



Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA No.3/2025 with
MC (FA) No.4/2025
MC (FA) No.7/2025
MC (FA) No.10/2025
Cont.Cas(C)No.12/2025

Date of CAV: 04.12.2025

Date of Pronouncement: 09.12.2025

Suraksha Salvia LLP, a limited liability partnership, incorporated under the Limited Liability Partnership Act, 2008, having its registration No.LLPIN-AAQ-0697 and its registered office at Premises No:02/0327, Plot No.DG/12/1 Action Area ID, Barasat Sadar, Newtown, North 24 Parganas, Kolkata, West Bengal, India, 700156 and local branch at Pasteur Hills, Shillong-793001, East Khasi Hills District, Meghalaya.

..... Appellant

Vs.

The State of Meghalaya represented by the Secretary, Department of Health and Family Welfare, having its head office at Meghalaya Secretariat, Shillong-793001, East Khasi Hills District, Meghalaya.

.... Respondent

State of Meghalaya through Secretary, Department of Health and Family Welfare, having its office at Meghalaya Secretariat, Shillong-793001, East Khasi Hills District, Meghalaya.

..... Applicant

Vs.

Suraksha Salvia LLP, having its office at Premises No:02/0327, Plot No.DG/12/1 Action Area ID, Barasat Sadar, Newtown, North 24 Parganas, Kolkata, West Bengal, India, 700156.

.... Respondent

Suraksha Salvia LLP

Vs.

Shri Ram Kumar, IAS

Coram:

Hon'ble Mr. Justice Soumen Sen, Chief Justice

Hon'ble Mr. Justice H.S. Thangkhiew, Judge



**Appearance in FA No.3/2005 with MC (FA) No.4/2025,
MC (FA) No.7/2025 and Cont.Cas(C)No.12/2025:**

For the Appellant : Mr. J. Saha, Sr.Adv with
Mr. R. Auddy, Adv
Mr. M.U. Ahmed, Adv
For the Respondent : Mr. A. Kumar, Advocate General with
Mr. A.S. Dey, GA
Ms. D. Mukherjee, GA

Appearance in MC (FA) No.10/2025:

For the Appellant : Mr. A. Kumar, Advocate General with
Mr. A.S. Dey, GA
Ms. D. Mukherjee, GA
For the Respondent : Mr. J. Saha, Sr.Adv with
Mr. R. Auddy, Adv
Mr. M.U. Ahmed, Adv

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice)

This appeal arises out of a judgment dated 21.03.2025 passed by the learned Judge, Commercial Court, Shillong, in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996.

2. The learned judge dismissed the application, inter alia, on the ground that the appellant/petitioner is not a party to the Memorandum of Understanding (MOU).

3. The limited issue on which this appeal is required to be heard is whether the appellant/petitioner is entitled or could maintain an



application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short ‘the Act of 1996’).

4. A brief factual background necessary for the purpose of deciding the said issue is mentioned hereinafter.

5. The Department of Health and Family Welfare (DH&WF), Government of Meghalaya, intended to build a state-of-the-art Diagnostic Centre at Shillong and facilitate improvement of health facilities for the people of Meghalaya, and for the aforesaid purpose, it was in search to have a partner with credentials and experience in the field. In the process of finding out a collaborator for the aforesaid purpose, the DH&FW identified Suraksha Speciality LLP and Salvia Global LLP (hereinafter referred to as the “private partner”) having considered to have experience and reputation in the field of establishing and operating the diagnostic centre. On negotiation, an MOU was entered into on 21.06.2019 between Suraksha Salvia Global LLP and the Department of Health and Family Welfare (DH&WF), Government of Meghalaya. The MOU contemplates a public private partnership (PPP) for the construction, establishment and functioning of the diagnostic centre in the State of Meghalaya. The MOU has described the parties in the memorandum as follows:



“With reference to the above, the Government of Meghalaya, through Department of Health and Family Welfare (hereinafter referred as **DH&FW**) has agreed to sign and execute a Memorandum of Understanding (MOU) with Suraksha Speciality LLP in association with Salvia Global LLP (hereinafter referred as **Private Partner**).”

