

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
Arb Pet. No 2/2020

Reserved on: 26.12.2025
Pronounced on: 30.12.2025
Uploaded on: 30.12.2025
Whether the operative part or full
judgment is pronounced: *FULL*

Farooq Ahmad Sheikh, Adv. Aged 53 years
S/o Ghulam Hassan Sheikh
R/o Koolipora, Khanyar, Srinagar ...Petitioner(s)/Appellant(s)

Through: Mr. Areeb Javed Kawoosa, Adv.

Vs.

- 1. M/s Jehlum Cements Limited**
Sathumarg Khrew, Tehsil Pampore ...Respondent(s)
District Pulwama
Through its Managing Director
Regd. Office New Jammu Flour Mills
Bari Brahmana Sarore, Jammu.
- 2. Raj Kumar Gupta**
S/o Late Sardari Lal
A/P R/o 37-F Gandhi Nagar, Jammu.
- 3. Mr. Ravinder Sharma**
C/o Jehlum Cements Limited
Regd. Office New Jammu Flour Mills,
Bari Brahmana Sarore, Jammu.

Through: Mr. Prithvi Raj, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

J U D G M E N T

1. This is an application by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act 1996 ["the Act"] for referring the disputes raised and the claims projected in the petition to an independent arbitrator for arbitration.

BRIEF FACTS:

2. The petitioner and respondent No. 1, a Private Limited Company registered under the Companies Act through its the then Managing Director

namely Raj Kumar Gupta, entered into an agreement which was reduced into writing and signed by the parties on 14th August 2018. The agreement was with respect to the sale of respondent No. 1-Company along with land measuring 572 Kanals approximately.

3. In view of the agreement made by respondent No. 1 to sell the company and its properties including land, the petitioner claims to have paid a token amount of Rs. 50.00 lakhs to the respondent No. 1. In the agreement aforesaid, it was agreed by the parties that all the issues regarding the deal would be discussed in the next meeting after going through all legal papers of the land and the project namely 'Jhelum Cement Ltd'. Pursuant to and in furtherance of the agreement dated 14th August 2018, the parties i.e., the petitioner herein and respondent No. 1 through its then Managing Director Mr. Ravindra Sharma, entered into Memorandum of Understanding ["MoU"] which was executed by the parties on 23rd of November 2018. In terms of Memorandum of Understanding, the petitioner claims to have taken over the management and control of the respondent No. 1 company on the basis of outright sale (100% stake) on the terms and conditions mentioned in the said MoU. The total consideration amount of all the assets including the land and 100% stake of the company was stated to have been fixed at Rs. 34.15 Crores. The petitioner claims that a sum of Rs. 16.50 Crores was received by respondent No. 1 leaving a balance of Rs. 17.65 Crores outstanding.

4. It is claimed by the petitioner that after the execution of the MoU, a special Power of Attorney in favour of the petitioner was also executed by respondent No. 1. It is submitted that at the time the MoU was signed, certain NOCs were required to be provided by the respondent No. 1 which

were required for establishment and operation of the cement plant. It was obligatory upon the respondent No. 1 to procure and provide all requisite NOCs by or before 26th of March 2019 subject to which the rest of the consideration amount of Rs. 17.65 Crores was payable by the petitioner. It is the grievance of the petitioner that the respondent No. 1 could not obtain and provide to the petitioner the requisite NOCs and, therefore, the dispute between the parties. The petitioner has given details of the part of obligations which as per the MoU were to be performed by respondent No. 1 to claim the balance amount. The petitioner claims that he invoked the arbitration clause i.e., Clause 9 of the MoU and served a notice dated 27th November 2019 requesting the respondents to refer the dispute to the named arbitrators namely Mr. Mohammad Yousuf Parray, Advocate and Mr. Fayaz Ahmad Lone, Advocate for arbitration and settlement.

5. The notice, it is pleaded by the petitioner, was received by the respondents, who, in terms of its reply notice dated 19th November 2019 directed the petitioner to pay a balance amount of Rs. 17.65 Crores within 15 days or else MoU executed will be terminated and the amount already paid shall stand forfeited. It is in the background of the aforesaid fact situation, the petitioner has raised the following disputes:

(I) Whether the sale could not be conducted because of the in- action on the part of the Respondents to carry out their part of obligation as is provided under Clauses 4, 5, 6 and 7 of the MOU reproduced hereinabove?

