

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 389 OF 2024

SHRADDHA
KAMLESH
TALEKAR

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Date: 2025.10.13
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M/s. Mukesh Patel and Ors.

...Applicant

Versus

1) Pant Nagar Ganesh Krupa Cooperative
Housing Society Limited

2) Avvad Spaces LLP

3) Shubham Ambience Co-Operative
Housing Society Limited

...Respondents

Mr. Mayur Khandeparkar a/w. *Mr. Vikram Garewal, Mr. Aditya Miskita, Mr. Devansh Bheda, Mr. Parth Jasani, Mr. Kartikeya Awasthi i/b M/s. Purnanand & Co., for Applicant.*

Mr. Dinyar Madon, Senior Advocate a/w. *Mr. Ziad Madon and Mr. Shubro Dey, for Respondent No. 2.*

Mr. Cyrus Ardes Shir, Senior Advocate a/w. *Roop Basu and Heenal Wadhwa i/b The Law Point, for Respondent No. 3.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : OCTOBER 9, 2025

Oral Judgement:

Context and Factual Background:

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking appointment of an arbitral

tribunal in connection with disputes and differences that would be relatable to an arbitration clause contained in a Development Agreement dated October 15, 2010 (“*Development Agreement*”) between the Applicant, Mukesh Patel (“*Patel*”) and Respondent No. 1, Pant Nagar Ganesh Krupa Cooperative Housing Society Limited (“*Earlier Society*”).

2. The Society has admittedly been merged, among others, into Respondent No. 3, Shubham Ambience Co-Operative Housing Society Limited (“*Merged Society*”), and therefore, the privity, if any, of the Development Agreement is now between Patel and the Merged Society.

3. Ordinarily, a matter of this nature, would not necessitate writing of a reasoned judgement, inasmuch as it is an application under Section 11 connected to an admittedly existent arbitration agreement. However, it is the insistence of Patel that Respondent No. 2, Avvad Spaces LLP (“*Avvad*”), another developer who has since been appointed as a developer for redevelopment of the property, after the termination of the Development Agreement, is a *veritable party* to the arbitration proceedings under the Development Agreement. This insistence is strongly opposed by Avvad, dealing with every strand of submissions

made by Patel. Pleadings have been permitted and that warrants dealing with the legal issues raised by Patel and countered by Avvad.

4. The Development Agreement had been terminated way back on February 8, 2019, pursuant to a resolution passed by the members of the Society on December 15, 2018. Patel asserts that despite such termination, the Development Agreement subsists. Towards this end, Patel would contend that *some* members of the Society continued to receive transit rent under the Development Agreement.

5. Well after the termination effected , much water has flown , including a public advertisement for appointment of Avvad as a Developer with the appointment purported to have been made five years later, on November 8, 2022. That appointment is said to have been ratified by a Special General Body Meeting held on February 19, 2023.

6. Disputes and differences under the Development Agreement are sought to be agitated in arbitration but by including Avvad as a veritable party in the arbitration proceedings, seeking to invoke known principles of law governing participation by non-signatory parties in arbitration proceedings.

7. Patel indeed filed a Petition under Section 9 of the Act seeking interlocutory protection against the termination of the Development Agreement. While the termination had been effected in February 2019, the Section 9 Petition was filed on March 9, 2023, four years after the event. That Petition too came to be dismissed for non-removal of office objections. An application for restoration is said to have been filed and the same pending on the docket of this Court, although for the past nine months, *praecipies* requesting circulation of restoration applications are routinely listed within days of the request being made.

Contentions of the Parties:

8. I have heard Mr. Mayur Khandeparkar, Learned Advocate for Patel, Mr. Cyrus Ardeshir, Learned Senior Advocate for the Merged Society and Mr. Dinyar Madan, Learned Senior Advocate for Avvad. I have examined the voluminous record generated in these proceedings with their assistance and gone through the copious written material submitted to Court.

9. Mr. Khandeparkar would place strong reliance on case law governing participation of non-signatories to an arbitration agreement

in the arbitration proceedings, in particular, on *Cox and Kings*¹ read with, *ASF Buildtech*². It is his case that the development rights now conferred on Avvad forms a subject matter of the rights enjoyed by Patel, and therefore, on the ground of subject commonality, Avvad must necessarily be made a party to the arbitration proceedings, and that this Court should return a finding that Avvad is a veritable party to the arbitration proceedings. He would request that this Court could either endorse Avvad as a veritable party on a *prima facie* basis or leave this issue to the Learned Arbitral Tribunal to determine.

