2026 INSC 803

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. .... of 2026
(@ Special Leave Petition (C) No. 4222 of 2025)

KKH Finvest Pvt. Ltd. and another …**Appellants**

versus

Ashiesh Shukla and others …**Respondents**

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. The scope of this appeal falls within a narrow compass. Notice was ordered in this matter on 31.01.2025 limited to the observations made in paragraph Nos. 103 and 104 of the impugned judgment dated 21.10.2024 passed by the Delhi High Court in Arbitration Petition No. 38 of 2024.

3. The short issue that arises for consideration, in the context of paragraph Nos. 103 and 104 of the judgement, is whether respondent No. 1 herein, Ashiesh Shukla, who was arrayed as respondent No. 6 in the arbitration petition before the High Court, would also be bound by the clauses in the Memorandum of Settlement dated 09.05.2022 and would, in consequence, qualify as a veritable party for the purposes of the arbitration proceedings initiated thereunder.

4. The relevant facts: KKH Finvest Private Limited, appellant No. 1, is involved in the business of investment, consultancy, development and promotion of business activities of companies. Appellant No. 1 intended to take over Sensorise Digital Services Private Limited, appellant No. 2, and its sister concern, Sensorise Smart Solutions Private Limited, under Memorandum of Settlement dated 09.05.2022 (MoS). Ashiesh Shukla, respondent No. 1, was not a signatory to the MoS, which was signed by appellant No.1 along with appellant No.2, its sister concern and their promoters, i.e., Sharad Arora and Rajeev Arora. Appellant No. 1 was referred to as the '*buyer*' therein while the following were collectively referred to as the '*ex-Promoter group*' or '*Sellers*':

a. ex-Promoters as defined in Schedule 1;
b. the Management Team (MT) as defined in Schedules 1A and 1B;
c. Consultants/Employee Shareholders and ex-MT Members defined in Schedule 2 and 2A; and
d. Shareholding Family Members and Associate Shareholders defined under Schedule 2B.

5. Schedule 1 listed the ex-promoters as Rajeev Arora and Sharad Arora. Schedule 1A named four MT members: Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain. Schedule 1B named a foreign shareholder/MT member with whom we are not concerned. Schedule 2, titled 'List of consultants/employee shareholders' named Ashiesh Shukla as a shareholder with 1480 shares, constituting a 0.05% shareholding, along with another person with whom we are not concerned. Similarly, Schedules 2A and 2B are not of relevance presently.

6. Clause H of the MoS recorded that, based on a consensus that the buyer would acquire the shares of the sellers and in order to sustain and maintain appellant No. 2 and its sister concern, the parties to the MoS had arrived at an understanding to resolve all their disputes once and for all. Clause I stated that, further to discussions, the buyer agreed to take initial handover of appellant No. 2 and its sister concern and purchase the complete shareholding of the sellers for ₹8 crores. The clause recorded that the shareholding of the persons named in Schedules 1, 1A, 1B and Schedules 2, 2A and 2B would also be transferred to the buyer.

7. Clause K recorded that, for the sake of convenience, simultaneous with the MoS, separate Share Purchase Agreements, containing indemnity, non-disclosure, non-compete and non-solicitation clauses, and share transfer forms would be executed with persons enlisted in Schedules 1A, 1B and Schedule 2. It recorded that the ex-promoters would render full co-operation and assistance in the execution of the said Share Purchase Agreements and other documents by persons enlisted in Schedules 1A, 1B, 2 and 2B. It is an admitted fact that, pursuant to the aforestated clauses in the MoS, Ashiesh Shukla, respondent No. 1, also executed a Share Purchase Agreement on 09.05.2022. Therein, Ashiesh Shukla was shown as the seller. Clause E of the said agreement stated that Ashiesh Shukla was working in appellant No. 2 as a consultant and was holding 1480 equity shares. Clause G recorded that, based on the

consensus, the buyer was acquiring the shares of the ex-promoters, MT, including the seller and other shareholders of appellant No. 2, for a settlement amount of ₹8 crore. The assignment of intellectual property; non-disclosure; non-solicitation and non-compete were all covered by the clauses that followed thereafter in the said agreement.

