to be "extended" to a "third party" – because that party's actions constitute consent to the agreement, or otherwise bind it to the agreement, notwithstanding the lack of its formal execution of the agreement. The arbitration agreement is therefore not ordinarily "extended", but rather the true parties that have consented to the arbitration agreement are identified."

86. Courts and tribunals across the world have been applying traditional contractual and commercial doctrines to determine the consent of the non-signatory parties to be bound by the arbitration agreement. Generally, consent based theories such as agency, novation, assignment, operation of law, merger and succession, and third party beneficiaries have been applied in different jurisdictions. In exceptional circumstances, non-consensual theories such as piercing the corporate veil or alter ego and estoppel have also been applied to bind to bind a non-signatory party to an arbitration agreement. **The group of companies doctrine is one such consent-based doctrine which has been applied, albeit controversially, for identifying the real intention of the parties to bind a non-signatory to an arbitration agreement.**

123. The participation of the non-signatory in the performance of the underlying contract is the most important factor to be considered by the courts and tribunals. The conduct of the non-signatory parties is an indicator of the intention of the non-signatory to be bound by the arbitration agreement. The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The UNIDROIT Principle of International Commercial Contract, 2016 provides that the subjective intention of the parties could be ascertained by having

regard to the following circumstances:

(a) preliminary negotiations between the parties;
(b) practices which the parties have established between themselves;
(c) the conduct of the parties subsequent to the conclusion of the contract;
(d) the nature and purpose of the contract;
(e) the meaning commonly given to terms and expressions in the trade concerned; and
(f) usages.

132. We are of the opinion that there is a need to seek a balance between the consensual nature of arbitration and the modern commercial reality where a non-signatory becomes implicated in a commercial transaction in a number of different ways. Such a balance can be adequately achieved if the factors laid down under Discovery Enterprises (supra) are applied holistically. For instance, the involvement of the non-signatory in the performance of the underlying contract in a manner that suggests that it intended to be bound by the contract containing the arbitration agreement is an important aspect. Other factors such as the composite nature of transaction and commonality of subject matter would suggest that the claims against the non-signatory were strongly inter-linked with the subject matter of the tribunal's jurisdiction. Looking at the factors holistically, it could be inferred that the non-signatories, by virtue of their relationship with the signatory parties and active involvement in the performance of commercial obligations which are intricately linked to the subject matter, are not actually strangers to the dispute between the signatory parties.

135. The Arbitration Act does not define the phrase "person claiming through or under" a party. A person "claiming through or under" a party is not a signatory to the contract or agreement, but can assert a right through or under the signatory party. Russel on Arbitration states that an assignee can invoke the arbitration agreement as a person "claiming through or under" a party to the arbitration agreement. 107 An assignee takes the assigned right under a contract with both the benefit and burden of the arbitration clause.108 Similarly, the English courts have held that a transferee or subrogate can claim through or under a party to the arbitration agreement. 109 Under the English law, the typical scenarios where a person or entity can claim through or under a party are assignment, subrogation, and novation. In these situations, the assignees or representatives become successors to the signatory party's interests under the arbitration agreement. They step into the shoes of the signatory party, from whom they derive the right to arbitrate, rather than claiming an independent right under the arbitration agreement.

143. An arbitration is founded upon the consent of the parties to refer their disputes to an alternative dispute resolution mechanism. Consequently, third parties typically cannot be compelled to arbitrate based on an agreement to which they have not consented. The phrase "claiming through or under" has not been used either in Section 2(1)(h) or Section 7 of the Arbitration Act. This is because those provisions are based on the concept of party autonomy and party independence, which requires the party to provide consent to submit their disputes to arbitration. On the contrary, a person claiming through or under a party to an arbitration agreement is merely standing in the shoes of the original party to the extent that it is merely agitating the right of

the original party to the arbitration agreement.

151. One of the questions that has been referred before us is whether the phrase "claiming through or under" in Section 8 could be interpreted to include the group of companies doctrine. The group of companies doctrine is founded on the mutual intention of the parties to determine if the non-signatory entity within a group could be made a party to the arbitration agreement in its own right. Such non-signatory entity is not "claiming through or under" a signatory party. As mentioned above, the phrase "claiming through or under" is used in the context of successors in interest that act in a derivative capacity and substitute the signatory party to the arbitration agreement. To the contrary, the group of companies doctrine is used to bind the non-signatory to the arbitration agreement so that it can agitate the benefits and be subject to the burdens that it derived or is conferred in the course of the performance of the contract. The doctrine can be used to bind a non-signatory party to the arbitration agreement regardless of the phrase "claiming through or under" as appearing in Sections 8 and 45 of the Arbitration Act.

163. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the arbitral tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the arbitral tribunal. The doctrine of competence-competence is intended to minimize judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

166. The above position of law leads us to the inevitable conclusion that at the referral stage, the court only has to determine the prima facie existence of an arbitration agreement. If the referral court cannot decide the issue, it should leave it to be decided by the arbitration tribunal. The referral court should not unnecessarily interfere with arbitration proceedings, and rather allow the arbitral tribunal to exercise its primary jurisdiction. In Shin-Etsu Chemical Co Ltd v. Aksh Optifibre Ltd, this Court observed that there are distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the tribunal:

> 74. […] Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not valid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceedings to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration."

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory

party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by arbitral tribunal under Section 16.
……

Conclusions

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 (supra). 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 (supra) 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)

111. In the concurring judgment of Shri. Justice P. S. Narsimha, His Lordship has made the following observations that the Group of Companies doctrine is premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement. The relevant observations read thus:

230.2 The Group of Companies doctrine is also premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement. The doctrine requires the intention to be gathered from additional factors such as direct relationship with the signatory parties, commonality of subject-matter, composite nature of the transaction, and performance of the contract.

…..

230.4 The expression "claiming through or under" in Sections 8 and 45 is intended to provide a derivative right; and it does not enable a non-signatory to become a party to the arbitration agreement. The decision in Chloro Controls (supra) tracing the Group of Companies doctrine through the phrase "claiming through or under" in Sections 8 and 45 is erroneous. The expression 'party' in Section 2(1)(h) and Section 7 is distinct from "persons claiming through or under them". This answers the remaining questions referred to the Constitution Bench."

112. Adverting to the aforesaid principles of law to the facts of the present case and more particularly considering paragraph 135 and 151 of the decision of the Supreme Court in Cox and Kings (supra), in the absence of any intention or a mutual intention brought about between the parties, a non signatory cannot become a party to the arbitration proceedings. This more particularly when in the present case the Petitioner a non signatory entity is not "claiming through or under" a signatory party i.e. M/s. Gagan (respondent no.2). It is thus difficult to accept Mr. Khambata's submission that there was any intention of the petitioner who was a non-signatory to an arbitration agreement which could be gathered from additional factors of the petitioner having any direct relationship with the signatory parties or of a commonality of subject-matter, composite nature of the transaction, and performance of the contract, under the Articles of Agreement dated 25 February 2017. We do not find that the conduct of the petitioner in any manner indicates that the petitioner had consented to be bound by the arbitration agreement and/or for the applicability of group of companies doctrine, the petitioner in any manner could be related to the parties to the respondents in the arbitral proceedings and more particularly respondent No.9 so as to hold that the petitioner was claiming through or under M/s. Gagan which was a necessary, concomitant underlying the group of companies doctrine, which envisages maintaining the corporate separateness of group of companies, where common intention of parties can be gathered, so as to come to a conclusion that the parties intended to bind the non-signatory to the arbitration agreement.

113. Also in our opinion, applying the test of harmonious reading of Section 2(1)(h) alongwith Section 7 of the ACA, applying the cumulative factor test as laid down in **Oil And Natural Gas Corporation Ltd vs M/s.Discovery Enteprises Pvt. Ltd.** (supra) we are not persuaded to accept that the petitioner, in any manner, as a non signatory could be impleaded as a party and/or foisted an arbitration *de hors* the petitioner's intention to join arbitration. In our opinion, such foisting of arbitration on the petitioner by M/s. Eminence in fact amounts to the destruction of rule of party autonomy.

114. The principle as laid down in the decision in Cox & Kings are followed by the Supreme Court in the recent decision of the Supreme Court in **Adavya Projects Pvt. Ltd. vs. Vishal Structurals Pvt. Ltd. and Others** (supra). The Supreme Court has reiterated the following principle in regard to the impleadment of a non signatory to the arbitration agreement:

> "36. In Cox and Kings (supra), this Court held that non-signatories are parties to the arbitration agreement if the conduct of the signatories and non-signatories indicates mutual intention that the latter be bound by the arbitration agreement. 33 The test to determine whether such a non-signatory is a party is as follows:
>
> > "132. We are of the opinion that there is a need to seek a balance between the consensual nature of arbitration and the modern commercial reality where a non-signatory becomes implicated in a commercial transaction in a number of different ways. Such a balance can be adequately achieved if the factors laid down under Discovery Enterprises are applied holistically. For instance, the involvement of the non-signatory in the performance of the underlying contract in a manner that suggests that it intended to be bound by the contract containing the arbitration agreement is an important aspect. Other factors such as the composite nature of transaction and commonality of subject-matter would suggest that the claims against the non- signatory were strongly interlinked with the subject-matter of the tribunal's jurisdiction. Looking at the factors holistically, it could be inferred that the non-signatories, by virtue of their relationship with the signatory parties and active involvement in the performance of commercial obligations which are intricately linked to the subject- matter, are not actually strangers to the dispute between the signatory parties."

