REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS 10025-10026 OF 2017

CHERAN PROPERTIES LIMITED ..Appellant

VERSUS

KASTURI AND SONS LIMITED AND ORS ..Respondents

J U D G M E N T

Dr D Y CHANDRACHUD, J

1 The appeals in the present case arise under Section 423 of the Companies Act, 2013 against a judgment and order of the National Company Law Appellate Tribunal[1] dated 18 July 2017. The NCLAT has dismissed an appeal filed against an order dated 6 March 2017 of the National Company Law Tribunal[2] at its Chennai Bench.

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Date: 2018.04.24 14:45:45 IST
Reason:

[1] NCLAT
[2] NCLT

2 The second respondent is a company by the name of Sporting Pastime India Limited[3]. It was incorporated on 2 May 1994, as a fully owned subsidiary of the first respondent, Kasturi & Sons Limited[4]. On 19 July 2004 an agreement was entered into between KC Palanisamy[5] (the third respondent), KSL (the first respondent) and SPIL and a company by the name of Hindcorp Resorts Pvt. Ltd. (Hindcorp). Under the agreement SPIL was to allot 240 lakh equity shares of Rs 10 each, fully paid up at par to KSL against the book debts due by SPIL to KSL. KSL offered to sell to KCP or his nominees 243 lakh equity shares representing 90 per cent of the total paid up share capital for a lumpsum consideration of Rs 2,31,50,000. The intention of the parties, as reflected in the agreement, was that KCP would take over the business, shares and liabilities of SPIL and would discharge the liabilities set out in Schedules 2 and 3 of the agreement which were outstanding on the date of the agreement. KCP agreed to discharge the Schedule 2 liabilities within 180 days from the date on which he took over management of SPIL. Clause 14 of the agreement was to the following effect:

> "KSL hereby recognise the right of KCP and/or his nominees to sell or transfer their holding in SPIL to any other person of their choice, provided the proposed transferees accept the terms and conditions mentioned in this agreement for the management of SPIL and related financial aspects covered by this agreement."

[3] SPIL
[4] KSL
[5] KCP

The agreement contained the following provision for resolution of disputes by arbitration:

> "In the unlikely case of dispute arising out of this agreement relating to claims and counter claims, the parties hereto agree that the same shall be referred to Arbitration under he Indian Arbitration Law. The arbitration shall be by three arbitrators. KCP shall be entitled to appoint one arbitrator. KSL shall be entitled to appoint one arbitrator. The two arbitrators so appointed shall elect the third arbitrator."

An amount of Rs 2.5 crores was paid by KCP as against a total consideration of Rs 30 crores. Ninety per cent of the shares were transferred by KSL to KCP and to his nominees in the following manner:

- One share to KCP
- Ninety five per cent shares to Cheran Properties Limited, the appellant
- One share each to Cheran Enterprises Pvt.Ltd., KCP Associates Holdings P. Ltd., CG Holdings (P) Ltd. and Cheran Holdings P. Ltd.

On 17 August 2004, a letter was addressed by KCP acting as the authorized signatory of the appellant to KSL. The letter specifically contained a reference to the share purchase agreement dated 19 July 2004. The text of the letter is extracted below:

> "Re: SHARE PURCHASE AGREEMENT DT.19.7.04
>
> In pursuance of the above Agreement, you have agreed to sell and our Group Companies, by themselves and/or by their nominees have agreed to purchase shares in Sporting Pastime India Limited of a face value of Rs. 2,430 lakhs, for a sum of Rs. 243.00 lakhs.
>
> Accordingly we send herewith seven Share Transfer Deeds duly executed by us and we request you to execute the same and lodge

them with Sporting Pastime India Limited together with relevant Share Certificates for registering the transfers in the Following names :

1.	C G Holdings (P) Ltd.	
2.	Cheran Holdings P Ltd.	
3.	KCP Associates Holdings P. Ltd	
4.	Mr K C Palanisomi	
5.	Cheraan Properties Limited	
6.	Cherraan Properties Limited	242,99.994
7.	Cherraan Properties Limited	
	Total	243.00.000

We enclose a Demand Draft no. 788401 dt. 16.08.04, drawn on ABN AMRO Bank, for Rs. 2,43,00,000, (Rupees Two Crores lakhs only) towards Share Consideration as above. Kindly acknowledge receipt thereof.

We will now have to draw up a Supplementary Agreement to the above Share Purchase Agreement to reflect the altered consideration. We will also have to sign all the Annexures to the Agreement.

There are certain outstanding guarantees issued by you, to the parties listed in Schedule 2 to the above Agreement. You are requested to keep your guarantees in good standing in accordance with the terms of the Agreement. We shall relieve your guarantees in accordance with the Agreement".

3 Since the transaction was not completed by KCP, disputes arose between the parties resulting in the commencement of arbitral proceedings. On 16 December 2009 the arbitral tribunal made its award in the following terms:

"28.0 Award

28.01 In the result this Arbitral Tribunal passes the final Award in the arbitration matter between M/s Kasturi & Sons Limited M/s Hindcorp Resorts Private Limited, the claimants and Mr K C Palaniswami and M/s Sporting Pastime India Limited, the respondents:-

(i) Directing the respondents to return to the claimants the documents of title and share certificates relating to 2,43,00,000 shares of the second respondent namely Sporting Pastime India Limited, which were handed over earlier to the first respondent pursuant to the agreement dated 19/07/2004 in the manner following :