8. Clause L of the MoS recorded that, upon acquisition of shares as aforesaid, appellant No.1 would hold 100% of the issued and paid-up capital of appellant No. 2 with 100% voting rights, and the sellers' shareholding would be diluted to nil and get nullified. Sub-clause 20 in Clause VI, titled 'Other deeds and documentations', posited that, simultaneous to the execution of the MoS, the following documents would be executed by persons enlisted in Schedules 1A, 1B and Schedule 2:

(1) Share Purchase Agreements containing non-disclosure, non-compete and non-solicitation and indemnity;
(2) IP assignment deed;
(3) Consultancy Agreement by persons enlisted in Schedule 1A and 1B; and
(4) All handovers and documentations as required under Schedules 4 and 9 necessary for fulfilment of consultancy for a period of 3 months during the Transition of Management of appellant No. 2 and its sister concern as contemplated in the MoS.

9. Sub-clause 43 in Clause X, titled 'Assignment of intellectual property', provided that the persons specified in Schedules 1, 1A, 1B and 2 would assign all registered and/or unregistered copyrights, patents, trademarks and or designs, referred to as intellectual property, arisen or created in the course of business or relating to appellant No. 2 or its sister

concern's activities in favour of appellant No. 2. Sub-clause 47 in Clause XI, titled 'Non-solicitation and non-compete' provided that each of the persons specified in Schedules 1, 1A, 1B and 2 covenant that, for a period of 4 years after execution of the MoS, they would not directly or indirectly, jointly, or in conjunction with, any other person, in any manner whatsoever, except with the prior written consent of appellant No. 1, solicit, interfere with or endeavour to direct or entice away from appellant No. 2 and its sister concern, any customer, agent, client, employee or any person, firm or company dealing with appellant No. 2 or its subsidiaries or affiliates or associates. Sub-clause 75 in Clause XVIII, titled 'General Releases', provided that the transfer/sale of such shares shall be conclusive, independent, mutually exclusive and in no way connected with any of the remaining clauses of the MoS.

10. Sub-clause 78 in Clause XX, titled 'Dispute Resolution', provided that all disputes or differences between the parties in respect of or arising out of the MoS, including breach, shall at the first instance be resolved through good faith negotiations between the parties, which negotiations shall begin promptly after a party delivered to the other party a written request for such consultation. Sub-clause 79 stated that, if the parties were unable to resolve the disputes in question within 21 business days of the commencement of negotiations in terms of sub-clause 78, then the dispute shall, unless the parties otherwise agree in writing, be referred to

arbitration in accordance with the Arbitration and Conciliation Act, 1996[1]. It further provided that the dispute shall be submitted for arbitration to a sole arbitrator to be jointly appointed by the parties. Sub-clause 80 stated that, if the parties fail to mutually appoint a sole arbitrator then, in the absence of such agreement, a sole arbitrator is to be appointed in accordance with the provisions of the 1996 Act.

11. Disputes did arise after execution of the MoS and in due course appellant No. 1 issued Arbitration Invocation Notice dated 10.09.2022 to the ex-promoters, i.e., Rajeev Arora and Sharad Arora. On its application filed under Section 11 of the 1996 Act, the Delhi High Court appointed Hon'ble Mr. Justice T.S. Thakur (Retired), Former Chief Justice of India, as the sole Arbitrator on 12.04.2023.

12. However, in its Statement of Claims filed before the learned Arbitrator on 11.07.2023, appellant No. 1 included parties who were not privy to the application filed by it under Section 11 of the 1996 Act. The parties so added included Ashiesh Shukla, respondent No. 1, and others, viz., Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain, who figured in Schedule 1A, i.e., the list of MT members. As objections were raised by them on this ground before the learned Arbitrator, by filing applications under Section 16 of the 1996 Act, appellant No. 1 and appellant No. 2 jointly filed another application under Section 11 of the

[1] For short, 'the 1996 Act'

1996 Act in Arbitration Petition No. 38 of 2024 seeking reference of the disputes relating to the aforestated persons, viz., Ashiesh Shukla, Ajay Nandy, Abhishek Batra Prasun Nigam and Achin Jain, to arbitration before the same learned Arbitrator.

13. The impugned judgment came to be passed by a learned Judge of the Delhi High Court upon this application. The learned Judge noted therein that the issues for consideration were whether, on a *prima facie* view, the arbitration agreement contained in the MoS could be extended to respondent Nos. 2 to 9 who were non-signatories to the MoS and whether the Court had the power to consolidate arbitration proceedings. Noting that, being a referral Court, he was only required to take a *prima facie* view on whether there existed an arbitration agreement and whether the respondents who were non-signatories to the MoS were veritable parties to the same, the learned Judge noted the decision of this Court in ***Cox and Kings Limited vs. SAP India Private Limited and another***[2].

