AFR

2026:AHC-LKO:24750

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

MATTERS UNDER ARTICLE 227 No. 6089 of 2025

M/S U.P. Rajya Vidyut Utpadan Nigam, Ltd. Thru. Authorised Representative Pradeep Soni And Others

... Petitioners

Versus

M/S Adani Enterprises Ltd., Ahemdabad Thru. Managing Director Ahemdabad And Another

...Respondents

Counsel for Petitioner(s) : Vibhanshu Srivastava, Pritish Kumar, Suyash Manjul

Counsel for Respondent(s) : Pranjal Krishna

CONNECTED WITH

MATTERS UNDER ARTICLE 227 No. 5333 of 2025

M/S U.P. Rajya Vidyut Utpadan Nigam Ltd. (Uprvunl) Thru Authorized Pradeep Soni And 2 Others

... Petitioners

Versus

M/S Adani Enterprises Ltd. Thru. Managing Director And Another

...Respondents

Counsel for Petitioner(s) : Suyash Manjul, Pritish Kumar, Vibhanshu Srivastava

Counsel for Respondent(s) : Pranjal Krishna

Reserved: *12.03.2026*
Pronounced: *09.04.2026*

Court No. 6

HON'BLE PANKAJ BHATIA, J.

J U D G M E N T

1. Writ Petition being Matters Under Article 227 No.6089 of 2025 has been filed by the petitioners challenging the order dated 29.08.2025 passed by learned Commercial Court – I, Lucknow in Execution Case No.383 of 2023 (M/s Adani Enterprises v. UCM Coal Company and Ors.) whereby objections filed by the petitioners have been rejected in respect of the execution sought by respondent no.1 for execution of the final arbitral award dated 20.11.2018.

Writ Petition being Matters Under Article 227 No.5333 of 2025 has been filed by the petitioners against the order dated 31.07.2025 passed by learned Commercial Court – I, Lucknow in Execution Case No.277 of 2021 (M/s Adani Enterprises v. UCM Coal Company and Ors.) whereby the objections of the petitioners were dismissed. The said execution proceedings were initiated by respondent no.1 for execution of the interim award dated 31.01.2017.

2. As the facts and issues are same and the parties are also same, both the petitions are being decided together by this common judgment.

3. For the sake of brevity, facts of Writ Petition being Matters Under Article 227 No.6089 of 2025 are being recorded for deciding the matters.

FACTS OF THE CASE :

4. Ministry of Coal invited bids for allocation of coal mines and petitioner nos.1, 2 & 3 being desirous of participating applied and were allocated coal mines at Chandipada – I and Chendipada – II coal blocks at Odisha vide allocation dated 25.07.2007 (Annexure – 2). In terms of the allocation letter, the allottees were entitled to float a company for excavation and development of the coal block and in pursuance to the said provision, the petitioner nos.1, 2 & 3 formed a company known as UCM

Coal Company Ltd. *(hereinafter referred to as 'SPV')*. The petitioner nos.1, 2 & 3 were the shareholders in the percentage in which they were allotted the coal blocks by the Ministry of Coal. Copy of the Articles of Association of the SPV are on record as Annexure – 3. It also bears from record that a share holder agreement was executed *inter se* in between petitioner nos.1, 2 & 3 on 11.11.2008 (Annexure – 4) which specified the manner in which a company (SPV) would be incorporated.

5. The SPV – respondent no.2 herein – floated a request for proposal on 27.09.2009 through an international competitive bidding for selection of suitable mine operator for the coal mines located at Chendipada I and II. Respondent No.1 was desirous of obtaining the contract and submitted its bid and was selected as successful for which a Letter of Award dated 27.10.2010 was issued by the SPV to respondent no.1 (Annexure – 5). Subsequently, a mining contract dated 05.02.2011 was also entered into *inter se* between respondent no.1 and respondent no.2 (Annexure – 6). The said agreement also contained an arbitration clause.

6. It is claimed that after the issuance of Letter of Award several work contracts and sub-contracts were issued by respondent no.1 which according to the petitioners, were in violation of the agreement.

7. It is on record that subsequently the Hon'ble Supreme Court while hearing the matters with regard to allegations of improper allocation of coal mines and ultimately the Hon'ble Supreme Court in the case of ***Manohar Lal Sharma v. The Principal Secretary & Ors.; Writ Petition (Criminal) No.120 of 2012*** set aside the entire coal block allotments and vide its judgment dated 24.09.2014 entire 204 coal blocks were de-allocated. After the cancellation of the coal blocks, mining contract dated 05.02.2011 became impossible to perform and respondent no.1 raised claims through letter/notice dated 28.02.2015 for restitution of the expenses and cost incurred by them towards performance of the

obligations under the contract. The said letter/notice dated 28.02.2015 is on record as Annexure – 7.

