

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF DECEMBER, 2025**

**PRESENT**

**THE HON'BLE MR. JUSTICE JAYANT BANERJI**

**AND**

**THE HON'BLE MR. JUSTICE UMESH M ADIGA**

**WRIT PETITION NO. 36101 OF 2024 (GM-RES)**

**BETWEEN:**

MANTRI DEVELOPERS PVT LTD,  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956, HAVING ITS  
REGISTERED OFFICE AT, C-5, RICH HOMES,  
NO.5/1, RICHMOND ROAD, BANGALORE -560 025,  
REP. BY ITS DIRECTOR, MR.MOHAN KUMAR S.J

...PETITIONER

(BY SRI.BASAVARAJ S., SENIOR COUNSEL FOR  
SMT.JAITHRA J NARAYAN, ADVOCATE)

**AND:**

1. GOKULAM SHELTERS PRIVATE LIMITED,  
A COMPANY EXISTING UNDER  
THE COMPANIES ACT, 2013,
2. KRISHNA LILA PARK FOUNDATION,  
A REGISTERED TRUST,
3. ISKCON CHARITIES,  
A REGISTERED TRUST,
4. INDIAN HERITAGE FOUNDATION,  
A REGISTERED TRUST,

RESPONDENT Nos.1 TO 4 HAVING OFFICE AT 8<sup>TH</sup>  
MILE,DODDAKALLASANDRA POST, KANAKAPURA  
MAIN ROAD, BENGALURU-560 062.  
REP. BY ITS AUTHORISED REPRESENTATIVE,  
SRI.SHAMA SUNDER MUDUKUTHORE.

5. M/S CASTLES VISTA PVT. LTD,  
A COMPANY EXISTING UNDER  
THE COMPANIES ACT, 2013 AND  
HAVING ITS OFFICE AT C-5,  
RICH HOMES, NO.5/1, RICHMOND ROAD,  
BENGALURU-560 025,  
REP. BY ITS MANAGING DIRECTOR.

...RESPONDENTS

(BY SRI.K.G.RAGHAVAN, SENIOR COUNSEL FOR  
SRI.PRADEEP NAIK, AVOCATE FOR R1 TO R4;  
SRI.DHANANJAY JOSHI, SENIOR COUNSEL FOR  
SRI.ANISH ACHARYA, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAING TO (A)  
ISSUE A WRIT ORDER OF DIRECTION SETTING ASIDE THE  
ORDER DATED 28/11/2024 PASSED BY THE ARBITRAL  
TRIBUNAL IN THE MATTER BETWEEN GOKULAM SHELTERS  
PVT. LTD., AND OTHERS VS. CASTLES VISTA PVT. LTD.,  
WHEREIN THE ARBITRAL TRIBUNAL BY MAJORITY HAS  
ALLOWED THE IA NO.V PRODUCED AS ANNEXURE-A, (B)  
GRANT SUCH OTHER AND FURTHER ORDERS.

THIS WRIT PETITION HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 09.09.2025, COMING ON FOR  
'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE  
THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI  
AND  
HON'BLE MR. JUSTICE UMESH M ADIGA

**CAV ORDER**

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

1. The array of parties in this petition is as under:

	RANK OF THE PARTIES	
	ARBITRATION	HIGH COURT
<b>MANTRI DEVELOPERS PVT LTD,<sup>1</sup></b> A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT, C-5, RICH HOMES, NO.5/1, RICHMOND ROAD, BANGALORE-560025, REPRESENTED BY ITS DIRECTOR, MR.MOHAN KUMAR S.J.	RESPONDENT NO.2	PETITIONER

**AND:**

1. <b>GOKULAM SHELTERS<sup>2</sup></b> PRIVATE LIMITED, A COMPANY EXISTING UNDER THE COMPANIES ACT, 2013	CLAIMANT NO.1	RESPONDENT NO.1
2. <b>KRISHNA LILA PARK FOUNDATION<sup>3</sup>,</b> A REGISTERED TRUST	CLAIMANT NO.2	RESPONDENT NO.2
3. <b>ISKCON CHARITIES<sup>4</sup></b> A REGISTERED TRUST	CLAIMANT NO.3	RESPONDENT NO.3
4. <b>INDIAN HERITAGE FOUNDATION<sup>5</sup></b> A REGISTERED TRUST	CLAIMANT NO.4	RESPONDENT NO.4

GSPL TO 4 HAVING OFFICE AT  
8<sup>TH</sup> MILE, DODDAKALLASANDRA POST,  
KANAKAPURA MAIN ROAD,  
BENGALURU-560 062,

REPRESENTED BY ITS AUTHORISED  
REPRESENTATIVE  
SRI.SHAMA SUNDER MUDUKUTHORE

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<sup>1</sup> Mantri Developers

<sup>2</sup> Gokulam Shelters

<sup>3</sup> Krishna Lila

<sup>4</sup> ISKCON Charities

<sup>5</sup> IHF

5. **M/S. CASTLES VISTA PVT. LTD.,**<sup>6</sup> RESPONDENT RESPONDENT NO.5  
A COMPANY EXISTING UNDER THE NO.1  
COMPANIES ACT, 2013 AND HAVING ITS  
OFFICE AT C-5, RICH HOMES, NO.5/1,  
RICHMOND ROAD, BENGALURU-560 025  
AND REPRESENTED BY ITS MANAGING  
DIRECTOR.

2. The instant petition has been filed seeking to set aside of an order dated 28.11.2024 passed by the Arbitral Tribunal whereby the Arbitral Tribunal by majority has allowed an application bearing IA No.5 filed by the claimants.

3. By the IA No.5 the claimants had sought impleadment of Mantri Developers under Section 2(1)(h) read with Section 7 of the *Arbitration and Conciliation Act, 1996*<sup>7</sup>. By the impugned order of 28.11.2024, the Arbitral Tribunal by majority, allowed the application aforesaid, directing impleadment of Mantri Developers on the ground that even though it is non-signatory to the arbitration agreement, it has by its action and conduct consented to be bound by the arbitration agreement. For coming up this conclusion, the Arbitral Tribunal, by majority relied upon the judgment of the Supreme Court in ***M/s. ONGC Limited Vs. Discovery Enterprises Pvt. Ltd.***<sup>8</sup>, which was approved in the judgment of the Supreme Court in ***Cox and***

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<sup>6</sup> Castles Vista

<sup>7</sup> Act 1996

<sup>8</sup> (2022) 8 SCC 42

***Kings Ltd. Vs. SAP India Pvt. Ltd.***<sup>9</sup>, Consequential directions were also issued.

4. The case set out in the petition is that, Mantri Developers being a Company incorporated under the Companies Act, 1956 is a pioneer developer in real estate sector around Bengaluru and other cities which has undertaken various development activities both residential and commercial. It has also received prestigious awards in the field of real estate development. Gokulam Shelters (Respondent No.1) is a company incorporated under the Companies Act, which is majorly involved in achieving the aims and goals of the Respondent Nos. 2 to 4, that is, Krishna Lila, ISKCON Charities, IHF, who are the Claimant Nos. 1 to 4 in the arbitration proceedings. Castles Vista is the respondent in the arbitration proceedings.