14. The learned Judge summed up that that the assessment required to be undertaken by him so as to ascertain whether the respondents were veritable parties or not was primarily an assessment regarding the conduct, role and involvement of such non-signatories in the underlying contract, i.e., the MoS. He observed that, in order to undertake such assessment, he was required to consider factors such as mutual intent,

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relationship between the signatories and non-signatories, commonality of the subject matter, composite nature of transactions and the performance of the contract. Apropos Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain, the learned Judge noted that they fell in Schedule 1A of the MoS, constituting the MT. The learned Judge noted that the obligations under the MoS were also required to be performed by them to give full effect to it and opined that a bare reading of the MoS suggested that they held specific roles and responsibilities under the MoS, which now formed the core of the disputes in the ongoing arbitral proceedings. As individual Share Purchase Agreements were also executed by them which contained mirror obligations, indicating *prima facie* the inter-connected nature of those agreements with the MoS, the learned held that it would be difficult to dissociate them from the obligations of the MoS carried out by them. The learned Judge noted that the objective of the MoS was for appellant No. 1 to take complete control over the business, management, administration and running of the operations of appellant No. 2 and the shareholding of the MT necessarily had to be transferred too. Observing thus, the learned Judge concluded that the Share Purchase Agreements were a creation of the MoS and the performance of the MoS would not be complete without execution and performance of those agreements. The learned Judge accordingly held that, in his *prima facie* view, the transactions were composite in nature, as the common goal of both agreements was to ensure complete transfer of control and ownership of appellant No. 2 and its sister concern to appellant No. 1. As a result, the learned Judge held that the obligations under the MoS and the Share Purchase Agreements were so interwoven that the performance under one agreement directly impacted the obligations under the other in furthering the overall objective of transition of appellant No. 2 to appellant No. 1. The learned Judge, therefore, held that Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain were veritable parties to the arbitration agreement contained in the MoS. The disputes relating to them were, accordingly, referred to arbitration by the learned Arbitrator who was already appointed.

15. However, considering the case of Ashiesh Shukla separately, the learned Judge opined that there was a distinguishing feature in the Share Purchase Agreement executed by him, i.e., Clause 16, which reads thus:

> '16. The transfer/sale of such shares shall be conclusive, independent, mutually exclusive and in no way connected with any of the remaining clauses of the present SPA and the MoS dated 09.05.2022.'

16. Observing that this clause expressly showcased the intention of Ashiesh Shukla not to be bound by any of the clauses in the MoS, as it categorically separated the sale of shares from the other obligations and disputes arising under the MoS, the learned Judge opined that invoking arbitration against him on the basis of the MoS would be legally unsustainable. *Per* the learned Judge, Clause No 16 unambiguously

disconnected any and all issues between the Share Purchase Agreement and the MoS and as there was no separate arbitration agreement between Ashiesh Shukla and the other contracting parties in his Share Purchase Agreement, the learned Judge concluded that no case was made out against Ashiesh Shukla for reference to arbitration. The learned Judge observed that if he was referred to arbitration, it would render Clause 16 of the Share Purchase Agreement redundant and meaningless.

17. Surprisingly, the learned Judge failed to take note of a crucial fact while making the above observations. The Share Purchase Agreements executed by Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain contained a clause identical to Clause 16 in Ashiesh Shukla's Share Purchase Agreement. The agreement of Prasun Nigam replicated the aforestated Clause 16 in Clause 24 while the agreement executed by Abhishek Batra mirrored it in Clause 24. The agreement executed by Ajay Nandy duplicated the same in Clause 28 and, lastly, the agreement of Achin Jain stated to the same effect in Clause 23. Therefore, the logic applied to the four of them in the context of qualifying them as veritable parties equally applied to Ashiesh Shukla, notwithstanding Clause 16 in the Share Purchase Agreement executed by him.