10. Mr. Cyrus Ardeshir would submit that the Merged Society can have no quarrel with proceeding to arbitration should Patel be advised to pursue such proceedings that are hopelessly time barred, leaving it open for the Merged Society to present the objection on limitation to the Learned Arbitral Tribunal.

11. Mr. Dinyar Madan would strongly object to Avvad being made a party even to these proceedings. He would submit that there is no basis whatsoever for Avvad to be made a party to the Section 11 proceedings, much less even being subjected to consideration as to

1 *Cox and Kings Ltd. v. SAP India (P) Ltd.* - (2024) 4 SCC 1.

2 *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.* - 2025 SCC OnLine SC 1016

whether it is a veritable party in the arbitration proceedings.

Analysis and Findings:

12. At the threshold, it is made clear that whether Avvad must be drawn into the arbitration proceedings sought to be initiated by Patel against the Society is the sole question being answered. All the recording and observations of facts in this order are made purely bearing in mind the aforesaid question, also bearing in mind the limited scope of jurisdiction of this Court under Section 11 of the Act, namely, examination of the existence of an arbitration agreement.

13. At first blush, it is attractive to leave this facet of the matter entirely to the Learned Arbitral Tribunal. However, considering the firm opposition to leaving this to the Learned Arbitral Tribunal and the case law on the subject, since Patel has chosen to make Avvad a party in these proceedings, and considering the scope of Section 11 of the Act and the requirement to examine the existence of an arbitration agreement, in my opinion, it would be necessary to examine the scope of existence of a right to arbitrate against the third party.

14. It would be appropriate and necessary to examine whether

Avvad could have any role to play in arbitration proceedings between Patel and the Merged Society. Patel's contentions in support of a declaration that Avvad is *prima facie* a veritable party is based on the ground that:-

- a) Avvad is purported to be a person claiming through or under the Merged Society, and is therefore a veritable party. Therefore, there is no need to invoke arbitration against Avvad in view of the foregoing proposition, and in reliance on the law declared in ***ASF Buildtech***, that a separate invocation against a veritable party is not necessary;
- b) Avvad has entered the scene knowing fully well about the existence of Patel's interests under the Development Agreement and therefore the concept of *lis pendens* would apply; and
- c) Section 19(b) of the Specific Relief Act, 1963 would necessarily mean that specific performance may be enforced against any party to a contract and also against any other person claiming under a party to the contract, by a title arising subsequent to the contract.

15. At the threshold, it is difficult to see how Avvad could be regarded as a party claiming through or under the Merged Society in relation to the Development Agreement. To begin with, Avvad has no claim and purports to make no claim, whether under the Development Agreement or otherwise. It is Patel who seeks to make a claim against Avvad by bringing him into the dispute Patel purports to have with the Merged Society.

16. That apart, Avvad is a subsequent grantee of development rights and has nothing to do with the Development Agreement to which Patel was a party, which came to be terminated in February 2019, with a Section 9 Petition being filed in March 2023, and that too well after Avvad was appointed as a developer in November 2022. The agreement that Avvad would have with the Merged Society is a different agreement and that cannot become connected with Patel merely because at some time in the past, Patel had executed the Development Agreement. It is not as if the Development Agreement (between Patel and the Merged Society) was assigned or novated to Avvad, as a transfer of the rights enjoyed by Patel being conveyed to Avvad.

17. The reliance upon an isolated strand and sentence in *ASF Buildtech* is disingenuous inasmuch that judgement only builds further on the law declared in *Cox and Kings*, which in turn, declared the law on invoking the “group of companies” doctrine. First and foremost, it would be appropriate to examine the plain meaning of the term “veritable party” for purposes of examining the application of the law in *Cox and Kings* and in *ASF Buildtech*.

18. When the law allows a non-signatory to an arbitration agreement to be regarded as a “veritable party”, it essentially permits a non-signatory to be treated as a signatory to the arbitration agreement. Towards this end i.e. to ascertain if a party is a *de facto* signatory to an arbitration agreement even when such party is *de jure* not a signatory to the arbitration agreement, various factors and surrounding factual circumstances may be taken into account. The term “veritable” in the context of “party” means a party that is truly, genuinely, authentically to be regarded as a party to the agreement that such party has not signed.

19. When the Supreme Court declared the law in *Cox and Kings*, the Supreme Court did so in the context of whether a party that is part

of the same “group of companies” to which a signatory belongs, could be regarded as a veritable party. The declaration of the law has to be seen in this context. Two or more companies forming part of a group of companies are evidently “related parties” – related by such degree of common ownership, management or control that would lead to their being treated as members of the same group.

