
CHERAN PROPERTIES LIMITED Vs KASTURI AND SONS LIMITED

CIVIL APPEAL NOS 10025-10026 OF 2017

Court: SUPREME COURT OF INDIA

Date of Decision: April 24, 2018

Acts Referred:

THE ARBITRATION AND CONCILIATION ACT, 1996 " sec 42,11,7,9,35,45,8,34 Companies Act, 1956 " sec 111,397,398,402,403

Citation: (2018) 3 ArbLR 228 : (2018) 6 Scale 267 : (2018) 4 Supreme 451 : (2018) 4 SCR 1063 : (2018) 16 SCC 413

Hon'ble Judges: A.M. KHANWILKAR, D.Y. CHANDRACHUD,DIPAK MISRA

Bench: Full Bench

Advocate: ABHINAV SHRIVASTAVA

Final Decision: Dismissed

Judgement

Ä, Dr D Y CHANDRACHUD, J

1 The appeals in the present case arise under Sec(cid:34)on 423 of the Companies Act, 2013 against a judgment and order of the Na(cid:34)onal Company

Law Appellate Tribunal¹ dated 18 July 2017. The NCLAT has dismissed an appeal filed against an order dated 6 March 2017 of the Na(cid:34)onal

Company Law Tribunal² at its Chennai Bench.

2 The second respondent is a company by the name of Spor(cid:34)ng Pas(cid:34)me India Limited³. It was incorporated on 2 May 1994, as a fully owned

subsidiary of the first respondent, Kasturi & Sons Limited⁴. On 19 July 2004 an agreement was entered into between KC Palanisamy⁵ (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."

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 the 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

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. Cheraan Properties Limited 242,99.994

7. Cheraan 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:

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/- (cid:34) 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* (2010) 5 SCC 306 and in *S.N. Prasad,*

Hitek Industries (Bihar) Limited v Monnet Finance Limited (2011) 1 SCC 320;

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 (2010) 5 SCC 306 (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.* (2013) 1 SCC 641 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* (2017) 9 SCC 729.

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

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" manner (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*;

Finally, 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 "a party to the arbitration agreement" 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 cer(cid:34)ificates and rec(cid:34)ifica(cid:34)on of the share register. Mere transfer of the physical custody of the share cer(cid:34)ificates would not be sufficient,

since a rec(cid:34)ifica(cid:34)on of the share register is required to perfect the (cid:34)tle of KSL. Consequently, it was necessary for KSL to move the NCLT for

rectification of the share register under Section 111; and

Ã, Fi(cid:80)hly, the principle that an arbitral award may bind a group company, which is an affiliate of a signatory to the arbitra(cid:34)on agreement has

been se(cid:75)led 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, a(cid:75)ribu(cid:34)on 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 Sec(cid:34)on 9. The Madras High Court has categorically rejected those submissions and has held that the appellant,

at all material (cid:34)mes, acted as a nominee of KCP under the agreement dated 19 July 2004. The appellantÃ¢â,~â,,s le(cid:75)er of 17 August 2004

categorically contains a reference to the earlier agreement and establishes beyond doubt that the appellant assumed all the obliga(cid:34)ons under

the agreement, including the remedy of arbitration;

Secondly, Indowind is essen(cid:34)ally a case under Sec(cid:34)on 11 of the Arbitra(cid:34)on and Concilia(cid:34)on Act, 1996. In the present case the Court is dealing

with a post award enforcement;

Thirdly, Sec(cid:34)on 35 of the Arbitra(cid:34)on and Concilia(cid:34)on Act, 1996 indicates that an arbitral award binds par(cid:34)es to an arbitra(cid:34)on and persons

claiming under them. The appellant has, at all material (cid:34)mes, 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 arbitra(cid:34)on agreement and is a(cid:75)racted

to the present case on all fours; and Fi(cid:80)hly, the consequence of the arbitral award is to envisage a transmission of the shares to KSL by

opera(cid:34)on of law. This being the posi(cid:34)on, the CLB could have directed a rec(cid:34)ifica(cid:34)on of the register of the company. Upon the cons(cid:34)tu(cid:34)on of

the NCLT, exclusive jurisdic(cid:34)on 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 rec(cid:34)ifica(cid:34)on 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 Sec 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 Sec 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 Sec 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

Sec(cid:34)on 7, and in the absence of existence of an arbitra(cid:34)on agreement as contemplated in clauses (b) or (c) of sub-sec(cid:34)on (4) of Sec(cid:34)on 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 arbitra(cid:34)on agreement. In the absence of an arbitra(cid:34)on agreement between

Wescare and Indowind, no claim against Indowind or no dispute with Indowind can be the subject-ma(cid:75)er of reference to an arbitrator. This is

evident from a plain, simple and normal reading of Sec(cid:34)on 7 of the Act.Ã¢â¬ The fact that the agreement was entered into by S as the promoter

of Indowind and described the la(cid:75)er 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 dis(cid:34)nt legal en(cid:34)ty and the mere fact that the companies had common shareholders or a common Board of Directors will not

make them a single en(cid:34)ty. Nor could there be an inference that one company would be bound by the acts of the other. In the view of this