5. ISKCON Charities and IHF, being the land owners of certain plots of land, approached Mantri Developers to develop the lands. Pursuant to which, the petitioner and the Respondent Nos.3 and 4 entered into an agreement dated 26.06.2010 with regard to the development and purchase of the portion of lands belonging to the Respondent Nos.3 and 4.

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<sup>9</sup> (2024) 4SCC 1

Thereafter, they entered into a supplementary agreement dated 29.07.2010 incorporating certain changes in the terms and conditions, which agreement was in the nature of addendum/amendment to the first agreement of 26.06.2010.

6. Thereafter a second supplementary agreement<sup>10</sup> dated 29.09.2010 was entered into by them, wherein the rights and obligations under the framework agreement were assigned by the Respondent Nos.3 and 4 to the Respondent No.1- Gokulam Shelters. Mantri Developers assigned its rights to Castles Vista. It is stated that the assignment of rights under the SSA transferred all responsibilities from the petitioner to Castles Vista.

7. It is stated that, this effectively severed and terminated all prior legal relationships between the petitioner and the Respondent Nos.3 and 4 leaving Castles Vista as the sole party responsible for the obligations under the separate Joint Development Agreement<sup>11</sup> dated 29.09.2010. It is stated that the petitioner had exited from the entire transaction including the performance of their obligations/rights and

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<sup>10</sup> SSA

<sup>11</sup> JDA

liabilities under the prior agreements. The JDA was registered in the Office of the Sub-Registrar, J.P.Nagar, Bengaluru, which was entered into between the Gokulam Shelters, as 'Land Owner', ISKCON Charities and IHF, as Confirming Parties, and the Respondent No.5-Castles Vista as 'Developer'.

8. That Gokulam Shelters also executed an irrevocable General Power of Attorney<sup>12</sup> dated 29.09.2010 authorizing Castles Vista to do all such acts and deeds in relation to the development and construction on the JDA property. Pursuant to the execution of JDA, several amendments to the agreement took place on 08.12.2010, 24.07.2012, 19.01.2015 and 05.06.2018, either to rectify the drafting errors or capturing the subsequent events or to amend the terms of the JDA.

9. Thereafter, Castles Vista commenced its construction activities by obtaining necessary approvals from various authorities to construct multi-storied residential apartments in phased manner. In order to finance the construction, Castles Vista availed financial assistance from Piramal Capital and Housing Finance Limited and executed a loan agreement dated 30.04.2018 by mortgaging JDA properties after consent from

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<sup>12</sup> GPA

Gokulam Shelters Pvt. Ltd., The petitioner-Mantri Developers stood guarantor to the said loan transaction. To secure the term loan, various documents were executed between the parties viz.,-

- i) Deed of Hypothecation dated 30.04.2018
- ii) Deed of Pledge dated 30.04.2018
- iii) Memorandum of Deposit of Title Deeds dated 05.06.2018
- iv) Security Trustee Agreement dated 05.06.2018

Thereafter, certain disputes arose between Castles Vista and Gokulam Shelters which were very specific to the JDA, due to which, GSPL along with IHF and ISCKON Charities, invoked arbitration clause in JDA and accordingly, the Arbitral Tribunal was constituted.

10. Respondent Nos.1 to 4 filed their claim petition and Castles Vista filed its statement of objections and counterclaim. An application numbered as I.A. No.5 was filed on behalf of respondent Nos.1 to 4 seeking to implead the petitioner - Mantri Developers to the arbitration proceedings on the basis of 'Group of Companies Doctrine'. Objections were filed both by Mantri Developers and Castles Vista.

11. After hearing both the parties, the impugned order was passed.

12. The contention is that respondents Nos.1 to 4 in their application have not made out any direct contractual relationship between the petitioner - Mantri Developers and execution of JDA. The dispute is strictly between Gokulam Shelters and the Castles Vista with the relief sought by the Gokulam Shelters and other claimants being exclusively against Castle Vista. The Mantri Developers having no role in the execution or performance of the JDA cannot be made a party to the arbitral proceedings. There is lack of mutual intent on behalf of Mantri Developers to uphold the rights or obligations under the primary agreement and supplementary agreement. Instead, there exists clear intent to sever such ties leading to inovation and execution of an unambiguous JDA. Mantri Developers has not participated in any activities related to the execution or performance of the JDA. Limited secretarial practices, such as facilitating certain correspondences unrelated to JDA execution or providing conditional guarantees for funding or having common employees cannot establish mutual intent to bind the Mantri Developers to the JDA. The submission is that the mutual intent of the parties must be

assessed specifically concerning the JDA and not other independent transactions unconnected to its execution or performance.

13. Secondly, it is urged that concerning the relationship of non-signatory to a party to the agreement, pertains to the Group of Companies Doctrine but does not, by itself, satisfy the criteria.

14. Thirdly, commonality of the subject matter must relate to the execution or performance of the JDA. The petitioner-Mantri Developers has no such commonality with the parties to the JDA in the activities of the parties to the JDA and the Castles Vista.

15. Fourthly, the composite nature of the transaction pertains to the JDA's execution and the performance, which clearly does not involve the petitioner herein in any capacity. Mantri Developer role as a guarantor to Piramal Finance to imply direct obligations under the JDA is misplaced because its role as mentioned under the loan agreement as a Guarantor/obligor is restricted to that extent and cannot be interlinked with the rights and obligations arising out of JDA which is exclusively between respondent Nos.1 to 4 and Castles

Vista. The corporate guarantee furnished by Mantri Developers has an independent arbitration clause with the specific triggers like Castle Vista's loan default, which has not occurred, and therefore, reliance on the same is premature. The Tribunal has gone beyond the scope of reference by assuming jurisdiction even under the independent Corporate Guarantee. It is stated that the Tribunal has erred in considering that loan documents, corporate guarantee and JDA constitute a composite transaction.

16. Lastly, it is urged that the performance of the contract is confined with the relationship between the signatory parties and Mantri Developers has no role in its execution. It is submitted that the SSA dated 29.09.2010 transferred Mantri Developers' obligation to Castle Vista, severing Mantri Developer's contractual ties with Gokulam Shelters regarding the JDA.

