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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\# **CNR No. DLHC010481242024**

\+ **CS(COMM) 661/2024, I.A. 35756-35757/2024, I.A. 41704-41705/2024, I.A. 42215/2024, I.A. 48836/2024, I.A. 48838/2024, I.A. 49350/2024, I.A. 10445/2025, I.A. 20676/2025, I.A. 27157/2026, I.A. 27163-27165/2026 and I.A. 27173/2026**

UTRACON CORPORATION PTE LTD

COMPANY REGISTRATION NO: 200510379E
REGISTERED OFFICE AT: 5 JOO KOON WAY,
SINGAPORE 628944..

.....Plaintiff

(*Through: Mr. Abhishek Malhotra, Senior Advocate with Mr. Himanshu Deora, Mr. Sukrit Kapoor, Ms. Shambhavi Sharma, Ms. Garima Singh, Ms.Anukriti Trivedi, Mr. Divya Bhushan, Mr. Tanay Raj and Mr.Kartikay Dutta, Advocates.*)

versus

1. UCON PT STRUCTURAL SYSTEM PRIVATE LIMITED FORMERLY UTRACON STRUCTURAL SYSTEMS PRIVATE LIMITED
CIN: U45200TN2004PTC072704
THROUGH ITS DIRECTORS:
(I) MR. MUTHUKUMARASWAMY KAMALA KANNAN [DIN:01941628];
(II) MR. RADHAKRISHNAN MAHENDIRAN [DIN: 06616668]; AND
(III) MR. JAYAKUMAR [DIN: 07386445]
ADDRESS:
164, BASEMENT FLOOR, B5 BLOCK, B4 BLOCK,
SAFDARJUNG ENCLAVE, NEW DELHI, DELHI 110029
ALSO AT:

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NEW NO.45, OLD NO.23,
PADMANABA NAGAR 5TH CROSS STREET,
ADYAR NA, CHENNAI, TAMIL NADU 600020

2. MR. MUTHUKUMARASWAMY KAMALA KANNAN
[DIN:01941628];
FLAT 20 PLOT 146 KSHETRA APT, BEACH ROAD,
KALAKSHETRA CLY, BESANT NAGAR,
CHENNAI, TAMIL NADU
INDIA-600090

3. MR. RADHAKRISHNAN MAHENDIRAN
[DIN: 06616668]
6 VANTAGE SPRING
26 SRINIVASA PRM 2ND STREET L P NGR
CHENNAI, TAMIL NADU
INDIA-600041

4. MR. JAYAKUMAR
[DIN: 07386445]
M35, 3-D, RAMANIYAM SHREE MAHALAKSHMI,
THIRUVANMIYUR, CHENNAI TAMIL NADU
INDIA-60004

5. UTRACON STRUCTURAL SYSTEMS PRIVATE LIMITED
CIN: U41002TN2023PTC162180
THROUGH ITS DIRECTORS
(I) MR. KARTHIKEYAN [DIN: 10251701]; AND
(II) MR. BALAJI SELVAMUTHUKUMAR [DIN: 10251702].
ADDRESS:
1/379 1ST CROSS ARUNAGIRI, NAGAR,
NACHIKURICHI, SOMARASAMPETTAI,
TIRUCHIRAPPALLI, SRIRANGAM,
TAMIL NADU, INDIA, 620102

6. UCON MEP ENG PRIVATE LIMITED
[FORMERLY UTRACONINDIA STRUCTURAL SYSTEMS PRIVATE LIMITED]
CIN: U45209TN2022PTC149023
THROUGH ITS DIRECTORS

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(I) MR. ARUNKUMAR BALAJI [DIN: 09458530] AND
(II) MR. KAMALAKANNAN MUTHUKUMARASAMY SRIRAM [DIN:09396930]
ADDRESS:
P.NO.32, 1ST MAIN ROAD, RAJA NAGAR,
NEELANKARAI, CHENNAI, CHENNAI,
TAMIL NADU, INDIA, 600115.
ALSO AT:
164, BASEMENT FLOOR, B5 BLOCK, B4 BLOCK,
SAFDARJUNG ENCLAVE, NEW DELHI, DELHI 110029.

7. UCON LIVSPACE PRIVATE LIMITED
(FORMERLY UTRACON CONSTRUCTION PRIVATE LIMITED)
CIN: U45207TN2018PTC125620
THROUGH ITS DIRECTORS:
(I) MR. JAYAKUMAR [DIN: 07386445]; AND
(II) MR. SHIVRAM JAYAKUMAR [DIN: 08221219]
ADDRESS:
PLOT NO 32, RAJA NAGAR FIRST MAIN ROAD,
NEELANKARAI, CHENNAI,
TAMIL NADU, INDIA, 600041

8. NAME.COM INC.
HAVING ITS ADDRESS AT:
2500, EAST 2ND AVENUE DENVER, CO 80206 UNITED STATES

.....DEFENDANTS

(*Through: Mr.Siddhartha Iyer, Ms. Jaspriya Poply and Mr.Aman Gupta, Advocates for D-1 to D-4, D-6 and D-7.*
Ms. Suriti Chowdhary, Ms. Arushi and Ms. Tanya Sharma, Advocates for D-5.
None for D-8.)

% Reserved on: **12.10.2026**
Pronounced on: **28.10.2026**

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JUDGMENT

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I.A. 41705/2024 (under Section 8 of Arbitration & Conciliation Act r/w Section 151 of CPC)

By way of the present judgment, the Court is called upon to decide the application filed by defendant no.1 under Section 8 of the Arbitration and Conciliation Act, 1996 ("A&C Act") read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking reference of the parties to arbitration in view of the existence of an arbitration agreement between them.

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I. FACTUAL MATRIX:

2. The plaintiff, Utracon Corporation Pvt. Ltd., is a company incorporated under the laws of Singapore, having its registered office at 5 Joo Koon Way, Singapore. It is engaged in the construction and infrastructure industry and claims to render, *inter alia*, post-tensioning and pre-tensioning services, bridge construction, precasting, structural retrofitting, heavy lifting and allied construction engineering services.

3. The plaintiff claims to have adopted the trade mark "UTRACON" in the year 1998 and to have subsequently adopted stylised variants and a logo thereof (collectively, the "UTRACON Marks"). It claims to be the registered proprietor of the UTRACON Marks in India under Class 37, dating back to 14.08.2012. It also claims copyright in the artistic features of the UTRACON logo and in its technical documents, drawings and photographs of projects.

4. Defendant no.1, formerly known as Utracon Structural Systems Private Limited and now known as Ucon PT Structural System Private Limited, was incorporated in Chennai in the year 2004 as a wholly owned subsidiary of the plaintiff. It is an ex-licensee of the plaintiff. By virtue of the Licence Agreement dated 22.03.2012 ("Licence Agreement"), defendant no.1 was granted the right to use the UTRACON Marks and the other intellectual property rights of the plaintiff pertaining to technical material, pictures, drawings, designs, etc.

5. Defendant nos.2, 3 and 4 are the directors of defendant no.1. According to the plaintiff, they have incorporated companies using the plaintiff's mark or marks similar thereto. Defendant nos.5, 6 and 7, namely

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Utracon Structural Systems Private Limited (incorporated on 24.07.2023), Ucon MEP ENG Private Limited (formerly Utraconindia Structural Systems Private Limited, incorporated on 05.01.2022) and Ucon Livspace Private Limited (formerly Utracon Construction Private Limited, incorporated on 01.11.2018), are stated in the plaint to be affiliated or sister concerns of defendant no.1.

6. The plaintiff itself avers that defendant nos.1 to 7 function as a "single economic unit". Defendant no.8 is the domain name registrar for the impugned domain name "www.utraconindia.com" and has been impleaded as a pro forma party.