(II) Whether the Respondents could issue notice for termination of the MOU executed on 23.11.2018 when despite not adhering to the terms and conditions of the MOU, particularly when the Respondents failed to carry out their part of obligation as provided in the MOU?

(III) Whether the Respondents are entitled to receive the balance consideration amount unless and until they

did not fulfill their part of obligation as provided under MOU, minus the amount which has been spent by the petitioner for improving and completion of the work required for completion of 600 TPD Cement Plant like digging of bore-well, electric connection, renewal of NOCs, sidewall, renewal of power sanction, construction of new gate, filing and dressing of part of land etc., on which the petitioner-applicant has spent nearly Rs 45.00 lacs?

(IV) That the petitioner-applicant has become 50% owner of the assets of the Respondent Company in view of the fact that payment of Rs 16.50 Crores, which has been received by the Respondents also in view of the fact that the petitioner has not failed at any point of time to carry out his part of obligation, whereas it is Respondents who have failed to carry out their part of the obligation for conclusion of the sale as per MOU?

6. It has been pleaded by the petitioner that since the respondents have not consented to refer the disputes to the named arbitrators in terms of Clause 9 of the MoU, as such, he is left with no option but to seek the indulgence of this court to appoint an independent arbitrator to go into and resolve the dispute between the parties through the means of arbitration.

7. The respondents have entered appearance and have filed their objections through Mr Hamza Prince, Advocate.

8. Apart from many submissions made, the learned counsel appearing for respondent No. 2 would submit that since he is not a party to MoU which contains Arbitration Clause, as such, he can neither be made party in the application under Section 11(6) of the Act, nor can he be sent to arbitration before the arbitrators in terms of Clause 9.

9. Other respondents have filed their objection and have taken the plea that the MoU signed by the parties which contains an Arbitration Clause, has been frustrated as the property which was the subject matter of the MoU and agreed to be transferred to the petitioner has been attached and taken over by the Enforcement Directorate. The other respondents have also contested the

claims raised by the petitioner on merits. It is also the plea taken by the respondents in their objection that since the MoU was executed in Jammu and the seat of arbitration in terms of Clause 9 has been fixed at Jammu, as such, the application under Section 11(6) should not have been filed in the Srinagar Wing of this court.

10. Having heard the learned counsel for the parties and perused the material on record, I am of the considered opinion that the application filed by the petitioner deserves to be allowed. The plea of the respondents to the jurisdiction of Srinagar wing of the High Court to entertain a petition under Section 11(6) of the Act is grossly misconceived and deserves outright rejection.

11. The application under Section 11(6) for appointment of an arbitrator lies before the Hon'ble the Chief Justice or a Judge nominated by him for the purpose. Whether the application is filed in the Jammu wing or in the Srinagar wing of the High Court pales into insignificance once the application is taken up for consideration either by the Lord Chief Justice or his nominee.

12. The other question which is raised by learned counsel appearing for No. 2, Mr Prithvi Raj Darora, is that since respondent No. 2, Raj Kumar Gupta, is not a signatory to the MoU which contains Arbitration Clause, as such, he can neither be a party in a petition under Section 11(6) of the Act, nor can he be referred to arbitration in terms of Clause 9 of the MoU, is also without any substance and deserves to be rejected outrightly. The first agreement, i.e., agreement dated 14th August 2018, as noted above, was executed by respondent No. 1, a Company registered under the Companies Act, through its then Managing Director-respondent No. 2, with the

petitioner. This agreement was for the sale of the company along with its assets, including land measuring 572 Kanals approximately. Respondent No. 2, Mr Raj Kumar Gupta, is a signatory to the agreement. As per the agreement, he even received an advance amount of Rs. 50.00 lakhs in lieu of Agreement-to-Sell executed by the company promoted by him along with other Directors. It is in this agreement, it was decided to sort out all issues regarding the deal in the next meeting. The next meeting culminated into signing of MoU on 23rd November 2018. The Company, i.e., M/s Jhelum Cements Limited, Sathumarg, Khrew, Tehsil Pampore, District Pulwama, is a signatory to the MoU. It is, however, a different matter that at the time of inking the MoU on 23rd November 2018, Mr Ravinder Sharma had taken over as its Managing Director, replacing respondent No. 2, Mr. Raj Kumar Gupta. It is not in dispute that respondent No. 2 was one of the initial promoters of respondent No. 1 Company.