17. The learned counsel has referred to the various terms in the first supplementary agreement and SSA in this regard. The agreements with Piramal Finance are stated to be independent of the JDA and were structured solely to finance Castle Vista construction activities. Mantri Developers role was

limited to provide financial security as a guarantor with no obligations. These agreements, distinct in purpose and terms, were acknowledged by respondent Nos.1 to 4 in the Fourth Amendment to the JDA as separate arrangements. It is stated that the Respondent Nos.1 to 4 having filed a commercial suit, have impliedly admitted that the loan transactions and the JDA transactions are distinct and independent of each other.

18. On behalf of the Respondent No.1, a statement of objections to the writ petition was filed in which maintainability of the petition has been questioned on the ground of non-disclosure, inter alia, that the Respondent No.5 is a wholly owned subsidiary of the petitioner. Further it has been stated that under Section 16 of the Act, 1996, the Arbitral Tribunal possesses exclusive powers to decide its jurisdiction and is the proper forum to determine whether the petitioner is a party to the arbitration agreement. It is further stated that, this Court ought not to interfere in the impugned order passed in exercise of jurisdiction under Section 16 of the Act, 1996 while exercising powers under Article 227 of the Constitution, inasmuch as the scheme of the Arbitration Act contemplates minimal judicial interference in Arbitration Proceedings. No

exceptional circumstances or perversity on the face of the impugned order has been demonstrated by the petitioner warranting interference by this Court. In this regard, a reference has been made to the judgment of the Apex Court in ***SBP & Co. Vs. Patel Engineering Ltd.***<sup>13</sup> and the judgment of the Supreme Court in ***Deep Industries Ltd. Vs. ONGC***<sup>14</sup>.

19. It is stated that the Act of 1996 is a complete Code and it provides sufficient safeguards to the parties to an arbitration leaving little to no scope to avoid the statutory scheme and seek interference under the supervisory jurisdiction of this Court. It is only the Arbitral Tribunal which would decide if a non-signatory is a party to an arbitration agreement and, consequently to implead. In this regard, the learned counsel has referred to the judgments of the Supreme Court in ***Bhavan Constructions Vs. Sardar Sarovar Narmada Nigam Ltd.***<sup>15</sup> and the judgment in ***Cox and Kings Ltd. Vs. SAP India (P) Ltd.***<sup>16</sup>

20. It is stated that the Arbitral Tribunal has carefully assessed the complex factual matrix in the present case, the

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<sup>13</sup> (2005) 8 SCC 618 (Para-46)

<sup>14</sup> (2020) 15 SCC 706

<sup>15</sup> (2022) 1 SCC 75.

<sup>16</sup> (2024) 4 SCC 1

various contractual clauses, representations and warranties of the parties as well as commercial role of the parties in dispute while passing the impugned order. It is stated that the impugned order is well-reasoned which considers in detail the relevant five-factors test mandated in **ONGC Vs. Discovery Enterprises Pvt. Ltd.**<sup>17</sup>. The judgment of the Supreme Court in **Ajay Madhusudan Patel Vs. Jyotrindra S. Patel**<sup>18</sup> has also been referred to. It is stated that a party aggrieved by any order of the Arbitral Tribunal has a right of appeal under Section 37 of the Act, 1996, and has to await passing of the award by the Arbitral Tribunal.

21. It is stated that, Castle Vista is held by the petitioner-Mantri Developers as a subsidiary Company, which holds 99.9% of the share-holding in Castle Vista. The remaining 0.1% is also owned by Mr. Sushil Mantri and Ms. Snehal Mantri, who are the Directors of the Company.

22. It is stated that on the basis of the representation of the petitioner to the respondent-Gokulam Shelters and ISCKON Charities that it had the means and expertise to develop the property into a residential complex and a cultural

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<sup>17</sup> (2022) 8 SCC 42

<sup>18</sup> (2025) 2 SCC 147

theme park, ISCKON Charities and IHF executed an agreement with the petitioner on 26.06.2010 agreeing to execute the JDA, wherein the petitioner agreed to develop the property. That agreement stipulates that the parties to it will execute the JDA and that the petitioner-Mantri Developers would be entitled to 70% of the super built-up area and undivided interest in the property. As consideration for the 2010 agreement, the petitioner-Mantri Developers paid a sum of Rs.15.00 Crores in favour of ISCKON Charities, which amount is to be adjusted against the final sale consideration /refundable security deposit to be paid in respect of the Item No.1 and/or Item No.2 mentioned in the agreement. On 29.07.2010, a First Supplementary Agreement was executed between the petitioner-Mantri Developers and, ISCKON Charities and IHF, under which agreement, the petitioner-Mantri Developers paid another sum of Rs.5.00 Crores. The respondents Gokulam Shelters, ISCKON Charities and IHF were led to believe in the commitment and involvement of the petitioner in the development of the properties, in view of its significant investment.

23. On 29.09.2010, the Second Supplementary Agreement (SSA) was executed between the petitioner-Mantri

Developers and the Respondents Gokulam Shelters, ISCKON Charities and IHF as well as Castle Vista, whereunder, the ISCKON Charities and IHF assigned their rights and obligations under the first agreement to Gokulam Shelters. The petitioner-Mantri Developers nominated Castle Vista (then known as Land Masters Realtors Pvt. Ltd.) to take on the rights, duties and obligations of the petitioner-Mantri Developers under the 2010 agreement. The SSA also records that the respondents and Castle Vista will execute the proposed JDA.

24. On 29.09.2010 itself, Gokulam Shelters and Castles Vista executed the JDA for the development of the property through the construction of a residential project. It is stated that the JDA was executed subsequent to negotiations and discussions between the petitioner-Mantri Developers and the Respondents Gokulam Shelters, ISCKON Charities and IHF.

25. It is stated that under clauses 6, 7 and 9 of the JDA, Castles Vista is required to develop the project on the property entirely at their cost and expense. In consideration of Gokulam Shelters granting the exclusive right to Castles Vista to develop the property by constructing a residential complex, Gokulam Shelters along with ISCKON Charities and IHF were

entitled to 30% of the sale proceeds in the defined in the JDA of various units in the project. In terms of clause 16 of the JDA, Castles Vista was entitled to take loans and financial assistance from banks, financial institutions or any third-party credit agencies for persons for development of the project against the security of the areas demarcated to its share alone. Castles Vista was solely responsible for the repayment of any loans and the discharge of any mortgage/charge created. Under clause 23 of the JDA, there was also a specific stipulation that the name 'Mantri' and the logo of the petitioner-Mantri Developers will always remain in the project. It is stated that accordingly, as on date, the project continues to be called the "Mantri Serenity" project.