20. This is precisely why even in accounting standards as universally applied all over the globe, dealings between two distinct and separate enterprises or entities but forming part of the same group, are treated with distrust, with the presumption being that such dealings are not informed by genuine arms-length rigorously negotiated contracts, unless specific stipulations for treating them as such are complied with. This is the foundational principle on which the “group of companies” doctrine is based – that in a contract between two parties, a third party that is related to a party to the contract regarded *de facto* as a party to the contract despite being a third party.

21. The law declared in ***Cox and Kings*** and elaborated in ***ASF Buildtech*** must be read in this light. The very opening paragraphs of ***Cox and Kings*** makes this abundantly clear. Therefore, when these

judgements throw light on how third parties who may not fall within the scope of “group of companies” but are placed in the same position, the law declared must be appreciated in context. It is most inappropriate to pick and choose individual sentences from concluding summaries in the judgements ignoring the rest of the detailed articulation of what led to such summaries.

22. It is trite law on what a precedent is. To quote from ***Ravi Ranjan***³, which puts it succinctly:

41. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say.

[Emphasis Supplied]

23. Therefore, when ***ASF Buildtech*** builds further on ***Cox and Kings***, it expands the reasoning on discerning the veritable nature of a party but without losing sight of the need to establish that the third party to a contract is in a factual position that would for all practical

3 Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee – (2022) SCC OnLine SC 568

purposes i.e. *de facto*, render him to be a party to that very contract. This is a vital and important threshold to be met. For a party to be regarded as a *veritable* party, one has to bring to bear circumstances that would show that such non-signatory is for all practical purposes to be regarded as a signatory. In fact, Paragraph 109 of ***ASF Buildtech*** is instructive and is reproduced below:-

“109. From the above exposition of law, it can be seen that there is nothing within the scheme of the Act, 1996, which prohibits or restrains an arbitral tribunal from, impleading a non-signatory to the arbitration proceedings on its own accord. So long as such impleadment is undertaken upon a consideration of the applicable legal principles — including, but not limited to, the doctrines of ‘group of companies’, ‘alter ego’, ‘composite transaction’, and the like —the arbitral tribunal is fully empowered to summon the non-signatory to participate in the arbitration. This autonomy stems from the broad jurisdiction conferred upon arbitral tribunals under the Act, 1996 to rule upon their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, as enshrined under Section 16. The impleadment of a non-signatory, being fundamentally a question of jurisdiction and consent. Special Leave Petition (C) No. 21286 of 2024 Page 142 of 190 falls squarely within the province of the tribunal's powers, free from any statutory prohibition.”

[Emphasis Supplied]

24. Therefore, a judgement has to be read for it truly stands for and declares and not ignoring the very premise on which a non-signatory may be attempted to be roped in as a veritable party. To rope a non-signatory to an arbitration agreement into arbitration proceedings, elements such as the “group of companies” or “alter ego” or “a composite transaction” or facts of that nature would need to be discernible. A historical and long-terminated contract cannot be allowed to rope in a party to a completely different contract executed years later, merely because the subject matter of the contract executed years later, had been the subject matter of the earlier contract.

25. If the non-signatory is not a related party, not a group company or enterprise, has no commonality of ownership, management or control, is not alter ego of a party, and is not undertaking a transaction that is contingent upon or subservient to or a contact not forming part of a wider, integral and composite transaction, it would not be possible to invoke principles of making such person a veritable party.

26. The matter in hand entails roping in a completely unconnected third party who is not connected to the Development

Agreement that contains the arbitration agreement. The bargain between Avvad and the Merged Society is a different one and does not depend on the Development Agreement. The Development Agreement, in fact, has purportedly been terminated way back in 2019. The first whisper of a challenge under Section 9 of the Act appears to have been made in 2023, and even that challenge has been allowed to lapse by non-removal of office objections.

27. To now try and rope in Avvad into the arbitration proceedings sought to be initiated by filing a Section 11 Application in 2025 and requesting this Court to rule that a *prima facie* case has been made out, or to refer the parties to arbitration leaving it to the Learned Arbitral Tribunal to answer the question of veritable party, is wholly unacceptable. This Court's jurisdiction entails a limited role of examining existence of an arbitration agreement – such arbitration agreement may have been executed formally (between signatories in conformity with Section 7 of the Act) or should be reasonably and *prima facie* discernible from the material on record. ***ASF Buildtech*** allows the arbitral tribunal to take this decision on its own but Patel has made Avvad a party in these proceedings and this Court is then required to be satisfied that *prima facie* the potential to contend

existence of arbitration agreement with a veritable party exists. Patel has failed to make any dent in relation to whether such discernment is at all possible.