8. In view of the dispute arising *inter se* in between respondent no.1 and respondent no.2, the same was referred to the Arbitral Tribunal comprising of three arbitrators who entered into the reference of the dispute in between respondent no.1 and respondent no.2. Before the Arbitral Tribunal, respondent no.1 moved an application for interim award for payment of Rs.73.94 crores which was granted in favour of respondent no.1 against respondent no.2 on 31.01.2017. Subsequently, the Arbitral Tribunal proceeded and ultimately a final award came to be passed on 20.11.2018 in favour of respondent no.1 against respondent no.2. The interim award and the final award are contained in Annexures – 8 & 9. The final award dated 20.11.2018 was challenged before the Commercial Court under Section 34 of Arbitration and Conciliation Act *(hereinafter referred to as 'the Act')* which was dismissed on 31.03.2023. The said order of dismissal came to be challenged before the High Court under Section 37 of the Act in an appeal being Appeal Under Section 37 of Arbitration and Conciliation Act 1996 No. - 52 of 2023. Subsequently, it bears from record that the said appeal also came to be dismissed on 23.09.2025 and SLP preferred by respondent no.2 was dismissed on 19.01.2026.

9. It also bears from record that the interim award passed in favour of respondent no.1 on 31.01.2017 was never challenged by respondent no.2 through separate objections under Section 34 and in fact, a partial payment out of the said amount awarded has also been paid by respondent no.2 in the execution proceedings. Respondent no.1 ultimately preferred an execution of the interim award dated 31.01.2017 through an application filed under Order XXI Rule 11 read with Section 151 of CPC and Section 37 of the Act on 29.09.2021 which was registered as Execution Case No.277 of 2021 before the Commercial Court, Lucknow.

Similarly, respondent no.1 filed a separate execution case being Execution Case No.383 of 2023 seeking execution of the final award dated 20.11.2018. In the said execution cases, apart from respondent no.2, the petitioners who were the constituents of the SPV (respondent no.2) were also arrayed as judgment debtors.

As both the execution cases were being heard together, the petitioners herein filed an application seeking deletion of their names in in Execution Case No.277 of 2021 which came to be rejected on 22.05.2023.

10. The petitioners preferred a writ petition being Matters Under Article 227 No.3254 of 2025 challenging the order dated 22.05.2023 which came to be decided finally on 09.01.2025 whereby the writ Court refused to interfere with the order and gave liberty to the parties to raise all the pleas available to them in the execution proceedings which was directed to be decided in accordance with law.

11. The petitioners herein filed detailed objections in Execution Case No.383 of 2023 which are on record as Annexures – 13, 14 & 15. The decree holder/respondent no.1 filed its objection to the objections filed by petitioner nos.1, 2 & 3 through replies dated 27.05.2025 (Annexures – 16 & 17). Learned Commercial Court finally decided the execution case on 29.08.2025 and the objections filed by the petitioners were rejected and orders were passed against the petitioners to satisfy the award. The said order dated 29.08.2025 is under challenge in the present proceedings.

ARGUMENTS :

12. In the backdrop of the facts, in brief as narrated above, Shri K M Nataraj, learned A.S.G. assisted by Shri Pritish Kumar, learned A.A.G., Shri Suyash Manjul, Shri Vibhanshu Srivastava and Shri Sharath Nambiar, learned counsel(s) argued and submitted his written submission in terms of the directions given by this Court.

13. It is argued that the Commercial Court has erred in directing enforcement of the arbitral awards (interim as well as final) against the petitioners, even though the said awards were rendered in proceedings *inter se* between respondent no.1 and respondent no.2 and the petitioners were not parties. It is argued that it is well settled that an executing Court cannot go behind the decree. The Commercial Court has failed to appreciate the settled principles governing the doctrine of *'alter ego'* and *'lifting of corporate veil'* as well as limited scope of persons *"claiming under a party*" under Section 35 of the Act as well as the parameters for invoking the doctrine of *'group of companies'* and has erred in directing the enforcement of the award against the petitioners who were not the parties in the arbitration agreement or the proceedings.

14. It is argued that Section 35 of the Act cannot come to the rescue to bind non-signatories to an arbitration agreement or award by invoking Section 35 of the Act as their scope, foundation and legal tests are different. The alter ego doctrine to lift or pierce the corporation veil can be applied only on satisfying the proof of alter ego. It is argued that respondent no.1 for filing the execution proceedings against the petitioners had argued that petitioner nos.1, 2 & 3 are the promoters and share holders of respondent no.2 – SPV – and exercise control over its management and affairs, and were the initial allottees of the coal blocks and the respondent no.2 is a mere creature of these three entities, whereas in the present case, three State owned companies from three different states are the share holders of the company against which the award has been passed, as such, there could be no alter ego at all.

15. It is argued that only when the company is a facade, sham or instrumentality of another person or entity, the Court can treat them as one of the same legal personality.