> (a) The documents of title relating to the second claimant being part of the documents of title referred to above to the second claimant, forthwith.
> (b) The documents of title pertaining to the first claimant being part of the documents of title referred to in (a) above and the share certificates pertaining to 2,43,00,000 shares referred to above contemporaneously with the first claimant paying / tendering the sum of Rs. 3,58,11,000/- (Rs. Three crores fifty eight thousand eleven thousand only) to the first respondent as per para 27.01 with interest @ 12% p.a. on Rs. 2,55,00,000/- from the date of award till 17/01/2010 or earlier payment/tender and thereafter @ 18% p.a. on Rs. 2,50,00,000/- till date of payment / tendering of the amount of Rs. 3,58,11,000/-
>
> (ii) Dismissing the counter – claim of the respondents for Rs. 8,83,23,086/-
>
> (iii) Directing the respondents to bear the costs of the proceedings in a sum of Rs. 60,15,000/- the claimants being entitled to the same in para 23.09 hereinabove and the same having been set-off in the manner stated in para 26.01 hereinabove.
>
> (Iv) Directing the respondents to bear their own costs in both the claim and the counter-claim."

Under the terms of the award, a direction was issued under which KCP and SPIL were required to return documents of title and share certificates relating to 2.43 crore shares contemporaneously with KSL paying an amount of Rs 3,58,11,000 together with interest at 12% p.a. on a sum of Rs 2.55 crores.

4 KCP challenged the award of the arbitral tribunal under Section 34 of the Arbitration and Conciliation Act, 1996. The challenge was repelled by a learned Single Judge of the Madras High Court by a judgment and order dated 30 April 2015. The appeal filed by KCP was dismissed by the Division Bench of the High Court on 24 January 2017. This Court dismissed the Special Leave

Petition challenging the judgment of the Division Bench on 10 February 2017. The award has attained finality.

5 KSL initiated proceedings, *inter alia*, under Section 111 of the Companies Act, 1956 read with Sections 397, 398, 402 and 403, among other things, for rectification of the register of SPIL. NCLT allowed the petition by its order dated 6 March 2017. The decision of the NCLT was affirmed by NCLAT on 3 May 2017.

6 NCLAT held that the appellant is a nominee of KCP and holds the shares in question on his behalf. Hence, NCLT was held to be justified in entertaining the proceedings for rectification under Section 111. For coming to the conclusion that the appellant is a nominee of KCP and held the shares on his behalf, reliance has been placed on a judgment dated 29 April 2011 of the Madras High Court *inter partes* in an application under Section 9 of the Arbitration and Conciliation Act, 1996. The Madras High Court formulated the following questions for consideration:

> "(1) Whether an order of interim injunction can be passed against the respondents who are not party to the arbitration agreement or arbitration proceedings;
>
> (2) Whether the respondents 3 to 6 can be said to be nominees of Sri K.C. Palanisamy so as to be bound by the Arbitration Award, for passing interim direction against them."

The High Court came to the conclusion that clause 14 of the agreement dated 19 July 2004 recognise the right of KCP to transfer his holding in SPIL to a person of his choice, provided that the proposed transferee accepts the terms and conditions mentioned in the agreement for the management of SPIL together with related financial aspects covered by the agreement. The High Court held that the shares had not been purchased by the appellant as a matter of an independent right but as a nominee of KCP. The purchase of the shares was in pursuance of the agreement dated 19 July 2004. Rectification of the register was held to have been ordered by the NCLT correctly. The appeal was dismissed.

7 We have heard Mr Kapil Sibal and Dr Abhishek Manu Singhvi, learned senior counsel in support of the appeal and Mr Mukul Rohtagi and Mr Arvind Datar, learned senior counsel on behalf of the respondents.

8 On behalf of the appellants it has been urged that:

> *Firstly,* the appellant is not a party to the arbitration agreement contained in clause 21 of the agreement dated 19 July 2004. This agreement was entered into between KCP, KSL, SPIL and Hindcorp. Even though the appellant purchased the shares of SPIL as a nominee of KCP, the arbitral award which has been rendered in proceedings between the parties to the agreement dated 19 July 2004 does not bind the appellant;

Secondly, the principle that an arbitration agreement will, under Section 7, bind only parties and not a third party in the position of the appellant, is settled by the decisions of this Court in **Indowind Energy Limited** v **Wescare (India) Limited**[6] and in **S.N.Prasad, Hitek Industries (Bihar) Limited** v **Monnet Finance Limited**[7];

Thirdly, an arbitral award has to be enforced as a decree of a civil court in view of the provisions of Section 36. The arbitral award could not have been enforced by pursuing proceedings before the NCLT;

Fourthly, though a review was sought before the NCLAT on the basis of the law laid down by this Court in **Indowind** (supra) it was summarily dismissed on the ground that there was no error in the original judgment.

9 Mr Kapil Sibal, learned senior counsel, has basically urged three submissions in support.

Firstly the appellant ought to have been, but was not impleaded as a party to the arbitral proceedings (obviously because it was not a party to the arbitration agreement). The appellant has

[6] (2010) 5 SCC 306
[7] (2011) 1 SCC 320

paid valuable consideration for the shares purchased by it. KSL proceeded on a wrong legal basis in the first place and has compounded its legally untenable approach by selecting a wrong remedy by moving the NCLT;

Secondly, **Chloro Controls India Private Limited** v **Severn Trent Water Purification Inc.**[8] does not apply because it deals with an international arbitration under Section 45 whereas this was a case of a domestic arbitration. The provisions of Section 45 must be distinguished from unamended Section 8 of the Arbitration and Conciliation Act 1996. The appellant is not a party to the arbitration agreement and having paid consideration for its purchase of shares, is not bound by the arbitral award;

Thirdly, the decision in **Chloro Controls** has been clarified by this Court in **Duro Felguera, S.A.** v **Gangavaram Port Limited**[9]**.**