26. It is stated that Mantri Developers and its personnel were involved in liaising with the claimants for the construction of the Project. From the execution of the JDA in 2010, it has always been the petitioner-Mantri Developers that has been coordinating with Gokulam Shelters, and through its representatives including its Managing Director and its General Manager, were providing various updates regarding the status of the project, inventory, cash flow, statements etc. and was involved in the day-to-day performance of the JDA. It is also

stated that a few months after the registration of the JDA, the petitioner-Mantri Developers also wrote a letter to the homeowners in the project explaining that it has been brought in to develop the project. The letter further explains that it will also be taking bookings for the units in the project. Reference has been made to a letter issued by the petitioner to the homeowners on 25.10.2010. It is also stated that the petitioner also released several advertisements for the project under its name and logo. Various other emails emanating from the domains belonging to Mantri Developers, agreement, loan agreement, corporate guarantee are referred to endeavour to demonstrate the intention of the petitioner-Mantri Developers to be bound by the JDA. The negotiations leading to the sanction of Rs.650 crores by Piramal Group are stated to have been carried out by Mantri Developers and Castles Vista without the knowledge of the claimants, though they pertained to creation of charge over the claimants' share. Mantri Developers had active obligations under the loan agreement.

27. We now proceed to discuss the case of **Deep Industries** which is cited by learned counsel for the respondents as regards the issue of maintainability of this petition. The Supreme Court in the case of **Deep Industries**

was considering a case where, after termination of the contract, on the very next day the vendor code of the appellant was blocked, and a show cause notice was issued to the vendor as to why it should not be blacklisted for a period of two years. The appellant therein invoked the arbitration clause contained in the contract and a sole arbitrator was appointed. About two weeks after the claim petition was filed, the appellant was blacklisted for two years by an order. Application under section 17 of the Act, 1996 was filed before the learned arbitrator. Applications to amend the petition and a Section 17 application were moved by the appellant, which were allowed.

27.1. Meanwhile a Section 16 application was moved before the learned arbitrator basically on the ground that since the arbitration notice was confined only to termination of the agreement, blacklisting would be outside the arbitrator's jurisdiction. This application was dismissed by the arbitrator. On that very day the Section 17 application was disposed of by the learned arbitrator by an order in which the operation of the order of blacklisting was stayed on the condition that the two-year ban/blacklisting will only operate if the Appellant ultimately loses in the final arbitration proceedings.

27.2. An appeal against the stay order granted by the arbitrator was filed before the City Civil Court which upheld the order of the learned arbitrator and dismissed the appeal filed under Section 37. At this stage a petition under article 227 of the Constitution was filed before the High Court challenging the order of the City Civil Court. The High Court without answering the question as to whether the petition filed under article 227 should be dismissed at the threshold, as it did not raise any jurisdictional issue, went on to state that the blacklisting order had been passed not under a clause of the agreement but under a General Contract Manual, as a result of which a serious dispute arose as to the jurisdiction of the arbitrator to deal with the same. The High Court finally held that no stay could possibly have been granted under Section 17 with regard to the blacklisting order as an injunction could not be granted in cases where party can be compensated later in damages. The petition was allowed and the civil courts order was set aside.

27.3. After noticing the time limit introduced under section 29-A by the Amendment Act, 2016 of 12 months within which the arbitral award must be made from the date the arbitral tribunal enters upon the reference, it was noticed that

even so far as section 34 applications are concerned, section 34 (6) added by the same amendment, states that these applications are to be disposed of expeditiously and in any event within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other parties.

27.4. The non-obstante clause contained in section 5 was noticed. It was also observed that section 37 grants a constricted right of first appeal against certain judgments and orders and no others. A second appeal cannot be filed. It was observed that that being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under section 37, the entire arbitral process would be derailed and will not come to fruition for many years. It was also observed that at the same time, it cannot be forgotten that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of section 5 of the Act, 1996. Though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under section 37 of the Act, 1996, yet the High Court would be extremely circumspect in interfering with the same, taking into account to

the statutory policy so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

27.5. After noticing its various judgments, the Supreme Court referred to the case of **SBP & Co.** and quoted its extract as under: –

*"19. In SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] , this Court while considering interference with an order passed by an Arbitral Tribunal under Articles 226/227 of the Constitution laid down as follows: (SCC p. 663, paras 45-46)*

*"45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract*

*between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.*

*46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”*

27.6. It was observed that this statement of law (in **SBP & Co.**) does not apply directly on the facts of the case, yet it is important to notice that the 7 Judge bench in **SBP & Co.** has referred to the object of the Act, 1996 being that of minimising judicial intervention and that this important object should always be kept in mind in the forefront when an Article 227 petition is being disposed of against proceedings that are decided under the Act, 1996. It was further noted that in the case of **Punjab Agro industries Corpn. Ltd. v. Kewal Singh**

**Dhillon**<sup>19</sup>, this Supreme Court distinguished **SBP & Co.** stating that it will not apply to a case of non-appointment of an arbitrator. The observations of the Supreme Court in Punjab Agro industries were for the reason that no provision for appeal had been given by statute against the orders passed under section 11, which is why the High Court's supervisory jurisdiction first be invoked before going to the Supreme Court under Article 136. The Supreme Court observed that the facts of the case in **Deep Industries** was distinguishable for the reason that Article 227 jurisdiction was exercised by High Court only after a first appeal was dismissed U/s 37 of the Act, 1996. Even otherwise it was found that whether or not an injunction ought to have been issued, is a mere error of law and not an error of jurisdiction, much less an error of inherent jurisdiction going to the root of the matter.

27.7. The Supreme Court held that the legislative policy is that no revision lies under section 115 CPC if an alternative remedy of appeal is available. Moreover, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. Therefore the general revisional jurisdiction that is contained by the

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<sup>19</sup> (2008) 10 SCC 128

amendments made to Section 115 CPC should be kept in mind when the High Courts dispose of petitions filed under Article 227.

28. The aforesaid judgment in **Deep Industries** was followed in yet another three Judge Bench of the Supreme Court in the case of **Bhaven Construction**. After observing its mandate in the case of **Nivedita Sharma Vs. Cellular Operators Association of India**<sup>20</sup>, the Court in **Bhaven Construction** observed that it is prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. The Court observed that this high standard set by the Supreme Court is in terms of the legislative intention to make the arbitration fair and efficient.