16. It is argued that the doctrine of group of companies is based on the principle that a non signatory company within the same corporate group may be bound by an arbitration agreement if it was intended to be part of the transaction which depends on various factors such as common intention of the parties to bind the group entities, direct participation of the non signatory in the negotiation, performance or termination of the contract.

17. It is argued that Section 35 of the Act specifies that the award shall be binding on the parties and the persons claiming under them. The same embodies a statutory concept rather than a judicial doctrine whereby the binding effect of an arbitral award may be extended to persons who derive successor or derivative rights from a party to the arbitration.

18. It is argued that before the executing Court, respondent no.1 confined his pleadings only to the invocation of doctrine of alter ego without there being any pleadings of the foundational facts and without there being any pleadings of fraud, sham and misuse of the corporate form which are essential for lifting the corporate veil.

19. It is argued that the execution proceedings are confined to decree holder and the judgment debtor, and the executing Court cannot widen the scope of decree by impleading strangers or third parties who are neither the parties to the suit nor bound by the decree and the impleadment of the third part would amount to granting relief not contemplated by the degree. The executing Court cannot travel beyond the terms and scope of the decree. The attempt to implead third party who are neither parties to a suit or bound by the decree is impermissible in law and amounts to enlarging or modifying the decree.

20. To support the argument that the executing Court is bound by the decree and cannot go beyond it, reliance is placed upon judgment of the following judgments:

Topanmal Chhotmal v. Kundomal Gangaram; AIR 1960 SC 388;
Meenakshi Sadena v. ECGC Limited; (2018) 7 SCC 479;
Sanwarlal Agarwal v. Ashok Kumar; (2023) 7 SCC 307;
Dhanush Vir v. Dr. Ila Sharma; 2024 SCC OnLine All 3693;
V.K. Uppal v. Akshay International Pvt.; 2010 SCC OnLine Del 538;
Anirban Roy and Anr. v. Ram Kishna Gupta; 2017 SCC OnLine Delhi 12867

21. It is argued that the company is separate and distinct legal entity from its shareholders. It is argued that the shareholders cannot be treated as company and *vice versa*, and shareholders cannot be proceeded against for the liabilities of the company, except in situations recognized by law, and thus, the properties and liabilities of the company are its own and not that of the shareholders even if the shareholders hold majority of the shareholding. For the said proposition, reliance is placed upon the following judgments:

Electronics Corpn. of India Ltd. v. Secy., Revenue Deptt. Govt. of A.P.; (1999) 4 SCC 458
Meekin Transmission Ltd. v. State of U.P.; 2008 SCC OnLine All 161

22. In support of the submission that doctrine of alter ego and lifting of the veil is permissible only in exceptional circumstances and not as a rule, reliance is placed upon the following judgments:

Ansal Crown Heights v. M/s Ansal Crown Infrabuild; 2026 INSC 51
Rakesh Mahajan v. State of U.P.; 2019 SCC OnLine All 4766
Balwant Rai Saluja v. AIR India Limited; (2014) 9 SCC 407
Ajay Gupta v. Amit Sales; 2025 SCC OnLine Del 4703
Sudhir Gopal v. IGNO; 2017 SCC OnLine Del 8345
Cox and Kings Ltd. v. SAP India Private Limited and Anr.; (2024) 4 SCC 1

23. It is argued that the concept of Group of Companies doctrine cannot be invoked at the execution stage. The said doctrine has no

applicability in the present case as petitioners are separate and independent corporate entities and do not form part of the single economic unit or group structure. There is no common controlling entity having pervasive control over the day to day affairs of the petitioners companies. It is also argued that in the absence of the same, the attempt to invoke Group of Companies doctrine at the execution stage is impermissible. In support of the same, reliance has been placed on the following judgments:

> *Cox & Kings Ltd. v. SAP India Private Limited and Anr.; (2024) 4 SCC 1*
>
> *Cheran Properties Limited v. Kasturi & Sons; (2018) 16 SCC 413*

24. It is argued that the expression "claiming under" used in Section 35 of the Act is confined to persons who derive their legal rights or liabilities from arbitration agreement or award and the said expression cannot be expanded to include independent third parties or group companies merely on the basis of corporate association and for impleading a party invoking Section 35 it is essential that the entity must derive its rights and obligation from the party itself.

It is argued that no foundational facts were pleaded before the executing Court to demonstrate as to how the petitioners could be treated as "persons claiming under" under Section 35 of the Act. To support his argument, reliance is placed upon the following judgments:

> *Cox & Kings Ltd. v. SAP India Private Limited and Anr.; (2024) 4 SCC 1*
>
> *Cheran Properites Limited v. Kasturi & Sons; (2018) 16 SCC 413*

25. During the course of the argument, although not forming a part of the written arguments, an attempt was made to argue that the execution of the award was barred by the provisions of the Coal Mines (Special Provisions) Act, 2015, however, as no pleadings were existing, the said

argument was not pressed very fairly by learned A.S.G. and thus, did not even form a part of the written arguments.