Court:

Ã¢â¬A contract can be entered into even orally. A contract can be spelt out from correspondence or conduct. But an arbitra(cid:34)on agreement is

different from a contract. An arbitra(cid:34)on agreement can come into existence only in the manner contemplated under Sec(cid:34)on 7. If Sec(cid:34)on 7

says that an arbitra(cid:34)on agreement should be in wri(cid:34)ng, it will not be sufficient for the pe(cid:34)(cid:34)oner in an applica(cid:34)on under Sec(cid:34)on 11 to show

that there existed an oral contract between the par(cid:34)es, or that Indowind had transacted with Wescare, or Wescare had performed certain acts

with reference to Indowind, as proof of arbitra(cid:34)on agreement.Ã¢â¬ 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 arbitra(cid:34)on 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:

Ã¢â¬An arbitra(cid:34)on 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 arbitra(cid:34)on agreement in respect of another guarantor who was not a party to the arbitra(cid:34)on agreement.

Therefore, there was no arbitra(cid:34)on agreement as defined under Sec(cid:34)ons 7(4)(a) or (b) of the Act, insofar as the appellant was concerned,

though there was an arbitra(cid:34)on agreement as defined under Sec(cid:34)on 7(4)(a) of the Act in regard to the second and third respondents.Ã¢â¬

Consequently, the impleadment of the appellant as party to the arbitra(cid:34)on 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, noting 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 controlled 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 companies¹². Though the extension of this doctrine is met with resistance

on the basis of the legal imputa(cid:34)on of corporate personality, the applica(cid:34)on of the doctrine turns on a construc(cid:34)on of the arbitra(cid:34)on

agreement and the circumstances rela(cid:34)ng to the entry into and performance of the underlying contract.¹³ Russel on Arbitra(cid:34)on¹⁴ formulates

the principle thus:

“Arbitra(cid:34)on is usually limited to par(cid:34)es who have consented to the process, either by agreeing in their contract to refer any disputes

arising in the future between them to arbitra(cid:34)on or by submi(cid:92)ng to arbitra(cid:34)on when a dispute arises. A party who has not so consented,

o(cid:80)en referred to as a third party or a non-signatory to the arbitra(cid:34)on agreement, is usually excluded from the arbitra(cid:34)on. There are however

some occasions when such a third party may be bound by the agreement to arbitrate. For example, “, assignees and representa(cid:34)ves may

become a party to the arbitra(cid:34)on 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 benefi(cid:75)ed) by an arbitra(cid:34)on 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 jurisdic(cid:34)ons hold that a party who has not assented to a contract containing an arbitra(cid:34)on 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, but excep(cid:34)onal, departure from “the fundamental principle ... that each company in a group of companies

(a rela(cid:34)vely modern concept) is a separate legal entity possessed of separate rights and liabilities¹⁶. Explaining group of companies

doctrine, Born states :

“the doctrine provides that a non-signatory may be bound by an arbitra(cid:34)on agreement where a group of companies exists and the par(cid:34)es

have engaged in conduct (such as nego(cid:34)a(cid:34)on or performance of the relevant contract) or made statements indica(cid:34)ng the inten(cid:34)on assessed

objec(cid:34)vely and in good faith, that the non-signatory be bound and benefi(cid:75)ed by the relevant contracts.¹⁷ While the alter ego principle is a

rule of law which disregards the effects of incorpora(cid:34)on 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 affilia(cid:34)ons among dis(cid:34)nct legal

en(cid:34)(cid:34)es provide the founda(cid:34)on for concluding that they were intended to be par(cid:34)es to an agreement, notwithstanding their formal status as

non-signatories.18Ã¢â¬ 20 The decision in Indowind arose from an applica(cid:34)on under Sec(cid:34)on 11 of the Arbitra(cid:34)on and Concilia(cid:34)on 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 arbitra(cid:34)on. Indowind held

that an applica(cid:34)on under Sec(cid:34)on 11 was not maintainable. The present case does not envisage a situa(cid:34)on of the kind which prevailed before

this Court in Indowind. The present case relates to a post award situa(cid:34)on. 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.

Sec(cid:34)on 35 of the Arbitra(cid:34)on and Concilia(cid:34)on Act 1996 postulates that an arbitral award Ã¢â¬shall be final and binding on the par(cid:34)es and

persons claiming under them respec(cid:34)velyÃ¢â¬. The expression Ã¢â¬claiming underÃ¢â¬, in its ordinary meaning, directs a(cid:75)en(cid:34)on to the source of

the right. The expression includes cases of devolu(cid:34)on and assignment of interest (Advanced Law Lexicon by P Ramanatha Aiyar19). The

expression Ã¢â¬persons claiming under themÃ¢â¬ in Sec(cid:34)on 35 widens the net of those whom the arbitral award binds. It does so by reaching out

not only to the par(cid:34)es but to those who claim under them, as well. The expression Ã¢â¬persons claiming under themÃ¢â¬ is a legisla(cid:34)ve

recogni(cid:34)on of the doctrine that besides the par(cid:34)es, an arbitral award binds every person whose capacity or posi(cid:34)on 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 posi(cid:34)on 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.