7. The controversy in the suit relates to ***(a)*** the continued use of the plaintiff's UTRACON Marks as a trade mark, trade name, trading style, domain name and social media handles by defendant no.1, despite the termination of the Licence Agreement; ***(b)*** the incorporation of defendant nos.5, 6 and 7 using the trade mark UTRACON as a part of their corporate names; and ***(c)*** the use of printed material, advertisements, technical documents and pictures of projects bearing the UTRACON Marks by defendant nos.1 to 7, despite the termination of the Licence Agreement.

8. It is the case of the plaintiff that the rights under the Licence Agreement were effective from 01.04.2011, and expired on 31.03.2021 by efflux of time. On the same date as the Licence Agreement, i.e., on 22.03.2012, the plaintiff, Utracon Management Pvt. Ltd., defendant no.2 and defendant no.1 had also executed a Sale of Shares Agreement ("SOS Agreement").

9. The plaintiff claims that despite the expiry of the Licence Agreement, defendant no.1 continued with the use of the UTRACON Marks and the

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other intellectual property rights. The plaintiff had issued a letter calling upon defendant no.1 to comply with its obligations under Clause 8.4 of the Licence Agreement within 30 days of the expiry thereof.

10. The relevant clauses of the Licence Agreement, on which the plaintiff has founded its case in the plaint, read as under:

> *"3.5. Assistance and due care: USSI understands that UCPL is in the process of registering its Trademarks "UTRACON" and its logo (Trademarks as defined in Annexure A), in India and outside India. USSI, its Affiliates and associates hereby agrees and undertakes that it will not register and/or try to register Trademarks and represent in any way that it has title to or ownership of Trademarks, nor shall do or cause to be done any act or thing contesting or in any way impairing UCPL's right, title of ownership and interest in and to Trademarks. Further during or any time after the Term of this Agreement, USSI agree that it shall refrain from doing anything which has or might have the effect of endangering the objectives of this Agreement and/or of discrediting the Trademarks.*
>
> *3.6. Anytime after the Term of this Agreement, USSI agree to cease using the Trademarks in any form whatsoever, and agree not to adopt or use any other trademarks which is confusing with the Trademarks and agree to promptly deliver up to UCPL all pamphlets, printed materials, advertising or other material which is marked with the Trademarks. Furthermore, USSI, their Affiliates, associates, successors, subsidiaries agree and undertake that they shall not either on their own account or in conjunction with others directly or indirectly use or represent in any way and in anywhere that they have title to or ownership of UCPL's Trademarks nor refrain from doing anything which has or might have the effect of endangering and/or discrediting the Trademarks. Provided UCPL may authorise USSI to use or represent the Trademarks by a letter of authorisation which shall be in writing and carried out by way of internationally accepted couriers and email or by fax.*
>
> *xxx xxx xxx*
>
> *8.1. Term: This Agreement shall be effective for 10 years ("Term") from the Effective Date. Unless sooner terminated by UCPL or USSI in accordance with the provisions described below, this Agreement will continue in force for a period of ten (10) years. Parties hereby agree that the Agreement is irrevocable and exclusive during the Term. After the expiry of the Term, the Parties shall thereafter have the option to renew for one year periods from year to year. A notice of renewal by USSI under this clause shall be given by registered letter at least six (6) weeks prior to the effective termination date.*

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xxx xxx xxx

> *8.4. Further Rights of UCPL for Termination: Within 30 (Thirty) calendar days from the date of termination or expiry of this Agreement, USSI undertakes and agrees to the following: i. USSI will change its registered company name and the new name be it current or in future, cannot includes, resemble or similar to the name "UTRACON" or the logo of UTRACON as defined in Annexure A; ii. shall notes in writing on the change of company name to all its clients; and iii. shall place a notice in a publicly National available newspapers on the change of its corporate name."*
>
> (In the Licence Agreement, "UCPL" refers to the plaintiff and "USSI" refers to defendant no.1.)

11. *Vide* letter dated 04.05.2022, defendant no.1 asserted that the licence had been extended till 31.03.2022 and sought permission to use the name "UTRACON" for a further period of five years. The plaintiff denies any such extension. The plaintiff issued a legal notice dated 29.08.2022, to which defendant no.1 replied on 16.09.2022 and 12.10.2022. The plaintiff replied on 30.01.2023 and published a trade mark caution notice on 02.02.2023.

12. Defendant no.1, in turn, issued legal notices dated 11.02.2023 and 21.02.2023 alleging that the plaintiff had violated Clause 10.2 of the Licence Agreement by incorporating an Indian subsidiary, namely Utracon Engineering Services Private Limited, in the year 2019. The plaintiff replied on 13.02.2023 and 15.03.2023. In June 2023, defendant no.1 changed its name to Ucon PT Structural System Private Limited.

13. In April 2024, defendant no.1 initiated pre-institution mediation before the Tamil Nadu State Legal Services Authority, Chennai, against the plaintiff and its Indian subsidiary, raising grievances, *inter alia*, as regards the termination of the Licence Agreement. The plaintiff participated in the said mediation without prejudice to its rights and contentions, as recorded in

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its letter dated 30.05.2024. On the same date, i.e., 30.05.2024, the plaintiff issued a cease-and-desist notice to defendant nos.1 to 7.

14. On 30.07.2024, defendant no.1 issued a notice invoking arbitration under Clause 14.1 of the Licence Agreement. By a notice dated 06.08.2024, defendant no.1 recalled its notice dated 30.07.2024 insofar as it invoked arbitration under the Licence Agreement.

15. The plaintiff instituted the present suit, and on 07.08.2024, this Court passed an *ex parte ad interim* injunction restraining defendant nos.1 to 7 and all persons acting on their behalf from using the UTRACON Marks or any deceptively similar mark, logo, domain name or trade name.

16. In the meantime, defendant no.1 filed a petition under Section 9 of the A&C Act before the High Court of Judicature at Madras, in which the plaintiff filed its counter affidavit on 10.09.2024. The said application was dismissed on 09.10.2024. *Vide* order dated 02.04.2025 in Review Application Nos. 4 to 6 of 2025, the High Court of Madras clarified that the observations in the order of dismissal would not affect or influence the arbitration.

17. Defendant no.1 then invoked the arbitration clause contained in Clause 18 of the SOS Agreement by notice dated 27.09.2024 under Section 21 of the A&C Act, and thereafter filed a petition under Section 11 of the A&C Act before the Supreme Court. The Supreme Court, *vide* order dated 30.04.2026, appointed a sole arbitrator to adjudicate the disputes arising out of the SOS Agreement. The said order was taken on record by this Court *vide* order dated 06.08.2026. According to defendant no.1, the arbitral proceedings have commenced where the plaintiff is also participating.

18. Defendant no.1, in its written statement, has denied the averments

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made in the plaint and has made extensive averments of its own. At this stage, all of them may not have any relevance, as the Court is only dealing with the application under Section 8 of the A&C Act.

II. SUBMISSIONS ON BEHALF OF THE DEFENDANT NO.1/ APPLICANT:

19. Mr. Siddharth Iyer, learned counsel for defendant submits that defendant no.1 was formerly a wholly owned subsidiary of the plaintiff. When the plaintiff took a business decision to close its India operations, defendant no.2, the executive director of defendant no.1, offered to purchase the plaintiff's stake and run the company. On 22.03.2012, the parties executed the SOS Agreement, under which defendant no.2 purchased 90% of the shares of defendant no.1 from the plaintiff. The expression "Trade Marks" is defined in the SOS Agreement, and Clause 10.6.1 thereof records the arrangement under which the plaintiff was to make the Utracon intellectual property and logo available to defendant no.1. The agreed logo is reproduced in Schedule E to the SOS Agreement.

