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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 03rd FEBRUARY, 2025
IN THE MATTER OF:

+ **ARB.P. 1524/2024**

ASHISH KAPUR & ANR.

.....Petitioners

Through: Dr. Amit George, Ms. Bhargavi
Kannan, Ms. Shivani Karmakar, Ms.
Kavya Sarin, Advocates.

versus

DEEPAK SETH & ORS.

.....Respondents

Through: Mr. Prithvi Rohan Kapur and Ms.
Payal Chandra, Advocates for
Respondent Nos.1 to 3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioners seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Arbitration Agreement dated 08.04.2024. The Arbitration Agreement dated 08.04.2024 reads as under:

" ARBITRATION AGREEMENT

1. Certain disputes have arisen between Ashish Kapur, Meghana Kapur(wife of Ashish Kapur), Joydeep Singh, Terveeni Singh (wife of Joydeep Singh), and Deepak Seth (collectively referred to as 'Parties'), out of and on account of certain of the following contracts entered into between some or all of the Parties (collectively or individually referred to as 'Contract(s')):



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Sl. No.	Description of Contract
1	The Wine Connection
2	Super Bowl Co.]
3	White Hat Hospitality LLP
4	White Hat Wine & Hospitality Pvt. Ltd
5	Karma Kitchen & Bar Pvt. Ltd.
6	White Beach Kitchen Pvt. Ltd
7	Moods Hospitality Pvt. Ltd

We, ASHISH KAPUR (family group represented by Ashish Kapur), JOY DEEP SINGH (family group represented by Joy Deep Singh) and DEEPAK SETH, hereby agree to finally settle these disputes through a process of arbitration by a Tribunal constituted by a sole retired high court judge, under the Indian Arbitration Act, 1996. The seat of arbitration shall be New Delhi and the laws of Union of India shall be applicable to the substance of the dispute. The language of arbitration shall be English. This Arbitration Agreement is made and entered into on 8 April, 2024."

2. Shorn of unnecessary details, the facts in brief leading to this petition are that the Petitioners ventured into the Food & Beverages Industry in India and established several brands including the QSR outlets of "Yo! China", "Dimsum Bros", and "The Bento Cafe", fine dining restaurants including "Kimono Club" in Delhi, "Whiskey Samba" and "The Wine Company" in Gurugram, "The Wine Rack" in Mumbai and "Antares" in Goa.

3. It is stated that a Partnership Deed in the year 2013 was entered into between the Respondent No.3 and one Ms. Shalini Saini for the purpose of running restaurants, food and beverages stores, food outlets etc. The business was being run under the style of "The Wine Company". The Partnership Deed was called as "The Wine Connection Partnership Deed". It is stated that the Respondent No.1 approached the Petitioners to invest in



their existing and upcoming ventures and a series of Agreements came to be executed inter alia between the Petitioners and Respondents No.1 to 3. A Partnership Deed called the Super Bowl Company Partnership Deed dated 21.04.2015 was entered into between Petitioner No.2, Respondent No.1 and Respondent No.3 with the aim of creating a nationally and internationally recognized scalable high volume Chinese food court. Respondent No.5 i.e. M/s Super Bowl Company was constituted under this deed, which then established and operated a food chain called The Bento Cafe. It is stated that thereafter, on 29.09.2015, a shareholders Agreement was executed between the M/s Karma Kitchen & Bar Private Limited i.e. Respondent No.8 and Gokul Kumar, Varinder Sachdeva, Petitioner No.2, Respondent No.1, Respondent No.3 and one celebrity Chef Ms. Sarah Patricia Todd for the purpose of establishing restaurants in Goa and subsequently in different parts of India.

4. Respondent No.6 was a party under an Agreement namely White Hat Hospitality LLP Agreement dated 28.07.2016. The said Agreement was entered into by Petitioner No.2, Respondent No.1 and Respondent No.3 with the objective of running bars, and to take over Lux Dining business which was an older business run by the same partners. Respondent No.6 i.e. M/s White Hat Hospitality LLP came to be established and operate a wildly successful whisky bar, The Whisky Samba.

5. On 06.04.2018, a Wine Connection Compromise-cum-Settlement Agreement was entered into between Ms. Shalini Saini, Mr. Ajay Saini, Petitioner No.1, Petitioner No.2 and Respondent Nos.2 and 3 which then re-constituted the composition of Respondent No.4 i.e. M/S the Wine Connection. Under this Agreement, Ms. Shalini Saini would retire from



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Respondent No.4 i.e. M/S Wine Connection and Petitioner No.2 and Respondent No.1 would be added as partners. After this, Wine Connection Partnership Deed was executed between Respondent No.3, Petitioner No.2, Respondent No.1 where Ms. Shalini Saini retired and former three became working partners.