29. We may now discuss the facts of the present case.

29.1. The petitioner–Mantri Developers entered into an agreement dated 26.06.2010 with ISKCON Charities and IHT. In the said agreement, the Mantri Developers represented that

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<sup>20</sup> [(2011) 14 SCC 337]

it is carrying on the business of property development and is interested in purchasing absolutely from **ISKCON Charities and IHT** (Land Owners), the Item No.1 land of the Schedule to the agreement and that it had also means and expertise to develop the Item No. 2 land of the Schedule property; that Mantri Developers being desirous of purchasing the Item No.1 of the Schedule Property and developing Item No.2 land of the Schedule Property on a Joint Development basis is entering into the agreement based on certain representations of the Land Owners. All disclosures were made by the land owner regarding encumbrances, the legal proceedings, etc., and on the basis of the representations and the facts given by the land owners, the land owners offered to sell the Item No.1 land of the schedule property and to convey the same absolutely in favour of the Mantri Developers, and also agreed to irrevocably empower and authorize Mantri Developers to develop Item No.2 land of the Schedule property on joint Development basis and Mantri Developers agreed to accept the said offer on compliance by the land owners of the terms set-out in the agreement.

29.2. Under that agreement, Mantri Developers was entitled to publish a public notice in the Newspapers calling for claims with respect to the Schedule property, which claims the

land owners were responsible for clearing entirely at their own cost, failing which Mantri Developers at its sole discretion is entitled to clear the same at the cost of the land owners. As consideration for executing that agreement, the Mantri Developers paid an amount of Rs.15.00 crores.

29.3. With regard to the joint development of Item No.2 Schedule land, in consideration of Mantri Developers agreeing to develop and hand over to the land owners 30% of the super built-up area in Item-2, the land owners agreed to transfer 70% of the undivided interest in Item No.2 along with 70% of the super built-up area developed on Item -2 to Mantri Developers. The parties agreed to execute a JDA subject to fulfillment of other terms in the agreement to consummate the joint development of Item-2. It was provided that the parties may agree to a revenue share model at the time of execution of JDA. Simultaneous with the execution of the JDA, the land owners were required to execute an irrevocable power of attorney in favour of the Mantri Developers to enable transfer and development of land. The Land Owners were to appoint Mantri Developers as their exclusive marketing agent to market their entitlement under the JDA.

29.4. It was agreed that Mantri Developers shall pay an amount of Rs.40.00 Crores on execution and registration of the JDA and handing over vacant possession of the Schedule property for development and execution of GPA as refundable deposit to the land owners for the Item No.2 land in the schedule under the JDA in the manner specified.

29.5. On completion of the obligation set out in the agreement, the Land Owners were required to execute a sale deed with regard to Item No.1-land and a JDA with respect to Item No.2 land of the Schedule property in favour of Mantri Developers and/or any of its nominees. It was provided in the agreement that in case the land owners are unable to satisfy/get clear and marketable title of the schedule property and/or are unable to satisfy all claims that may have been raised in response to the public notice to the satisfaction of Mantri Developers, Mantri Developers shall be entitled to terminate the agreement.

29.6. Upto the date of execution of the sale deed and JDA and handing over vacant possession of the schedule property to Mantri Developers, the land owners were required

to obtain khata of the property from BBMP and pay all taxes, levies and cess in respect of the schedule property.

29.7. It was disclosed that Mantri Developers proposes to develop residential buildings on Item no.2 land of the schedule property. It was also disclosed that Mantri Developers intends to construct on part of Item No.1 land of the schedule property a commercial and/or residential building. It was further provided that in the rear portion of the Item no.2 land of the schedule property, Mantri Developers would provide a road of width 24.5 meters and the land owners shall be entitled to a right of way through the said road for access to its other developments being the Krishna Leela Theme Park. However, Mantri Developers would have absolute right over the same (road). The land owners were permitted to put a Gopuram at the entry on the beginning of the said road. An exclusive access road of 18.3 meters width was to be reserved for use of Mantri Developers for developments at the schedule property.

29.8. The land owners agreed and undertook that on the adjacent property measuring approximately 6.445 acres (area retained by the land owners) it shall not develop

commercial and/or residential buildings which will become competition to Mantri Developers developments.

29.9 The terms regarding arbitration and assignment mentioned in the agreement are as under:-

*"All disputes, claims and questions whatsoever in relation to or arising out of this Agreement between the Parties either during the continuance of the Agreement or afterwards, if not settled by mutual discussion, shall be referred to binding arbitration with three arbitrators in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof. Each party shall be entitled to appoint one Arbitrator and the two Arbitrators in turn will appoint a third Arbitrator. The arbitration shall be conducted in Bangalore and in English language. The decision of the Arbitrator shall be final and binding on the parties."*

.....

*"IC and IHT shall not be entitled to assign any of their rights in this agreement without the prior written approval of MDPL. MDPL shall be permitted to assign this Agreement to any of its affiliates, associates, SPVs or group companies, or companies in which MDPL has an interest."*

29.10. It is pertinent to mention here that the description of Mantri Developers given towards the beginning of this agreement dated 26.06.2010 is as follows:-

*"Mantri Developers Private Ltd., a company incorporated under the Companies Act, 1956, having its Registered Office at No.41, Vittal Mallya Road, Bangalore 560 001, hereinafter referred to as the "MDPL", (which expression shall, wherever the context so required or admits, mean & include its successors in interest, nominees and assigns)"*

29.11. This agreement is signed, on behalf of Mantri Developers, by its Director/Authorised Signatory, Girish Gupta H.S.. Among its witnesses is Sushil Mantri, who is the Director of Mantri Developers.

30. Just three days after the aforesaid agreement, a First Supplementary Agreement was executed on 29.07.2010. The parties to it are ISKCON Charities and IHT of one part ('Land Owners'), and, Mantri Developers, of the other part. This agreement provided, inter alia, that in addition to the advance paid under the agreement of 26.7.2010, at the request of the Land Owners, Mantri Developers have agreed to pay additional advance amount of Rs. 5 crores which shall be adjusted towards the sale consideration for the item No. 1 property. Additionally, Mantri Developers agreed to bear and pay all actual interest amounts only for a limited period of 90 days on several loan amounts totaling Rs. 120.00 crores availed by the

land owners. Further, a clause was inserted in the agreement which provided that without prejudice to its right to terminate the agreement and the supplemental agreement, Mantri Developers shall be entitled to transfer/assign its rights under the agreement and the supplemental agreement (on terms and conditions it may deem fit) to a mutually acceptable third party. In the event of such transfer/assignment, Mantri Developers shall have the first right to be paid all amounts mentioned in clause 7.3.1 therein, expended by it.

30.1. It further provided that the land owners shall appoint Mantri Developers their exclusive marketing agent to market their entitlement in the built-up area as per clause 5.1. In consideration of Mantri Developers selling and marketing the land owners entitlement, Mantri Developers shall be entitled to 2.5% of the sale price of such built-up area service charges. On behalf of Mantri Developers, this supplementary agreement was also signed by the aforesaid Girish Gupta H.S. as authorized signatory.