10 Dr Abhishek Manu Singhvi has in his submissions addressed the Court on the following propositions.

[8] (2013) 1 SCC 641
[9] (2017) 9 SCC 729

Firstly, the arbitral award dated 16 December 2009 cannot be executed against the appellant which is admittedly not a signatory to the agreement dated 19 July 2004 which contains a provision for arbitration;

Secondly, the arbitral award cannot be executed by a Tribunal such as the NCLT/NCLAT in a "camouflaged petition" (under Sections 111, 397, 398, 402 and 403 of the Companies Act 1956) which would be barred by Section 42 of the Arbitration and Conciliation Act, 1996;

Thirdly, the prayer seeking a rectification of the register of members fails to meet the strict requirements of Sections 111 and 111 A of the erstwhile Companies Act 1956 and hence the direction to rectify the register of members is fallacious;

Fourthly, NCLAT as well as NCLT have failed to explain or distinguish the settled principle of law laid down in the judgment of this Court in **Indowind**;

Fifthly, reliance on the letter dated 17 August 2004 addressed on behalf of the appellant and on the order of the Madras High Court in the petition under Section 9 is misconceived;

Sixthly, during the course of the proceedings under Section 9, counsel for the appellant had conceded that the expression

'party' means a party to the arbitration agreement and which is actually before the arbitral tribunal;

Seventhly, for the **Chloro Controls** principle to be attracted, the following requirements are necessary:

(a) there has to be a joint venture agreement;
(b) there must be a mother agreement;
(c) the mother agreement must contain an arbitration agreement;
(d) agreements ancillary to the mother agreement need not contain an arbitration agreement; and
(e) there must be a finding that the ancillary agreements cannot be performed in the absence of the mother agreement.

11 On the other hand, it has been urged on behalf of the respondents that:

Firstly, Clause 14 of the agreement dated 19 July 2004 specifically provides that the nominees of KCP would be bound by the agreement. The recognition of the right of KCP to sell or transfer his holdings in SPIL was expressly subject to the condition that the proposed transferees would accept the terms and conditions of the agreement. Such an acceptance would necessarily include all its provisions including the arbitration agreement contained in clause 21;

Secondly, the condition for KCP's nominees to obtain the shares of SPIL having been spelt out in clause 14, the appellant is merely a nominee and is not entitled to raise the present dispute;

Thirdly, in the order of the High Court dated 29 April 2011 under Section 9 of the Arbitration and Conciliation Act 1996, the appellant was held specifically to be a nominee of KCP whose purchase of shares was referable to the agreement dated 19 July 2004. The appellant which is a party to those proceedings has not challenged the finding;

Fourthly, the arbitral award has the status of a decree under Section 36 and can be enforced "as if" it is a decree of the court. Under the Companies Act, no matter relating to the transfer of shares can be decided except by the NCLT after 2013. KSL requires physical custody of the share certificates and rectification of the share register. Mere transfer of the physical custody of the share certificates wold not be sufficient, since a rectification of the share register is required to perfect the title of KSL. Consequently, it was necessary for KSL to move the NCLT for rectification of the share register under Section 111; and

Fifthly, the principle that an arbitral award may bind a group company, which is an affiliate of a signatory to the arbitration

agreement has been settled in a judgment of a three judge bench of this Court in **Chloro Controls.** While there can be no dispute about the applicability of the **Indowind** principle in the generality of cases, attribution of an arbitral award to a group company is governed by the decision in **Chloro Controls** (supra).

12 Mr Mukul Rohtagi and Mr Arvind Datar have countered the submissions which were urged on behalf of the appellant. They have urged that:

Firstly, each of the submissions which are sought to be advanced before this Court in the present appeals were urged before the Madras High Court in the proceedings under Section 9. The Madras High Court has categorically rejected those submissions and has held that the appellant, at all material times, acted as a nominee of KCP under the agreement dated 19 July 2004. The appellant's letter of 17 August 2004 categorically contains a reference to the earlier agreement and establishes beyond doubt that the appellant assumed all the obligations under the agreement, including the remedy of arbitration;

Secondly, **Indowind** is essentially a case under Section 11 of the Arbitration and Conciliation Act, 1996. In the present case the Court is dealing with a post award enforcement;

Thirdly, Section 35 of the Arbitration and Conciliation Act, 1996 indicates that an arbitral award binds parties to an arbitration and persons claiming under them. The appellant has, at all material times, been aware of the fact that it was claiming under KCP in pursuance of the original agreement dated 19 July 2004 and its letter dated 17 August 2004;

Fourthly, the judgment in **Chloro Controls** explains the concept of a person claiming under a party to an arbitration agreement and is attracted to the present case on all fours; and

Fifthly, the consequence of the arbitral award is to envisage a transmission of the shares to KSL by operation of law. This being the position, the CLB could have directed a rectification of the register of the company. Upon the constitution of the NCLT, exclusive jurisdiction to do so stands vested in it. The transmission of shares, as a consequence of law under the arbitral award, has to be given effect to by a formal rectification of the register. To effectuate this, the only remedy which is available to KSL was to move the NCLT for rectification.

13 The rival submissions will now be analysed.

14 Section 7 of the Arbitration and Conciliation Act, 1996 provides thus:

> "7 Arbitration agreement. —
> (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
> (3) An arbitration agreement shall be in writing.
> (4) An arbitration agreement is in writing if it is contained in—
> (a) a document signed by the parties;
> (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
> (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

While interpreting Section 7 in **Indowind,** a two Judge Bench of this Court held that:

> "It is fundamental that a provision for arbitration to constitute an arbitration agreement for the purpose of Section 7 should satisfy two conditions: (*i*) it should be between the parties to the dispute; and (*ii*) it should relate to or be applicable to the dispute."

