* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 24th October, 2019
Decided on: 21st May, 2020

\+ **CS(COMM) 1290/2018**

MAGIC EYE DEVELOPERS PVT. LTD. ..... Plaintiff
Represented by: Mr. Krishnendu Dutta, Sr. Advocate instructed by Mr. Shaunak Kashyap, Mr. Aseem Talwar, Ms. Trisha Nagpal, Mohd. Hamza, Advocates.

versus

GREEN EDGE INFRA PVT. LTD. & ORS. .....Defendant
Represented by: Mr. Sameer Rastogi, Mr. Namit Suri, Mr. Akshi Pradhan, Mr. Kunal Kumar, Advocates for D1.
Mr. Ashish Batra, Advocate for D2 and D3.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

IA No. 1645/2019 (u/S 8 of Arbitration & Conciliation Act by D-1)

1. By the present suit, the plaintiff seeks decree in favour of the Plaintiff Company and against defendants for a total sum of ₹10,20,00,000/- out of which ₹5,20,00,000/- being the principal unsecured acknowledged debt along with interest @18% per annum and ₹5,00,00,000/- towards damages on account of breach of contract, loss of reputation and loss of business opportunity.

2. In the suit, plaintiff has impleaded Green Edge Infra Pvt. Ltd., Vera Edu-Infra Pvt. Ltd. and Vega Schools all having their addresses at 4, Factory

Road, Safdarjung Enclave, New Delhi as defendant Nos.1, 2 and 3 respectively.

3. Summons in the present suit were issued on 14th December 2018 and defendants entered appearance on 13th February 2019, whereafter the defendant No.1 filed the present application under Section 8 of the Arbitration & Conciliation Act, 1996 besides the written statement.

4. Briefly the plaintiff pleads that it is a company having an authorized share capital of ₹62,78,70,020/- is involved in activities contributing to the construction and finishing of building while defendant no. 1 company, having an authorized share capital of ₹1,00,000/- is involved in building of complete constructions or part thereof and other related civil engineering services. Defendant no. 2 having an authorized share capital of ₹27,00,00,000/- is involved in the business of providing higher education that is post-secondary or senior secondary sub-degree level education that leads to university degree or equivalent. Defendant no.3 having its authorized share capital of ₹1,00,000/- is involved in buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and sub-dividing real estate into lots, development and sale of land and cemetery lots, operating of apartment hotels and residential mobile home sites.

5. It is the case of the plaintiff that in the year 2010 Maj.(Retd.) Surender Kumar Hooda, the erstwhile Managing Director of defendant No. 1 company, approached the representatives of the plaintiff company and represented that he would be able to facilitate numerous transactions in the Real Estate Industry in and around Delhi. On the repeated assurances made by Surender Kumar Hooda, plaintiff company entered into a business

relationship with defendant No. 1 company. On 31st July, 2012, the plaintiff company advanced a sum of ₹ 8,00,00,000/- through RTGS as part of the composite transaction, which served to net off previous outstanding accounts between the two entities and advance a short term loan of ₹ 5,20,00,000/- as per S.K.Hooda's request as he was in dire need of the funds for his son's school project. Thus out of the sum of ₹ 8,00,00,000/- defendant No. 1 company is liable to pay a sum of ₹ 5,20,00,000/- as the amount due and outstanding towards the plaintiff company. The liability of ₹ 5,20,00,000/- is duly acknowledged by Surender Kumar Hooda on behalf of the defendant No. 1 company in a Share Purchase Agreement dated 24th July, 2013. The business relationship entered into between the plaintiff and defendant No. 1 company is evident from the documents being Shareholders Agreement dated 4th July 2012, (in short SHA), Share Purchase Agreement dated 24th July 2013 (in short SPA) and Memorandum of Understanding (in short MOU) executed on stamp paper dated 24th July 2013 which are to be read together in order to ascertain the aforesaid outstanding consideration. A conjoint reading of the said documents clarify the rights and obligations which were to be incurred by both the parties.

6. As per the plaint, defendant Nos.1, 2 and 3 are front companies of one family called the 'HOODA family' which runs various businesses and by defrauding various innocent members of the public pass their money abroad through money laundering. Defendant No.1 company is merely a sham company which is used by the HOODA family to launder and siphon away money advanced towards defendant No.1 company by way of loan and other borrowings from various members of the public. The breakup of these amounts is purposely concealed in collusion with the auditors by "notes on

account" to "loans and advances" section being listed in every audited balance sheet year to year. It is averred by the plaintiff that tapping away of money and property is an incessant wrong and the cause of action for the present suit existed even on the date of filing and was renewed with each audited account statement filed by the defendants. Hence, the corporate veil deserves to be pierced.