36.1 The factors laid down in ONGC v. Discovery Enterprises (supra) must be holistically considered to determine whether non- signatories are parties to the arbitration agreement, which are as follows:

> "40. In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors:
> (i) The mutual intent of the parties;
> (ii) The relationship of a non-signatory to a party which is a signatory to the agreement;
> (iii) The commonality of the subject-matter;
> (iv) The composite nature of the transactions; and
> (v) The performance of the contract."

36.2 Finally, in light of the requirement under Section 7 of the ACA that the arbitration agreement must be in writing, the mutual intention of non-signatories to be bound by the arbitration agreement must be evidenced in writing. The non-signatory's conduct in the formation, performance, and termination of the contract, and surrounding circumstances like direct relationship with signatory parties, commonality of subject-matter, and composite nature of transaction must be ascertained from the record of the agreement, as held in Cox and Kings (supra):

> "229. Since the fundamental issue before the Court or tribunal under Section 7(4)(b) and the Group of Companies doctrine is the same, the doctrine can be subsumed within Section 7(4)(b). Consequently, the record of agreement that evidences conduct of the non-signatory in the formation, performance, and termination of the contract and surrounding circumstances such as its direct relationship with the signatory parties, commonality of subject-matter, and composite nature of transaction, must be comprehensively used to ascertain the existence of the arbitration agreement with the non-signatory. In this inquiry, the fact of a non-signatory being a part of the same group of companies will strengthen its conclusion. In this light, there is no difficulty in applying the Group of Companies doctrine as it would be statutorily anchored in Section 7 of the Act.
>
> 230.1. An agreement to refer disputes to arbitration must be in a written form, as against an oral agreement, but need not be signed by the parties. Under Section 7(4)(b), a court or Arbitral Tribunal will determine whether a non-signatory is a party to an arbitration agreement by interpreting the express language employed by the parties in the record of agreement, coupled with surrounding circumstances of the formation, performance, and discharge of the contract. While interpreting and constructing the contract, courts or tribunals may adopt well-established principles, which aid and assist proper adjudication and determination. The Group of Companies doctrine is one such principle."

39. Therefore, in view of the fact that respondent nos. 2 and 3 have, through their conduct, consented to perform contractual obligations under the LLP Agreement, it is clear that they have also agreed to be bound by the arbitration agreement contained in Clause 40 therein. Since they are parties to the underlying contract and the arbitration agreement, the arbitral tribunal has the power to implead them as parties to the arbitration proceedings while

> exercising its jurisdiction under Section 16 of the ACA and as per the kompetenz-kompetenz principle."
>
> (emphasis supplied)

115. Further in a recent decision of the Supreme Court in **ASF Buildtech Private Limited** (supra), the Supreme Court has observed thus:

> "126. It was in this backdrop and the emerging best international practices that Cox and Kings (I) (supra) recognized 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 were traced to not only the object of the Act, 1996, but to the substantive provisions of Section(s) 2(1)(h) and 7 thereto. However, mere recognition of this principles which ultimately seeks 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 recognized, 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 Act, 1996 as well as the fundamental cannons of the law of arbitration of providing an effective alternative dispute resolution mechanism."

116. Thus a non signatory party agreeing to be bound by the arbitration agreement was held to be imperative and a *sine qua non* for such party to be impleaded as a party to the arbitration proceedings, which is certainly not a case in the facts in hand. The Petitioner is neither a veritable party nor it has impliedly consented to any arbitration agreement.