20. On the same date, and in furtherance of the SOS Agreement, the plaintiff and defendant no.1 executed the Licence Agreement, under which defendant no.1 was permitted to use the plaintiff's trade marks against payment of royalty. Recitals A and D of the Licence Agreement expressly record that it was executed in furtherance of the SOS Agreement. Both agreements were executed in Chennai, and both contain non-compete and non-solicitation clauses which restrained the plaintiff from carrying on activities competing with defendant no.1. The transfer of shares, the permitted use of the UTRACON Marks, the payment of royalty and the

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reciprocal business restrictions, therefore, form one composite transaction.

21. Disputes arose when the plaintiff, contrary to its obligations under the agreements, commenced a competing business. Defendant no.1 invoked Section 9 of the A&C Act, and thereafter invoked arbitration under the SOS Agreement, which has culminated in the appointment of a sole arbitrator by the Supreme Court on 30.04.2026. Allowing the suit to proceed on the same underlying transaction would result in parallel adjudication, duplication of evidence, multiplicity of proceedings and a real possibility of inconsistent findings on the same contractual rights.

22. The plaintiff concealed the existence of the arbitration clauses, the pre-institution mediation in Chennai and the invocation of arbitration while seeking the *ex parte* injunction dated 07.08.2024.

23. Learned counsel further submits that the existence of the arbitration agreements is not disputed. The application was filed immediately upon receipt of summons and before filing the first statement on the substance of the dispute. The scope of examination under Section 8 is confined to a *prima facie* examination of the existence of the arbitration agreement, and non-arbitrability can be examined only in exceptional situations. Reliance is placed on ***Vidya Drolia v. Durga Trading Corporation,***[1] ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899,***[2] ***Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums,***[3] ***Magma Leasing & Finance Ltd. v. Potluri Madhavilata,***[4] ***Sundaram Finance Ltd. v. T.***

[1](2021) 2 SCC 1.
[2](2024) 6 SCC 1.
[3](2003) 6 SCC 503.
[4](2009) 10 SCC 103.

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Thankam,[5] and ***P. Anand Gajapathi Raju v. P.V.G. Raju***[6].

24. The plaintiff's claim against defendant no.1 cannot be examined independently of the SOS Agreement and the Licence Agreement. The use of the UTRACON name, logo and marks by defendant no.1 was contemplated by the SOS Agreement and regulated by the Licence Agreement. Merely describing the claims as infringement, passing off or copyright claims does not alter their contractual foundation. Reliance is placed on ***Ameet Lalchand Shah v. Rishabh Enterprises,***[7] ***Cox and Kings Ltd. v. SAP India (P) Ltd.,***[8] and ***National Skill Development Corporation v. Surya Wires (P) Ltd.***[9].

25. The plaint does not contain a single prayer relating to the grant, registration or cancellation of a trade mark. The dispute concerns the *inter se* right of the plaintiff and defendant no.1 to use the marks under the agreements executed between them and is, therefore, an action *in personam*. Reliance is placed on ***Sanjay Mehra v. Sharad Mehra,***[10] ***Hero Electric Vehicles (P) Ltd. v. Lectro E-Mobility (P) Ltd.***[11] and ***Liberty Footwear Co. v. Liberty International***[12].

26. The plaintiff cannot avoid its admitted agreement to arbitrate by impleading additional defendants and framing common or consequential reliefs against them. Section 8 permits an application by a party to the arbitration agreement or by any person claiming through or under such

[5](2015) 14 SCC 444.
[6](2000) 4 SCC 539.
[7](2018) 15 SCC 678.
[8](2024) 4 SCC 1.
[9]2026 SCC OnLine SC 1798.
[10]2023 SCC OnLine Del 2205.
[11]2021 SCC OnLine Del 1058.
[12]2023 SCC OnLine Del 83.

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party. Reliance is placed on ***Cox and Kings*** (supra) and on the decision of a Division Bench of this Court in ***Canara Bank v. Sanjeev Sharma,***[13] to contend that where the pleadings and reliefs disclose a composite transaction, the agreements must be read as a whole, and the cause of action cannot be split between the civil court and the arbitral tribunal.

27. The arbitration agreement survives the expiry or termination of the underlying contract, as held in ***Magma Leasing*** (supra). Any contention based on the expiry of the Licence Agreement, therefore, does not exhaust the arbitration agreement.

III. SUBMISSIONS ON BEHALF OF THE PLAINTIFF

28. *Per contra*, Mr. Abhishek Malhotra, learned senior counsel appearing on behalf of the plaintiff, has opposed the application submits that the suit has been filed against all the defendants collectively and not against defendant no.1 alone. There is no agreement, arbitral or otherwise, between the plaintiff and defendant nos.2 to 8. The causes of action against them are distinct and separate and cannot be said to arise from the Licence Agreement or the SOS Agreement.

29. The suit is based upon the plaintiff's statutory and common law rights in the registered and famous UTRACON Marks and its other intellectual property. The Licence Agreement and its termination merely provide the background of the relationship between the plaintiff and defendant no.1. Disputes relating to infringement and passing off affect rights *in rem* and are non-arbitrable. Infringement suits cannot be filed before any court inferior to the District Court, which shows that such a suit can only be resolved by a

[13]2025 SCC OnLine Del 4959.

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competent court.

30. Reliance is placed on ***J. Nithyanandham v. M/s M.V.S. Gramany & Sons,***[14] wherein the High Court of Madras, in a suit for infringement and passing off against a contracting party and a non-signatory, rejected the application under Section 8 and observed as under:

> *"An action for infringement and passing off is not an action in relation to subordinate rights relating to a trademark. It is an action asserting a right in rem, but the proceedings are in personam. [...] The position prevailing throughout the country today is that actions for infringement and passing off are only adjudicated by jurisdictional District Courts and High Courts and not by arbitral tribunals."*

31. The entire subject matter of the suit must be covered by the arbitration agreement before a reference can be made under Section 8. The plaintiff cannot be asked to split its cause of action. The causes of action and reliefs against defendant no.1 and the non-signatory defendants, particularly defendant no.5, which was incorporated on 24.07.2023, i.e., more than two years after the expiry of the Licence Agreement, arise out of a joint and collusive conspiracy and cannot be segregated. Reliance is placed on ***Tirupati Vancom Pvt. Ltd. v. James Glendye & Co. Pvt. Ltd.***[15].

32. The Supreme Court, while disposing of the petition under Section 11 of the A&C Act, noted that the reference before it was limited to the arbitration clause contained in Clause 18.2 of the SOS Agreement and clarified that the scope of the arbitration shall be strictly confined to the disputes arising out of the SOS Agreement. It was further directed that the said order and the arbitration proceedings would have no impact whatsoever on the present suit.

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[14]2026 SCC OnLine Mad 2281.
[15]2026 SCC OnLine Cal 1598.

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33. Clause 10.6 of the SOS Agreement merely acknowledges and preserves the pre-existing ownership of the plaintiff in its trade mark and logo. It does not create, grant or regulate any licence. The tort proceedings for infringement and passing off cannot be dragged into the arbitration clause of the SOS Agreement merely by reference to a generic preservation clause.

34. The Licence Agreement and the SOS Agreement are independent of each other. The two agreements contain mutually exclusive and conflicting arbitration clauses, one providing for arbitration under the SIAC Rules at Singapore and the other for arbitration at Chennai under the A&C Act. The Licence Agreement is strictly bilateral, whereas the SOS Agreement is a multi-party contract involving a third party. The SOS Agreement was an executed share purchase transaction, whereas the Licence Agreement was a determinable ten-year commercial licence. Neither agreement makes the other subject to it. Recital D of the Licence Agreement refers to the SOS Agreement only by way of background.

35. No invocation presently subsists under the Licence Agreement, which expired on 31.03.2021. Even on defendant no.1's plea of extension till 31.03.2022, the period of three years to invoke arbitration has expired. Any contractual claim under the Licence Agreement is, therefore, time-barred.