31. On 29.9.2010, the SSA was executed between ISKCON Charities and IHT of the First part, and, Land Master Realtors Private Limited, of the Second part, and, Gokulam

Shelters, of the Third part, and, Mantri Developers of the Fourth part. Land Master Realtors Private Limited<sup>21</sup> was one of the previous names of Castles Vista, the Respondent no.5.

31.1. Inter alia, the SSA provided that Mantri Developers has now nominated LMRPL to take on the rights, duties, obligations and liabilities of Mantri Developers under the Agreement and First Supplementary Agreement. The SSA states that parties have entered into the SSA which shall along with the Agreement dated 26.06.2010, and the First Supplementary Agreement dated 29.07.2010 (together referred to as the 'Framework Agreements') specify comprehensively the rights, duties, obligations and liabilities of the parties including the payment and receipt of the consideration for the sales to be made.

31.2. It is mentioned in the SSA that Gokulam Shelters has also represented that it shall honour the obligations undertaken by the Land Owners under the Agreement and the First Supplementary Agreement wherein the Land Owners have undertaken to sell the item No.1 property to LMRPL and to

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<sup>21</sup> LMRPL

enter into a JDA with Mantri Developers with respect to Item No.2 property of Agreement.

31.3. The LMRPL consented to assignment of the land owner's rights in the Agreement and the First Supplementary Agreement with respect to schedule property in favour of Gokulam Shelters. Gokulam Shelters as the assignee of the Land Owners agreed to sell Item No.1 property to LMRPL and further to execute a JDA in favour of LMRPL in terms of the Framework Agreements. Both LMRPL and Gokulam Shelters consented to enter into a JDA on the terms agreed under the Framework Agreements and assented to develop Item No.2 property on the same terms as laid down under the Framework Agreements. The SSA recognized that Mantri Developers has made payment of Rs.23,90,00,000/- under the agreement and First Supplementary Agreement and the same shall be treated as an advance consideration paid by LMRPL to Gokulam Shelters for sale of Item -1 property and to that extent LMRPL shall be discharged of its obligation to make payment of the sale consideration for Item-1 property.

31.4 In the SSA, sale of Item No.3 property admeasuring approximately 6.32 acres of land was also agreed to be

transferred. Gokulam Shelters agreed to pay total consideration of Rs.57,53,97,500/- for the Larger Extent Property and an undivided interest in the land measuring 7 acres 18 guntas reduced by 7 acres 5.13 guntas in the Gokulam Property to the Land Owners jointly. It was provided that in the light of the recitals, the parties are desirous of amending and adding certain provisions of the agreement. Pursuant to the same, the parties decided to execute the SSA.

31.5 After the aforesaid recitals the SSA stated that the Land Owners shall sell the Larger Extent Property in favour of Gokulam Shelters and assign their rights in the agreement and First Supplementary Agreement in favour of Gokulam Shelters in consideration for receiving a portion of the Entitled Receivables and receiving the advance and non-refundable deposit. The encumbrance was to be discharged by LMRPL under the terms of the Framework Agreement in order to facilitate the proposed sale of Item No.1 property to LMRPL and the proposed JDA between LMRPL and Gokulam Shelters in respect of Item No.2 property. The Land Owners agreed to execute a GPA in favour of LMRPL to enable LMRPL to obtain such approval as are incidental to the purpose of the

agreement. Simultaneous with the execution of the sale deed with respect to a larger extent property a similar GPA was to be granted by Gokulam Shelters in favour of LMRPL.

31.6 With regard to the Item No.1 property sale by Gokulam Shelters in favour of LMRPL, Gokulam Shelters confirmed and agreed to sell Item No.1 property in favour of LMRPL. It was mentioned that Mantri Developers, pursuant to the terms of the agreement, had published a public notice in the newspapers after the execution of the agreement with the Land Owners calling for claims with respect to Item No.1 and Item No.2 property and objections were received by the Mantri Developers regarding the same. The Land Owners and Gokulam Shelters undertook that they alone shall be responsible for clearing all such claims, failing which, LMRPL at its sole discretion would be entitled to clear the same at the cost and expense of Gokulam Shelters and for the Land Owners.

31.7 As regards joint development of Item No.2 property, the Land Owners confirmed and agreed to irrevocably empower and exclusively authorize Gokulam Shelters to develop Item No.2 property by entering into a JDA with LMRPL.

Under the JDA the revenues from the proceeds of sale were to be shared in the ratio of 30:70, that is 30% will fall into the share of Gokulam Shelters and 70% to the share of LMRPL. Other terms and conditions between the Land Owners, Gokulam Shelters and LMRPL were also specified.

31.8 Thereafter the terms were specified pertaining to execution of sale deed and JDA. Under this, the Land Owners were required to execute a sale deed with respect to larger extent property in favour of Gokulam Shelters. It also contemplated execution of sale deed by Gokulam Shelters in respect to the Item No.1 property in favour of LMRPL. The JDA between LMRPL and Gokulam Shelters was to be simultaneous with the execution of the sale deed and the Land Owners, Gokulam Shelters and LMRPL were to jointly execute the JDA in respect of Item No.2 property.

31.9 Certain Clauses of the SSA are quoted below.

"4.4. This Second Supplementary Agreement does not amount to a waiver of the rights, conditions, accuracy of representations or any other term of the Agreement dated 26<sup>th</sup> June 2010 and the representations made in the First Supplementary Agreement dated 29<sup>th</sup> July 2010 thereto by any of

the Parties except what is specifically amended or added in this Second Supplementary Agreement.

4.5. This Second Supplementary Agreement, together with the Agreement and First Supplementary Agreement, constitute and represent the entire agreement and understanding amongst the Parties with respect to the subject matter hereof.

4.6 This Second Supplementary Agreement shall modify the relevant portions of the Agreement and First Supplementary Agreement (even where specific clauses are not referred to) and the Parties shall construe the Agreement, the First Supplementary Agreement and this agreement harmoniously. Except as expressly modified or added by this Second Supplementary agreement, the terms and conditions of the Agreement and First Supplementary Agreement shall continue in force and constitute legal and binding obligations of the Parties. Any amendment or addition to the same shall be reduced in writing.”

31.10. It is pertinent to mention here that on behalf of Mantri Developers as well as LMRPL, the same Director/Authorised signatory has signed namely, Sri. Girish Gupta. It is further pertinent to mention here that only in the recital section of the SSA was it mentioned that 'whereas Mantri Developers has now nominated LMRPL to take on the

rights, duties, obligations and liabilities of Mantri Developers under the agreement and the First Supplementary Agreement to which the Land Owners hereby consent’.