6. The MOU has described in detail the responsibilities of DH&FW and the private partner and also provides for termination of the agreement and settlement of disputes. The said agreement was duly signed by Christopher Rani of Suraksha Salvia Global LLP, who also appears to be a designated partner of Saliva Global LLP.

7. Dispute arose in view of the decision taken by the DH&FW to convert the existing infrastructure at the Pasteur Institute to a Medical College. In a duly convened meeting on 29th July, 2024, the respondent informed the private partner that the respondent shall establish a medical college named and styled as “Shillong Medical College” in Pasteur Institute and required the existing infrastructure including that of the diagnostic centre which is claimed to have been set up by the appellant/petitioner and for which purpose, the respondent had sought to amicably terminate the MOU of public private partner, dated 21.06.2019. The appellant/petitioner, in its communication dated 04.09.2024, reminded the respondent that termination under the



agreement would require giving them three months' notice and only after giving an opportunity to remedy the breach, if any. Any decision to terminate the MOU would cause immense hardship having regard to the fact that the state-of-the-art Diagnostic Centre was launched on 21.01.2022 with the effort and hard work put in by the partners. An abrupt closure would have an adverse impact on the reputation and goodwill of the company amongst the people of Meghalaya. Moreover delay, if any, was attributable to the government as the government had failed to provide the infrastructure and also in procuring the required equipment although a substantial payment had been made by the PPP in the meantime. The government cannot unilaterally terminate the PPP. The matter was deliberated thereafter in the presence of the representatives of the private partner and ultimately the government decided to terminate the MOU.

8. The termination of the MOU is now being questioned by Suraksha Salvia LLP on the ground that they are the real partner to the agreement and have performed the agreement with their own resources with the knowledge of the government.

9. Mr. Jishnu Saha, learned senior counsel appearing on behalf of the appellant/petitioner has submitted that a limited liability partnership



agreement was entered into between Suraksha Speciality LLP and Salvia Global LLP on 21st August, 2019. Under Section 3 of the Limited Liability Partnership Act, 2008, a limited liability partnership is to be a body corporate. Section 5 of the said Act provides that any individual or a body corporate may be a partner in a limited liability partnership. Section 11 of the Act requires a limited liability partnership to be incorporated. The said Section provides for subscription of the names of the persons constituting the limited liability partnership in the incorporation document and provides for filing of the same with the Registrar of the State in which the registered office of the limited liability partnership is to be situated. Accordingly, Chapter IV of the Limited Liability Partnership Rules, 2009 makes provisions for incorporation of limited liability partnerships.

10. Consequently, unlike in an ordinary partnership, under the Limited Liability Partnership Act, 2008, a limited liability partnership assumes the character of a separate juristic entity. As a result, it is only the limited liability partnership, and not its constituting partners, who can sue or be sued. In this context, Section 4 of the Act of 2008 was relied to show that the provisions of the Indian Partnership Act, 1932, would be inapplicable to limited liability partnerships.



11. Mr Saha has referred to Clause 1 of the limited liability partnership agreement entered into between Suraksha Speciality LLP and Salvia Global LLP on 21.08.2019 which provides that the limited liability partnership business shall be carried on in the name and style of 'Suraksha Salvia LLP' and that the registered office of the firm shall be at the address mentioned near New Town, Rajarhat, Kolkata 700 156. It further mentions that Suraksha Specialty LLP and Salvia Global LLP shall be the partners of the firm. In such circumstance an application was made to the Ministry of Corporate Affairs for incorporation of Suraksha Salvia LLP as the limited liability partnership of Suraksha Specialty LLP and Salvia Global LLP. Accordingly, such certificate of its incorporation was granted by the Ministry of Corporate Affairs to Suraksha Salvia LLP with its date of incorporation mentioned as 26.07.2019.