6. On 01.06.2019, White Beach Private Limited Shareholders' Agreement was executed pertaining to the business interests of Respondent No.9 i.e. M/S White Beach Kitchen Private Limited.

7. On 17.10.2020, Respondent No.1 stated that he did not have funds to make investments and expressed his inclination to square off his holdings in Respondent No.6 i.e. M/s White Hat Hospitality LLP and resigned. Consequently on 17.12.2020, White Hat Hospitality LLP Agreement was entered between Petitioner Nos.1 and 2, Respondent No.1 and 3 whereby Respondent No.1 retired and Petitioner No.1 was made the new partner in Respondent No.6.

8. On 21.12.2020, one Mr. Anil Kochhar was added as a new partner to Respondent No.6 under White Hat Hospitality LLP Agreement.

9. On 08.04.2024 an Arbitration Agreement was executed between Petitioner No.1 (on behalf of himself and Petitioner No.2), Respondent No.2 (on behalf of himself and Respondent No.3), Respondent No.1 wherein it was mutually agreed to refer all disputes arising out of the Contract herein to arbitration. The businesses named in the Arbitration Agreement are Respondent No.4 to Respondent No.10.

10. It is stated that Respondents No.4 to 10 are various LLP firms in which the Petitioners No.1 and 2, Respondents No.1 to 3 are partners or are major shareholders in the Companies.



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11. It is stated that on 19.07.2024, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the Petitioners invoking arbitration. It is stated that the said notice was addressed to all the Respondents in the present petition. It is further stated that the names of three Judges namely J. (Retd.) Ajit Prakash Shah, former Chief Justice of Madras High Court and this Court, J. (Retd.), Indermeet Kaur, former Judge of this Court and J. (Retd.) Badar Durrez Ahmed, former Chief Justice of Jammu and Kashmir High Court and Judge of this Court were suggested.

12. Since there was no response on behalf of the Respondents, a reminder was issued on 08.08.2024. On 16.08.2024, the Respondents gave a reply to the notice dated 19.07.2024 and also issued a fresh notice under Section 21 of the Arbitration and Conciliation Act, 1996 on their own. Though, the Respondents agreed to nomination of J. (Retd.), Indermeet Kaur, a former Judge of this Court as the Arbitrator, however the Respondents No.1 to 3 objected to Respondents No.4 to 10 herein from being parties to the Arbitration. The same was replied to by the Petitioners.

13. It is stated that since there was no consensus as to whether Respondents No.4 to 10 should or should not be a part of the arbitration proceedings arising from the Arbitration Agreement, the Petitioners have approached this Court by filing the instant petition seeking appointment of an Arbitrator.

14. A short question that arises for consideration is that whether this Court must appoint the Arbitrator to whom both the parties have no objection to and should Respondents No.4 to 10 be parties or not in the arbitration proceedings.

15. The learned Counsel appearing on behalf of the Petitioners contend



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that the scope of a Court referring disputes to arbitration is limited and the examination of whether non-signatories are parties or not to the Arbitration Agreement is best left to the Arbitral Tribunal. It is stated that this Court need not adjudicate the issue as to whether Respondent No.4 to 10 were signatories to the Arbitration Agreement dated 08.04.2024 or not but as referred in the Arbitration Agreement should be parties to the arbitration proceedings or not. It is stated that the interference by the referral Court in matters like this will militate against the principle of *Kompetenz Kompetenz*. It is stated that this Court has to see as to whether there is a valid Arbitration Agreement or not.

16. *Per contra*, learned Counsel appearing for the Respondents contend that non-signatories cannot be made parties to the arbitration proceedings including non-signatories to the arbitration agreement. It is stated that Respondents No.4 to 10 are not parties to the Arbitration Agreement dated 08.04.2024 at all. It is further stated that even the bare reading of the Arbitration Agreement does not in any way indicate that Respondents No.4 to 10 should participate in the arbitration proceedings which is primarily for adjudicating the disputes between Petitioners No.1 and 2 on the one side and Respondents No.1 to 3 on the other. It is stated that neither the Petitioners can claim through Respondents No.4 to 10 nor the Respondents No.4 to 10 can claim through the Petitioners.

17. Heard the learned Counsel for the parties and perused the material on record.

18. The issue as to whether non-signatories can be made parties to the arbitration proceedings or not is no longer *res integra* and the same has been decided by the five-Judge Bench of the Apex Court in Cox and Kings



Limited v. SAP India Private Limited and Another, (2024) 4 SCC 1. The said judgment does indicate that non-signatories can be made parties and has laid down the parameters which have to be taken into account by the referral Courts. The Apex Court in Cox and Kings Limited (supra) has concluded as under:-

"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;

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 [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80]. 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 [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] 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."