36. Learned senior counsel lastly submits that the parties to the suit are not identical to the signatories of either arbitration clause. Defendant nos.3 to 8 are not signatories to the SOS Agreement, and defendant nos.2 to 7 are non signatories to the Licence Agreement. All the defendants are necessary and proper parties, without whom no complete and effective decree can be passed. Defendant no.1 has selectively invoked Section 8 with reference to

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the SOS Agreement, which provides for a Chennai seat, in order to circumvent the scrutiny under Section 45 of the A&C Act in respect of the Licence Agreement, which provides for a Singapore seat.

IV. ISSUES FOR CONSIDERATION:

37. On the basis of the submissions made and arguments advanced, the following issues arise for consideration:

37.1 What is the scope of the inquiry which this Court is required to undertake while deciding an application seeking reference of the parties to arbitration?

37.2 Whether the subject matter of the suit is covered by an arbitration agreement between the parties, and if so, which agreement?

37.3 What is the effect of the order of the Supreme Court dated 30.04.2026 and of the orders passed by the High Court of Madras in the proceedings under Section 9 of the A&C Act?

37.4 Whether the dispute raised in the suit is non-arbitrable on the ground that it relates to rights *in rem*?

37.5 Whether the impleadment of defendants who are not signatories to the arbitration agreement, and the alleged inseverability of the causes of action, prevent a reference?

V. ANALYSIS:

a. Scope of inquiry at the stage of referral:

38. Section 8(1) of the A&C Act, as amended by Act 3 of 2016, reads as under:

> *"8. Power to refer parties to arbitration where there is an arbitration agreement.--(1) A judicial authority, before which an action is brought in*

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> *a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."*

39. The language of the provision is mandatory. The Supreme Court in ***P. Anand Gajapathi Raju*** (supra) held that the language of Section 8 is peremptory and that it is, therefore, obligatory for the Court to refer the parties to arbitration. The Court further observed that once the parties are so referred, nothing remains to be decided in the original action. This was reiterated in ***Hindustan Petroleum Corporation Ltd***. (supra), wherein it was held that it is mandatory for the Civil Court to refer the dispute to an arbitrator, and that the courts below ought not to have proceeded to examine the applicability of the arbitration clause which question will have to be raised before the concerned Arbitral Tribunal. In ***Magma Leasing*** (supra), the Supreme Court described Section 8 as being in the form of legislative command and held that no option is left to the court once its conditions are met.

40. The Constitution Bench of seven Judges in ***SBP & Co. v. Patel Engineering Ltd.,***[16] noticed the complementary nature of Sections 8 and 11 of the A&C Act. The said observations have been extracted by the Supreme Court in ***Vidya Drolia*** (supra) as under:

> *"16. We may at this stage notice the complementary nature of Sections 8 and 11. Where there is an arbitration agreement between the parties and one of the parties, ignoring it, files an action before a judicial authority and the other party raises the objection that there is an arbitration clause, the judicial authority has to consider that objection and if the objection is found sustainable to refer the parties to arbitration. The expression used*

[16](2005) 8 SCC 618.

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> *in this section is "shall" and this Court in P. Anand Gajapathi Raju v. P.V.G. Raju and in Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums has held that the judicial authority is bound to refer the matter to arbitration once the existence of a valid arbitration clause is established. Thus, the judicial authority is entitled to, has to and is bound to decide the jurisdictional issue raised before it, before making or declining to make a reference."*

41. Relying upon the aforesaid, the Supreme Court in ***Vidya Drolia*** (supra) held that the scope of the Court's jurisdiction under Sections 8 and 11 of the A&C Act is similar, and that in an application under Section 8, the court has the advantage of the specific details pleaded in the suit. The relevant observations read as under:

> *"We are clearly bound by the dictum of the Constitutional Bench judgment in Patel Engineering Ltd. that the scope and ambit of court's jurisdiction under Section 8 or 11 of the Arbitration Act is similar. An application under Section 11 of the Arbitration Act need not set out in detail the disputes or the claims and may briefly refer to the subject matter or broad contours of the dispute. However, where judicial proceedings are initiated and pending, specific details of the claims and disputes are normally pleaded and, therefore, the court or the judicial authority has the advantage of these details."*

42. The approach which a civil court must adopt on an application under Section 8 was explained in ***A. Ayyasamy v. A. Paramasivam,***[17], as noted in ***Vidya Drolia*** (supra), in the following words:

> *"13. Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches."*

43. In ***Vidya Drolia*** (supra), the Supreme Court also emphasised that the language of Sections 8 and 11 is peremptory, and that the arbitration

[17](2016) 10 SCC 386.

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agreements must be enforced:

> *"71. ... In terms of the mandate of Section 89 of the Civil Procedure Code and the object and purpose behind the Arbitration Act and the mandatory language of Sections 8 and 11, the mutually agreed arbitration clauses must be enforced. The language of Sections 8 and 11 of the Arbitration Act are peremptory in nature."*

44. The Supreme Court in ***Vidya Drolia*** (supra) further held that the review by the referral court is a *prima facie* review, meant to weed out manifestly non-arbitrable and non-existent claims, and that the court is not to conduct a mini-trial. The Court summed up the approach as "*when in doubt, do refer*". The Constitution Bench of seven Judges in ***In Re: Interplay*** (supra) has thereafter reiterated that the referral court is to confine itself to the *prima facie* existence of the arbitration agreement, and that the arbitral tribunal, by virtue of Section 16 of the A&C Act, is the preferred first authority to determine questions of its own jurisdiction. The same principle has been followed in ***SBI General Insurance Co. Ltd. v. Krish Spinning***[18].

45. Recently, in ***K. Mangayarkarasi v. N.J. Sundaresan,***[19] which also arose out of a commercial suit for injunction against the use of trade marks, the Supreme Court reiterated the nature of the obligation under Section 8 in the following words:

> *"23. ... Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration."*

[18](2024) 12 SCC 1.
[19](2025) 8 SCC 299 : 2025 INSC 687.

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46. Therefore, the inquiry before this Court is a limited one. The Court is to see ***(a)*** whether the application has been filed by a party to the arbitration agreement or a person claiming through or under it, before the submission of the first statement on the substance of the dispute; ***(b)*** whether, *prima facie*, a valid arbitration agreement exists; and ***(c)*** whether the subject matter of the suit is the subject of that arbitration agreement and is not ex facie non-arbitrable.

b. Whether the subject matter of the suit is covered by an arbitration agreement?

47. The plaintiff describes defendant no.1 as its ex-licensee. The controversy, is the continued use of the "UTRACON" Marks despite the termination of the License Agreement. The plaintiff has relied upon Clause 8.4 of the Licence Agreement, which obliges defendant no.1 to change its corporate name, and upon Clauses 3.5 and 3.6 thereof, which oblige defendant no.1 and its affiliates, associates and subsidiaries to cease use of the marks after the term and not to claim any title to them.

48. Defendant no.1, on the other hand, claims that the licence stood extended, that the plaintiff itself breached the non-compete covenant under the agreements, and that its right to use the UTRACON name flowed from the commercial arrangement under which the plaintiff exited its Indian business. Whether defendant no.1 had any surviving right to use the marks, whether the licence was extended, what obligations survived the term, and whether either side breached the agreements are, therefore, the core questions that require adjudication.