13. From reading of Clause 1 of the MoU, it is evident that respondent No. 1 Company, which claimed to be in possession of land measuring 520 Kanals situated at Village Satpokharan, Tehsil Pampore, through respondent No. 2 Raj Kumar Gupta agreed to transfer the same to the petitioner herein without any further financial obligations. Clause 3 of the MoU gives the detail of the shareholding pattern/structure of respondent No. 1 Company. The majority of shares are held by the family members of respondent No. 2. The consideration amounting to Rs. 5.00 Crores has been paid to respondent No. 1 Company through the bank account of Mr Raj Kumar Gupta. This is done in pursuance of Clause 3 of the MoU. It is thus evident that the beneficiary of the entire transaction is none other than respondent No. 2.

14. Viewed thus, it cannot be said that respondent No. 2 is a stranger to the Memorandum of Understanding and, therefore, not amenable to arbitration in respect of the disputes that have arisen touching upon and out of the Memorandum of Understanding dated 23rd November 2018. The respondent No. 2, though not a formal signatory to the MoU, has put his signature on the MoU as one of the witnesses.

15. In the given facts and circumstances, if the veil is lifted, it will be found that the entire transaction has taken place between the petitioner and respondent No. 2, though for and on behalf of the Company-Jhelum Cements Limited. The applicability of the 'Group of Companies' doctrine was examined by the Hon'ble Supreme Court in the case of **Cox and Kings Ltd. vs. SAP India Private Ltd. & Anr.** 2023 SCC Online SC 1634 in which it was held that the question of existence or applicability of the Group of Companies doctrine in a particular case, is a fundamentally a fact-intensive exercise that involves a nuanced determination of the consent of parties from diverse factual elements and circumstances. It would require ascertaining the intention of the parties by examining and analysing the factual circumstances surrounding the contractual arrangement, particularly factors like the level of involvement of a non-signatory in the negotiation, execution, performance or termination of the contract, to what extent such conduct may be indicative of its position as a veritable party to the arbitration agreement and a common intention to be bound by it. To put it succinctly, it can be held that the principal test for ascertaining the applicability of the 'Group of Companies' doctrine to a particular case would lie in the determination of the intention of the parties, which is

required to be gathered from the facts and circumstances surrounding the contractual transaction.

16. Paras 96, 101, 102, 105 and 109 of the judgment are relevant and, as such, are set out below.

“96. [...] The level of the non-signatory party’s involvement was to the extent of making the other party believe that it was a veritable party to the contract, and the arbitration agreement contained under it. Therefore, the group of companies doctrine is applied to ascertain the intentions of the parties by analysing the factual circumstances surrounding the contractual arrangements.

101. [...] Rather, the courts need to determine: first, the existence of a group of companies; and second, the conduct of the signatory and non-signatory parties which indicate their common intention to make the non-signatory a party to the arbitration agreement. 95 Thus, the group of companies doctrine is similar to other consent based doctrines such as agency, assignment, assumption, and guarantee to the extent that it is ordinarily applied as a means of identifying the common intention of the parties to bind the non-signatory to the arbitration agreement.

102. [...] Thus, the existence of a group, of companies is a factual element that the court or tribunal has to consider when analysing the consent of the parties. It inevitably adds an extra layer of criteria to an exercise which at its core is preponderant on determining the consent of the parties in case of complex transactions involving multiple parties and agreements.

105. In multi-party agreements, the courts or tribunals will have to examine the corporate structure to determine whether both the signatory and non signatory parties belong to the same group. This evaluation is fact specific and must be carried out in accordance with the appropriate principles of company law. Once the existence of the corporate group is established, the next step is the determination of whether there was a mutual intention of all the parties to bind the non-signatory to the arbitration agreement.

109. [...] The primary test to apply the group of companies doctrine is by determining the intention of the parties on the basis of the underlying factual circumstances. The application of the group of companies doctrine will serve to stymie satellite litigation by non-signatory members of

the corporate group, thereby ensuring the efficacy of the agreement between the parties.”