117. In the aforesaid circumstances, the plenary jurisdiction vested with the High Court under Article 226 of the Constitution certainly would be required to be exercised to prevent miscarriage of justice considering the breach of legal rights of the petitioner. In the present case non-interference of the Court, in present proceedings would result in patent miscarriage of justice, considering the scheme of

the independent contractual relations between respondent no.9, a non-signatory to the arbitration agreement and the petitioner, again an entity wholly alien to the arbitration agreement and arbitral proceedings. The arbitral proceedings cannot be held to be rudimentary and in fact, the principles governing arbitration and more particularly the elementary principles of party autonomy, i.e. competing parties to the arbitration agreement coming together and agreeing to such private mechanism of adjudication of disputes, cannot be stretched to such an extent, that something which is completely outside the contractual dispute and/or parties foreign to the arbitral disputes who are non-signatories to the arbitration agreement, and who do not consent to be governed by the jurisdiction of the arbitral tribunal, are foisted arbitration, as in the facts of the present case.

118. An arbitral tribunal is not a civil court strictly governed by the principles of Order I Rule 3 of the Code of Civil Procedure and the principles akin thereto, in regard to joinder of parties to the arbitration agreement, choosing to adjudicate disputes, not under a civil suit but before a private forum chosen by them, on which they have conferred specific jurisdiction under the arbitration agreement. Thus, an arbitral tribunal cannot be guided by the rules under the Code of Civil Procedure on joinder and non-joinder of parties, as the very basis of arbitration is, the parties voluntarily submitting themselves to the jurisdiction of the arbitral tribunal. It hence cannot be that an arbitration is foisted on a non-signatory to the arbitration agreement *dehors* the principles which would govern applicability of the group of companies and a contractual relationship which would be recognized by the said doctrine as held by the Supreme Court in **Cox and Kings** (supra). It is in

these circumstances, in our opinion, it becomes imperative for the writ Court to exercise jurisdiction under Article 226/227 when a tribunal which is governed by the provisions of the statute (ACA) passes an order resulting into manifest injustice.

119. There is another aspect which needs to be taken into consideration, namely, a deviation from the well established principles of arbitration under the legislative scheme envisaged under the ACA in what has been conceived and persued by M/s. Eminence in filing the application to implead the petitioner, as a party respondent, in the pending arbitration between M/s. Eminence and M/s. Gagan which is to the effect that an arbitration can be invoked against a party to the arbitration agreement in a manner recognized by Section 21 of the ACA i.e. by invoking arbitration for the dispute to be referred to arbitration, being received by the party to the arbitration agreement. This is a *sine qua non*. Thus, necessarily the first step for M/s. Eminence to invoke arbitration against the petitioner would be to make known the basis of obtaining the consent of the petitioner by such invocation as recognized under Section 21 and on refusal of the petitioner to agree to such invocation, M/s. Eminence could have taken recourse to the appropriate proceedings known to law and it is in such proceedings, it could be prima facie determined whether there is any privity between M/s. Eminence and the petitioner for any relief to be granted in arbitration. It is for such reason, a robust mechanism under the provisions of Section 21 read with Sections 8 and 11 finds place under the ACA. This is what normally happens. However, what is brought about by the actions of M/s. Eminence is to the effect that, bypassing these basic statutory requirements, M/s. Eminence has attempted to have a back door entry to be

brought under the arbitral proceedings and/or to directly foist an arbitration on the non-signatory and non-consenting petitioner. Thus, such basic requirements of the provisions of the ACA have been overlooked by the learned sole arbitrator in passing the impugned order, which have an effect of weighty arbitral proceedings being imposed on the petitioner, This leads to a consequence on the petitioner requiring to suffer an arbitration, and wait till the award is passed. We are thus of the clear opinion that the scheme of the ACA cannot be interpreted to bring about, such an unwarranted consequence, namely before the parties legal entitlement to form part of the arbitration is tested more particularly when a party to be impleaded is a third party, as mandated under Section 21 read with the other provisions of the Act, only as a matter of convenience. This by invoking the principles of 'kompetenze kompetenze'. No doubt that the arbitral tribunal has the jurisdiction to determine on its own jurisdiction, however, while determining its own jurisdiction, it cannot be that the contention of lack of jurisdiction qua a non-consenting third party and the non-signatory to the arbitration agreement, in a case which does not attract the group of companies doctrine could be adjudicated by the arbitral tribunal giving a go-bye to the aforesaid salutary principles. Such an exercise of the arbitral tribunal in our opinion is an exercise not recognized by the provisions of the ACA, but also resulting into a wholesome arbitrariness on a third party, which otherwise would become legitimately entitled to defend the invocation mechanism which otherwise could be applied as permissible under Section 21 for any claimant to seek a relief against such party, primarily for the reason, that the whole basis of arbitration is the will, consent and intention of the

parties, stemming from the principles of party autonomy. Such principles cannot be overlooked to bring about a situation of a servitude. The arbitral tribunal cannot transgress its jurisdiction beyond what has been conferred by the competent parties. It is in the context of such principles of party autonomy, the principles of law as laid down by the Constitution Bench of the Supreme Court in **Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company**[38] become imperative namely of party autonomy, quasi judicial character of the arbitral tribunal, principles of non-bias etc. are required to be adhered by the arbitral tribunal. The following observations as made by the Constitution Bench throw a light on the obligations of an arbitral tribunal:-