49. The Licence Agreement expressly records that the same was executed

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in furtherance of the SOS Agreement. Recitals A to D of the Licence Agreement read as under:

> *"RECITALS*
>
> *A. WHEREAS UCPL, Utracon Management Pte Ltd ("UMPL") Mr. Muthukumaraswamy Kamalakannan ("KK") and USSI have entered in to Memorandum of Understanding ("MOU") dated 1st day of October 2011 and a Sale Of Shares Agreement whereby UCPL and UMPL agreed to transfer its 14,00,000 (Fourteen Lakhs) and 2,00,000 (Two Lakhs) equity shares of USSI respectively to KK for the sum of INR 60,000,000 and INR 10,000,000 respectively.*
>
> *B. WHEREAS, UCPL either directly or through one or more of its Affiliates ("UCPL Group"), has, during the course of its activities, acquired worldwide recognition of the name "Utracon" and its corporate logo (as defined in Annexure A) and certain unique skills and expertise in practicing and implementing engineering ideas to support consultants and contractors in construction projects. Further, UCPL with in-depth knowledge of both design and practical construction, provides the value to projects from the conceptual stage to the construction stage of structures;*
>
> *C. WHEREAS, USSI acknowledges and recognizes UCPL's Intellectual Property Rights (as defined herein after) and Trademarks "Utracon" including its corporate logo (as defined in Annexure A) and USSI hereby agrees to avail the Intellectual Property Rights including but not limited to the Trademarks from UCPL with the commitment that the License Fees shall be paid in accordance with the provisions of this Agreement;*
>
> *D. WHEREAS, UCPL acknowledges and recognizes that USSI in furtherance of the Sale of Shares Agreement is now entering into this License Agreement for the Term specified herein in relation to all the Intellectual Property Rights, present and future, of UCPL used/to be used by USSI, including but not limited to such rights in UPS Post tensioning systems, Trade-name and corporate logo."*

50. Recital D reinforces that the Licence Agreement was executed in furtherance of the SOS Agreement. The Licence Agreement is essentially in relation to all the intellectual property rights, present and future, of the plaintiff used or to be used by defendant no.1, including such rights in the UPS post-tensioning systems, the trade name and the corporate logo.

51. Clause 14 of the Licence Agreement pertains to the applicable law

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and the mechanism for resolution of disputes. It provides that, in the event the parties are unable to resolve a dispute through the stated procedure, the dispute shall be submitted to final and binding arbitration in accordance with the scheme agreed therein. For the sake of clarity, Clause 14 is extracted in its entirety as under:

> *"14. APPLICABLE LAW AND MEDIATION*
>
> *14.1 USSI and UCPL agree to negotiate in good faith to resolve any dispute between them regarding this Agreement. If any dispute is not resolved through discussions, then UCPL or USSI can issue written notice requesting commencement of reconciliation. Within 30 (thirty) days from such notice, UCPL shall appoint 1 (one) representative and USSI shall nominate the other representative. These representatives shall, within 30 (thirty) days of a written request by either UCPL or USSI to call such a meeting, meet in person and shall attempt in good faith to resolve the dispute ("Reconciliation Meeting"). UCPL or USSI shall, if appropriate, also consider the appointment of a mediator to assist in the resolution of any dispute. UCPL or USSI shall not commence legal or arbitration proceedings unless 30 (Thirty) Business days' notice has been given to the other. In the event that UCPL or USSI are unable to resolve a dispute through the foregoing procedures, the dispute shall be submitted to final and binding arbitration, in accordance with the following:*
>
> *a. Such arbitration shall be in accordance with the Singapore International Arbitration Centre Rules for the time being in force which rules are deemed to be incorporated by reference to this Section. All proceedings of such arbitration shall be in the English language. The venue of arbitration shall be Singapore.*
>
> *b. The arbitration tribunal shall consist of 1 (One) member ("Arbitrator") who shall be appointed by USSI and UCPL mutually, in accordance with Singapore International Arbitration Rules Arbitration Laws. In the event of failure of the appointment of the Arbitrator, USSI and UCPL hereby agree to have the Arbitrator nominated by the Singapore International Arbitration Centre.*
>
> *c. Arbitration awards rendered shall be final and binding and shall not be subject to any form of appeal.*
>
> *d. UCPL and USSI shall use their best efforts to effect the prompt execution of any such awards and shall render whatever assistance as may be necessary to this end, including, if necessary, compliance with the enforcement procedures stipulated in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.*

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e. In the event any dispute occurs and when any dispute is under arbitration, except for the matters under dispute, USSI and UCPL shall continue to exercise their other respective rights and fulfill their other respective obligations under this Agreement.

14.2 This Agreement will be governed by the laws of the India, without regard to the conflict of laws provisions thereof."

52. It is, thus, noted that there exists a binding arbitration clause between the plaintiff and defendant no.1, which covers any dispute between them regarding this agreement. A dispute as to whether an ex-licensee may continue to use the licensed marks after the term, and whether it has complied with the post-term obligations under Clauses 3.5, 3.6 and 8.4, is plainly a dispute regarding the Licence Agreement.

53. The SOS Agreement dated 22.03.2012 also contains a similar clause, i.e., Clause 18 thereof, which is extracted as under:

"18. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by, enforced and construed in accordance with the laws of India and the courts at Chennai shall have exclusive jurisdiction over any disputes between the parties with respect to the subject matter hereof.

18.1 The Parties agree that only the Courts at Chennai shall have jurisdiction to entertain any proceedings related to this Agreement whether during pendency, or after expiry/termination. No other Court shall have jurisdiction to entertain any proceedings related to this Agreement.

18.2 Any Dispute which is not settled after an attempt by the parties to the Dispute at amicable negotiations shall be resolved by final and binding arbitration held in Chennai, India in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time (the "Arbitration Act"). The language of such arbitration proceedings shall be English.

18.3 The Disputes shall be referred to a sole arbitrator if the Parties agree upon a sole arbitrator and failing such agreement, to three arbitrators, one to be appointed by each party and the third to be jointed appointed by the two arbitrators appointed by the Parties."

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54. The plaintiff is correct in contending that the two clauses are different. One provides for arbitration under the SIAC Rules at Singapore, and the other for arbitration at Chennai under the A&C Act. However, the difference does not advance the plaintiff's case. The question under Section 8 is not whether the two clauses can be merged, but whether the matter brought before the Court is the subject of an arbitration agreement between the parties. In the opinion of this Court, the subject matter of the present suit is squarely covered by Clause 14 of the Licence Agreement, which binds the plaintiff and defendant no.1. Whether, and to what extent, the disputes under the two agreements overlap is a matter for the arbitral tribunal(s) to consider.

55. The plaintiff has contended that defendant no.1 has sought reference only under Clause 18 of the SOS Agreement. A perusal of the application, however, shows that defendant no.1 has specifically pleaded both the Licence Agreement and the SOS Agreement, has extracted Clause 14 of the Licence Agreement as well as Clause 18 of the SOS Agreement, and has asserted that both agreements envisage the resolution of disputes by arbitration. The written submissions of defendant no.1 pray for reference of the parties in accordance with the arbitration agreements. The application also contains a general prayer for such further orders as the Court may deem fit. The plaintiff has replied to the application on both clauses and has addressed the Court on Clause 14 at length. It is, therefore, not a case where the plaintiff has been taken by surprise. The duty of the Court under Section 8 is to see whether the matter before it is the subject of an arbitration agreement, and it is not confined to the particular clause on which the applicant lays greater emphasis. Nor does the conduct of defendant no.1 in recalling its notice dated 30.07.2024 efface the arbitration agreement

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contained in Clause 14 of the Licence Agreement.

56. The recall of a notice of invocation is not a waiver or abandonment of the arbitration agreement itself. More importantly, the arbitration agreement binds the plaintiff as much as defendant no.1. The plaintiff, which is a party to Clause 14, has chosen to bring the very dispute that clause covers before this Court. Therefore, the foundation of the plaintiff's case rests on the Licence Agreement; it would not permit the plaintiff to rely on the Licence Agreement to found its cause of action, and at the same time to avoid the dispute resolution clause in the very same agreement, i.e., selective reliance is impermissible.

57. Similarly, the expiry of the Licence Agreement by efflux of time does not render the arbitration clause inoperative. In ***Magma Leasing*** (supra), the Supreme Court held that upon termination of the contract, the arbitration clause does not get perished nor rendered inoperative, and that it survives for resolution of disputes arising out of the contract. The plaintiff's own claim is based on obligations which, according to it, operate after the term of the Licence Agreement.