7. It is further claimed in the plaint that on receiving several requests for the payment of the aforesaid consideration that is ₹5.20 Crores, defendant no. 1 company made assurances that the same would be paid at the earliest accompanied with a request to not initiate legal proceedings for recovery of the same. Regardless of numerous reminders and requests no payment was received by the plaintiff company. It is further averred by the plaintiff that the defendant no. 1 company also failed to disclose information pertaining to source of funds and the same was clubbed under the head "Other Liabilities". Ms. Priti Hooda took over the shares of Surender Kumar Hooda, being his daughter and joined the fraud. Further, the amount that was shown as "Loan to Director" in favour of Surender Kumar Hooda was later masked as "Other". All other heads in the balance sheet of the defendant no. 1 company including "Investments" are loans for laundering of money to the officers and directors of the company being members of the Hooda Family.

8. It is also stated by the plaintiff that on going through the Balance Sheet of the defendant no. 1 company it could be ascertained that its liability for the financial year 2016-2017 was ₹13,80,00,000/- that is 1380 times the paid-up capital of the company. Furthermore, out of the said amount defendant no. 2 company was advanced a sum of ₹9,20,00,000/- out of which ₹4,20,00,000/- was advanced as "Loan" while ₹5,00,00,000/- was

advanced as "Equity Investments". The balance amount was camouflaged as "Other" being the sum loaned to Surender Kumar Hooda.

9. As per the terms of the aforesaid documents i.e. the SHA, SPA and MOU, the defendant no. 1 company agreed to provide certain services to the plaintiff company including but not limited to the arrangement of necessary and applicable licenses for the project situated at Sector 106, Gurgaon, Haryana. The non-performance of services lead to delay in launch of the projects of the plaintiff. The defendant no. 1 company was liable to discharge the obligations incurred by it vide Clause 4 of the said MOU within a period of five years that is by July 2018 in which the defendant No. 1 failed. Furthermore, plaintiff company had to engage certain third parties and take loans thereby incurring significant costs for completion of projects as the defendant no. 1 company miserably failed to discharge its contractual obligations. The delay caused by the defendant no. 1 company caused further monetary loss and damage to the plaintiff company, the total cost of borrowing being ₹40 crores which includes Loan from IIFL, Take-over by SCB, Second loan from IIFL etc.

10. It has further been averred that Surender Kumar Hooda has various FIRs and criminal investigations going on against him and has also been arrested by the EOW.

11. The present application has been being filed by defendant no. 1 through its authorised representative Surendra Kumar Hooda on account of there being a valid and subsisting arbitration agreement between the parties. It is claimed by the defendant No. 1 that Clause 27.3 of the SHA provides that in the event of any dispute arising between the parties, they shall settle the same under the provisions of the 1996 Act and the disputes shall be

referred to the Sole Arbitrator to be mutually appointed by the parties. Further, as per Clause 29 of the SHA, the said agreement shall be subject to the exclusive jurisdiction of the Courts in New Delhi. An arbitration clause also exists in the MOU wherein it was agreed that any dispute arising between the parties shall be settled by arbitration of a Sole Arbitrator to be appointed mutually by the parties. Furthermore, Clause 7.1 of the SPA also provides for referring the disputes to arbitration. It is further averred that the said agreements are interconnected and cover the subject matter of the present suit.

12. Learned counsel for the defendant No.1 contends that all the three agreements i.e. SHA, SPA and MOU contain valid and subsisting arbitration clauses which squarely cover the subject matter of dispute raised in the present suit and hence the present suit is not maintainable and the disputes if any between the parties are liable to be referred to arbitration. The three agreements are intertwined and interconnected with each other covering the entire subject matter of disputes in the instant suit. Reliance is placed on the decisions reported as (2018) 15 SCC 678 *Ameet Lalchand Shah & Ors. Vs. Rishabh Enterprises & Anr.*; (2017) 7 SCC 716 *Hema Khattar & Anr. Vs. Shiv Khera* and 258 (2019) DLT 411 *Bhasin Infotech & Infrastrucutre Pvt. Ltd. Vs. Ahmad Main & Ors*.