12. Learned senior counsel has also referred to the Master Data of Suraksha Salvia LLP as available in the portal of the Ministry of Corporate Affairs of the appellant's application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, as evidence of the incorporation of Suraksha Salvia LLP on 26.07.2019. It is submitted that, however, due to inadvertence, the Memorandum of Understanding



(MOU) that was entered into by Suraksha Salvia LLP with the Department of Health and Family Welfare (DH & FW), Government of Meghalaya, on 21.06.2019, it has mentioned the name of the appellant as Suraksha Salvia Global LLP. The learned senior counsel has also referred to few annexures of the appeal papers as well as the application for additional evidence at the appellate stage to substantiate that for all intents and purposes, the agreement is in fact between the government and the present appellant/petitioner. In fact, no payment has ever been made by the Government of Meghalaya to Suraksha Salvia Global LLP.

13. The learned senior counsel submits that in order to appreciate whether there is a binding agreement between the parties, even for the purpose of consideration as to whether a non-signatory to the said MOU would be bound by the agreement, reference was made to the minutes dated 29.07.2024, where Christopher Rani, Director of Suraksha Salvia Global LLP and Sayan Samaddar, Manager of Suraksha Salvia Global LLP attended followed by the letters dated 09.08.2024 and 04.09.2024 issued by them in response to the issues raised in the said meeting, whereby they had clearly communicated their disagreement with regard to the discontinuation of the MOU and sought for its continued performance.



14. Although in the Minutes of the Meeting held on 29.07.2024, the Government acknowledged the role of Suraksha Diagnostic within the Health and Family Welfare Department of Meghalaya, including its impact and contribution to the citizens of Meghalaya, following the rejection of its proposal by Suraksha Salvia LLP on 09.10.2024, the Government served on Suraksha Salvia LLP Medical and Diagnostic Laboratories a Show Cause Notice. Significantly, although the said notice was issued to Suraksha Salvia LLP Medical and Diagnostic Laboratories, it proceeded to mention that the MOU of 21.06.2019 had been entered into with Suraksha Salvia Global LLP. The notice, however, thereafter proceeded to allege that Suraksha Salvia LLP Medical and Diagnostic Laboratories had failed to meet the terms and conditions outlined in the MOU. It is clear therefrom that the Government itself recognized Suraksha Salvia LLP and Suraksha Salvia Global LLP to be one and same entity.

15. The reply to the Show Cause Notice was sent by Suraksha Salvia LLP on 08.11.2024. Following the same the Government proceeded to issue a Notice of Termination of the MOU on 30.01.2025. Interestingly, the said notice was issued both to Suraksha Salvia Global LLP and to Suraksha Speciality LLP, one of the partners of Suraksha Salvia LLP.



16. In view of the disputes that arose between the parties following the attempt on the part of the Government to terminate the MOU of 21.06.2019, a notice dated 10.02.2025 under Section 21 of the Act of 1996 was issued by Suraksha Salvia LLP. Following the service of such notice, Suraksha Salvia LLP filed an application under Section 9 of the Act of 1996, against the Government praying, inter alia, for an order of injunction restraining the Government from giving any effect or further effect to the Notice of Termination dated 30.01.2025. Upon the petition being moved, being satisfied with the prima facie case made out therein, on 12.02.2025 the learned Judge, Commercial Court, Shillong was pleased to pass an ad interim order of injunction restraining the Government from giving effect to the Notice of Termination dated 30.01.2025 and from disturbing the possession of the petitioner Suraksha Salvia LLP at its Diagnostic Centre at Pasteur Hill, Shillong, Meghalaya.

17. Following the passing of the said order, on 24.02.2025, the Government of Meghalaya wrote to Suraksha Salvia LLP calling upon it to furnish a head-wise break-up of its investments in the Diagnostic Centre, thereby once again recognizing that the Suraksha Salvia LLP was the entity with which it had entered into the MOU of 21.06.2019.



18. As in violation of the order of injunction and/or assurances that were given by the Government to the court, the Government proceeded to repossess the Diagnostic Centre. On an application made by Suraksha Salvia LLP an order was passed on 19.03.2025 directing Suraksha Salvia LLP to be put back in possession of the premises occupied by it. It is at this stage that the Government for the first time contended that Suraksha Salvia LLP had no right to maintain the application filed by it under Section 9 of the Act of 1996, as the MOU of 21.06.2019 had been entered into by it with Suraksha Salvia Global entity. Although this was the case canvassed by the Government of Meghalaya in its objection filed to the repossession application that was filed by Suraksha Salvia LLP, it was not contended by the Government therein that Suraksha Salvia Global LLP is in fact not a legal entity or is in fact not in existence or was never incorporated. It is on the basis of such objection that the learned Judge, Commercial Court at Shillong was ultimately pleased to pass the impugned order dated 21.03.2025, vacating the interim order earlier passed in the application under Section 9 of the Act of 1996.

