IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO. 25994 OF 2026

Parle Agro Private Limited, through it's Authorized Representative Bhalchandra Shripad Virkar ... **Petitioner**

Vs.

1. **Udayak Agro Products Pvt. Ltd.**
2. **K.L. Bevarages LLP** ... **Respondents**

Dr. Birendra Saraf, Senior Advocate with Mr. Jay Sanklecha, Mr. Aditya Malhotra, Ms. Kanika Goenka, Ms. Prachi Gupta, Ms. Swagata Ghosh, Ms. Prachi Gupta and Mr. Pranay Malade for the Petitioner.

Mr. Prathamesh Kamat with Mr. Sumit Towari for Respondent No.1.

Mr. Ravi Kadam, Senior Advocate with Mr. Shanay Shah, Ms. Aditi Deshpande, Mr. Tejas Popat and Ms. Rupal Dugar i/by J. Sagar Associates for Respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 16, 2026.

PRONOUNCED ON : SEPTEMBER 23, 2026

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). By this

Petition, the Petitioner seeks urgent interim protection against the continuing breach of obligations by the Respondents under two Franchise Agreements. The first is the Franchise Agreement dated 5 February 2014, as amended from time to time, between the Petitioner and Respondent No. 1. The second is the Franchise Agreement dated 16 July 2018, as amended from time to time, between the Petitioner and Respondent No. 2. Both these agreements are together referred to as the "Franchise Agreements".

2. The Petitioner, Parle Agro Private Limited ("PAPL"), is an Indian company carrying on the business of beverages and is the proprietor of, among others, the brands "BAILLEY", "BAILLEY ONE", "Frooti", "Appy" and "Appy Fizz". Under the Franchise Agreements, Respondent No. 1, Udayak Agro Products Pvt. Ltd., and Respondent No. 2, KL Beverages LLP, were appointed as franchisees for manufacturing and selling PAPL's packaged drinking water and beverages in the North-Eastern region. Both Respondents belong to the KL Group. The KL Group is controlled by M.K. Agarwala, Raj Shekhar Agarwal, Nikita Agarwal and Sangeeta Agarwal. These persons are partners of Respondent No. 2. M.K. Agarwala, Raj Shekhar Agarwal and Sangeeta Agarwal are directors of Respondent No. 1. Rajshekhar Constructions Private Limited is another group company. PAPL's business relationship with the KL Group goes back to the year 2001, when Respondent No. 1 was first appointed as PAPL's franchisee for packaged drinking water under the Franchise Agreement dated 31 May 2001. That arrangement was continued through successive Franchise Agreements and continues under the Udayak Franchise

Agreement. During this long business relationship, PAPL permitted the Respondents to use and have access to its intellectual property, technical know-how, quality manuals, manufacturing processes, vendor and distribution networks and confidential business information. The Franchise Agreements contain detailed provisions relating to non-compete obligations, exclusivity, confidentiality, intellectual property and protection of technical know-how. These provisions prohibit the Respondents and their associate or group entities from directly or indirectly manufacturing or dealing with competing products. They restrict the Respondents from allowing competitors to use the franchise facilities, using their association with PAPL for carrying on competing business, or using PAPL's confidential know-how and proprietary information for any competing activity.

3. The present Petition has been filed because, during a audit conducted in March 2026, PAPL found that the Respondents had started manufacturing and distributing packaged drinking water under the brand "SURE" from the franchise premises. investigation showed that production and sale of this competing product had started. It was found that the purchase of raw material required for PAPL's products had reduced and that Respondent No. 2 was actively carrying on the competing packaged drinking water business. The Udayak Franchise Agreement is still valid and subsisting and has been extended up to 31 March 2028. Insofar as the KL Franchise Agreement is concerned, the manufacturing and distribution operations under that agreement have stopped. However, no disassociation was ever executed. Therefore, according to PAPL, Respondent No. 2 continues to be bound by the post-termination non-compete obligation under Clause 15(d), which continues for two years from the date of termination. PAPL repeatedly called upon the Respondents to stop the competing activities. The Respondents did not stop such activities and did not give any satisfactory explanation for their conduct. It is the case of the Petitioner that the Respondents are continuously violating their obligations, including the obligations relating to non-compete, exclusivity and confidentiality under the Franchise Agreements. According to the Petitioner, the conduct of the Respondents gives them an opportunity to use PAPL's proprietary know-how, confidential information, infrastructure, customer relationships and goodwill for a competing business. The Petitioner submits that this is causing continuing and irreparable harm which cannot be compensated only by payment of damages. The Petitioner seeks urgent interim measures pending commencement and completion of the arbitral proceedings. The Petitioner seeks, among other reliefs, an order restraining the Respondents from manufacturing, marketing, distributing or otherwise dealing in competing packaged drinking water and other competing products in breach of the Franchise Agreements. The Petitioner seeks an order restraining the Respondents from using or exploiting PAPL's proprietary know-how, confidential information, intellectual property, manufacturing processes, quality manuals, customer relationships and other proprietary resources for any competing business. The Petitioner seeks a direction to the Respondents to disclose all records, materials and evidence relating to the competing business.