13. Learned counsel for the plaintiff contends that the plaintiff lent a sum of ₹5.20 crores to the defendant No.1 which through a series of transactions was siphoned off by the defendant Nos. 2 and 3. Since the defendant No.2 and 3 are not a party to the agreement, the arbitration clauses of the three agreements between the plaintiff and defendant No.1 would not apply to them. The earlier loan of ₹5.20 crores taken from the plaintiff by the

defendant No.1 has nothing to do with buying shares of the defendant companies and the prayer in the present suit by the plaintiff is for a decree of recovery of ₹5.20 crores as an unsecured loan. Besides, the recovery of loan, the suit also prays for a decree of damages. Thus the two reliefs being distinct, the relief of damages cannot be referred to arbitration, hence, the present suit is maintainable. Learned counsel for the plaintiff relies upon the decision reported as (2003) 5 SCC 531 *Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya & Ors*. It is further contended by learned counsel for the plaintiff that the two agreements i.e. SPA and SHA having been consummated, the disputes cannot be referred to arbitration. The decision in *Ameet Lalchand Shah* has no application to the facts of the case for the reason the said decision relied upon the principle laid down in *Chloro Controls India (P) Ltd. Vs. Severn Trent Water Purification Inc*. (2013) 1 SCC 641 wherein the mother agreement had provided for an arbitration clause.

14. The relationship and obligations between the parties along with the third parties as noted above is governed by the two agreements being the SHA and SPA as also the MOU. The SHA dated 4th July, 2012 was entered into between the plaintiff referred to as the first party/the company and the defendant as a third party which also included RKS Buildtech Private Limited (in short, 'RKS') and Spire Techpark Private Limited (in short, 'STPL') as the second parties. As per the SHA, the plaintiff conveyed to the defendant which was confirmed by RKS and the STPL that an agreement dated 22nd May, 2012 had been entered into between the plaintiff and Spire Developers Private Limited (SDPL) for grant of development price for 8

Acres of land in favour of SDPL and in consideration of the transfer of development rights by the plaintiff, SDPL would pay Rs. 65 Crores plus transfer of built up area representing 20% of the total saleable area of the project in favour of the plaintiff, in proportion of the licenced land. It also noted that the plaintiff had entered into an agreement to sell dated 11th June, 2012 with RKS in respect of transfer of company's investments in flats developed by ILDM. The plaintiff also entered into share purchase option agreement dated 11th June, 2012 with STPL in respect of the transfer/purchase of companies investments in SDPL shares and compulsorily and fully convertible debentures appearing in the books of accounts of the plaintiff. The SHA further laid down the shareholding patterns and the manner in which the shareholders will participate in the business and management of the company i.e. the plaintiff. It was agreed that pursuant to the SHA, the defendant and its affiliates on the one hand and promoters or their affiliates on the other hand shall hold the issued and allotted equity shares and redeemable preference shares of the company in the ratio of 20:80. It was also agreed that all expenses/liabilities/rights/obligations in respect of the land/balance land including expenses relating to obtaining approvals for development and construction of the project or pertaining to the balance land shall be shared between the defendant and the promoter in the ratio of 20:80. It was also agreed that the defendant would lead the process for obtainment of various licences, approvals, NOC that may include the approvals, licences and NOCs issued by DTCP, Haryana Fire Department, environmental clearance, part/complete occupancy certificate etc., provided that such licence/approvals and NOCs are obtained at the cost and expense of the

company. In lieu of the defendant agreeing to provide the aforesaid services to the plaintiff company, the company agreed and its promoters confirmed that the defendant will be entitled to built up area comprising of total 10 numbers of flats which amounted to approximately 7600 square feet of super area in the project.