58. The plaintiff has then argued that any claim under the Licence Agreement is time-barred and is, therefore, deadwood. The Court is not persuaded to accept the said contention at this stage. Defendant no.1 has set up a plea of extension of the licence till 31.03.2022. The plaintiff itself has pleaded that the cause of action is recurring and continuing and that it continues till the defendants are restrained. The claims of the plaintiff, which relate to continuing use of the marks after the term, are not *ex facie* barred. Questions of limitation, which turn on disputed facts, are pre-eminently for the arbitral tribunal. The referral court may decline a reference only where

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the claim is manifestly and *ex facie* time-barred, which is not the position here.

c. Effect of order dated 30.04.2026 of the Supreme Court and of the proceedings under Section 9

59. The Supreme Court, *vide* order dated 30.04.2026, has appointed the sole arbitrator to adjudicate the disputes arising out of the SOS Agreement, and the arbitration proceedings are pending. According to the plaintiff, the Supreme Court noted that the reference before it was limited to Clause 18.2 of the SOS Agreement, clarified that the scope of the arbitration shall be strictly confined to the disputes arising out of the SOS Agreement, and further directed that the said order and the arbitration proceedings shall have no impact whatsoever on the present suit.

60. Though the Supreme Court has clarified that the appointment of the arbitrator would be without prejudice to the present suit, the said clarification cuts both ways. It means that the order of the Supreme Court cannot be read as a determination that the present suit must go to arbitration. Equally, it cannot be read as a determination that the present suit is not referable to arbitration. The Supreme Court was dealing with a petition under Section 11 of the A&C Act with reference to the SOS Agreement alone.

61. The question as to whether the subject matter of the present suit is covered by the arbitration agreement contained in the Licence Agreement was neither before the Supreme Court nor decided by it. Therefore, the present application is being taken up without being influenced by the appointment of the arbitrator by the Supreme Court *qua* the SOS

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62. For the same reason, the dismissal of the petition under Section 9 of the A&C Act by the High Court of Madras on 09.10.2024 has no bearing on the present application. The said order was concerned with interim protection, and the High Court of Madras has itself clarified in the review order dated 02.04.2025 that the observations made therein would not affect or influence the arbitration.

63. This Court has, therefore, independently examined the Licence Agreement dated 22.03.2012 and finds that there exists an independent arbitration clause, i.e., Clause 14, which binds the parties to the agreement and which covers the subject matter of the suit.

d. Section 8 or Section 45 of the A&C Act

64. The plaintiff has contended that defendant no.1 has invoked Section 8 to avoid the scrutiny of Section 45 of the A&C Act in respect of the Licence Agreement. Clause 14.1 of the Licence Agreement provides for arbitration under the SIAC Rules with Singapore as the venue, and the plaintiff is a company incorporated in Singapore. If the arbitration contemplated by Clause 14.1 is one seated outside India, the reference would, strictly speaking, fall under Section 45 in Part II of the A&C Act, since Part I applies where the place of arbitration is in India, and Section 8 is not one of the provisions extended to foreign-seated arbitrations by the proviso to Section 2(2).

65. Section 45 of the A&C Act reads as under:

> *"45. Power of judicial authority to refer parties to arbitration.-- Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action*

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> *in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it prima facie finds that the said agreement is null and void, inoperative or incapable of being performed."*

66. Both provisions use the expression "shall" and mandate reference, at the request of a party or any person claiming through or under it, subject only to a *prima facie* examination of the arbitration agreement. Section 45 is, more stringent in its mandate, as it operates notwithstanding anything contained in Part I or in the CPC. The plaintiff has not been able to point out how the arbitration agreement in Clause 14 is, even *prima facie*, null and void, inoperative or incapable of being performed. The objections of the plaintiff regarding expiry of the licence, limitation and the conduct of defendant no.1 do not go to the validity of the arbitration agreement.

67. It is well settled that the mere mention of a wrong provision in an application does not denude the court of a power which it otherwise possesses[20]. Therefore, whether the reference is made under Section 8 or under Section 45 of the A&C Act, the outcome would remain the same. The question as to the juridical seat of the arbitration contemplated by Clause 14.1, and the rules and law that would govern it, are matters which the arbitral tribunal constituted in terms of Clause 14.1 is competent to decide. This Court does not express any opinion thereon. The contention of the plaintiff that defendant no.1 has sought to circumvent Section 45 is, therefore, of no consequence.

[20] *N. Mani v. Sangeetha Theatres*, (2004) 12 SCC 278.

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e. Rights in rem v. Rights in personam

68. The principal objection of the plaintiff is that a suit for infringement of trade mark and copyright and for passing off asserts rights *in rem*, and is therefore not arbitrable. The Court has to examine the aspect of non-arbitrability of the dispute only to a limited extent, namely, whether the dispute is ex facie non-arbitrable, as in the exceptional situations where the statute has conferred exclusive jurisdiction on a court or a public forum and arbitration is not possible. Such position is affirmed by the Supreme Court in ***Vidya Drolia*** (supra), ***In Re: Interplay*** (supra), ***Hindustan Petroleum Corporation Ltd.*** (supra), ***Magma Leasing*** (supra), ***Sundaram Finance Ltd***. (supra) and ***P. Anand Gajapathi Raju*** (supra).

69. The distinction between rights *in rem* and rights *in personam* was explained by the Supreme Court in ***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.,***[21] as under

> *"35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. ...*
>
> *xxx xxx xxx*
>
> *37. ... A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers*

[21](2011) 5 SCC 532.

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to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself.

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable."

70. The said distinction was further elaborated by the Supreme Court in ***Vidya Drolia*** (supra). The Court cautioned that the labels of rights *in rem* and rights *in personam* may not by themselves be decisive, because a right *in rem* often results in an enforceable right *in personam*. Significantly, the Supreme Court held in terms that a claim for infringement of copyright against a particular person is arbitrable. The relevant paragraph reads as under:

"48. A judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment "settles the destiny of the res itself" and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence. By contrast, a judgment in personam, "although it may concern a res, merely determines the rights of the litigants inter se to the res". Distinction between judgments in rem and judgments in personam turns on their power as res judicata, i.e. judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute. Use of expressions "rights in rem" and "rights in personam" may not be correct for determining non-arbitrability because of the inter-play between rights in rem and rights in personam. Many a times, a right in rem results in an enforceable right in personam. Booz Allen & Hamilton Inc. refers to the statement by Mustill and Boyd that the subordinate rights in personam derived from rights in rem can be ruled upon by the arbitrators, which is apposite. Therefore, a claim for infringement of copyright against a particular person is arbitrable, though in some

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manner the arbitrator would examine the right to copyright, a right in rem. Arbitration by necessary implication excludes actions in rem."