26. Shri Vikram Nankani, learned Senior Advocate assisted by Shri Pranjal Krishna, Shri Abhishek Dwivedi and Shri Sumeet Nankani, learned counsel for respondents extensively drew my attention to the initial bids by petitioner nos.1, 2 & 3 and the events leading to allocation of coal blocks.

27. It is argued that the coal blocks were jointly allocated to petitioner nos.1, 2 & 3 who were required to carry out the mining activity and were solely to be used for the benefit of power stations owned by petitioner nos.1, 2 & 3 only. Mining leases were to be executed by petitioner nos.1, 2 & 3 and the bank guarantees were also submitted by them. It is argued that respondent no.2 was only an SPV created by petitioner nos.1, 2 & 3 for sole purpose of exploiting the coal blocks through a shareholders agreement for holding the shares in the ratio of 50%, 31.47% and 18.53% respectively by petitioner nos.1, 2 & 3.

28. It is also argued that all the Directors were to be appointed by the petitioners and in fact, the Managing Director of petitioner no.2 is the Chairman of the Board of respondent no.2 and Managing Director of petitioner no.1 is the Managing Director of respondent no.2. It is argued that respondent no.2 had no other business except the coal blocks which was allotted to petitioner nos.1, 2 & 3 and its incorporation and end were subject to the sole business of exploiting the coal blocks to be availed by the petitioners only.

29. It is stated that the Company Secretary of the petitioners and respondent no.2 was the same and the Letter of Award was marked to the petitioner nos.1, 2 & 3 which is not a common practice. It is stated that the mining contract was signed on all pages by petitioner nos.1, 2 & 3 in their individual capacities as mine owners. The Directors were to be

appointed from petitioner nos.1, 2 & 3 and the resources were to be used by petitioner nos.1, 2 & 3 only.

30. It is stated that respondent no.2 has no assets, resources or business of its own and survives and operates solely through the financial infusions and equity contributions made by petitioner nos.1, 2 & 3, and in fact the cost of arbitration was also borne by petitioner nos.1, 2 & 3.

31. My attention is also drawn to the financial statement wherein the liability arising out of award are shown as contingent liability in proportion to its shareholding. My attention is also drawn to the fact that in respect of the petitioner no.3 the auditor had raised certain objections in respect of contingent liability shown in the balance sheet by them which was clarified subsequently and accepted.

32. It is argued that in respect of petitioner no.1 in the financial statement for the year 2021 – 22, a provision was made that all the three will continue their share in the ratio as agreed for satisfying the awards in respect of the interim award made. It is argued that in the financial statement of petitioner no.1 it has been stated that once the coal blocks have been satisfied, company's winding up proceedings will begin.

33. It is argued that the Company Secretary of petitioner no.1 and respondent no.2 are the same and operate from the same office, reflecting the clear control over the operations and finances by petitioner no.1 over respondent no.2 and even the present petition, has been signed by the same Company Secretary.

34. It is further argued that this Court had formulated four questions of law vide its order dated 24.09.2025 in writ petition being Mattes Under Article 227 No.5333 of 2025 to be decided, however, as the issues are identical, the same are being answered collectively.

35. It is argued that the arbitral award can be executed between a party which is not party to the arbitral proceeding and the executing Court has

the power to lift the corporate veil by execution of an award against non-parties. As respondent no.2 – the SPV – is nothing but an alter ego of the petitioners which is recognized both under Section 35 of the Act as well as Order XXI Rule 11 and Order XXI Rule 41 of CPC. Reliance is placed upon the judgment of the ***Cheran Properties Ltd. v. Kasturi & Sons; (2018) 16 SCC 413.***

36. It is argued that in terms of the mandate of Order XXI Rule 11 of CPC, there is a provision for including the name of the persons against whom the execution of the decree is sought and in terms of the mandate of Order XXI Rule 41 of CPC, a decree holder has a right to apply for examination of not only the judgment debtor but also any other person to ascertain whether the judgment debtor has means to satisfy the decree.

37. It is also argued that under the Act, the binding nature of the domestic arbitral award differs from that of a foreign arbitral award. While the former is governed by Part I of the said Act, latter is governed by Part II. Section 35 of the Act falls under Part I, which is reproduced in the later part of the judgment.

38. It is argued that language of Section 35 differs from Section 46 which falls under Part II and reads as under:

> *"**46. When foreign award binding**.—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award."*

39. In the light of the said, it is argued that while a foreign award under Section 46 of the Act only binds the parties to the arbitral proceedings, the domestic award issued under Part I of the Act not only binds the parties to the arbitral proceedings but also the persons claiming under them.

40. It is argued that in view thereof, reliance of the petitioner, during argument, on the judgment of ***Mitsui OSK Lines Ltd. (Japan) v. Orient Ship Agency Pvt. Ltd. & Anr.; 2020 SCC OnLine Bom 217*** is wholly misplaced as the same arose in respect of a foreign award governed by Section 46 of the Act and not Section 35.