19. The learned senior counsel has submitted that the contract was terminated unilaterally and not following the procedure mentioned in



the MOU. It is submitted that the contract between the parties is of non-determinable only, and it is well settled that a non-determinable contract cannot be unilaterally cancelled as held in ***K.S. Manjunath & ors v. Moorasavirappa alias Muttanna Chennappa Batil since deceased by his L.R.s & ors***¹. The learned senior counsel also submits that the contention of the Government of Meghalaya at the much belated stage that Suraksha Salvia LLP is not a party to the agreement and hence, could not maintain the application under Section 9 of the Act of 1996 is unmeritorious and without any substance. Although there can be some doubt that the MOU dated 21.06.2019 had been entered into with Suraksha Salvia Global LLP, the name of Suraksha Salvia Global LLP in the MOU is clearly a misnomer or a case of misdescription protected by the maxim *falsa demonstratio non nocet, cum de corporeal constat* which means “...mere false description does not vitiate, if there be sufficient certainty as to the object. “False demonstratio” means an erroneous description of a person or a thing in a written instrument and; the above rule respecting it signifies that whether the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal

¹ 2025 SCC OnLine SC 2378



certainty, the untrue part will be rejected and will not vitiate the device; the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only” [per R.C. Lahoti, J in (2003) 8 SCC 613 para 13].

20. The doctrine of misnomer (misdescription) recognizes a party’s incorrect or imperfect description in a contract or cause title does not automatically create a separate legal person or void the instrument where the real party is identifiable. Under the misnomer principle, a miswritten name is treated as a descriptive error that the Court may always correct. The identity of the contracting party, as demonstrated by a document and conduct, has to be taken into account.

21. Further reference was made to the decision of the Hon’ble Supreme Court in ***Purushottam Umedbhai & Co. v. Manilal***², in which it was held that a firm name is merely a compendious description of all the partners collectively. The Apex Court held that while a firm may not be a legal entity in the sense of a corporation or a company incorporated under the Companies Act, when a suit is filed in the name of a firm, it is in reality a suit by all the partners of the firm. Accordingly, the Court permitted an amendment by striking out the name of the firm and

² 1960 SCC OnLine SC 126



replacing it with the name of the persons forming the partnership. In the present case, a reverse situation applies as a limited liability partnership is an incorporated entity and hence a juristic person. It is only such an entity and not its partners who can sue.

22. This apart the doctrine of adoption/ratification by conduct holds that a party who knowingly accepts performance under an agreement or allows obligations to be carried out consistent with an agreement is estopped from later denying the validity of such agreement. Adoption by conduct therefore, converts a clerical defect into an effectively executed and accepted contract binding on the parties. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in *Union of India & ors v. N. Murugesan & ors*³.

23. Furthermore, the doctrine of substantial performance requires the Court to look at whether the parties have in substance performed the core obligations of the contract and to refuse to allow minor formal defects to defeat enforcement. Where the project work was executed, statutory permissions were obtained, invoices were raised and settled and the commercial purpose of the contract was fulfilled, the

³ (2022) 2 SCC 25 (para 25).



requirement of substantial performance is satisfied with the parties having completed the contractual bargain in essence. Allowing a party to avoid liability by pointing to a minor naming discrepancy after enjoying the benefits of performance will, as such, frustrate commercial justice.