That was a case where an agreement of sale was entered into between W and S. The agreement described S and its nominee as a buyer and as the promoter of Indowind. Under the agreement, the seller agreed to transfer to the buyer certain assets for a consideration which was payable partly in cash and partly by the issue of equity shares. The Board of Directors of W accorded approval to the agreement, as did the Board of S. No approval was, however, granted by the Board of Directors of Indowind. According to W, certain disputes arose

between it and S and Indowind on the other. W filed a petition under Section 11(6) against S and Indowind for appointment of a sole arbitrator. Indowind resisted the petition on the ground that it was not a party to the agreement which was entered into between W and S. The Chief Justice of the Madras High Court allowed the application for appointment of an arbitrator, holding that though Indowind was not a signatory to the agreement, it was bound. In appeal, this Court held that W had not entered into an agreement with Indowind, referring to the agreement which contained an arbitration agreement, with an intention to make the arbitration agreement a part of their agreement. In the view of this Court:

> "..The question is when Indowind is not a signatory to the agreement dated 24-2-2006, whether it can be considered to be a "party" to the arbitration agreement. In the absence of any document signed by the parties as contemplated under clause (*a*) of sub-section (4) of Section 7, and in the absence of existence of an arbitration agreement as contemplated in clauses (*b*) or (*c*) of sub-section (4) of Section 7 and in the absence of a contract which incorporates the arbitration agreement by reference as contemplated under sub-section (5) of Section 7, the inescapable conclusion is that Indowind is not a party to the arbitration agreement. In the absence of an arbitration agreement between Wescare and Indowind, no claim against Indowind or no dispute with Indowind can be the subject-matter of reference to an arbitrator. This is evident from a plain, simple and normal reading of Section 7 of the Act."

The fact that the agreement was entered into by S as the promoter of Indowind and described the latter as its nominee and that the agreement was signed on behalf of S by a person who was also a director of Indowind was held not to make any difference. This Court held that S and Indowind were two independent companies each of which was a separate and distinct legal entity

and the mere fact that the companies had common shareholders or a common Board of Directors will not make them a single entity. Nor could there be an inference that one company would be bound by the acts of the other. In the view of this Court:

> "..A contract can be entered into even orally. A contract can be spelt out from correspondence or conduct. But an arbitration agreement is different from a contract. An arbitration agreement can come into existence only in the manner contemplated under Section 7. If Section 7 says that an arbitration agreement should be in writing, it will not be sufficient for the petitioner in an application under Section 11 to show that there existed an oral contract between the parties, or that Indowind had transacted with Wescare, or Wescare had performed certain acts with reference to Indowind, as proof of arbitration agreement."

15 The decision in **Indowind** was followed by a two Judge Bench in **Prasad** (supra). The issue in that case was whether a guarantor to a loan who is not a party to a loan agreement between the lender and borrower could be made a party to a reference to an arbitration in regard to a dispute governing the repayment of the loan and be subjected to the arbitral award. The loan agreement contained an arbitration clause. In the view of this Court:

> "An arbitration agreement between the lender on the one hand and the borrower and one of the guarantors on the other, cannot be deemed or construed to be an arbitration agreement in respect of another guarantor who was not a party to the arbitration agreement. Therefore, there was no arbitration agreement as defined under Sections 7(4)(*a*) or (*b*) of the Act, insofar as the appellant was concerned, though there was an arbitration agreement as defined under Section 7(4)(*a*) of the Act in regard to the second and third respondents.."

Consequently, the impleadment of the appellant as party to the arbitration proceedings and the award were held to be unsustainable. The principle which was formulated by the Court was this:

> "..The Act makes it clear that an arbitrator can be appointed under the Act at the instance of a party to an arbitration agreement only in respect of disputes with another party to the arbitration agreement. If there is a dispute between a party to an arbitration agreement, with other parties to the arbitration agreement as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can be only with respect to the parties to the arbitration agreement and not the non-parties."

16 Both these decisions were prior to the three Judge Bench decision in **Chloro Controls** (supra). In **Chloro Controls** this Court observed that ordinarily, an arbitration takes place between persons who have been parties to both the arbitration agreement and the substantive contract underlying it. English Law has evolved the "group of companies doctrine" under which an arbitration agreement entered into by a company within a group of corporate entities can in certain circumstances bind non-signatory affiliates. The test as formulated by this Court, noticing the position in English law, is as follows:

> "Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them, the courts under the English law have, in certain cases, also applied the "group of companies doctrine". This doctrine has developed in the international context, whereby an arbitration agreement entered into by a company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates. This theory has been applied in a number of arbitrations so as to justify a tribunal taking jurisdiction over a party who is not a

> signatory to the contract containing the arbitration agreement. [*Russell on Arbitration* (23rd Edn.)]
>
> This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, "intention of the parties" is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties."

The Court held that it would examine the facts of the case on the touch-stone of the existence of a direct relationship with a party which is a signatory to the arbitration agreement, a 'direct commonality' of the subject matter and on whether the agreement between the parties is a part of a composite transaction:

> "A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed."

Explaining the legal basis that may be applied to bind a non-signatory to an arbitration agreement, this Court held thus:

> "The first theory is that of implied consent, third-party beneficiaries, guarantors, assignment and other transfer

> mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities.
>
> The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called "the alter ego"), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.
>
> ..
>
> We have already discussed that under the group of companies doctrine, an arbitration agreement entered into by a company within a group of companies can bind its non-signatory affiliates, if the circumstances demonstrate that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties."