17. Apart from the above, the Hon’ble Supreme Court in the case of **Cox and Kings** (supra) also held that a referral court; while exercising its jurisdiction under Section 8 or Section 11, should prima facie determine the validity or existence of the arbitration agreement and leave it to the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.

18. Paras 163 and 164 of the judgment are relevant and are, therefore, reproduced hereunder:-

“163. [...] Thus, when a non-signatory person or entity is arrayed as a party at Section 8 or Section 11 stage, the referral court should prima facie determine the validity or existence of the arbitration agreement, as the case may be, and leave it for the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement.

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

(Emphasis supplied)

19. Relied upon the aforesaid judgment in the case of **Cox and Kings** and the Hon'ble Supreme Court in **ASF Build Tech Private Limited Vs. Shapoorji Pallonji and Company Private Limited [2025 9 SCC 76]** in paragraph 98, held thus:-

“98. Thus, even if it is assumed for a moment, that the question whether a non-signatory is a veritable party to the arbitration agreement is intrinsically connected with the issue of “existence” of arbitration agreement, the referral courts should still nevertheless, leave such questions for the determination of the arbitral tribunal to decide, as such an interpretation gives true effect to the doctrine of competence-competence enshrined under Section 16 of the Act, 1996.”

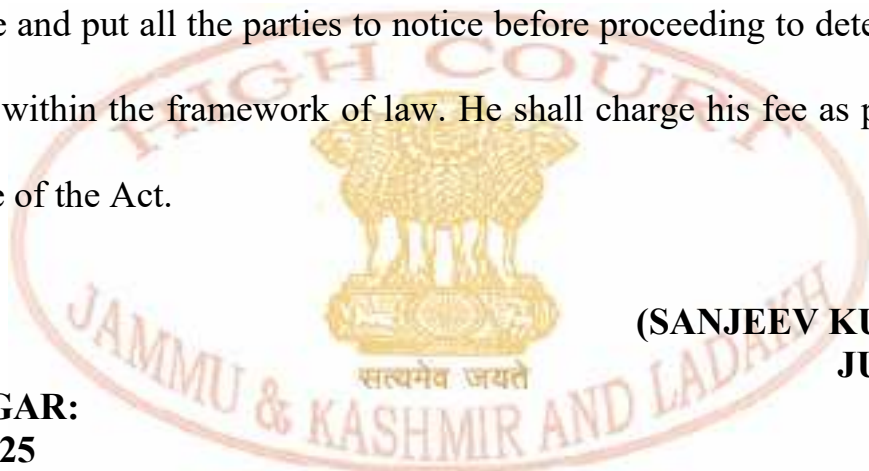
20. The principle found recognition in a later case of **Ajay Madhusudan Patel & Ors. vs. Jyotrindra S. Patel & Ors. [2024 SCC Online SC 2597]** which has been noticed and explained by the Hon'ble Supreme Court in **ASF Build Tech Private Limited** (supra) in para 115 of the judgment.

21. In view of the settled legal position, I am of the considered opinion that in the given fact situation emerging in the case on hand, the doctrine of ‘Group of Companies’ is clearly attracted and the respondent No. 2, who may not be directly signatory to the MoU containing Arbitration Clause, can be *prima facie* said to be bound by it. However, in view of the clear position of law laid down by the Hon'ble Supreme Court in **Cox and Kings** and reiterated in **ASF Build Tech Private Limited**, the issue should be left to be determined by the Arbitral Tribunal as determining whether non-signatory is indeed a veritable party involves inherently complex exercise. Legal position is iterated in **Hindustan Petroleum Corporation Ltd. Vs. BcL Secure Premises Pvt. Ltd 2025 INSC 140**.

22. For the following reasons, I find no substance in the objection filed on behalf of respondent No. 2 to wriggle out of its contractual obligation.

23. The petition is thus **allowed** and Shri Justice M.H. Attar, a former Judge of this Court is appointed as arbitrator to arbitrate the disputes that have arisen between the parties with reference to MoU dated 23rd November 2018. The learned arbitrator, upon receipt of a copy of this order, shall enter reference and put all the parties to notice before proceeding to determine the disputes within the framework of law. He shall charge his fee as per Fourth Schedule of the Act.

SRINAGAR:
30.12.2025
Altaf



(SANJEEV KUMAR)
JUDGE

Whether approved for reporting? Yes/No