24. Per contra, the learned Advocate General has submitted that the initial description of the parties in the MOU would show that Suraksha Salvia Global LLP is a private partner. The seal at the bottom of the page of the MOU also indicates that it was signed on behalf of Suraksha Salvia Global LLP. Similarly, clause 1 of the MOU, which describes the parties to the MOU, does not refer to the name of the appellant/petitioner herein as a party in the MOU. The agreement nowhere indicates that the name of the appellant/petitioner herein i.e., Suraksha Salvia LLP, as a party to the MOU. The signatures at the end of the MOU also do not carry any signatures on behalf of the appellant/petitioner. The learned Advocate General has referred to clause IX of the MOU, which provides for settlement of disputes and it is submitted that the said clause is confined to:

“IX. SETTLEMENT OF DISPUTES

1. Any dispute or difference or question arising at any time between the parties hereto arising out of or in connection with or



in relation to this Agreement shall be referred to and settled by arbitration under the provisions of the Arbitration and Conciliation Act, 1996 as amended or any modification or replacement thereof as applicable for the time being in India.

2. The arbitration shall be referred to an arbitrator nominated mutually by both the parties.

3. The place of arbitration shall be Meghalaya.

4. The decision of the arbitrator shall be final and binding on both the parties”. (Emphasis supplied)

25. By referring to the said clause, it is argued that since the present appellant/petitioner is not a party to the said agreement and the arbitration clause is limited to the MOU, any third party/stranger to the contract cannot seek enforcement of the arbitration clause in the said agreement. It is submitted that termination Notice dated 30.01.2025 has been issued to Suraksha Salvia Global LLP and Suraksha Specialty LLP determining the MoU. It is submitted that under Section 9 of the Act of 1996, only “party” to the arbitration agreement can prefer a petition. Since appellant/petitioner is not a party to the arbitration agreement, it cannot prefer the instant petition. Once the terms of the contract are unambiguous, the same must be given effect to and the appellant/petitioner cannot lead any external/oral evidence in respect of the contents of the contract and in this regard reference was made to Section 92 of the Evidence Act, 1872 and Section 95 of the BSA, 2023.



The appellant/petitioner in paragraph 9 of the petition has stated that due to “inadvertence” the appellant has been mentioned as “Suraksha Salvia Global LLP” instead of “Suraksha Salvia LLP”. However, the appellant/petitioner during hearing made a categorical statement that there exists a letter for the change of name of the appellant/petitioner, which was not placed on record.

26. The learned Advocate General has even otherwise has challenged the locus of the present appellant/petitioner to maintain the petition by referring to Section 15(fa) of the Specific Relief Act, 1963, which provides that *“Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by(fa) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new liability partnership which arises out of the amalgamation.”* By referring to the said provision, it is argued that since the appellant/petitioner is claiming to be an amalgamated LLP of Suraksha Salvia Global LLP and Suraksha Specialty LLP, in the absence of any order showing that the amalgamation has been allowed or taken place in accordance with Sections 60 to 62 of the Limited Liability Partnership Act, 2008, which provides for a detailed



mechanism for amalgamation of LLPs only in terms of the order of the National Company Law Tribunal (NCLT), the appellant/petitioner has no right to enforce the MOU. It is further submitted that LLPs are body corporate and the amalgamation of the LLPs are done in a manner like companies by virtue of proceedings before the NCLT and in this regard, reliance is placed on *Cheviot Infrastructure LLP & ors...*⁴.

27. The learned Advocate General referred to clause 23 of the MOU and submitted that the agreement regarding collaboration and formation of Suraksha Salvia LLP also permits the partners to carry out their independent and separate business. In order to buttress that the appellant/petitioner was exclusively connected with the contract, as it independently asserted its right under the MOU, attention is drawn to the legal notice dated 17.10.2024, in which it is mentioned that the notice was issued on behalf of Suraksha Speciality LLP and Salvia Global LLP, and thereafter, a corrigendum was issued to the said notice on 21.10.2024 correcting the reference of the name of “Suraksha Diagnostic LLP” in the first paragraph of the said notice to be read as “Suraksha Speciality LLP”. It is further submitted that the appellant was conscious of the fact that only the private parties mentioned in the MOU

⁴ (2023) SCC OnLine NCLT 1208



are the parties to the said MOU and being conscious of such fact, issued the legal notices in the name of the private partner without making any reference to the present appellant/petitioner. Insofar as the Specific Relief Act is concerned, it is submitted that under Section 20A, no injunction can be granted by the court in respect of a contract relating to an infrastructure project mentioned in the schedule and granting an injunction would cause impediment or delay to the progress or completion of such infrastructure project. Further reference was made to Section 41(ha) of the Specific Relief Act, 1963, to show that there is a prohibition of the grant of an injunction, where granting of such an injunction would impede or delay the progress or completion of such infrastructure project.