> "60. An arbitrator's relationship with parties is contractual. The rights and obligations of an arbitrator are principally the result of the contractual relations with the parties. [Gary Born, *International Commercial Arbitration*, (3rd Edn.) p. 2111.] However, the position under common law is that the rights and duties of an arbitrator are derived from a conjunction of contract and quasi-judicial status granted by national laws. In *K/S Norjarl A/S* v. *Hyundai Heavy Industries Co. Ltd.* [*K/S Norjarl A/S* v. *Hyundai Heavy Industries Co. Ltd.*, 1992 QB 863 : (1991) 3 WLR 1025 (CA)] , Lord Browne-Wilkinson observed that it is impossible to distinguish contractual matters from those of quasi-judicial status. [*K/S Norjarl A/S* v. *Hyundai Heavy Industries Co. Ltd.*, 1992 QB 863 : (1991) 3 WLR 1025 (CA) Lord Browne-Wilkinson in his opinion observed that it is "impossible to divorce the contractual and status considerations : in truth the arbitrator's rights and duties flow from the conjunction of those two elements."] Similarly, in *ONGC Ltd.* v. *Afcons Gunanusa JV* [*ONGC Ltd.* v. *Afcons Gunanusa JV*, (2024) 4 SCC 481 : (2024) 3 SCC (Civ) 604] , this Court recognised that the rights and duties of arbitrators flow from : (*i*) the national laws governing arbitration which give a quasi-judicial status to arbitrators where they have to act as impartial adjudicators; and (*ii*) the arbitrator's contract with the parties which governs many aspects of the arbitrator-party relationship including remuneration, confidentiality, and timelines for completion of arbitral proceedings. [*ONGC Ltd.* v. *Afcons Gunanusa JV*, (2024) 4 SCC 481, para 102 : (2024) 3 SCC (Civ) 604]
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> 61. An Arbitral Tribunal performs a quasi-judicial function because it substantially determines the rights and liabilities of competing parties

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through adjudicative means. [*Srei Infrastructure Finance Ltd.* v. *Tuff Drilling (P) Ltd.*, (2018) 11 SCC 470, para 14 : (2018) 5 SCC (Civ) 156] The tribunal is generally required to arrive at decisions or awards based on procedural and substantive law. The Arbitration Act allows flexibility to parties to select the procedural and substantive law to be followed by the Arbitral Tribunal. During the arbitration process, the Arbitral Tribunal generally meets at a place agreed upon by the parties, considers the statement of claim and defence, conducts oral hearings, and may appoint experts. Thus, Arbitral Tribunals act judicially to adjudicate the rights of parties.

62. The Arbitration Act is a self-contained code. [*Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re*, (2024) 6 SCC 1, para 92] The legal framework contained under the Arbitration Act and the Contract Act recognises and enforces the contractual intention of parties to entrust an Arbitral Tribunal with the authority to settle their disputes. Section 8 of the Arbitration Act mandates judicial authorities to refer parties to arbitration where there is an arbitration agreement. The other provisions of the Arbitration Act are also geared towards ensuring minimal judicial interference [Section 5, Arbitration Act.] in arbitral proceedings and recognising the competence of the Arbitral Tribunals to rule on their jurisdiction. [Section 16, Arbitration Act.]

63. Although the Arbitration Act recognises the autonomy of parties to decide on all aspects of arbitration, it also lays down a procedural framework to regulate the composition of the Arbitral Tribunal and conduct of arbitral proceedings. The incorporation of Section 12(5) is a recognition of the well-established principle that quasi-judicial proceedings should be conducted consistent with the principles of natural justice. Section 18 serves as a guide for Arbitral Tribunals to follow the principles of equality and fairness during the conduct of arbitral proceedings. Thus, the Arbitration Act requires the Arbitral Tribunals to act judicially in determining disputes between parties. [*Engg. Mazdoor Sabha* v. *Hind Cycles Ltd.*, 1962 SCC OnLine SC 134, para 5; *Dewan Singh* v. *Champat Singh*, (1969) 3 SCC 447, para 9]

64. Since arbitral proceedings have "trappings of a court", the law requires Arbitral Tribunals to act objectively and "exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice" [*Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*, 1980 Supp SCC 420, para 8 : 1981 SCC (L&S) 309] . An arbitral award can be set aside if the composition of the Arbitral Tribunal or the arbitral procedure violates the mandatory provisions of the Arbitration Act, including Sections 12 and 18. Thus, the Arbitration Act emphasises that the substance of the law cannot be divorced from the procedure.