15. In the SPA dated 24th July, 2013 executed between the defendant as the vendor and the first party, RKS Buildtech Private Limited as the vendee and the second party and the plaintiff company as the company or confirming party or the third party, it was noted that vendor i.e. the defendant was the shareholder of the plaintiff, the confirming party holding a stake of 20% in the issued, subscribed and paid up equity capital in the company and that the vendor i.e. the defendant for its business purposes had taken loan of Rs. 5.20 Crores from the plaintiff company and assured that the said amount being payable by vendor to the plaintiff company shall be repaid on or before the date of closing. The defendant/vendor also desirous of selling its entire share holding constituted of 2000 equity share of the face value of Rs. 10 each and 42 lakhs redeemable preference shares of the face value of Rs. 10 each and the vendee i.e. RKS agreed to purchase the said 2000 equity shares and 42 lakhs redeemable preference shares of the face value of Rs. 10 each offered by the vendor RKS on payment of Rs. 6267 per equity share and Rs. 10 per preference share upon fulfillment of the conditions precedent. It was also agreed that the vendor i.e. the defendant shall repay to the plaintiff company a sum of Rs. 5.20 Crores advanced by the company as an unsecured loan. The MOU dated 24th July, 2013 was arrived at between the defendant as the first party, RKS as the second party and the plaintiff company as the third party/confirming party/company. The

said MOU arrived at a business arrangement in respect of the balance unlicenced land of approximately 4.80 Acres of the plaintiff company.

16. In the reply to the notice-cum-reply dated 25th July, 2017 on behalf of the plaintiff to the defendant company given on 2nd August, 2017, the plaintiff company has detailed the financial transactions between the parties and it is stated that the plaintiff company had advanced a sum of Rs. 8 Crores to the defendant by way of RTGS. A claim of the defendant for a sum of Rs. 2,80,00,000/- was adjusted from the said payment of Rs. 8 Crores and thus, the balance amount was Rs. 5.20 Crores. The notice gives the details of the transactions between the parties from which it is apparent that a sum of Rs. 5.20 Crores was outstanding towards the defendant company in the course of the business transactions between the plaintiff and defendant which was duly acknowledged by the defendant in the SPA dated 24th July, 2013. The claim of the damages of the plaintiff is also in relation to the non-performance of the obligations which the defendant company was required to perform and thus, incidental to the three agreements between the parties i.e. the SPA, SHA and Memorandum of Understanding.

17. The two main grounds on which plaintiff contests the present application seeking reference of disputes to arbitration is firstly that in the suit besides the recovery of the acknowledged unsecured liability the plaintiff has also sought a decree of damages, which is not an arbitrable dispute and the suit would be thus maintainable as held by the Supreme Court in the decision reported as 2003 (5) SCC 531 *Sukanya Holdings Pvt. Ltd. vs.Jayesh H. Pandya*. Secondly, it is urged that the defendant Nos.2 and 3 not being party to the SHA, SPA and the MOU and thus not party to

the clauses agreeing to refer the dispute to the arbitration, the application filed by the defendant No.1 is liable to be dismissed.

18. The first plea of learned counsel for the plaintiff that since the plaintiff has sought the relief of damages for which there is no arbitration agreement and the reliefs in the present suit cannot be bifurcated, hence the dispute cannot be referred to arbitration deserves to be rejected. The ground on which the plaintiff seeks damages from the defendants is averred in paras-24, 25 and 26 of the plaint wherein it is stated that as per the terms of SHA, SPA and MOU the defendant No.1 company was to render various services to the plaintiff company including but not limited to arrangement of necessary and applicable licenses for the project situated at Sector-106, Gurgaon, Haryana. Defendant No.1 company miserably failed to perform its contractual obligation and in breach of the said agreement liable to pay damages to the plaintiff and also to compensate the plaintiff for various loans which it had to take, arrangement which it had to make as well as the delay caused by the non-performance of defendant No.1 resulting in delayed launch of its projects. It is thus claimed that since the defendant No.1 company failed to discharge its obligation, it is liable to make good the loss suffered by the plaintiff company on said account as also additionally liable to pay damages.

19. A perusal of the claim for damages from the plaint is evidently based on the failure of defendant No.1 to perform its contractual obligations as entered into vide the SHA, SPA and MOU is an arbitrable dispute duly governed by the arbitration clauses in the SHA, SPA and MOU. The two reliefs sought in the plaint are not required to be bifurcated as held in *Sukanya Holding* (Supra) and can be very well decided by arbitration.

20. Plea of the plaintiff that defendant Nos.2 and 3 are not parties to the SHA, SPA and MOU and thus being third parties to the arbitration agreement, the disputes cannot be referred to arbitration is also liable to be rejected. In the plaint case of the plaintiff itself is that defendant Nos.1, 2 and 3 companies are the companies of HOODA family and defendant No.1 company with an authorized share capital of Rs. 1,00,000/- has no work and has been incorporated to perpetrate financial jugglery of funds with defendant Nos. 2 and 3 companies with a motive to defraud innocent third parties. The plaintiff itself claims that the corporate veil of the three companies deserves to be pierced in view of the manner of transfer of funds and siphoning thereof. Thus, according to the plaint itself defendant Nos. 1, 2 and 3 are group companies of a single family.