28. The learned Advocate General has referred to the decision of the Hon'ble Supreme Court in *Rajeev Suri v. DDA*⁵ to argue that the underlying legislative intent is to protect infrastructure projects from inappropriate use of Court processes to impede the fulfilment of development goals of the country. It is submitted that the Hon'ble Supreme Court in *N.G. Projects Limited v. Vinod Kumar Jain*⁶ held

⁵ (2022) 11 SCC 1

⁶ (2022) 6 SCC 127 (Paras 19 to 21)



that infrastructure projects of public importance covered by the schedule to the Specific Relief Act should not be stayed. It is also submitted that the Delhi High Court in *Simplex Infrastructures Ltd. v. National Highway Authority of India*⁷ in a matter concerning infrastructure project of road construction refused to grant any relief under Section 9 of the Arbitration and Conciliation Act, 1996 due to the prohibition under Section 20A and Section 41(ha) of the Specific Relief Act, 1963. In response to the argument that the contract is determinable, the learned Advocate General has referred to the Delhi High Court in *Ksheeraabd Construction Pvt. Ltd. v. National Highways and Infrastructure Development Corporation Ltd. & anr*⁸ in which after analysing various judgments on the point including the judgments of the Hon'ble Supreme Court held that any contract which is terminable on account of any eventuality is also a contract which is in the nature determinable and no specific enforcement can be granted in that regard.

29. As we said at the beginning, everything depends upon the maintainability of the application under Section 9 of the Act of 1996. For the purpose of determining whether an application under Section 9

⁷ (2023) SCC OnLine Del 3410 (Para 14)

⁸ (2023) SCC OnLine Del 3156



is maintainable, the court at the stage of deciding an application under Section 9, is required to come to a prima facie finding that there is an existence of an arbitration agreement between the parties. The Section starts with the word “a party”, which necessarily means that he has to be a party to the arbitration agreement. If a dispute is raised with regard to the validity of an arbitration agreement or that the party seeking to enforce the agreement is not a party to the arbitration agreement, it is the duty of the court to arrive at, at least a prima facie finding before the parties on the court may decide to refer their disputes to an arbitrator that the party seeking the relief is a party to the arbitration agreement. In order to ascertain whether the party approaching the court seeking interim relief is a party to the arbitration agreement or not, the contract agreement, which contains the arbitration clause, has to be read as a whole. The MOU was entered into on 21.06.2019 between Suraksha Salvia Global LLP and DH&FW. Mr. Christopher Rani was representing Suraksha Salvia Global LLP. The parties to the MOU, as we have referred earlier, had recognised Suraksha Speciality LLP and Salvia Global LLP as private partners. Even if we assume for the sake of argument that the description of Suraksha Salvia Global LLP was inaccurate, however, there is no accuracy in the description of Suraksha



Speciality LLP and Salvia Global LLP. The DH&FW has clearly acknowledged the execution of the MOU with Suraksha Speciality LLP in association with Salvia Global LLP.

30. Admittedly, the present appellant/petitioner was not in existence at that point of time. It may have been in the contemplation of Suraksha Speciality LLP and Salvia Global LLP to form a limited liability partnership under the name and style of Suraksha Salvia LLP. However, the said LLP not being incorporated or born as on the date of the said agreement could not have been a signatory or a party to the said agreement. Admittedly, the LLP was constituted on 26.07.2019. If it was an amalgamation of the said two companies, then the provision of Sections 60 to 62 of the LLP Act was required to be followed and necessary disclosures ought to have been made to substantiate such claim. However, the facts remain that irrespective of the said LLP being born later, both the entities namely, Suraksha Speciality LLP and Salvia Global LLP had the freedom to carry on their individual businesses.