66. The Arbitral Tribunals serve as effective alternatives to traditional justice-dispensing mechanisms. The purpose of Arbitral Tribunals is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, and a peace-maker instead of a stirrer up of strife. [*Redfern and Hunter on International Arbitration*, (7th Edn., 2022) p. 3.] Arbitral Tribunals can inspire confidence in

their adjudicatory process by conducting fair and impartial hearings and providing sufficient and cogent reasons for their decisions. [*Siemens Engg. case*, (1976) 2 SCC 981, pp. 986-87, para 6:"*6.* … If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."] Given the adjudicatory functions performed by the Arbitral Tribunals, the decisions which emanate from them must be grounded in a process that is independent and impartial.

70. The concept of equality under Article 14 enshrines the principle of equality of treatment. The basic principle underlying Article 14 is that the law must operate equally on all persons under like circumstances. [*M. Nagaraj* v. *Union of India*, (2006) 8 SCC 212, para 106 : (2007) 1 SCC (L&S) 1013] The implication of equal treatment in the context of judicial adjudication is that "all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief, and for defence with like protection and without discrimination" [*Shree Meenakshi Mills Ltd.* v. *A.V. Visvanatha Sastri*, (1954) 2 SCC 497, para 6 : (1954) 26 ITR 713] . In *Union of India* v. *Madras Bar Assn.* [*Union of India* v. *Madras Bar Assn.*, (2010) 11 SCC 1, para 102 : (2010) 156 Comp Cas 392] , a Constitution Bench held that the right to equality before the law and equal protection of laws guaranteed by Article 14 of the Constitution includes a right to have a person's rights adjudicated by a forum which exercises judicial power impartially and independently. Thus, the constitutional norm of procedural equality is a necessary concomitant to a fair and impartial adjudicatory process.

72. The defining characteristic of arbitration law (particularly ad hoc arbitration) is that it allows freedom to the parties to select their arbitrators. This is unlike domestic courts or tribunals where the parties have to litigate their claims before a pre-selected and randomly allocated Bench of Judges. Section 11(2) of the Arbitration Act allows parties to agree on a procedure for appointing the arbitrators. The "procedure" contemplated under Section 11(2) is a set of actions which parties undertake in their endeavour to appoint arbitrators to adjudicate their dispute independently and impartially. Without formal equality at the stage of appointment of arbitrators, a party may not have an equal say in facilitating the appointment of an unbiased Arbitral Tribunal. In a quasi-judicial process such as arbitration, the appointment of an independent and impartial arbitrator ensures procedural equality between parties during the arbitral proceedings.

> This is also recognised under Section 11(8) which requires the appointing authority to appoint independent and impartial arbitrators.
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> 81. We recognise that arbitration is a private dispute settlement mechanism. Yet, it is statutorily subject to the principles of equality and fairness contained under the Arbitration Act. Section 18 of the Arbitration Act mandates the equal treatment of parties and fairness in arbitral proceedings as a mandatory principle governing the conduct of arbitration. Thus, the resolution of disputes arising in a private contractual relationship is subject to certain inherent principles which a quasi-judicial body like an Arbitral Tribunal is required to adhere to. Resolution of private disputes following the minimum statutory standards of equality and fairness is essential not only in the interest of justice, but also to uphold the integrity of arbitration in India."

120. For the aforesaid reasons, the learned sole Arbitrator in passing the impugned order in our opinion has acted in patent lack of jurisdiction, or in patent lack of inherent jurisdiction, hence the impugned order would be required to be regarded as legally perverse. In the context of the arbitral proceedings the concept of inherent jurisdiction can be understood considering the basic jurisdiction, authority and power which is conferred by the parties on the arbitral adjudication, namely the contract between the parties that confers on the arbitral tribunal an authority to resolve the specific disputes. This is the foundational source of power and jurisdiction of the arbitral tribunal. The arbitral tribunal is required to confine itself to the jurisdiction as conferred on the arbitral tribunal by the parties under the arbitration agreement. It is difficult to accept a situation that the powers of an arbitral tribunal can travel beyond the specific confines of the arbitration agreement and/or beyond the subject matter of dispute relevant to the arbitration agreement. Thus, powers that are not explicitly conferred under the arbitral agreement, can never be exercised by the arbitral tribunal. Such exercise of powers beyond the contours of what has been conferred by the parties, can be regarded as