The position in **Indowind** was formulated by a Bench of two Judges before the evolution of law in the three Judge Bench decision in **Chloro Controls**. **Indowind** arose out of a proceeding under Section 11(6). The decision turns upon a construction of the arbitration agreement as an agreement which binds parties to it. The decision in **Prasad** evidently involved a guarantee, where the guarantor who was sought to be impleaded as a party to the arbitral proceeding was not a party to the loan agreement between the lender and borrower. The loan agreement between the lender and borrower contained an arbitration agreement. The guarantor was not a party to that agreement.

17 As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both

signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the Court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.

18 International conventions on arbitration as well as the UNCITRAL Model Law mandate that an arbitration agreement must be in writing. Section 7 of the Arbitration and Conciliation Act, 1996 affirms the same principle. Why does the law postulate that there should be a written agreement to arbitrate? The reason is simple. An agreement to arbitrate excludes the jurisdiction of national courts. Where parties have agreed to resolve their disputes by arbitration, they seek to substitute a private forum for dispute resolution in place of the adjudicatory institutions constituted by the state. According to **Redfern and Hunter** on International Arbitration, the requirement of an agreement to arbitrate in writing is an elucidation of the principle that the existence of such an agreement should

be clearly established, since its effect is to exclude the authority of national courts to adjudicate upon disputes.[10]

19 Does the requirement, as in Section 7, that an arbitration agreement be in writing exclude the possibility of binding third parties who may not be signatories to an agreement between two contracting entities? The evolving body of academic literature as well as adjudicatory trends indicate that in certain situations, an arbitration agreement between two or more parties may operate to bind other parties as well. **Redfern and Hunter** explain the theoretical foundation of this principle:

> "..The requirement of a signed agreement in writing, however, does not altogether exclude the possibility of an arbitration agreement concluded in proper form between two or more parties also binding other parties. Third parties to an arbitration agreement have been held to be bound by (or entitled to rely on) such an agreement in a variety of ways: first, by operation of the 'group of companies' doctrine pursuant to which the benefits and duties arising from an arbitration agreement may in certain circumstances be extended to other members of the same group of companies; and, secondly, by operation of general rules of private law, principally on assignment, agency, and succession..[11]"

The group of companies doctrine has been applied to pierce the corporate veil to locate the "true" party in interest, and more significantly, to target the creditworthy member of a group of companies[12]. Though the extension of this doctrine is met with resistance on the basis of the legal imputation of corporate

[10] Redfern and Hunter on International Arbitration, Fifth Edition – 2.13, p.89-90
[11] Id at page 99
[12] **Redfern and Hunter** (supra) 2.40, page 100

personality, the application of the doctrine turns on a construction of the arbitration agreement and the circumstances relating to the entry into and performance of the underlying contract.[13]

Russel on Arbitration[14] formulates the principle thus:

> "Arbitration is usually limited to parties who have consented to the process, either by agreeing in their contract to refer any disputes arising in the future between them to arbitration or by submitting to arbitration when a dispute arises. A party who has not so consented, often referred to as a third party or a non-signatory to the arbitration agreement, is usually excluded from the arbitration. There are however some occasions when such a third party may be bound by the agreement to arbitrate. For example, …, assignees and representatives may become a party to the arbitration agreement in place of the original signatory on the basis that they are successors to that party's interest and claim "through or under" the original party. The third party can then be compelled to arbitrate any dispute that arises."

Garry B Born in his treatise on International Commercial Arbitration indicates that:

> "The principal legal bases for holding that a non-signatory is bound (and benefitted) by an arbitration agreement … include both purely consensual theories (*e.g.,* agency, assumption, assignment) and nonconsensual theories (*e.g.* estoppel, alter ego)[15]".

Explaining the application of the alter ego principle in arbitration, **Born** notes:

> "Authorities from virtually all jurisdictions hold that a party who has not assented to a contract containing an arbitration clause may nonetheless be bound by the clause if that party is an "alter ego" of an entity that did execute, or was otherwise a party to, the agreement. This is a significant,

[13] Id.2.41 page 100
[14] (24th Ed.), 3-025 pages 110-111
[15] 2nd Ed. Volume 1 page 1418

> but exceptional, departure from "the fundamental principle ... that each company in a group of companies (a relatively modern concept) is a separate legal entity possessed of separate rights and liabilities[16]."

Explaining group of companies doctrine, **Born** states :

> "the doctrine provides that a non-signatory *may* be bound by an arbitration agreement where a group of companies exists *and* the parties have engaged in conduct (such as negotiation or performance of the relevant contract) or made statements indicating the intention assessed objectively and in good faith, that the non-signatory be bound and benefitted by the relevant contracts.[17]"

While the alter ego principle is a rule of law which disregards the effects of incorporation or separate legal personality, in contrast the group of companies doctrine is a means of identifying the intentions of parties and does not disturb the legal personality of the entities in question. In other words :

> "the group of companies doctrine is akin to principles of agency or implied consent, whereby the corporate affiliations among distinct legal entities provide the foundation for concluding that they were intended to be parties to an agreement, notwithstanding their formal status as non-signatories.[18]"

20 The decision in **Indowind** arose from an application under Section 11 of the Arbitration and Conciliation Act 1996. Indowind was not a signatory to the contract and was held not to be a party to the agreement to refer disputes to arbitration. **Indowind** held that an application under Section 11 was not maintainable. The present case does not envisage a situation of the kind which

[16] Id at page 1432
[17] Id at pages 1448-49
[18] Id at page 1450

prevailed before this Court in **Indowind.** The present case relates to a post award situation. The enforcement of the arbitral award has been sought against the appellant on the basis that it claims under KCP and is bound by the award. Section 35 of the Arbitration and Conciliation Act 1996 postulates that an arbitral award "shall be final and **binding on the parties and persons claiming under them** respectively". The expression 'claiming under', in its ordinary meaning, directs attention to the source of the right. The expression includes cases of devolution and assignment of interest (**Advanced Law Lexicon by P Ramanatha Aiyar**[19]). The expression "persons claiming under them" in Section 35 widens the net of those whom the arbitral award binds. It does so by reaching out not only to the parties but to those who claim under them, as well. The expression "persons claiming under them" is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. Having derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. The issue in every such a case is whether the person against whom the arbitral award is sought to be enforced is one who claims under a party to the agreement.