31. Mr. Saha, the learned senior counsel has referred to two documents to show that statutory permissions have been granted by the respondent and payments have also been made to the appellant/petitioner. However, those documents by itself do not make



the present appellant/petitioner a party to the arbitration agreement. Section 7 of the Act of 1996 defines the arbitration agreement which means an agreement by the parties. The existence of the parties at the time of the agreement is a sine qua non. In fact, the argument that Suraksha Salvia Global LLP has no existence is completely belied by the minutes of the meeting held on 25.01.2021, in which Mr. Christopher Rani had represented Suraksha Salvia Global LLP. The address mentioned therein is Upper Lachumiere, Shillong. It is also the address mentioned in the MOU as the address of Suraksha Salvia Global LLP for the purpose of serving notice and communications, as well as clause 13, where the address of the private partner was the same address as that of Suraksha Salvia Global LLP. Moreover, the legal notice dated 17.10.2024 issued by M/s Sandersons & Morgan, Advocates & Solicitors, it has clearly mentioned its client as Suraksha Speciality LLP and Salvia Global LLP. In the first part of the letter dated 17.10.2024, it has been clearly mentioned that the legal notice was issued under instruction of the aforesaid two entities, although in describing Suraksha Speciality LLP, it was inadvertently mentioned as Suraksha Diagnostic LLP. It was, however, corrected by a corrigendum dated 21.10.2024. These letters have clearly established that the private



partner mentioned in the MOU are the only parties, who can enforce the said MOU. Mr. Saha has also referred to *Cox and Kings Limited v. SAP India Private Limited & anr*⁹ to persuade us to apply the group of companies doctrine in order to make the said arbitration agreement enforceable at the instance of the appellant/petitioner. In paragraph 170, the following conclusion was reached by the Hon'ble Supreme Court on a review of all the decisions with regard to the group of companies doctrine for binding non-signatories to the arbitration agreement. The said paragraph reads as follows:

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

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

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

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

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

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

⁹ (2024) 4 SCC 1



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

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

170.8. To apply the Group of Companies doctrine, the Courts or tribunals, as the case may be, have to consider all the cumulative factors laid down in *Discovery Enterprises*. Resultantly, the principle of single economic unit cannot be the sole basis for invoking the Group of Companies doctrine:

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

170.10. The approach of this Court in *Chloro Controls* to the extent that it traced the Group of Companies doctrine to the phrase “claiming through or under” is erroneous and against the well-established principles of contract law and corporate law;

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

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

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

32. The aforesaid judgment was delivered by Hon’ble Dr. D.Y. Chandrachud, the former Chief Justice of India. Justice P.S. Narasimha,



in his concurring judgment in paragraphs 230 to 230.4 concluded as follows:

“230. In view of the above, while concurring with the judgment of the learned Chief Justice, my conclusions are as follows:

230.1. An agreement to refer disputes to arbitration must be in a written form, as against an oral agreement, but need not be signed by the parties. Under Section 7(4)(b), a court or Arbitral Tribunal will determine whether a non-signatory is a party to an arbitration agreement by interpreting the express language employed by the parties in the *record of agreement*, coupled with surrounding circumstances of the formation, performance, and discharge of the contract. While interpreting and constructing the contract, courts or tribunals may adopt well-established principles, which aid and assist proper adjudication and determination. The Group of Companies doctrine is one such principle.

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

230.3. Since the purpose of inquiry by a court or Arbitral Tribunal under Section 7(4)(b) and the Group of Companies doctrine is the same, the doctrine can be subsumed within Section 7(4)(b) to enable a court or Arbitral Tribunal to determine the true intention and consent of the non-signatory parties to refer the matter to arbitration. The doctrine is subsumed within the statutory regime of Section 7(4)(b) for the purpose of certainty and systematic development of law.

230.4. The expression “claiming through or under” in Sections 8 and 45 is intended to provide a derivative right; and it does not enable a non-signatory to become a party to the arbitration agreement. The decision in *Chloro Controls* tracing the Group of Companies doctrine through the phrase “claiming through or under” in Sections 8 and 45 is erroneous. The expression “party” in Section 2(1)(h) and Section 7 is distinct from “persons



claiming through or under them". This answers the remaining questions referred to the Constitution Bench.