41. Learned counsel for the respondents places reliance on the judgment of the Supreme Court in respect of Section 35 in the case of ***Cheran Properties Ltd. (supra)*** wherein the following was recorded:

> ***29.*** *The decision in Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] arose from an application under Section 11 of the Arbitration and Conciliation Act, 1996. Indowind was not a signatory to the contract and was held not to be a party to the agreement to refer disputes to arbitration. Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] held that an application under Section 11 was not maintainable. The present case does not envisage a situation of the kind which prevailed before this Court in Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] . The present case relates to a post award situation. The enforcement of the arbitral award has been sought against the appellant on the basis that it claims under KCP and is bound by the award. Section 35 of the Arbitration and Conciliation Act, 1996 postulates that an arbitral award "shall be final and binding on the parties and persons claiming under them respectively" (emphasis supplied). The expression "claiming under", in its ordinary meaning, directs attention to the source of the right. The expression includes cases of devolution and assignment of interest (Advanced Law Lexicon by P. Ramanatha Aiyar [3rd Edn., Vol. I, p. 818.]). The expression "persons claiming under them" in Section 35 widens the net of those whom the arbitral award binds. It does so by reaching out not only to the parties but to those who claim under them, as well. The expression "persons claiming under them" is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. Having derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. The issue in every such a case is whether the person against whom the arbitral award is sought to be enforced is one who claims under a party to the agreement.*
>
> ***31.*** *The submission which was urged on behalf of the appellant, proceeds on the basis that since the appellant was not impleaded as a party to the arbitral proceedings, proceedings for the enforcement of the award will not lie against it. This line of submissions clearly misses the central facet of Section 35, which is that a person who claims under a party is bound by the award. The fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can*

> *be enforced against it on the ground that it claims under a party. Essentially, the Court is called upon to consider whether the test embodied in Section 35 is fulfilled in the present case, so as to bind the appellant."*

42. Reliance is also placed upon the judgment of the Division Bench of the Bombay High Court in the case of ***Bhatia Industries & Infrastructure Limited v. Asian Natural Resources (India) Pvt. Ltd. & Ors.; 2016 SCC OnLine Bom 10695*** to argue that the corporate veil can be pierced in execution proceedings also in situations where a view is formed that the company is a creature of the group and the mask which is held before its face is an attempt to avoid recognition by the eye of equity or is a mere cloak or sham and in truth the business was being carried on by one person and not by the company as a separate entity.

It is argued that the judgment of the ***Bhatia Industries (supra)*** was not interfered in the SLP, although, in the order passed by the Hon'ble Supreme Court it was recorded that the question of law was kept open.

43. Reliance is also placed upon judgment of the Calcutta High Court in the case of ***M/s Rana Chairs v. Director General (Town Planning) K.M.C. & Anr.; 2022 SCC OnLine Cal 3355*** wherein the application for impleadment of the person as judgment debtor was allowed. Relevant paragraph of the said judgment is reproduced herein below:

> *"12. Filing an appeal by the Kolkata Municipal Corporation to set aside the ex-parte decree on the grounds whatsoever shows that though Kolkata Municipal Corporation was not eo nomine party but interested in such right, that means the other persons i.e. Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation must come under the same title as those represented by names. The reason is that, if we read the provisions of Code of Civil Procedure in a technical or a restricted sense then the difficulty would be that the persons who are really entitled to the benefits of a decree or persons who are really burdened by a decree would escape the benefit or a liability under the decree and, therefore, the decree would be in-fructuous."*

44. It is reiterated by learned counsel for the respondents that from the Memorandum of Association of respondent no.2 it is clear that the same was incorporated as a vehicle for the purpose of exploiting coal for the

power plant owned by the petitioners, and for their benefits, rights and entitlements and respondent no.2 has no independent business or existence of its own. The main object of the company – respondent no.2 – as per their Memorandum of Association is as under:

> *"A. THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:-*
>
> > *1. The Company shall be primarily in the business of implementing the joint-venture project between UPRVUNL ... MAHAGENCO ... CMDC ... for the purpose of exploitation and share the output from the blocks of coal mines allotted by the Government of India, in a manner that is conductive, for the captive consumption of the joint venture partners."*

45. It is once again reiterated that as per the Shareholders' Agreement of respondent no.2 – the SPV – the petitioners are recognized as both the promoters as well as the only shareholders of respondent no.2. It is argued that the SPV's Board comprises only the officials from the petitioners – the Chairman being the Managing Director of petitioner no.2. The SPV is intrinsically and entirely managed, controlled and operated by the petitioners. The petitioners were also actively involved in the arbitral proceedings. It is again reiterated that the petitioners are signatories to the Mining Contract and they have signed on each and every page thereof including the pages containing the arbitration clause.