32. On the same day as the execution of the SSA, the JDA was executed between Gokulam Shelters, LMRPL (which is described in the JDA as “Developer” or “Second Party”), ISKCON Charities and IHT. In the recital to the JDA, it was mentioned that ISKCON Charities and IHT on the one hand and Mantri Developers on the other hand entered into a registered agreement on 26.06.2010 in respect of the schedule property and Developer Adjacent Property and certain other properties forming part of the Larger Extent of Property, wherein ISKCON Charities, inter alia, agreed to sell the Developer Adjacent Property (referred to as the Item-1 property) in favour of Mantri Developers and develop the schedule property. Subsequently, the First Supplementary Agreement dated 29.07.2010 was executed between those parties whereby certain terms of the Agreement were amended. Mantri Developer had nominated the Developer to take on the rights, duties, obligations and liabilities of Mantri Developers under the Agreement and the First Supplementary Agreement. On 29.09.2010, the ISKCON Charities, IHT, Gokulam Shelters

(Owner) and the Developer executed a further amendment to the Agreement and First Supplementary Agreement by way of SSA. Pursuant to the SSA, the Owner acquired the schedule property (consisting of undeveloped land) and is also executing the JDA in favour of the Developer.

32.1 The Agreement, First Supplementary Agreement and the SSA were collectively referred in the JDA as "Framework Agreements". The various terms in the agreement between the parties were specified in the JDA. The terms and conditions in the JDA consisted of those terms mentioned in the agreement of 26.06.2010, the First Supplementary Agreement and the SSA. As far as the name of the project was concerned, it was specified in the JDA, that the project name shall bear the word "Mantri" as part of its name always along with its Logo. The Developer (LMRPL) represented that they have the right to use the name "Mantri" and the Logo.

32.2 As far as Dispute Resolution is concerned, it was provided as *follows:-*

### ***"30. DISPUTE RESOLUTION***

*30.1 The Parties agree to negotiate in good faith to resolve any dispute between them regarding*

*this Agreement. If the negotiations do not resolve the dispute to the reasonable satisfaction of the Parties, then each disputing party shall nominate a person with respectable professional standing and unimpeachable conduct as its representative. These representatives shall, within 30 (thirty) days of a written request by any Party to call such a meeting, meet in person and shall attempt in good faith to resolve the dispute.*

*30.2. Upon the Parties being unable to appoint the representatives as aforesaid, or if the disputes cannot be resolved by such persons in such meeting as aforesaid, the disputes or differences shall be submitted to final and binding arbitration of 3 (three) arbitrators at the request of any of the Parties upon written notice to that effect to the other. In the event of such arbitration;*

*30.2.1. The arbitration shall be in accordance with the Indian Arbitration and Conciliation Act, 1996, in force at the relevant time (which is deemed to be incorporated into this Agreement by reference).*

*30.2.2. All proceedings of such arbitration shall be in the English language. The venue of arbitration shall be Bangalore, India;*

*30.2.3. The arbitration panel shall consist of 3 (three) arbitrators, 1 (one) arbitrator to be*

*appointed by the Owner and 1 (one) arbitrator to be appointed by the Developer, and the, third arbitrator to be appointed jointly by the 2 (two) arbitrators so appointed;*

*30.2.4. Arbitration awards rendered shall be final, binding and shall not be subject to any form of appeal. The losing party (ies), as determined by arbitrators, shall pay all reasonable out-of-pocket expenses (including, without limitation, reasonable advocates' fees) incurred by the prevailing Party (ies), as determined by the arbitrators, in connection with any dispute unless the arbitrators direct otherwise;*

*30.2.5. Nothing shall preclude a Party from seeking interim or permanent equitable or injunctive relief, or both, from any Court having jurisdiction to grant the same. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy for monetary losses through the arbitration described in this Clause 30.*

32.3 It is pertinent to mention here that the JDA was signed by the Director/Authorised Signatory of LMRPL namely, Mr. Girish Gupta.

33. After the execution of the JDA, a letter was issued on 25.10.2010 jointly by Snehal Mantri, Director Marketing,

Mantri Developers, and by ISKCON Charities to Gokulam Homeowners informing them about the integrated township called Hare Krishna City and for setting up of ISKCON's dream project - Krishna Lila Park on the adjacent land. It is stated in the letter that with more than a decade of history and expertise as one of India's leading developers of world class homes, IT Parks, and educational institutions, Mantri Developers are committed to creating a legacy of excellence for all its customers; that handing over the development to Mantri Developers frees ISKCON missionaries to focus on the Krishna Lila Park. Mantri Developers have committed to transfer substantial benefits of development to support the setting up of the Krishna Lila Park. It is stated that with this strong endorsement from the Mantri Brand, Homeowners at Gokulam can be assured of distinctive homes to boost of world class quality with superior amenities and facilities. The Mantri brand name also brings with it, value appreciation for your investment. It is further stated as follows:-

*"However, there are certain minimum quality standards a brand like Mantri abides by. As the threshold of these standards is much higher for Mantri Developers, naturally it adds on to capital expense. We are proud to say that, we have ensured that only a minimalistic*

*percentage of this capital expense is borne by you, who has trusted in ISKCON Charities and booked these apartments well in advance.*

*Therefore, the cost of this additional value add on and quality enhancement for you will be an addition of 10% of the price committed by Iskcon Charities. For others the project is launched at Rs.3190/ sqft by Mantri Developers for fresh bookings.*

*In case if you would like to withdraw the booking, Iskcon Charities will refund the booking amount. However on choosing to continue, your advance booking amount will be taken into account by Mantri Developers.*

*We look forward for you to be Mantri Family member and welcome you in advance.”*

34. Mantri Developers has also issued an advertisement for Mantri Serenity in which the Logo of Mantri was used in respect of the aforesaid project. There are numerous e-mails on record that have been exchanged between the officers of Mantri Developers and the representatives of the claimants from November 2010 till the year 2025 admittedly pertaining to the aforesaid project which is the subject matter of the JDA.

35. On record is a loan agreement dated 30.04.2018 between Mantri Castles Private Limited (formerly, LMRPL, which name later was changed to Castles Vista) referred as the “Borrower” of the First Part, Piramal Finance Limited referred as

“Lender” of the Second Part, and Mantri Developers as well as Mr. Sushil Mantri of the Third Part. The signatures of the aforesaid persons appear on each page of the said loan agreement. The loan agreement was in respect of extending financial assistance to the extent of up to Rs.650.00 Crores. To secure the aforesaid corporate loan, inter alia, there was execution of power of attorney by the Borrower in favour of the Security Trustee; Demand Promissory Note; Issuance of Personal Guarantee; Issuance of Corporate Guarantee, etc.