an exercise patently lacking in inherent jurisdiction. It is of utmost importance that the arbitral tribunal remains within the confines of its jurisdiction and preserving its jurisdiction, so as to maintain the sanctity of the proceedings and render an enforceable award. To bring a party totally alien to the arbitral proceedings within the scope of adjudication of the arbitral dispute, is not an order of procedural nature passed to fill the gaps or to deal with a situation which are confined to the arbitration agreement. There is a distinction between inherent powers which are conferred on the Civil Court and inherent powers and jurisdiction which are necessarily conferred by the parties on the arbitral tribunal. Such line of distinction in exercise of jurisdiction is paramount which needs to weigh with the arbitral tribunal and more particularly, in dealing with such dispute which are completely beyond the scope of adjudication in arbitral proceedings. If the position that the rights of third parties who are non-signatories to arbitral proceedings and who are non-consenting parties, in regard to the land and property, are subjected to adjudication in any arbitral proceedings, with which such third party is unconnected, it would lead to not only a chaotic situation but the whole sanctity of the arbitral proceedings being completely abused and destroyed. The arbitral tribunal also cannot consider itself to have sweeping inherent jurisdiction to pass orders and bring within the purview of the arbitral proceedings, parties and properties which are alien to the arbitral proceedings and in respect of which the parties to the arbitration themselves do not have any legal rights. There is no question of arbitral tribunal exercising implied powers, and / or the powers which are not conferred on the arbitral tribunal by the parties. Once the arbitral tribunal

is not competent to enter upon an enquiry, any such enquiry would be an enquiry inherently lacking jurisdiction.

121. The aforesaid discussion on the factual matrix would clearly indicate that the principles of law as laid down by the Supreme Court in **Cox & Kings Ltd.** (supra) in regard to impleadment of non signatories to the arbitration agreement, when applied to the present facts, would not permit impleadment of the petitioner as a party to the pending arbitration proceedings which are primarily between M/s Eminence and M/s Gagan. The test is of the intention of the parties and whether there was any intention at any point of time of the petitioner to join the arbitration, being the test as held by the Supreme Court in **Cox & Kings Ltd.** (supra). M/s. Eminence has wholly failed to satisfy that the petitioner in any manner consented to be a party to the arbitral proceedings or to join the arbitration proceedings which was primarily between M/s. Eminence and M/s.Gagan. The dispute between the parties [i.e. between M/s. Eminence (respondent No.1) and M/s.Gagan (respondent No.2)] necessarily falls under the Articles of Agreement dated 25 February 2017.

122. We have extensively discussed that the reliefs are for recovery of the amounts and the only relief in regard to the subject property as noted by us hereinabove, is based on the M/s. Eminence succeeding in its principal claim and being entitled to the money award as prayed for in terms of prayer clause (a). It is also clear that there is no charge created on the property to secure debts of M/s. Eminence from the subject property. Also the contention as urged on behalf of M/s. Eminence of any *lis pendens* in view of the pendency of the Section 9

proceedings has also faded into insignificance, inasmuch as, the *lis pendens* was sought to be registered by M/s. Eminence during the pendency of the Section 9 proceeding filed by M/s. Eminence was rejected on 22 March 2024 and it is only thereafter, the deed of conveyance was entered between respondent No.9 and the petitioner which is dated 29 March 2024, which is an agreement duly registered, crystallizing rights of the petitioner in respect of the subject property. Thus, the arbital tribunal which is a creature of a contract between M/s. Eminence and M/s. Gagan, could not have stretched its jurisdiction so as to include the consent of the petitioner to be bound by such arbitration agreement in which the petitioner being subjected to the jurisdiction of the arbitral tribunal. The view taken by the arbitral tribunal in fact is in teeth of the basic principles of party autonomy. The arbitral tribunal cannot assume jurisdiction of a Civil Court. The learned Sole Arbitrator hence inherently lacked jurisdiction to pass the impugned order against the petitioner.