46. My attention is also drawn to the judgment of the Delhi High Court in the case of ***Shapoorji Pallonji and Co. Pvt. Ltd. v. Rattan India Power Ltd.; 2021 SCC OnLine Del 3688,*** which observed as under:

> *"**29.** Gary B. Born in his book, International Commercial Arbitration, Volume I, (Third Edition), p. 1546, had explained the concept of alter ego as under:*
>
> > *"Definitions of "alter ego" vary materially in different legal systems, and are applied in a number of different contexts. Nonetheless, the essential theory of the "alter ego" doctrine in most jurisdictions is that one party so thoroughly dominates the affairs of another party, and has sufficiently misused such control, that it is appropriate to disregard the two companies' separate legal forms, and to treat them as a single entity. In the context of arbitration agreements, demonstrating an "alter ego" relationship under most developed legal systems requires convincing evidence*

> *that one entity dominated the day-to-day actions of another and/or that it exercised this power to work fraud or other injustice or inequality on a third party or to evade statutory or other legal obligations.*
>
> *The"alter ego" doctrine differs from principles of agency or implied consent in that the parties' intentions are not decisive; rather, the doctrine rests on overriding considerations of equity and fairness, which mandate disregarding an entity's separate legal identity in specified circumstances."*

47. In short, it is submitted that the most crucial element of the factual matrix available on record is the complete inseparability of respondent no.2 with the petitioners. The shareholding of respondent no.2 is based on the same proportion as per the ratio of coal allocation given in the Letter of Allocation. The entire management of respondent no.2 – the SPV – are derived from the petitioners and all the key managerial positions are manned by the persons either working with the petitioners or nominated by them. The entire action on behalf of respondent no.2 and the petitioners have been carried out as a single economic entity.

48. It is argued that the broad parameters for lifting the corporate veil were laid down by a Constitution Bench of the Supreme Court in the case of ***Life Insurance Corporation of India v. Escorts Ltd.; (1986) 1 SCC 264***, which reads as under:

> *"**90.** It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in Wallersteiner v. Moir [(1974) 3 All ER 217] and the decisions of this Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar [AIR 1965 SC 40 : (1964) 6 SCR 885] , CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] and Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] — While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd. [1897 AC 22] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the*

individual members recognised for who they are in certain exceptional circumstances Pennington in his Company Law (4th Edn.) states:

> *"Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text hooks on corporation tax, income tax, capital gains tax and capital transfer tax.*
>
> *The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members."*

In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd. [AIR 1965 SC 40 : (1964) 6 SCR 885] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

49. Relying on the judgment in ***Life Insurance Corporation of India (supra),*** Hon'ble Supreme Court in the case of ***State of U.P. & Ors. v. Renusagar Power Co. & Ors.; (1988) 4 SCC 59,*** held as under:

> ***"66.*** *It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order the profits of Renusagar have been treated as the profits of Hindalco.*
>
> ***68.*** *The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case [1897 AC 22] still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence [Tagore Law Lectures, p. 183]."*

50. It is also argued that the attempt to argue on the basis of enactment of the Coal Mines Act, 2015 was untenable as the same relate to disputes between the mine developers and the prior allottees of the mine and does not address or govern the dispute *inter se* in between prior allottees and the subsequent allottees.

51. In the light of the said, it is argued that the petition under Art. 227 of Constitution having limited scope is liable to be dismissed.

DISCUSSION :

52. Considering the submissions made by the parties and recorded above, the undisputed facts are that the three petitioners before this Court

had constituted a SPV – respondent no.2. The SPV had executed the agreement with respondent no.1. The interim and the final awards were passed by arbitral Tribunal which have been affirmed and have attained finality. It is also accepted that petitioner nos.1, 2 & 3 were not party before the arbitral Tribunal and were impleaded for the first time in the execution proceedings.

53. In the light of the said admitted positions, the question that arise for consideration is whether the interim and the final awards passed in between respondent no.1 and respondent no.2 can be executed against petitioner nos.1, 2 & 3 ?

Whether the petitioner nos.1, 2 & 3 could be impleaded as parties in the execution proceedings, they not being a party to the arbitral proceedings, would be governed by Section 36 of the Act which provides that the award can be enforced in accordance with the provisions of Code of Civil Procedure in the same manner as if a decree of the Court ?

54. The right of the decree holder to implead the petitioner nos.1, 2 & 3 flows from Order XXI Rule 11 of CPC. Section 36 of the Act and Order XXI Rule 11 of CPC are quoted herein below:

> *"**11. Oral application.—**(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.*
>
> ***(2) Written application.**—Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—*
>
> *(a) the number of the suit;*
>
> *(b) the names of the parties;*
>
> *(c) the date of the decree;*
>
> *(d) whether any appeal has been preferred from the decree;*

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether—

(i) by the delivery of any property specifically decreed;