[19] Third Edition, Volume I Page 818

21 Mr Sibal has sought to make a distinction between the provisions of Section 45 and the unamended Section 8. Section 45, forms a part of Part II dealing with the enforcement of foreign awards to which the New York Convention applies. It contemplates a reference by a judicial authority to arbitration at the request of one of the parties 'or any person claiming through or under him', where there is an arbitration agreement. The submission of Mr Sibal is that a similar expression ('any person claiming through or under him') has been introduced in the amended provisions of Section 8 (substituted by Act 3 of 2016 with effect from 23 October 2015) but that this expression did not find place in the unamended provision. The submission is a non-sequitur. Both Sections 8 and 45 operate in the sphere of the duty of a judicial authority to refer parties to arbitration. In the present case Section 35 is the material provision, which expressly stipulates that an arbitral award is, final and binding not only on the parties but on persons claiming under them.

22 The submission which was urged on behalf of the appellant, proceeds on the basis that since the appellant was not impleaded as a party to the arbitral proceedings, proceedings for the enforcement of the award will not lie against it. This line of submissions clearly misses the central facet of Section 35, which is that a person who claims under a party is bound by the award. The fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can be enforced against it on the ground that it claims under a party. Essentially, the Court is called upon to consider whether

the test embodied in Section 35 is fulfilled in the present case, so as to bind the appellant.

23 Under the agreement dated 19 July 2004, KCP was to be offered 243 lakh equity shares of KSL for a consideration of Rs 2.31 crores. The intent of the parties, as evinced in clause 6 of the agreement, was that KCP would take over the business, assets and liabilities of SPIL. KCP was to discharge those liabilities of SPIL which were specified in Schedules 2 and 3 of the agreement. Clause 14 of the agreement recognises, on the part of KSL, the right of KCP to sell or transfer his holding in SPIL "provided the proposed transferees accept the terms and conditions mentioned in this agreement" for the management of SPIL and related financial aspects covered by this agreement. Significantly, on 17 August 2004, KCP addressed a letter to KSL acting as the authorised signatory of the appellant. The letter contains a clear and categoric reference to the Share Purchase Agreement dated 19 July 2004. The appellant intimated to KSL that it was in pursuance of the said agreement that KSL had agreed to sell and "our group of companies by this agreement and/or by themselves and/or by their nominees have agreed to purchase shares" in SPIL of a face value of Rs 2430 lakhs for a sum of Rs 2.43 crores. Accordingly, the appellant indicated that it was remitting seven share transfer deeds duly executed and requested KSL to lodge them, upon execution, with SPIL. The parties in whose favour the transfers were to be registered were described as group companies.

It was indicated that a supplementary agreement would be drawn up to reflect the altered consideration.

24 The record establishes that the transfer of shares by KCP to his nominees was to be on the express condition that the nominee would abide by the terms of the agreement in relation to the take over of the management of SPIL and related financial aspects. The appellant, while purchasing the shares, was not merely aware of the agreement dated 19 July 2004 but expressly sought the allotment of shares in pursuance to it, to its group companies. In this background, it will not be open to the appellant to contend that while it was bound by all other terms of the agreement dated 19 July 2004, it would not be bound by the arbitration agreement contained in the very same agreement. The arbitral award, as we have noticed, attained finality after all attempts to raise objections to it failed before the High Court and, later, before this Court. The appellant, in purchasing the shares, was conscious of and accepted the terms of the agreement dated 19 July 2004. Its letter dated 17 August 2004 leaves no manner of doubt of the acceptance of this position.

25 The appellant questions the application of the **Chloro Controls** doctrine. Dr Singhvi urged that in **Chloro Controls** there was a joint venture agreement; the mother or parent agreement contained an arbitration clause and though the ancillary agreements did not contain an arbitration agreement, they could not have been performed in the absence of the mother agreement. The submission

proceeds on a constricted interpretation of the **Chloro Controls** dictum. The principle which underlies **Chloro Controls** is that an arbitration agreement which is entered into by a company within a group of companies may bind non-signatory affiliates, if the circumstances are such as to demonstrate the mutual intention of the parties to bind both signatories and non-signatories. In applying the doctrine, the law seeks to enforce the common intention of the parties, where circumstances indicate that both signatories and non-signatories were intended to be bound. In **Duro** (supra), the case was held to stand on a different footing since all the five different packages as well as the corporate guarantee did not depend on the terms and conditions of the original package nor on the memorandum of understanding executed between the parties. The judgment in **Duro** does not detract from the principle which was enunciated in **Chloro Controls**.

26 In the present case, as we have seen, the parent agreement dated 19 July 2004 envisaged the allotment of equity shares of KSL to KCP with the intent that KCP would take over the business, assets and liabilities of SPIL. While KCP was entitled to transfer his shareholding, this was expressly subject to the condition of the acceptance by the transferee of the terms and conditions of the agreement. KCP's letter dated 17 August 2004 to KSL contains a specific reference to the share purchase agreement dated 19 July 2004. It was in pursuance of that agreement that KCP indicated, as authorised signatory of the appellant, that his group of companies had agreed to purchase the shares

in SPIL. The shares were to be purchased by several entities in the same group. A supplementary agreement was to be entered into, to reflect the altered consideration. Eventually, no supplementary agreement was executed and the transaction was structured on the basis of the parent agreement dated 19 July 2004 which the appellant recognised in its letter dated 17 August 2004. Having regard to this factual context, the defence of the appellant against the enforcement of the award cannot be accepted. To allow such a defence to prevail would be to cast the mutual intent of the parties to the winds and to put a premium on dishonesty.