123. Insofar as the contention as urged on behalf of M/s. Eminence that the petitioner having filed its to reply to the application filed by M/s. Eminence to implead the petitioner as a party respondent in the arbitral proceedings and having done so, has acquiesced and/or conceded to the jurisdiction of the arbitral tribunal, is wholly untenable. Considering the fact that, as an application was made by M/s. Eminence before the arbitral tribunal to implead the petitioner as a party respondent to the arbitral proceeding, there was nothing wrong in the petitioner taking a position to contest such application and first persuade the arbitral tribunal that the petitioner was alien to the arbitral proceedings, hence, in no manner

whatsoever the petitioner could be said to have conceded and/or acquiesced to the jurisdiction of the arbitral tribunal being a non-consenting party as also a non-signatory to the arbitration agreement. For such reason, we are also not persuaded by the submission as made on behalf of M/s. Eminence that the proper remedy for the petitioner would be to challenge the award in the event if the award is against the petitioner relying on the provisions of Section 16(6) of the ACA i.e. challenge to the arbitral award on such ground that the arbitral tribunal having no jurisdiction. Accepting such contention in the facts of the present case would amount to patent miscarriage of justice, apart from foisting a illegality by forcing imposition of the arbitration on the petitioner, violating the legal rights of the petitioner as discussed herein above and most significantly in complete deviation of the fundamental principles governing arbitration.

124. We may also observe that in a given situation certainly the arbitral tribunal would have jurisdiction considering the principle of group of companies doctrine, to decide the application for impleadment of non-signatories to the arbitration agreement as necessary parties to the arbitration agreement. However, the present case is not the such case which would fall into exception as observed in the decision in Cox & Kings (supra).

125. We are also not in agreement on the submission as urged on behalf of M/s Eminence that merely because the definition of parties under Section 2(1)(h) of the ACA includes the non-signatories, in the present facts, the non-signatory like the petitioner can be impleaded as a party to the arbitral proceedings. The definition of parties which includes non signatory would be in the situation as

recognized by the Constitution Bench of the Supreme Court in Cox & Kings (supra). Even a decision in Cox & Kings (supra) does not go to the extent that a party which is non signatory to the arbitration agreement and totally alien to the subject matter of arbitral proceedings, can be impleaded as a party to such proceedings. Thus, the said contention as urged on behalf of M/s. Eminence would go contrary to the law laid down by the Supreme Court in Cox & King (supra.)

126. We are also not inclined to accept the contention that the petitioner would be required to be regarded as a successor in interest (claiming through or under) of the party to the arbitration agreement i.e. respondent No.2 namely M/s. Gagan Platinum Spaces LLP, the reason being that respondent No.9-M/s. Gagan I-Land Township Private Limited – respondent No.9 itself is not signatory to the arbitration agreement, although subject to its rights and contentions it was later on impleaded as a party to the arbitral proceedings. In fact a notice invoking the arbitration dated 25 March 2023 issued on behalf of M/s. Eminence does not invoke arbitration against respondent No.9 - Gagan I-Land Township Private Limited. It appears that at the relevant time respondent No.9 was alien to the arbitral proceedings. This more particularly considering the fact that respondent No.9 was impleaded as respondent No.8 in the application filed by M/s. Eminence under Section 9 of the ACA before the District Judge, Pune.

127. If M/s. Eminence was to have any legal rights against the petitioner qua the land/property in question, and subject matter of the deed of conveyance entered between respondent No.9 and the petitioner, certainly M/s. Eminence could have

resorted to file appropriate proceedings asserting any sch rights against respondent No.9 who is a non signatory to the arbitration agreement, as also against the petitioner who is also non signatory to the arbitration agreement. However, merely for the reason that money claim i.e. for recovery of money advanced to M/s. Gagan is subject matter of arbitral proceedings, to drag the petitioner into such proceedings not only in the absence of an arbitration agreement between M/s Eminence and M/s. Gagan but also alien to the rights of the petitioner, the petitioner could not have been subjected to the arbitral proceedings. This would amount to change in the complexion of the arbitral dispute as also calling upon the learned Arbitrator to exercise jurisdiction beyond the arbitration agreement and the basic agreement under which the disputes have arisen,namely, Articles of agreement dated 25 February, 2017.

128. Before parting we need to also observe that having adverted to the relevant decisions there are other decisions which were cited, however, we do not intend to burden this judgment as the principles of law laid down in such decisions are well settled.

129. In the light of the above discussion, we are of the clear opinion that the petition needs to succeed. Accordingly Rule is made absolute in terms of prayer clauses (a) and (b). No costs.

130. At this stage, Mr. Cama, learned counsel for respondent no. 1-Eminence seeks stay of this order for some time. The request for stay is being opposed on

behalf of the petitioner. We deem it appropriate to stay this order for a period of four weeks from the day a copy of this judgment is made available.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI, J.)