71. The Supreme Court in ***Vidya Drolia*** (supra) then propounded the following fourfold test for determining when the subject matter of a dispute is not arbitrable:

> *"76.1. ... (1) when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.*
>
> *(2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;*
>
> *(3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and*
>
> *(4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).*
>
> *These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject matter is non-arbitrable. Only when the answer is affirmative that the subject matter of the dispute would be non-arbitrable."*

72. While applying the aforesaid test, the Supreme Court observed as under:

> *"77. ... Similarly, grant and issue of patents and registration of trademarks are exclusive matters falling within the sovereign or government functions and have erga omnes effect. Such grants confer monopoly rights. They are non-arbitrable. ..."*

73. It is, thus, the grant and registration of a trade mark, being a sovereign function with *erga omnes* effect, which is non-arbitrable. Any doubt as to whether the aforesaid observation excludes all trade mark disputes from arbitration has been set at rest by the Supreme Court **in *K. Mangayarkarasi*** (supra). In that case, a suit had been filed seeking a

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permanent injunction against the use of certain trade marks, and the defendant had sought reference to arbitration on the basis of arbitration clauses contained in the trade mark assignment deeds. The Commercial Court allowed the application under Section 8, the High Court affirmed the same, and the Supreme Court declined to interfere, observing as under:

> *"13. ... the grant and issue of patents and registration of trademarks are matters that fall within the sovereign or government functions and have erga omnes effect. ... Prima facie, the nature of disputes sought to be raised by the petitioners cannot be considered as actions in rem.*
>
> *14. The assumption that all matters relating to trademarks are outside the scope of arbitration is plainly erroneous. ... Undisputedly, these disputes, although, involving the right to use trademarks, are arbitrable as they relate to rights and obligations inter se the parties to a licence agreement."*

74. This Court, in ***Liberty Footwear Co.*** (supra), was dealing with a suit for infringement and passing off filed by a partnership firm against the sole proprietorship of one of its partners. The plaintiff therein had contended that the suit, having been brought under the Trade Marks Act, 1999, could not be referred to arbitration, and that under Section 134 of the said Act, a suit for infringement cannot be instituted before a court inferior to a District Court.

75. Rejecting the said contention, this Court held that Section 134 "*merely provides that such claim cannot be adjudicated upon by a Court inferior to the Court of a District Judge*" and that the Trade Marks Act "*does not create any specific forum as far as suits for infringement of a trade mark are concerned*". It was held that the suit concerned the enforceability of *rights in personam*, flowing out of a *right in rem*, against someone who claims (whether rightly or wrongly) a right to use the trademark under or through the registered proprietor. The Court further held that *"The plaintiff cannot breach the arbitration agreement merely by*

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framing the suit as one under the Trade Marks Act". The application under Section 8 was, accordingly, allowed, the parties were referred to arbitration in accordance with the arbitration clause contained in the partnership deed, and the suit was disposed of.

76. Similarly, in ***Hero Electric Vehicles (P) Ltd***. (supra), this Court was dealing with a suit seeking injunction against the use of the trade mark "HERO", where the rights of the parties flowed from a family settlement agreement and a trade mark and name agreement. This Court held that the controversy, in the present case, does not relate to the grant or registration of trademarks, that the right asserted by the plaintiffs is not a right that emanates from the Trade Marks Act, and that the right asserted was clearly against the F-4 group, and the F-4 group alone, and not against the whole world. The parties were, accordingly, referred to arbitration.

77. The same view has been followed by this Court in ***Golden Tobie Pvt. Ltd. v. Golden Tobacco Ltd***.,[22] and in ***Sanjay Mehra*** (supra), wherein an application under Section 8 was allowed in a suit alleging infringement of trade marks and copyright, where the rights asserted flowed from a family settlement and a sale deed executed in furtherance thereof. The High Court of Bombay, in ***Eros International Media Ltd. v. Telemax Links India Pvt. Ltd.,***[23] had taken a similar view, holding that actions for infringement and passing off between identified parties are actions *in personam*.

78. The plaintiff has also argued that the remedies under the Trade Marks Act, 1999 and the Copyright Act, 1957 are statutory and must be adjudicated by a competent court. In this regard, the observations of the Supreme Court

[22]2021 SCC OnLine Del 3029.
[23]2016 SCC OnLine Bom 2179.

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in ***Vidya Drolia*** (supra) on the effect of mandatory law are apposite:

> *"68. ... Application of mandatory law to the merits of the case do not imply that the right to arbitrate is taken away. Mandatory law may require a particular substantive rule to be applied, but this would not preclude arbitration. Implied non-arbitrability requires prohibition against waiver of jurisdiction, which happens when a statute gives special rights or obligations and creates or stipulates an exclusive forum for adjudication and enforcement. An arbitrator, like the court, is equally bound by the public policy behind the statute while examining the claim on merits. ... There is a general presumption in favour of arbitrability, which is not excluded simply because the dispute is permeated by applicability of mandatory law. ..."*

79. The Supreme Court in ***A. Ayyasamy*** (supra), as noted in ***Vidya Drolia*** (supra), also held as under:

> *"43. Hence, the allegations of criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement."*

80. Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957 merely specify the Court, within the hierarchy of civil Courts, before which a suit for infringement is to be instituted. They do not create a special right or a special forum with powers beyond those of an ordinary civil court, and they do not prohibit the parties from agreeing to resolve their disputes by arbitration. They do not, therefore, satisfy the fourth test in ***Vidya Drolia*** (supra).

f. International perspective on arbitrability of intellectual property disputes

81. The position in India is consistent with the approach adopted in other jurisdictions. The English commentary of Mustill and Boyd, which was noticed in ***Booz Allen*** (supra) and approved in ***Vidya Drolia*** (supra), states

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the principle in the following words, as extracted by the Supreme Court:

> *"... Mustill and Boyd in their 2001 Companion Volume have observed that axiomatically rights that are valid as against the whole world cannot be a subject of private arbitration, although subordinate rights in personam derived from such rights may be ruled upon by the arbitrators. Therefore, rights under a patent license may be arbitrated but the validity of the underlying patent may not be arbitrable. Similarly, an arbitrator who derives its power from a private agreement between A and B, plainly has no jurisdiction to bind a third person by a decision on whether the patent is valid or not, for no one else has mandated him to make the decision and the decision which attempts to do so would be useless."*

82. The Supreme Court of Canada in ***Desputeaux v. Éditions Chouette (1987) Inc.***,[24] was dealing with a dispute regarding ownership of copyright in a character in a series of children books, which arose under a contract between the author and the publisher. The Court of Appeal of Quebec had held that the Federal Court and the provincial courts had exclusive jurisdiction under Section 37 of the Canadian Copyright Act, and that an arbitrator could not rule on copyright. Reversing the said view, the Supreme Court of Canada held that Section 37 only identifies which court in the judicial system would hear a copyright matter and does not exclude arbitration, being sufficiently general to include arbitration procedures. It further held that the arbitral award is not binding on third parties who were not involved in the proceeding, and that the possible effect of a decision on third parties was not a ground to exclude arbitration of copyright disputes. The reasoning is in pari materia with Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957.

83. In the United States, 35 U.S.C. § 294(a) expressly permits a contract involving a patent or any right under a patent to contain a provision

[24]2003 SCC 17 : [2003] 1 SCR 178.

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requiring arbitration of any dispute relating to patent validity or infringement arising under the contract. Section 294(c) provides that an award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person.

84. Singapore, being the venue chosen by the parties in Clause 14.1 of the Licence Agreement, has gone a step further. By the Intellectual Property (Dispute Resolution) Act, 2019, Part 2A was introduced in the International Arbitration Act, 1994. Section 26B(1) thereof declares that the subject matter of an IPR dispute is capable of settlement by arbitration as between the parties to the dispute. Section 26B(3) clarifies that such a dispute is not incapable of settlement by arbitration only because a law of Singapore or elsewhere confers jurisdiction on a specified court or entity to decide the dispute and does not mention arbitration.

85. The common thread running through these authorities is that the infirmity of arbitration lies only in its inability to bind persons who are not parties to it. An arbitral tribunal cannot grant, register, rectify or invalidate a trade mark so as to bind the world at large. But where the dispute is between identified parties, regarding the right of one of them to use the mark of the other, the award operates *in personam*, and there is no impediment to its adjudication by the arbitral tribunal.

86. The plaint, read as a whole, does not seek the grant, registration, rectification or cancellation of any trade mark. The plaintiff's registration is not under challenge. The aspect of the defendants allegedly using the plaintiff's trade mark beyond the expiry of the Licence Agreement is essentially an issue between identified parties, and there is no impediment in deciding the said issue by an arbitrator. The reliefs of injunction, delivery

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up, damages, rendition of accounts and transfer of the domain name are all directed against the defendants, and the decree, if any, would bind only them. The claim is founded upon the contractual arrangement between the parties. The dispute is, thus, essentially *in personam* and does not relate to rights *in rem*.