18. We may also note that certain clauses in the Share Purchase Agreement dated 09.05.2022 executed by Ashiesh Shukla clinched the issue in so far as he was concerned. The clauses read as under:

> 'F. Certain disputes arose between the Buyer and the ex-Promoters of SDS. In order to resolve their pending disputes amicably, the Buyer and ex-Promoters have entered into a Memorandum of Settlement ("MoS") dated 09.05.2022.
>
> G. Now, based on a consensus, the Buyer is acquiring the shares of ex-Promoters, Management Team including the Seller and other shareholders of SDS for a Settlement Amount of Rs. 8 Crores (*including the proportionate Settlement Amount of Seller*).
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> H. The present SPA is being executed with the Seller for his 1480 equity shares in SDS and *the proportionate settlement amount* of Rs. 86,831.60/- (Eighty-Six Thousand Eight Hundred Thirty One Rupees and Sixty Paisa) is being paid to the Seller by the Buyer for the sale/transfer of such shares.' *(emphasis is ours)*

In the light of the above clauses, there can be no doubting the fact that Ashiesh Shukla committed himself to the sale of his shares and to be bound by the terms of the MoS dated 09.05.2022.

19. We may also note that, in terms of the law laid down in ***Cox and Kings Limited*** (*supra*), the principle of 'veritable parties' would be applicable in situations where a person or entity may not sign an arbitration agreement, yet give the appearance of being a veritable party to such agreement due to that person/entity's legal relationship with the signatory parties and involvement in the performance of the underlying contract. This Court observed that the participation of a non-signatory in the performance of the underlying contract is the most important factor to be considered as the conduct of the non-signatory parties is an indicator of the intention of those parties to be bound by the arbitration agreement. This Court further observed that the intention of the parties to be bound

by an arbitration agreement could be gauged from the circumstances that surround the participation of such non-signatory party in the negotiation, performance and termination of the underlying contract, containing such agreement. Further, observing that there was a need to strike a balance between the consensual nature of arbitration and modern commercial reality, where a non-signatory becomes implicated in a commercial transaction in a number of different ways, this Court held that the balance could be adequately achieved if the factors laid down in ***Oil and Natural Gas Corporation Limited vs. Discovery Enterprises Private Limited and another***[3] are applied holistically. Elaborating further, it was observed that the involvement of a non-signatory in the performance of the underlying contract in a manner that suggests that it intended to be bound by the contract containing the arbitration agreement is an important aspect. Other factors, such as the composite nature of the transaction and commonality of subject matter, were also held to suggest that claims against a non-signatory are interlinked with the issues under arbitration.

20. Applying the aforestated principles, it is clear that the performance of his obligations by Ashiesh Shukla under his Share Purchase Agreement was fundamental to the completion of the obligations spelt out in the MoS. Being a shareholder in his own right, unless Ashiesh Shukla also transferred his shares, the MoS would inevitably remain incomplete.

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Further, as already noted *supra*, the learned Judge had found Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain to be veritable parties in the context of almost identical Share Purchase Agreements executed by them. Their obligations as members of the MT may have included certain functions that were not applicable to Ashiesh Shukla, a consultant shareholder, but the irrefutable fact remains that all other acts to be undertaken by persons listed in Schedule 1A, as spelt out by the terms of the MoS, referred to hereinabove, equally applied to him. In effect, there was no real point of distinction between Ashiesh Shukla when compared to Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain. The difference drawn by the learned Judge between these identically situated persons was not founded on fact and is entirely unsustainable in the light of the similar agreements executed by all of them.

21. The appeal is accordingly allowed, setting aside the judgment dated 21.10.2024 in so far as it related to Ashiesh Shukla, respondent No. 1. He is also held to be a veritable party to the MoS and would, therefore, be amenable to having his disputes with appellant Nos. 1 and 2 referred to arbitration. As a learned Arbitrator is already seized of the disputes arising under the MoS and the Share Purchase Agreements executed by Ajay Nandy, Abhishek Batra, Prasun Nigam and Achin Jain, we deem it appropriate to refer the disputes pertaining to Ashiesh Shukla also to the same learned Arbitrator.

22. Hon'ble Mr. Justice T.S. Thakur (Retired), Former Chief Justice of India, is appointed as the sole Arbitrator to undertake adjudication of the disputes between appellant Nos. 1 and 2 and Ashiesh Shukla, respondent No. 1. The other terms and conditions spelt out by the Delhi High Court as to such appointment shall apply. All issues are left open to be considered by the learned Arbitrator on facts and in accordance with law.

23. Parties shall bear their own costs.

..............................., J.
(SANJAY KUMAR)

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(SANJEEV SACHDEVA)

AUGUST 5, 2026
NEW DELHI.