4. The Petitioner, PAPL, carries on the business of manufacturing, marketing and distributing packaged drinking water under the trademarks "BAILLEY" and "BAILLEY ONE". It manufactures and deals in fruit-based and other beverages under the trademarks "Frooti", "Appy", "Appy Fizz", "B Fizz", "Dhishoom" and "Ginger Rokx". In Assam and Meghalaya, PAPL carries on its business through franchise arrangements with entities forming part of the "KL Group". The KL Group is controlled and managed by the Agarwal family. Respondent No. 1, Udayak, and Respondent No. 2, KL Beverages, are among the entities forming part of the KL Group. Both Respondents are owned and controlled by members of the Agarwal family, as stated hereinafter. Under the Franchise Agreement dated 5 February 2014 ("Udayak Franchise Agreement"), Udayak was appointed as PAPL's franchisee for packaged drinking water under the trademarks "BAILLEY" and "BAILLEY ONE" in Meghalaya and Assam. It is not in dispute that the Udayak Franchise Agreement is valid and subsisting and continues up to 31 March 2028. Under the Udayak Franchise Agreement, Udayak is prohibited from directly or indirectly entering into a competing business which is the same as the business carried on under the brands "BAILLEY" and "BAILLEY ONE". This prohibition applies where such competing business is carried on through its associates, sister concerns or in any other manner. KL Beverages is an associate and sister concern of Udayak and forms part of the KL Group. It was appointed as PAPL's franchisee for beverages under the Franchise Agreement dated 16

July 2018 ("KL Franchise Agreement"). It is not in dispute that the manufacturing and distribution operations under the KL Franchise Agreement have now stopped. During a plant audit conducted by PAPL on 18 and 19 March 2026 at the common compound of the Respondents, PAPL found that packaged drinking water under the trademark "SURE", which competes with PAPL's products, was being manufactured and stored by KL Beverages. KL Beverages has not denied that it manufactures packaged drinking water under the brand "SURE". In its own affidavit in reply, KL Beverages has stated that "SURE" is manufactured "in accordance with the process, methodology, quality standards and technical documentation prescribed by the 'SURE' brand." Udayak has admitted in its affidavit in reply that "SURE" packaged drinking water is being manufactured by KL Beverages. Udayak has admitted that "SURE" and "BAILLEY" are competing packaged drinking water products and operate in the same market. In view of these facts, PAPL seeks an interim injunction restraining the Respondents from carrying on the competing business, including the manufacture and sale of "SURE" packaged drinking water. PAPL seeks an order restraining the Respondents from using or disclosing its confidential information and know-how pending the arbitral proceedings.

5. The learned Senior Advocate, Mr. Saraf, submits that the Petitioner has a strong prima facie case because the Udayak Franchise Agreement contains clear non-compete obligations. According to him, these obligations are not confined to Udayak alone. They extend to its associates, affiliates and sister concerns.

Clause 5 of the Udayak Franchise Agreement provides:

> "[Udayak] accepts that it will not, either directly or indirectly through any associate /sister concern or in any other manner, carry out the said Activities in relation to any existing products of any other manufacturer/franchisor or any other product which may be launched by any other manufacturer in future which is similar to the said Products in the Territory during the subsistence of this Agreement".

6. Clause 6 of the Udayak Franchise Agreement extends the non-compete obligation beyond the Territory. Clause 14(a) contains a similar prohibition which operates during the period of the agreement and after its expiry or termination. Clause 14(a) provides:

> "In recognition to the valuable rights granted by [PAPL] to [Udayak] pursuant to this Agreement, during the tenure of this Agreement and after expiry/termination of this Agreement (if any) for a period of 2 years or 1/4th of period of business association between [PAPL] and [Udayak] whichever is earlier, [Udayak) or its sister concern, group company, associates, affiliates or such other organizations, in which [Udayak] has ownership, partnership, contract, agreement or otherwise has any interest and whether located within or outside the Territory, shall not manufacture, prepare, package, distribute, sell, market, deal in or be otherwise concerned with any competitive products including mineral/packaged drinking water."