28. Whether the Development Agreement was validly terminated is a matter of evidence. Whether Patel is time-barred in bringing the termination into question is also a matter of evidence. These are issues that the Learned Arbitral Tribunal may consider when it hears Patel and the Merged Society, but the limited issue being considered here is whether Avvad is to be made one of the parties when Patel and the Merged Society are referred to arbitration. In my opinion, in the absence of any reasonable means to discern Avvad as a potential veritable party, it would not be possible for this Court to return a *prima facie* finding that Avvad may be a veritable party. ***Cox and Kings*** requires the Section 11 Court to return such a finding. ***ASF Buildtech*** only enables the arbitral tribunal to make such a determination even if the Section 11 Court had not been presented with such a determination.

29. The privity of a veritable party has to be a *de facto* privity to the agreement in which disputes have arisen. The veritable party has to have proximity and connections to one of the *de jure* parties having privity, in order to be treated as a veritable party. Avvad is a

counterparty to the Merged Society in its own development agreement in much the same way Patel had been a counterparty to the Merged Society under the Development Agreement. It is impossible to draw linkages to unconnected parties to make them veritable parties.

30. The reliance upon Section 19(b) of the Specific Relief Act would have no consequence to privity to arbitration agreement. The provision is extracted below:-

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against –

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

[Emphasis Supplied]

31. The issue at hand is not about whether Patel can move against Avvad if so advised but about whether Patel can move against Avvad in arbitration proceedings initiated against the Merged Society. The issue is not one whether Patel can pursue specific relief, if he so

desires, but whether the forum in which he may seek specific relief is the arbitral tribunal.

32. The underpinning of all the principles of law declared in relation to arbitration proceedings is the foundational need for consent to arbitrate. A veritable party is deemed to have given consent, which is the effect of the law declared in *ASF Buildtech* read with *Cox and Kings*. If such consent, express or deemed, is not discernible, the Section 11 Court cannot force a third party into arbitration or give a lead or a nod to the Learned Arbitral Tribunal to be consider such third party as a veritable party.

33. There is one other element that may be touched upon. If Patel's submissions were to be accepted, once a contract is executed, every counterparty to every future contract would become a veritable party to be roped into the arbitration proceedings. For example, if the Development Agreement with Avvad were to also get terminated leading to arbitration proceedings, and a third developer were to be appointed in future, the question that would arise is to which of three arbitration agreements would necessarily entail which developer to be a veritable party. There would be multiple arbitration proceedings and in

each, one of the parties could contend that the others are veritable parties and the parties could fight over which of the proceedings must continue roping in the rest as veritable parties. The consequences are absurd to say the least, and that too when a foundational requirement for committing to arbitration is consent or deemed consent.

34. Therefore, Patel's conceptualisation is wholly misconceived. The citing of random extracts from ***ASF Buildtech*** without regard to the context and the very foundation on which it is based in a bid to rope in non-signatory third parties who are not related, not alter egos, and not involved in a composite interconnected bigger transaction, does not pass muster.

35. Therefore, I am of the opinion that Avvad is not a veritable party. It is open to Patel to initiate and pursue arbitration against the Merged Society. Should Patel insist on making Avvad a party, arbitration would not be the forum. Should Patel be desirous of initiating arbitration against the Society, an arbitral tribunal is hereby constituted in the following terms:

A] Mr. Snehal Shah, a Learned Senior Advocate of this Court is hereby appointed as the Sole Arbitrator to

adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings,

examination of witnesses, if any, schedule of hearings etc.

At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Arbitral Tribunal in relation to costs.

36. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed hereby.

37. The Application is *finally disposed of* in the aforesaid terms.

38. Considering that this is commercial arbitration, considering the nature of facts involved; the timing of various motions and filings;

the costs inflicted across rounds of litigation; and the pace and manner of approaching the Court, costs must follow the event. Costs are assessed at a token sum of Rs. 1.50 lakhs, payable within four weeks from the date of this judgement. Such costs shall be paid in equal proportion to such persons who were members of the Earlier Society at the time when the Development Agreement was executed ***and*** continue to be members of the Merged Society. Office bearers of the Merged Society shall ensure such distribution within two weeks of receipt of the costs.

39. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]