19. In a separate but concurrent judgment Justice P. S. Narasimha has concluded as under:-

“E. Conclusion

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 [As delineated in para 40 of ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42, para 40 : (2022) 4 SCC (Civ) 80.] 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 [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] 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.”*

20. At the same time, five-Judge Bench of the Apex Court in Cox and Kings Limited (supra) has also laid down the parameters of interference by the referral Court by observing as under:-

"162. *When deciding the referral issue, the scope of reference under both Sections 8 and 11 is limited. Where Section 8 requires the referral court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the existence of the examination of an arbitration agreement.*



163. *Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.*

164. *In Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , N.V. Ramana, J. (as the learned Chief Justice then was) held that the amendment to Section 8 rectified the shortcomings pointed out in Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] with respect to domestic arbitration. He further observed that the issue of determination of parties to an arbitration agreement is a complicated exercise, and should best be left to the Arbitral Tribunals : (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC p. 161, para 239)*

“239. ... Jurisdictional issues concerning whether certain parties are bound by a particular arbitration, under group-company doctrine or good faith, etc. in a multi-party arbitration raises complicated factual questions, which are best left for the tribunal to handle. The amendment to Section 8 on this front also indicates the legislative intention to further reduce the judicial



interference at the stage of reference.”

165. *In Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd. [Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd., (2021) 5 SCC 671 : (2021) 3 SCC (Civ) 307] , a Bench of three Judges of this Court was called upon to decide an appeal arising out of a petition filed under Section 11(6) of the Arbitration Act for appointment of sole arbitrator. The issue before the Court was the determination of existence of an arbitration agreement on the basis of the documentary evidence produced by the parties. This Court prima facie opined that there was no conclusive evidence to infer the existence of a valid arbitration agreement between the parties. Therefore, the issue of existence of a valid arbitration agreement was referred to be decided by the Arbitral Tribunal after conducting a detailed examination of documentary evidence and cross-examination of witnesses.*

166. *The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the referral court cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal. The referral court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. In Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , this Court observed that there are distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the Tribunal : (Shin-Etsu Chemical Co. case [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , SCC p. 267, para 74)*

“74. ... Even if the Court takes the view that the



arbitral agreement is not vitiated or that it is not valid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration.”

167. *In Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] , this Court held that it is the legislative intent of Section 45 of the Arbitration Act to give a finding on whether an arbitration agreement is “null and void, inoperative and incapable of being performed” before referring the parties to arbitration. In 2019, the expression “unless it prima facie finds” was inserted in Section 45. In view of the legislative amendment, the basis of the above holding of Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] has been expressly taken away. **The present position of law is that the referral court only needs to give a prima facie finding on the validity or existence of an arbitration agreement.***

168. *In Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar [Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar, (2011) 11 SCC 375 : (2011) 3 SCC (Civ) 679] , a two-Judge Bench of this Court held that when a third party is impleaded in a petition under Section 11(6) of the Arbitration Act, the referral court should delete or exclude such third party from the array of parties before referring the matter to the*



Tribunal. This observation was made prior to the decision of this Court in Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] and is no longer relevant in light of the current position of law. 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.

169. *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*



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agreement to be decided by the Arbitral Tribunal under Section 16."

(emphasis supplied)

21. Applying the said law to the facts of this case, it can be said that there is some force in the argument of learned Counsel for the Petitioners that the scope of a referral Court under Section 11(6) of the Arbitration and Conciliation Act to examine whether the non-signatories are parties to the arbitration proceedings or not is limited. Undoubtedly, complete strangers cannot be made parties to the Arbitration Agreement. The Arbitration Agreement in the present case indicates that the disputes have arisen between the parties *qua* Respondents No.4 to 10.

22. The Petitioners, in their rejoinder, in paragraph No.12, has succinctly brought out the involvement of the Petitioner No.1 and 2 and the Respondents in formation and running of Respondent No.4 to 10. The chart is being reproduced as under:-



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S. No.	Party	Particulars
1.	Petitioner No. 1: Mr. Ashish Kapur	Promoter founder of Respondent Nos. 4-10. Partnered with Respondent Nos. 1-3 in these ventures.
2.	Petitioner No. 2: Mrs. Meghana Kapur	Promoter founder of Respondent Nos. 4-10. Partnered with Respondent Nos. 1-3 in these ventures.
3.	Respondent No. 1: Mr. Deepak Seth	Partnered with Petitioner Nos. 1&2 and Respondent Nos. 2&3 in making investments into Respondent Nos. 4-10.
4.	Respondent No. 2: Mr. Joydeep Singh	Partnered with Petitioner Nos. 1&2 and Respondent No. 1 in making investments into Respondent Nos. 4-10.
5.	Respondent No. 3: Mrs. Terveeni Singh	Partnered with Petitioner Nos. 1&2 and Respondent No. 1 in making investments into Respondent Nos. 4-10.