27 The arbitral award envisaged that KSL was entitled to the return of documents of title and the certificates pertaining to the shares of SPIL contemporaneously with the payment or tendering of a sum of Rs 3.58 crores together with interest. KSL is in terms of the arbitral award entitled to the share certificates. That necessarily means the transfer of the share certificates. To effectuate the transfer, recourse to the remedy of the rectification of the register under Section 111 was but appropriate and necessary. The arbitral award has the character of a decree of a civil court under Section 36 and is capable of being enforced as if it were a decree. Armed with that decree, KSL was entitled to seek rectification before the NCLT by invoking the provisions of Section 111 of the Companies Act, 1956. There can be, therefore, no question about the jurisdiction of NCLT to pass an appropriate order directing rectification of the register.

28 We have not been impressed with the submission that the application by KSL to the NCLT was not maintainable since the Tribunal has no power to execute an arbitral award. The submission proceeds on finding of the Tribunal that the purpose of the petition before it was to implement the award dated 16 December 2009 and that its ultimate direction is to the same effect. The submission relies on the provisions of Section 42 of the 1996 Act which provides as follows:

> "42. Jurisdiction. -Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a court, that court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court and in no other court."

While dealing with the submission it is necessary to note that the award of the arbitral tribunal mandates that the appellant must return the share certificates relating to 2.43 crore shares of SPIL which were handed over in terms of the agreement dated 19 July 2004 against the payment of the consideration stipulated in the award. The transfer of the share certificates by the appellant will be effectual only by the rectification of the register of the company. The mere handing over of a share certificates will not constitute due implementation of the award. The award contemplates the transmission of the shares which stood in the name of the appellant in pursuance of the agreement dated 19 July 2004, to the claimant in the arbitral proceedings. This necessitated an application under Section 111 for the purpose of securing a rectification of the

register. Sub-section 4 of Section 111 deals with a situation where a default is made in entering in the register, the fact of any person having become a member of the company. Under sub-section 5 while hearing the appeal, the Tribunal is entitled to direct that the transfer or transmission shall be registered by the company and to order rectification of the register.

29 In the present case, the arbitral award required the shares to be transmitted to the claimants. The arbitral award attained finality. The award could be enforced in accordance with the provisions of the Code of Civil Procedure, in the same manner as if it were a decree of the Court. The award postulates a transmission of shares to the claimant. The directions contained in the award can be enforced only by moving the Tribunal for rectification in the manner contemplated by law.

30 The reliance which has been sought to be placed on the provisions of Section 42 of the 1996 Act is inapposite. Dr Singhvi relied on the decision in **State of West Bengal** v **Associated Contractors**[20]. The principle which was enunciated in the judgment of this Court was as follows:

> **"**If an application were to be preferred to a court which is not a Principal Civil Court of original jurisdiction in a district or a High Court exercising original jurisdiction to decide questions forming the subject matter of an arbitration if the same had been the subject matter of a suit, then obviously such application would be outside the four corners of Section 42. If, for example, an application were to be filed in a court inferior to a Principal Civil Court, or to a High Court which has no

[20] (2015) 1 SCC 32.

> original jurisdiction, or if an application were to be made to a court which has no subject-matter jurisdiction, such application would be outside Section 42 and would not debar subsequent applications from being filed in a court other than such court."

The conclusion of the Court is in the following terms:

> "(*a*) Section 2(1)(*e*) contains an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part I of the Arbitration Act, 1996.
>
> (*b*) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an award is pronounced under Part I of the 1996 Act.
>
> (*c*) However, Section 42 only applies to applications made under Part I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.
>
> (*d*) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.
>
> (*e*) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(*e*), and whether the Supreme Court does or does not retain seisin after appointing an arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil Court having original jurisdiction in the district, as the case may be.
>
> (*f*) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part I.
>
> (*g*) If a first application is made to a court which is neither a Principal Court of Original Jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject-matter jurisdiction would be outside Section 42."

31 More recently in **Sundaram Finance Limited** v **Abdul Samad**[21], this Court considered the divergence of legal opinion in the High Courts on the

[21] (2018) 2 SCALE 467

question as to whether an award under the 1996 Act is required to be first filed in the Court having jurisdiction over the arbitral proceedings for execution, to be followed by a transfer of the decree or whether the award could be filed and executed straight-away in the Court where the assets are located. Dealing with the provisions of Section 36, Justice Sanjay Kishan Kaul observed thus:

> "The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the arbitral tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code."

Explaining the provisions of Section 42 the Court held that:

> "The aforesaid provision, however, applies with respect to an application being filed in Court under Part I. The jurisdiction is over the arbitral proceedings. The subsequent application arising from that agreement and the arbitral proceedings are to be made in that court alone. However, what has been lost sight of is Section 32 of the said Act, which reads as under: "32. Termination of proceedings.— (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2). (2) The arbitral tribunal shall issue an order for the termination of CIVIL APPEAL No.1650 of 2018 Page 17 of 21 the arbitral proceedings where— (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute, (b) the parties agree on the termination of the proceedings, or (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible. (3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."

> 19.The aforesaid provision provides for arbitral proceedings to be terminated by the final arbitral award. Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance.."

Consequently, in the view of the Court, the enforcement of an award through its execution can be initiated anywhere in the country where the decree can be executed and there is no requirement of obtaining a transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings.