21 Mr Sibal has sought to make a dis(cid:34)nc(cid:34)on between the provisions of Sec(cid:34)on 45 and the unamended Sec(cid:34)on 8. Sec(cid:34)on 45, forms a part of

Part II dealing with the enforcement of foreign awards to which the New York Conven(cid:34)on applies. It contemplates a reference by a judicial

authority to arbitra(cid:34)on at the request of one of the par(cid:34)es Ã¢â¬or any person claiming through or under himÃ¢â¬, where there is an arbitra(cid:34)on

agreement. The submission of Mr Sibal is that a similar expression (Ã¢â¬any person claiming through or under himÃ¢â¬) has been introduced in

the amended provisions of Sec(cid:34)on 8 (subs(cid:34)uted 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 Sec(cid:34)ons 8 and 45 operate in the sphere of the duty of a judicial authority

to refer par(cid:34)es to arbitra(cid:34)on. In the present case Sec(cid:34)on 35 is the material provision, which expressly s(cid:34)ulates that an arbitral award is, final

and binding not only on the par(cid:34)es 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 Sec(cid:34)on 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 ques(cid:34)on as to

whether the award can be enforced against it on the ground that it claims under a party. Essen(cid:34)ally, 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 considera(cid:34)on of Rs 2.31 crores. The intent

of the par(cid:34)es, as evinced in clause 6 of the agreement, was that KCP would take over the business, assets and liabili(cid:34)es of SPIL. KCP was to

discharge those liabili(cid:34)es 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 condi(cid:34)ons

men(cid:34)oned in this agreement" for the management of SPIL and related financial aspects covered by this agreement. Significantly, on 17

August 2004, KCP addressed a le(cid:75)er to KSL ac(cid:34)ng as the authorised signatory of the appellant. The le(cid:75)er contains a clear and categoric

reference to the Share Purchase Agreement dated 19 July 2004. The appellant in(cid:34)mated 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 remi(cid:92)ng

seven share transfer deeds duly executed and requested KSL to lodge them, upon execu(cid:34)on, with SPIL. The par(cid:34)es 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 condi(cid:34)on that the nominee would abide

by the terms of the agreement in rela(cid:34)on 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 arbitra(cid:34)on agreement contained in the very same agreement. The arbitral award,

as we have no(cid:34)ced, a(cid:75)ained finality a(cid:80)er all a(cid:75)empts to raise objec(cid:34)ons 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 considerations 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 certificate 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* (2015) 1 SCC 32.. 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 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* (2018) 2

SCALE 467, this Court considered the divergence of legal opinion in the High Courts on the 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 Sec(cid:34)on 42 of the said Act, which deals with the jurisdic(cid:34)on issue in respect of arbitral proceedings, would have any relevance.Ã¢â¬

Consequently, in the view of the Court, the enforcement of an award through its execu(cid:34)on can be ini(cid:34)ated 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 jurisdic(cid:34)on

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 effectua(cid:34)ng the transmission is that which was provided in Sec(cid:34)on 111 for seeking a rec(cid:34)fica(cid:34)on 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 Sec(cid:34)on 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:

Ã¢â¬The reading of the le(cid:75)er issued by the third respondent seeking transfer and registra(cid:34)on of shares shown that reference was made to the

agreement dated 19.7.2004 which was in dispute before the Arbitra(cid:34)on Tribunal. Nothing has been produced on record to show, if any fresh

agreement was executed as suggested in the le(cid:75)er, seeking transfer of shares in favour of the person men(cid:34)oned in the le(cid:75)er wri(cid:75)en by the

third respondent, nor any documents have been placed on record to show as to whether the respondent took over the liabili(cid:34)es, which were

met by the applicant, and finally held to be binding on first respondent.

In the absence of execu(cid:34)on of new agreement, no other conclusion then the one that the transac(cid:34)on was in terms of the agreement, entered

into between the parties to arbitration can be arrived at.Ã¢â¬ ..

Ã¢â¬At the sake of repe(cid:34)(cid:34)on, it may be men(cid:34)oned that the reading of the le(cid:75)er 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.Ã¢â¬ The High Court further held thus:

Ã¢â¬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.Ã¢â¬ ..

Ã¢â¬The conten(cid:34)on 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 negated.

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 *Saresh Kumar v*

Surinder Kumar (1969) 2 SCR 244. 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 *Udam Singh*

Duggal & Co v Union of India 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 *Ā* 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 unless 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 *Saresh 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 registration 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.