21. In *Chloro Controls (supra),* Supreme Court laid down the principle where a third party or a non-signatory to the arbitration agreement could also be held amenable for arbitration. It was held:

> *"73. 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."*

22. Explaining the legal basis that may be applied to bind a non-signatory to an arbitration agreement, Supreme Court in *Chloro Controls (supra)* laid down the following principles:

> *"103. Various legal bases may be applied to bind a non-signatory to an arbitration agreement:*
>
> *103.1. 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.*
>
> *103.2. 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.*
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> *104. We may also notice the Canadian case of City of Prince George v. A.L. Sims & Sons Ltd. [(1998) 23 YCA 223] wherein the Court took the view that an arbitration agreement is neither inoperative nor incapable of being performed if a multi-party dispute arises and not all parties are bound by the arbitration agreement: the parties bound by the arbitration agreement are to be referred to arbitration and court proceedings may continue with respect to the other parties, even if this creates a risk of conflicting decisions.*
>
> *105. 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".

23. The three judges bench of the Supreme Court in the decision reported as 2018 (16) SCC 413 *Cheran Properties Limited vs Kasturi & Sons Limited* discussed and explained the Group Company doctrine as under:

"23. 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.

24. 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. [Redfern and Hunter on International Arbitration, 5th Edn. — 2.13, pp. 89-90.]

25. 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…. [Id at p. 99.] "

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 [Op cit fn. 16, 2.40, p. 100.] . Though the extension of this doctrine is met with resistance on the basis of the legal imputation of corporate 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. [Id, 2.41 at p. 100.]

26. Russell on Arbitration [24th Edn., 3-025, pp. 110-11.] 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."

27. 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 benefited) by an arbitration agreement ... include both purely consensual theories (e.g., agency, assumption, assignment) and non-consensual theories (e.g. estoppel, alter ego) [2nd Edn., vol. 1, p. 1418.] ."*

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, 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 [Id at p. 1432.] ."*

28. 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 benefited by the relevant contracts. [Id at pp. 1448-49.] "*

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. [Id at p. 1450.]"*

24. Thus Supreme Court in *Cheran Properties* (supra) came to the conclusion that even if the third party was not impleaded as a party to the arbitral proceedings, the said party would be bound by the award and the award can be enforced against it, once the tests embodied under Section 35 of the Arbitration and Conciliation Act are fulfilled.

25. Though defendant Nos.2 and 3 have filed separate written statements claiming mis-joinder of parties and causes of action in the suit by the plaintiff and that the suit was liable to be dismissed against the plaintiff and in favour of defendant Nos.2 and 3 for the reason there was no privity of contract between the plaintiff and defendant Nos.2 and 3 since the SHA, SPA and MOU were executed between the plaintiff and defendant No.1, however, in response to the cause of action paragraph-29 of the plaint wherein it is stated that the subject matter of the suit cannot be referred to arbitration as there is no provision under the Arbitration and Conciliation Act, 1996 for splitting the cause or the parties and referring the subject matter of the suit to the arbitrator, defendant Nos. 2 and 3 in their written statements have simply rebutted the said paragraph as denied for want of knowledge and that it did not pertain to defendant Nos.2 and 3. It may be also noted that during the course of arguments the defendant Nos.2 and 3

never opposed the plea of defendant No.1 that the disputes are liable to be referred to arbitration.

26. Considering the fact that there are valid agreements between the plaintiff and defendant No.1 containing clauses for reference of disputes to arbitration and defendant Nos.2 and 3 being group companies of defendant No.1, from the intent of the parties as noticed from the agreements as also the averments in the plaint it is evident that not only would defendant No.1 but also the defendant Nos. 2 and 3 companies be amenable to the jurisdiction of the arbitrator as per the arbitration clauses is the SHA, SPA and MOU. Consequently, the present application is disposed of holding that the present suit is not maintainable and the disputes between the parties are required to be referred to the arbitration.

27. I.A. No.1645/2019 is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 21, 2020
'ga/v/akb'