(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

XXX XXX XXX

***36. Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a Prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

55. As regards the arguments of the petitioners founded on the cited judgments to argue that the SPV company is a separate juristic personality, independent of its constituent companies and the liabilities of the SPV company cannot be enforced against its shareholders or the Directors, this legal proposition as argued by learned counsel for the petitioners is fairly settled as was decided by the Constitution Bench of the Supreme Court in the case of ***Cox and Kings Ltd. (supra)*** wherein under the Heading 'E' of the said judgment, the arguments with regard to separate legal personality of the companies separate from its shareholder and director were considered after analyzing judgments in the cases starting from ***Aron Salomon (Pauper) v. A. Salomon & Co. Ltd.; 1897 AC 22 (HL)*** uptil the judgment of the Supreme Court in the case of ***Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867.*** The Supreme Court analyzed and crystallized, after discussing the case-laws with regard to separate legal personality of a company in Para 94, which is as under:

*"**94.** From the above discussion, we can infer that entities within a corporate group have separate legal personality, which cannot be ignored save in exceptional circumstances such as fraud. The distinction between a parent company and its subsidiary is fundamental, and cannot be easily abridged by taking recourse to economic convenience. [Bank of Tokyo Ltd. v. Karoon, 1987 AC 45 : (1986) 3 WLR 414 (CA)] Legally, the rights and liabilities of a parent company cannot be transferred to the subsidiary company, and vice versa, unless, there is a strong legal basis for doing so."*

56. To that extent, there cannot be any dispute with the proposition as argued by learned counsel for the petitioners.

57. In the present case, the issue as arising *inter se* in between the parties is to be interpreted in the backdrop of mandate of Section 35 of the Act and the definition of 'party' as defined under Section 2(h) of the Act. Section 35 of the Act reads as under:

> *"**35. Finality of arbitral awards.**—Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively."*

Section 2(h) of the Act however, reads as under:

> ***"2. Definitions. -** (1) In this Part, unless the context otherwise require, -*
>
> *...*
>
> *(h) "party" means a party to an arbitration agreement."*

58. The issue as to whether a person/entity who is not a party to the arbitration agreement can be proceeded against in terms of the language of Section 35 of the Act which uses the phrase "persons claiming under them". Section 35 is distinct insofar as the said section binds the party to the agreement and the "person claiming under them". This aspect was considered in the light of mandate of Section 35 by the Supreme Court in the case of ***Cheran Properties Ltd. (supra)*** wherein the Supreme Court observed as under:

> *"**23.** As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered*

structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.

29. *The decision in Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] arose from an application under Section 11 of the Arbitration and Conciliation Act, 1996. Indowind was not a signatory to the contract and was held not to be a party to the agreement to refer disputes to arbitration. Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] held that an application under Section 11 was not maintainable. The present case does not envisage a situation of the kind which prevailed before this Court in Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] . The present case relates to a post award situation. The enforcement of the arbitral award has been sought against the appellant on the basis that it claims under KCP and is bound by the award. Section 35 of the Arbitration and Conciliation Act, 1996 postulates that an arbitral award "shall be final and binding on the parties and persons claiming under them respectively" (emphasis supplied). The expression "claiming under", in its ordinary meaning, directs attention to the source of the right. The expression includes cases of devolution and assignment of interest (Advanced Law Lexicon by P. Ramanatha Aiyar [3rd Edn., Vol. I, p. 818.]). The expression "persons claiming under them" in Section 35 widens the net of those whom the arbitral award binds. It does so by reaching out not only to the parties but to those who claim under them, as well. The expression "persons claiming under them" is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. Having derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. The issue in every such a case is whether the person against whom the arbitral award is sought to be enforced is one who claims under a party to the agreement.*

30. *Mr Sibal has sought to make a distinction between the provisions of Section 45 and the unamended Section 8. Section 45, forms a part of Part II dealing with the enforcement of foreign awards to which the New York Convention applies. It contemplates a reference by a judicial authority to arbitration at the request of one of the parties "or any person claiming through or under him", where there is an arbitration agreement. The submission of Mr Sibal is that a similar expression "any person claiming through or under him" has been introduced in the amended provisions of Section 8 (substituted by Act 3 of 2016 with effect from 23-10-2015) but that this expression did not find place in the unamended provision. The submission is a non sequitur. Both Sections 8 and 45 operate in the sphere of the duty of a judicial authority to refer parties to arbitration. In the present case Section 35 is the material provision, which expressly stipulates that an arbitral award is, final and binding not only on the parties but on persons claiming under them.*

31. *The submission which was urged on behalf of the appellant, proceeds on the basis that since the appellant was not impleaded as a party to the arbitral proceedings, proceedings for the enforcement of the award will*

not lie against it. This line of submissions clearly misses the central facet of Section 35, which is that a person who claims under a party is bound by the award. The fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can be enforced against it on the ground that it claims under a party. Essentially, the Court is called upon to consider whether the test embodied in Section 35 is fulfilled in the present case, so as to bind the appellant."