7. A plain reading of the Udayak Franchise Agreement shows that Udayak is prohibited from carrying on a competing activity either directly or indirectly through its associates, affiliates, sister concerns or group entities. The agreement places restrictions on Udayak and such related entities from using the business relationship with PAPL for obtaining competing business, from disclosing PAPL's confidential information and from using PAPL's know-how and quality manuals for competing products. The terms of the agreement appear to have been framed so that the restriction cannot be avoided merely by carrying on the competing business through a related entity.

8. Mr. Saraf, learned Senior Advocate, submits that the Courts have held that non-compete clauses are required to be understood in a manner which gives effect to their purpose, where the agreement extends the restriction to affiliates and related entities. According to him, if an affiliate is permitted to carry on the competing business indirectly, the object of the restriction would be defeated. In support of this submission, Dr. Saraf, learned Senior Advocate, relies upon the judgment in *Elster Instromet B.V. v. Mrunal Gandhi*, 2024 SCC OnLine Bom 350. The relevant paragraphs are reproduced below:

> “135. An attempt on the part of Mr. Nankani to read the words "directly" and "indirectly" synonymously would defeat the entire purpose of the proviso appended to clause 6.2 in form of a non compete clause, which was intended to ensure that the parties do not compete with the business of the JVC... the learned Arbitrator has refused to construe them as synonymous terms and opined that the parties intended to have a wide sweep of this clause and its intent cannot be defeated, by permitting the Affiliates to carry on competing business, which would be nothing short, to carry on business "indirectly".
>
> "136. … if the restrictive interpretation was to be applied to the proviso, it would cause damage to the clause 6.2, by

construing that the negative covenant did not extend to its Affiliates and thus permit the Affiliates to carry on competing business, and this would amount to circumventing the JVA and defeat the purpose for which the JVC was founded."

9. Therefore, according to Mr. Saraf, on a plain reading of the above clauses, Udayak as well as its associates and sister concerns cannot carry on a competing business. Otherwise, the restriction could be avoided by carrying on the competing business through another entity belonging to the same group or controlled by the same family members.

10. Mr. Saraf, learned Senior Advocate, submits that KL Beverages is an associate and sister concern of Udayak. According to him, the material on record shows that Udayak and KL Beverages have, in substance, functioned as part of the same economic unit. It is submitted that from the year 2001 onwards, PAPL has had a continuing business relationship with the KL Group, which is owned and controlled by the Agarwal family. The business relationship was carried on through different entities of the same group and through successive franchise agreements. The relevant facts relied upon by the Petitioner are as follows:

a. Udayak was appointed as PAPL's franchisee for packaged drinking water in the North-East in May 2001.

b. Padmesh Beverages ("Padmesh"), another entity of the KL Group managed by members of the Agarwal family, was appointed as PAPL's franchisee for beverages in 2004.

c. After Padmesh was dissolved, and at the specific written request of the Agarwal family, KL Beverages was appointed as PAPL's franchisee for beverages under the KL Franchise Agreement.

d. KL Beverages admits that, after Padmesh was dissolved, it took over the business and manufacturing operations of Padmesh Beverages, which had earlier been the beverages franchisee of PAPL.

11. It is submitted that each of the franchise agreements entered into with different entities of the KL Group from the year 2001 onwards contained negative covenants restricting the franchisee from manufacturing, distributing or otherwise dealing with products similar to or competing with PAPL's products. The Udayak Franchise Agreement is wider in its terms. It extends these restrictions to the franchisee's associates, sister concerns, group companies and affiliates.

12. Mr. Saraf, learned Senior Advocate, submits that the Respondents have attempted to justify their conduct by contending that the businesses of Udayak and KL Beverages are separate and independent. According to him, this contention does not appear to be supported by the material placed on record. The Petitioner relies upon several circumstances in support of its case.

13. Common ownership and control:

a. Both entities form part of the KL Group and are under the common ownership and control of the Agarwal family, as shown in the charts annexed as Annexure A.

b. The designated partners of KL Beverages, namely M.K.

Agarwala, Raj Shekhar Agarwal, Sangeeta Agarwal and Nikita Agarwal, are members of the Agarwal family. They are promoters, directors or shareholders, directly or indirectly, of Udayak.

c. Both entities belong to the same business group and, in their dealings with PAPL, are represented by the same persons, namely M.K. Agarwala and Raj Shekhar Agarwal. The same family had earlier operated Padmesh, which was PAPL's beverage franchisee from 2004 until 2020. After Padmesh ceased its operations, its franchise business, plant and FSSAI licence were continued through KL Beverages. According to the Petitioner, these facts show continuity of the same business group.