36. Thereafter, an Escrow Agreement was executed between (i) Mantri Castles Private Limited, (ii) Piramal Trusteeship Services Private Limited, (iii) Mantri Developers, (iv) HDFC Bank Limited, (v) Gokulam Shelters, (vi) Krishna Lila, (vii) Hamara Shelters Private Limited (acting through the aforesaid Mr. Girish Gupta), and (viii) Abhishek Propbuild Private Limited (acting through the aforesaid Mr. Girish Gupta). This Escrow Agreement was to secure and facilitate the term loan secured obligations of Mantri Castles Private Limited under the loan agreement. The word “Project” was defined to mean the residential housing project being constructed/developed by the borrower by the name and style of “Mantri Serenity”. This agreement too was signed by the aforesaid Sri. Girish Gupta

H.S. as authorized signatory for Mantri Castles Private Limited, Mantri Developers, Hamara Shelters Private Limited and Abhishek Propbuild Private Limited.

37. A letter dated 01.06.2018 is on record which is addressed to Gokulam Shelters by Sri. Sushil Mantri for Mantri Developers, which is a letter of undertaking from Mantri Developers with regard to the obligations of Mantri Castles Private Limited under certain Clauses of a Memorandum of Understanding dated 02.06.2018. Pursuant thereto, Mantri Developers irrevocably agreed and undertook to ensure payment of the dues of Gokulam Shelters upto an extent of Rs.35.00 Crores to Gokulam Shelters and Krishna Lila. It was provided inter alia that in the event Mantri Castles Private Limited fails to make any payment due to Gokulam Shelters and/or Krishna Lila under the "Serenity Documents", Mantri Developers ( as the original intended developer of the Project) undertakes to pay the same to Gokulam Shelters and/or Krishna Lila ( as the case may be). It also appears that the said letter was sent by e-mail by Mantri Developers as an attachment using its domain name on 02.06.2018.

38. Additionally, a Deed of Hypothecation dated 05.06.2018, Memorandum of Deposit of Title Deed dated 31.08.2020, an unconditional and irrevocable corporate guarantee dated 30.09.2020 are on record, all executed by Mantri Developers and others.

39. The aforesaid facts, thus reveal that Mantri Developers is closely involved in various stages of the project which was being developed along with the claimants despite execution of the SSA and the JDA. It has an abiding and deep-rooted interest in the success of the project as envisaged in the agreement dated 26.06.2010 as well as in the subsequent agreements. The admitted case of Mantri Developers is that it has assigned its rights under the aforesaid agreement of 26.06.2010 and the First Supplementary Agreement to LMRPL. The name of LMRPL was changed to Mantri Castles Private Limited and then again changed to Castles Vista. It is not disputed by the petitioner-Mantri Developers that it owns its subsidiary company, Castles Vista. In the agreement dated 26.06.2010, Mantri Developers agreed that reference to it shall mean and include its successors in interest, nominees and assigns, and the said agreement has an arbitration clause. The intention of Mantri Developers is clearly to be bound by the

agreements entered into between the claimants on one hand, and LMRPL, Mantri Castles Private Limited and Castles Vista on the other hand. Mantri Developers is intimately connected with Castles Vista for ensuring revenue for the project to the extent of 650.00 crores by executing loan agreement, Escrow agreement, hypothecation agreement and offering security for the amount of loan by executing Corporate Guarantee Agreement as well as personal guarantee of its Director to secure the loan advanced by Piramal Finance.

40. Starting from the first agreement on 26.06.2010, the subsequent agreements leading up to the JDA and even later agreements reflect common participation by Mantri Developers and Castles Vista with the claimants for the purpose of achieving a common purpose, which is the success of the Project of the claimants which is reflective of the mutual intent to be bound by the agreement to arbitrate. Mantri Developers has actively assumed obligations and performance under the agreements upon itself. Even otherwise, Mantri Developers has an enormous financial exposure in the Project of the claimants. There is thus a clear legal relationship between the petitioner-Mantri Developers and the claimants/respondents. Mantri developers has veritably consented to be bound by the JDA

despite it not being a signatory to the agreement. After the execution of the JDA, the joint letter issued on 25.10.2010 by Mantri Developers, and by ISKCON Charities to Gokulam Homeowners reflects that the claimants were under the legitimate belief that the non-signatory Mantri Developers was a veritable party to the JDA. Therefore, it is mentioned in the joint letter of 25.10.2010 that handing over the development to Mantri Developers frees ISKCON missionaries to focus on the Krishna Lila Park and that Mantri Developers have committed to transfer substantial benefits of development to support the setting up of the Krishna Lila Park. It was stated in the joint letter that with the strong endorsement from the Mantri Brand, Homeowners at Gokulam can be assured of distinctive homes to boast of world class quality with superior amenities and facilities. In that joint letter, Mantri Developers projected that Mantri brand name also brings with it value appreciation for the investment of the home buyers.

41. Therefore, the reliance on and affirmation of the cumulative factors that the Courts and tribunals should consider in deciding whether a company within a group of companies is bound by the arbitration agreement, as laid down in the judgment in ***Discovery Enterprises***, in the landmark

judgment of the Supreme Court in **Cox & Kings Ltd.**, are mandatorily required to be followed. The same is extracted below:-

*"115. In **Discovery Enterprises**, this Court refined and clarified the cumulative factors that the Courts and tribunals should consider in deciding whether a company within a group of companies is bound by the arbitration agreement:*

*"40. In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors;*

- (i) The mutual intent of parties;*
- (ii) The relationship of a non-signatory to a party which is a signatory to the agreement;*
- (iii) The commonality of the subject-matter;*
- (iv) The composite nature of the transactions; and*
- (v) The performance of the contract."*

42. We find from perusal of the impugned majority order of the Arbitral Tribunal that all the relevant factors prescribed in **Cox & Kings Ltd.** relating to impleadment of the non-signatory party, Mantri Developers, were duly considered by it. The Arbitral Tribunal is empowered to decide on its jurisdiction. The provisions of Section 2 (1) (h) of the Act, 1996

read with Section 16 thereof leave no room for doubt with regard to the authority of the Arbitrator to decide on its jurisdiction which is precisely what has been done by the Arbitral Tribunal by majority in the impugned order. So there is neither patent lack of jurisdiction nor inherent lack of jurisdiction of the Arbitral Tribunal in impleading the petitioner-Mantri Developers which is a non-signatory party to the JDA.

43. Thus we find no reason to interfere in the impugned majority order of the Arbitral Tribunal in exercise of our jurisdiction under Article 226/227 of the Constitution.

44. This petition is therefore, ***dismissed***. Pending IAs., if any, stand disposed of.

**Sd/-  
(JAYANT BANERJI)  
JUDGE**

**Sd/-  
(UMESH M ADIGA)  
JUDGE**

KGR