87. The plaintiff has also sought a mandatory injunction directing the defendants to withdraw their trade mark applications (prayer (e)), and a declaration that the UTRACON mark is a well-known trade mark in India (prayer (k)). Prayer (e) is again a relief directed against the defendants personally and does not require any adjudication by the Registrar of Trade Marks. As regards prayer (k), a declaration of well-known status is not the foundation of the suit, and it is not a relief without which the dispute between the parties cannot be resolved.

88. The core of the suit is the post-term use of the marks by an ex-licensee and its affiliates. A party cannot avoid an arbitration agreement merely by adding a relief which, by itself, may not be arbitrable. As held in ***Liberty Footwear*** (supra), the plaintiff cannot breach the arbitration agreement merely by the manner in which it frames the suit. The plaintiff remains at liberty to seek a determination of the well-known status of its mark before the Registrar of Trade Marks in accordance with Rule 124 of the Trade Marks Rules, 2017, and nothing in this judgment shall come in the way of the same.

89. Insofar as the decision of the High Court of Madras in ***J. Nithyanandham*** (supra) is concerned, the observations relied upon by the plaintiff themselves recognise that, though an infringement action asserts a right *in rem*, the proceedings are *in personam*. In any case, this Court is

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bound by the decisions of the Supreme Court in ***Vidya Drolia*** (supra) and ***K. Mangayarkarasi*** (supra), and is in agreement with the consistent view of this Court in ***Hero Electric*** (supra) and ***Liberty Footwear*** (supra). The said decision, therefore, does not come to the aid of the plaintiff.

90. The last objection of the plaintiff is that defendant nos.2 to 8 are not parties to the Licence Agreement, that the causes of action against them are distinct, and that the suit cannot be bifurcated. Reliance is placed on ***Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya,***[25] wherein the Supreme Court held that "*The words 'a matter' indicates entire subject matter of the suit should be subject to arbitration agreement*" and that "*bifurcation of the subject matter of an action brought before a judicial authority is not allowed*".

91. The Supreme Court in ***Vidya Drolia*** (supra) explained the rationale behind the decision in ***Sukanya Holdings*** (supra) in the following words:

> *"28. ... Bifurcation in such cases would result in a suit being divided into two parts, one being decided by the arbitral tribunal, and the other by the court or judicial authorities. This would defeat the entire purpose and inevitably delay the proceedings and increase cost of litigation, cause harassment and on occasions give rise to conflicting judgments and orders by two different fora. ..."*

92. However, the Supreme Court in ***Vidya Drolia*** (supra) also clarified that the said decision has to be read along with the subsequent decision in ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.,***[26] and in light of the 2015 amendment:

> *"31. ... Further, the decision in Sukanya Holdings (P) Ltd. has to be read along with subsequent judgment of this Court in Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and Others. The effect of amendment by Act 3 of 2016 with retrospective effect from*

[25](2003) 5 SCC 531.
[26](2013) 1 SCC 641.

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20.10.2015 on Sections 8 and 11 of the Arbitration Act with the stipulation that the amendments apply notwithstanding any earlier judgment has been examined by us under the heading Who Decides Non-arbitrability."

93. After the amendment, Section 8(1) expressly enables not only a party to the arbitration agreement, but also any person claiming through or under him, to seek reference, and it operates notwithstanding any judgment, decree or order of any court. In ***Ameet Lalchand Shah*** (supra), the Supreme Court was dealing with four inter-connected agreements for a single solar power project, not all of which contained an arbitration clause and not all of which were signed by all the parties. The Supreme Court held that all the four agreements are interconnected, that the dispute could be resolved only by referring all the four agreements and the parties thereon to arbitration, and that in such a case, all the parties can be covered by the arbitration clause in the main agreement. The Court noticed that Section 8(1) has been clarified/amplified to include persons claiming through or under such a party, and that the amendments are expressed to apply notwithstanding any prior judicial precedent.

94. The Constitution Bench in ***Cox and Kings*** (supra) has held that a non-signatory may be bound by an arbitration agreement where its conduct, and the composite nature of the transaction, show a mutual intention of the parties to bind it. The Supreme Court further held that in such cases, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement. In ***K. Mangayarkarasi*** (supra), the Supreme Court also found that the arbitration clauses contained in the trade mark assignment deeds bound a respondent who was not a signatory to those deeds.

95. In the instant case, the plaintiff itself has pleaded that defendant nos.1

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to 7 function as a "single economic unit", that defendant nos.5, 6 and 7 are affiliates or sister concerns of defendant no.1, and that defendant nos.2 to 4 are directors of defendant no.1 who, in collusion, incorporated defendant nos.5 to 7. According to the plaintiff's, defendant no.1 has also stated in its written statement that defendant nos.1, 6 and 7 form part of the same economic unit. The plaintiff's case against defendant nos.2 to 7 is that they are continuing, through and in collusion with defendant no.1, the very use which the Licence Agreement prohibits after its term.

96. Clauses 3.5 and 3.6 of the Licence Agreement, on which the plaintiff relies, themselves cast obligations upon the affiliates, associates, successors, subsidiaries of defendant no.1. The rights, if any, which defendant nos.2 to 7 may claim to use the "UTRACON" mark are, on the plaintiff's own showing, derived from defendant no.1. They are, therefore, *prima facie* persons claiming through or under defendant no.1. Defendant no.8 is only a *proforma* party, against whom no independent cause of action is pleaded, and the relief sought against it is merely consequential.

97. It is, thus, clear that the dispute against all the defendants arises out of the same alleged use of the "UTRACON" marks and the same contractual arrangement. The case of the plaintiff that the causes of action against all the defendants are so interconnected that they cannot be segregated, in fact, supports the conclusion that the entire subject matter of the suit should go to arbitration. The principle in ***Sukanya Holdings*** (supra), and the decision in ***Tirupati Vancom Pvt. Ltd.*** (supra) relied upon by the plaintiff, are aimed at avoiding the bifurcation of a suit between two fora. That concern does not arise where the entire subject matter of the suit is referred to arbitration. A plaintiff which is bound by an arbitration agreement cannot be permitted to

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defeat the same by impleading the affiliates and directors of the other contracting party and claiming common or consequential reliefs against them. Whether defendant nos.2 to 7 are ultimately bound by the arbitration agreement is a matter which the arbitral tribunal shall decide, as held in ***Cox and Kings*** (supra).

98. In view of the aforesaid discussion, this Court is of the considered opinion that;

98.1 The existence of the arbitration agreement contained in Clause 14 of the Licence Agreement dated 22.03.2012 between the plaintiff and defendant no.1 is not in dispute, and the plaintiff has not been able to show that it is, even *prima facie*, invalid, inoperative or incapable of being performed.

98.2 The suit has arisen out of the Licence Agreement, which was executed in furtherance of the SOS Agreement, and the subject matter of the suit is the subject of the arbitration agreement contained in Clause 14 thereof.

98.3 The dispute raised in the suit relates to subordinate rights *in personam* arising between identified parties and is not ex facie non-arbitrable.

98.4 The order of the Supreme Court dated 30.04.2026 and the orders passed in the proceedings under Section 9 of the A&C Act do not preclude the present reference.

VI. DIRECTIONS:

99. I.A. 41705/2024 is allowed.

100. The parties are referred to arbitration in accordance with Clause 14 of the Licence Agreement dated 22.03.2012.

101. It is clarified that nothing stated hereinabove shall be construed as an

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expression of opinion on the merits of the case. The observations made in this judgment are only *prima facie* and are confined to the decision of the present application.

102. The application stands disposed of in the aforesaid terms.

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103. In view of the order passed in I.A. 41705/2024, the present suit, along with all pending applications, stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 28, 2026
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