6.	Respondent No. 4: M/s. The Wine Connection	Partnership firm that runs the business of “ The Wine Company ”. Wholly owned by the Petitioners and Contesting Respondents in the following ratio: Petitioner No. 2: 44.4% Respondent No.1: 26% Respondent No. 3: 29.6% In the Arbitration Notice, the Petitioners have sought payment of INR 62,29,457 by the Contesting Respondents to Respondent No. 4.
7.	Respondent No. 5: M/s. Super Bowl Co.	Partnership firm that runs the business of “ Bento Café ”. Wholly owned by the Petitioners and Contesting Respondents in the following ratio: Petitioner No. 2: 48% Respondent No.1: 20% Respondent No. 3: 32% In the Arbitration Notice, the Petitioners have sought payment of INR 39,74,890 by the Contesting Respondents to Respondent No. 5.
8.	Respondent No. 6: M/s. White Hat Hospitality LLP	LLP that runs the business of “ Whisky Samba ”. Majority ownership with the Petitioners. Contesting Respondent No. 3 holds minority stake. Profit/ loss sharing ratio: Petitioner No. 1: 30% Petitioner No. 2: 30% Respondent No. 3: 20% Vineesh Anil Kochar: 20% In the Arbitration Notice, the Petitioners have sought payment of INR 36,89,381 by the Contesting Respondents to Respondent No. 6.
9.	Respondent No. 7:	Company which runs the business of “ Wine Rack ”. 100% of the shareholding



	White Hat Wine & Hospitality Private Limited	<p>is held by the Petitioners and the Contesting Respondents in the following ratio: Petitioner No. 2: 40.02% Respondent No. 1: 33.3% Respondent No. 3: 26.68%</p> <p>In the Arbitration Notice, the Petitioners have sought payment of INR 33,44,580 by the Contesting Respondents to Respondent No. 7.</p>
10.	Respondent No. 8: Karma Kitchen & Bar Private Limited.	<p>Company that runs the business of “Antares” restaurant in Goa. Majority shareholding collectively held by Petitioner No. 2, Respondent No. 1 and Respondent No. 3. Shareholding structure: Petitioner No. 2: 24% Respondent No. 1: 18% Respondent No. 3: 24% Others: 42%</p> <p>In the Arbitration Notice, the Petitioners have sought payment of INR 35,99,050 by the Contesting Respondents to Respondent No. 8.</p>
11.	Respondent No. 9: M/s. White Beach Kitchen Private Limited	<p>Company which runs the business of “Kimono Club”. Majority shareholding collectively held by Petitioner No. 2, Respondent No. 1 and Respondent No. 3. Shareholding structure: Petitioner No. 2: 32.8% Respondent No. 1: 27.3% Respondent No. 3: 21.9% Others: 18%</p> <p>In the Arbitration Notice, the Petitioners have sought payment of INR 1,69,25,094 by the Contesting Respondents to Respondent No. 9.</p>



12.	Respondent No. 10: Moods Hospitality Private Limited	Company which used to run the business of “Yo! China”. This entity has been liquidated.
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23. In view of the above, this Court is of the opinion that the disputes have primarily arisen between the parties in the business of Respondents No.4 to 10.

24. It cannot be said that Respondents No.4 to 10 are complete strangers to the dispute. The existence of the Arbitration Agreement is not in dispute. It is well settled that the referral Court should not unnecessarily interfere in the arbitration proceedings and should allow the Arbitral Tribunal to exercise its primary jurisdiction.

25. In view of the above, this Court is therefore not inclined to accept the case of the Respondents.

26. However, in view of the law laid down by the Apex Court in Cox & Kings Ltd. (supra), it is for the Arbitral Tribunal to take a decision as to whether Respondents No.4 to 10 are necessary parties to the arbitration proceedings or not.

27. It is made clear that this Court has not made any observations as to whether Respondents No.4 to 10 are necessary party to the arbitration proceedings or not. It is open for the Arbitral Tribunal to take a decision as to whether Respondents No.4 to 10 are necessary party to the arbitration proceedings or not.

28. Accordingly, the instant petition is allowed.

29. The Arbitrator who has been nominated by both the parties is



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requested to proceed further in accordance with law.

SUBRAMONIUM PRASAD, J

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