33. This judgment was followed in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited***¹⁰, in which the discussion on the point starts from paragraph 91 onwards. For the purpose of clarity, it is necessary to refer to paragraphs 91 to 93, which are set out herein below:

“91. Based on the abovenoted facts, and the evidence brought on record during the arbitral proceedings, the Tribunal concluded that the "Group of Companies" doctrine is applicable, as OPG and R-2 have represented themselves as a single economic entity which could switch duties and obligations from one to the other. The Tribunal held that:

- (a) R-2 is a proper party;
- (b) both OPG and R-2 were bound by the arbitration agreements, which gave rise to the arbitral proceedings; and
- (c) OPG and R-2 were jointly and severally liable to the claimant for complying with the award.

92. In *Cox & Kings Ltd. v. SAP India (P) Ltd.*, a Constitution Bench of this Court held that by interpreting the express language employed by the parties in the record of agreement, coupled with surrounding circumstances of its formation, performance, and discharge of the contract, a court or Arbitral Tribunal is empowered to determine whether a non-signatory is a party to an arbitration agreement. It was held that “Group of Companies” doctrine is premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement. The doctrine requires the intention to be gathered from additional factors such as direct relationship with the signatory parties, commonality of

¹⁰ (2025) 2 SCC 417



subject-matter, composite nature of the transaction, and performance of the contract.

93. In the instant case, the Arbitral Tribunal has found that:

(a) Gita Power is the holding company of OPG;

(b) Gita Power had issued the purchase orders and had actively participated in the formation of the contract even though the ACC unit of Gummudipoondi was of OPG;

(c) initial 10% of the purchase price was provided by Gita Power (R-2);

(d) the subsequent purchase orders issued by OPG were on similar terms and were issued by way of affirmation to obviate technical issues.

In our view, the above circumstances had a material bearing for invocation of “Group of Companies doctrine” to bind Gita Power (R-2) with the arbitration agreement and fasten it with liability, jointly and severally with OPG, in respect of the purchase orders relating to ACC unit of Gummudipoondi project. Thus, bearing in mind that an Arbitral Tribunal has jurisdiction to interpret a contract having regard to the terms and conditions of the contract and conduct of the parties including correspondences exchanged, and, further, taking into account the provisions of sub-section (2-A) of Section 34 of the 1996 Act limiting the scope of interference with a finding returned in an arbitral award, we do not find a good reason to interfere with the above findings of the Arbitral Tribunal more so when it is based on a possible view of the matter. We, therefore, reject the argument on behalf of R-2 that it was not bound by the arbitration agreement and that it ought not to have been made jointly and severally liable along with OPG for the dues payable to Enexio. Sub-issue (a) is decided in the aforesaid terms. (emphasis supplied)

34. In our respectful reading of the said decisions, the doctrine of group of companies would apply, provided there is an intention of a non-signatory to be a party to the arbitration agreement. For the purpose



of a non-signatory to be a party to the arbitration agreement, the said non-signatory should be in existence on the date when the agreement was entered into. Admittedly, on the date of the MOU was entered into, the present appellant/petitioner was non-existent and hence the ratio of the aforesaid decisions would have no application in the instant case. Moreover, as mentioned earlier, the private party has made several communications asserting their right in the MOU, which clearly shows that the present appellant/petitioner has been consciously excluded with regard to the enforcement of the right under the MOU by the private partner.

35. Curiously, the private partner inspite of their existence did not approach the court or initiate any arbitration proceedings qua the termination of the MOU. We could not find any satisfactory answer for the private partner to remain silent.

36. Accordingly, we are of the view that the application under Section 9 at the instance of the appellant/petitioner is not maintainable as the appellant/petitioner is not a party to the arbitration agreement.

37. The appeal and the miscellaneous applications are hereby dismissed.



38. Contempt petition also stands closed.
39. However, there shall be no order as to costs.

(H.S. Thangkhiew)
Judge

(Soumen Sen)
Chief Justice

Meghalaya
09.12.2025
"*Lam*" DR-PS