59. The said principle was further discussed and affirmed in the case of ***Cox and Kings Limited (supra)*** in the context of Section 35 in the following paragraphs:

"145. *Section 35 of the Arbitration Act provides that an arbitral award shall be final and binding on the parties and persons claiming under them respectively. In Cheran Properties [Cheran Properties Ltd. v. Kasturi & Sons Ltd., (2018) 16 SCC 413 : (2019) 1 SCC (Civ) 486] , this Court rightly observed that the expression "persons claiming under them" is "a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings". It was further observed that "[h]aving derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it". Similarly, Section 73 also provides that a settlement agreement signed by the parties shall be final and binding "on the parties and persons claiming under them respectively".*

146. *Sections 8, 35, and 45 use the phrase "parties or any person claiming through or under". The word "or" is used in Sections 8 and 45 as a disjunctive particle to express an alternative or give a choice between "parties" or "any person claiming through or under". Consequently, either the party to an arbitration agreement or any person claiming through or under the party can make an application to the judicial authority to refer the dispute to arbitration. It is in the interest of respecting the intention of the parties and promoting commercial efficacy, that the above provisions allow either the party or any person "claiming through or under him" to refer the disputes to arbitration.*

147. *On the other hand, Sections 35 and 73 use the phrase "parties and persons claiming under them". The use of the word "and" in Sections 35 and 73 conveys the idea that "parties" is to be added or taken together with the subsequent phrase "any person claiming through or under". The above provisions provide that an arbitration award binds not only the parties but also all such persons who derive their capacity from the party to the arbitration agreement. Again, the foundational basis for this provision is commercial efficacy as it ensures that an arbitral award leads to finality, such that both the parties and all persons claiming through or under them do not reagitate the claims. Moreover, the use of the word "and" in Sections 35 and 73 leads to an unmistakable conclusion that under the Arbitration Act, the concept of a "party" is distinct and different from the concept of "persons claiming through or under" a party to the arbitration agreement."*

60. The other judgments cited by learned counsel for respondent no.1 need not be gone into in view of the clear pronouncements of the Supreme Court on the interpretation of true scope and intent of Section 35 of the Act in the case of ***Cheran Properties Limited (supra)*** as affirmed in the case of ***Cox and Kings Limited (supra)***.

61. Once Section 35 and the phrase "any person claiming through or under him" has been interpreted by the Supreme Court to hold that the arbitral award binds every person whose capacity or possession is derived from and is the same as party to the proceedings, leaves no room for interpretation that the petitioners would be persons falling within the phrase "any person claiming through or under".

62. In the present case, what emerges from the pleadings is that from the stage of shareholders agreement, all the petitioners and their officers were involved. The SPV was created in terms of the mandate of the Ministry of Coal and all the officers of petitioner nos.1, 2 & 3 were involved from the process of creation of the SPV, which was created for the sole purpose of dealing with the allocated coal. The company was created for the benefit of petitioner nos.1, 2 & 3. The Company Secretaries of petitioner no.1 and respondent no.2 are the same. Respondent no.2 is nothing but a skeletal company drawing all its funds from its three major shareholders namely petitioner nos.1, 2 & 3. In fact, the office bearers of respondent no.2 who are also the office bearers of petitioner nos.1, 2 & 3 participated before the arbitral proceedings and at all stages of their dealing, the same was done by petitioner nos.1, 2 & 3 and their officers for and on behalf of respondent no.2. Also that part of interim award was satisfied by the petitioner by infusing funds. The SPV, respondent no.2, is same as petitioner nos.1, 2 & 3.

63. The argument that petitioner nos.1, 2 & 3 ought to have been made party before the arbitral Tribunal loses significance in view of the

mandate of Section 35 which enables execution even against a non party but falling within the expression ‘persons claiming under them’.

CONCLUSION :

64. Thus, the upshot of the reasoning recorded above is that a normal decree passed by a competent Court of law against a company can be executed only against the judgment debtor company and not against its shareholders/directors unless ingredients of lifting the corporate veil is established, however, an award passed under the Arbitration and Conciliation Act can be executed against the ‘party’ or any ‘person claiming under them’.

65. Finding that all the material on record clearly suggests that from the initial stage of inception up till the conclusion and in fact till the winding up of respondent no.2, it was the petitioners who would fall within the phrase “persons claiming under them” as used in Section 35 of the Act, thus, I have no hesitation in holding that the order of execution passed by the Commercial Court does not warrant any interference in exercise of powers under Art. 227 of the Constitution.

66. Both the petitions are accordingly ***dismissed*** with direction to the Executing Court to execute the decree with all expedition forthwith.

67. Direction(s) given by the Commercial Court on 29.08.2025 & 31.07.2025 shall be complied with, with all expedition by the petitioners.

68. Before parting with the judgment, I would like to put in word of appreciation for Ms. Rajshree Lakshmi, Research Associate for her dexterity in research and superlative assistance in drafting this judgment.

April 09, 2026 **[Pankaj Bhatia, J.]**

Nishant.