32 In the present case, the arbitral award, in essence, postulates the transmission of shares from the appellant to the claimant. The only remedy available for effectuating the transmission is that which was provided in Section 111 for seeking a rectification of the register. There is, therefore, no merit in the challenge addressed by the appellant.

33 We may also note the fact that in the proceedings before the Madras High Court under Section 9, it was held that the purchase of shares by the appellant was as a nominee of KCP and not by way of an independent right. The purchase was held to be referable to the agreement dated 19 July 2004. There has been no challenge to this finding.

The Madras High Court held thus:

> "The reading of the letter issued by the third respondent seeking transfer and registration of shares shown that

> reference was made to the agreement dated 19.7.2004 which was in dispute before the Arbitration Tribunal. Nothing has been produced on record to show, if any fresh agreement was executed as suggested in the letter, seeking transfer of shares in favour of the person mentioned in the letter written by the third respondent, nor any documents have been placed on record to show as to whether the respondent took over the liabilities, which were met by the applicant, and finally held to be binding on first respondent.
>
> In the absence of execution of new agreement, no other conclusion then the one that the transaction was in terms of the agreement, entered into between the parties to arbitration can be arrived at."
>
> ..
>
> "At the sake of repetition, it may be mentioned that the reading of the letter dated 18.8.2004 on which reliance was placed by the third respondent shows that clear reference was made to the agreement dated 19.7.2004 entered into between the applicant and the first respondent."

The High Court further held thus:

> "The respondents 3 to 6 have purchased the shares, as nominees of the first respondent and not as of independent right. No material other than the agreement dated 19.7.2004 has been placed on record to show that the respondents 3 to 6 exercises their independent right to purchase the shares."
>
> ..
>
> "The contention of Mr. V. Prakash, learned Senior counsel that the respondents 4 to 6 cannot be treated as nominees of the first respondent cannot be sustained, as shares were transferred, in pursuance to the letter dated 18.8.2004 addressed by the third respondent, for registration of the transfer deed by referring to the agreement dated 19.7.2004. Thus, the second question is also answered by holding that the respondents 2 to 6 purchased the shares, as the nominees of the first respondent."

We have referred to the above findings for the completeness of the record. These findings of the Madras High Court would indicate that virtually everyone of the submission which was urged before this Court have been negatived.

34 Finally, having covered the entire gamut of submissions which were urged on behalf of the appellant, it would be worthwhile to revisit the fundamental principles which were formulated nearly fifty years ago in a judgment of a three judge Bench of this Court in **Satish Kumar** v **Surinder Kumar**[22]. That case arose under the provisions of the Indian Arbitration Act 1940. The question which arose before this Court was whether an award under the Act requires registration under Section 17(1)(b) of the Registration Act, if it effects partition of immovable property above the value of Rs 100. A Full Bench of the Patna High Court held that unless a decree is passed in terms of the award (in terms of the position as it stood under the 1940 Act) it had no legal effect. In holding thus, the Patna High Court had relied upon a Punjab Full Bench decision holding that under the Arbitration Act 1940, an award was effective only when a decree follows a judgment on the award. The Punjab Full Bench held that even if the award is registered, it is still a 'waste paper' unless it is made a rule of the court. In appeal, this Court held that the two Full Benches had taken a view contrary to that formulated in an unreported decision of this Court in **Uttam Singh Duggal & Co** v **Union of India**[23] where it was held thus:

> "The true legal position in regard to the effect of an award is not in dispute. It is well settled that as a general rule, all claims which are the subject-matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After an award is pronounced, no action can be started on the original claim which had been the subject-matter of the reference. **As has been observed by Mookerjee, J., in the**

[22] (1969) 2 SCR 244

[23] Civil Appeal No 162 of 1962 – judgment delivered on 11 October 1962

> **case of *Bhajahari Saha Banikya* v. *Behary Lal Basak* [33 Col 881 at p 898] the award is, in fact, a final adjudication of a Court of the parties own choice, and until impeached upon sufficient grounds in an appropriate proceeding, an award, which is on the fact of it regular, is conclusive upon the merits of the controversy submitted, unless possibly the parties have intended that the award shall not be final and conclusive … in reality, an award possesses all the elements of vitality, even though it has not been formally enforced, and it may be relied upon in a litigation between the parties relating to the same subject-matter".** This conclusion, according to the learned Judge, is based upon **the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to the judgment of a court of last resort.** Therefore, if the award which has been pronounced between the parties has in fact, or can, in law, be deemed to have dealt with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed."
>
> (emphasis supplied)

The above position was followed in **Satish Kumar** (supra) as stating a binding principle of law. The earlier decision was reiterated in the following observations:

> "**In our opinion this judgment lays down that the position under the Act is in no way different from what it was before the Act came into force, and that an award has some legal force and is not a mere waste paper**. If the award in question is not a mere waste paper but has some legal effect it plainly purports to or affects property within the meaning of Section 17(1)(*b*) of the Registration Act."
>
> (emphasis supplied)

The present case which arises under the Arbitration and Conciliation Act 1996 stands on even a higher pedestal. Under the provisions of Section 35, the award can be enforced in the same manner as if it were a decree of the Court. The award has attained finality. The transmission of shares as mandated by

the award could be fully effectuated by obtaining a rectification of the register under Section 111 of the Companies Act. The remedy which was resorted to was competent. The view of the NCLT, which has been affirmed by the NCLAT does not warrant interference.

35 For the above reasons, we are of the view that the appeals are lacking in merit. The appeals shall stand dismissed.

.....CJI
[DIPAK MISRA]

.....J
[A M KHANWILKAR]

.....J
[Dr D Y CHANDRACHUD]

New Delhi;
April 24, 2018