14. Statutory disclosure:

Udayak's audited financial statements for the financial year 2024-25 and its Form AOC-2 describe KL Beverages as an "Associate". These documents record related-party transactions between Udayak and KL Beverages amounting to approximately INR 1.75 crores.

15. Same registered office and same factory compound:

16. Both Respondents have the same registered address at 176, F.A. Road, Kumarpara Panchali, Guwahati. They operate from two buildings situated within the same KL Industries Estate compound. The audit report concerning the audit conducted on 18 and 19 March 2026 records that the compound contains buildings marked "Udayak Agro Pvt Ltd" and "KL Beverages Pvt. Ltd."

17. The Petitioner relies upon the following material to show common control, management and operations:

a. One email domain and one set of mailboxes:

Neither Respondent has a separate email domain of its own. The emails relied upon by the Respondents in their respective affidavits in reply were sent from or received at addresses using the domain kigrroup.com. The emails are printed under the heading "KL.Grroup Mail", are signed as "KL Grroup" and contain a disclaimer referring to the "KL. Group or its subsidiaries and associated companies".

b. Common purchase, accounts and logistics departments:

The correspondence exchanged by both Respondents with PAPL is sent from or copied to the same shared mailboxes or email addresses. These include "Purchase Dept KL. Group", "Accounts Dept Padmesh & Udayak", "Logistics Padmesh & Udayak" and "Digital Filing KLG". The names of the mailboxes indicate that the accounts and logistics functions were shared between the two businesses.

c. One purchase department issuing orders for both:

By a single email dated 2 October 2024, the purchase department of the KL Group, from the email address purchases@kigrroup.com, issued purchase orders to PAPL on behalf of both Respondents.

d. Same operations staff:

i. Mr. Shaishav Kumar is shown as "Plant Head" of KL

Beverages in the assessment attendance sheet relating to the audit conducted at the KL Beverages facility between 7 and 12 July 2025. He is shown as "Plant Head" of Udayak in the audit report dated 19 December 2025 concerning Udayak's facility. He signed the audit report dated 19 March 2026 as "MD" of Udayak.

ii. Mr. Chandra Hajongh is shown as "Quality Control Executive" and Mr. Subhash Sharma as "Store Incharge" of both Respondents in the same three documents.

e. Accounts treated as interchangeable and adjusted against each other's dues:

There are at least two instances on record where the KL Group requested PAPL to use amounts standing to the credit of one entity towards the dues of another entity:

i. In December 2020, the KL Group requested PAPL to transfer the security deposit of INR 5,00,000 standing to the credit of Padmesh to the account of its successor, KL Beverages.

ii. In October 2025, KL Beverages requested PAPL to adjust amounts payable to KL Beverages against the outstanding dues of Udayak.

According to the Petitioner, these instances show that, in their dealings with PAPL, the Respondents treated amounts and obligations of one entity as capable of being adjusted or discharged through the account of the other.

f. The same persons from the KL Group negotiated and executed the Franchise Agreements. The KL Franchise Agreement and its addendums were executed on behalf of KL Beverages by Mr. Raj Shekhar Agarwal as its partner. At the same time, he is a promoter-director of Udayak and is the deponent of Udayak's affidavit in reply filed in the present proceedings.

18. Mr. Saraf, learned Senior Advocate, submits that when all these facts are considered together, they show that the Respondents are under common ownership and control, use common management and operational systems, have substantial related-party dealings, treat their accounts as interchangeable and represent before PAPL and others as members of the same group. According to him, Udayak and KL Beverages constitute a single economic unit. In support of this submission, reliance is placed on *Eveready Industries India Ltd. v. KKR India Financial Services Ltd.*, 2022 SCC OnLine Del 395, where, according to the submission, the independent character of an entity may be disregarded where group entities form part of a common economic entity having overlapping ownership and management. Reliance is placed on *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.*, (2025) 9 SCC 76. It is submitted that where group entities are managed by common persons and correspond with the other contracting party in an interchangeable manner, the Courts have, in appropriate cases, applied the group of companies doctrine and held even a non-signatory entity to be bound by the contract.

19. Mr. Saraf, learned Senior Advocate, submits that in these circumstances the manufacture of competing packaged drinking water by KL Beverages from the same compound, with the use of the same personnel and staff and under the management of the same persons who are associated with Udayak, amounts, according to the Petitioner, to Udayak carrying on the competing business indirectly through its sister concern. It is submitted that such conduct falls within the prohibitions contained, among other provisions, in Clauses 5 and 14(a) of the Udayak Franchise Agreement. Reliance is placed on *Cox & Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1, *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 SCC 641 and *Cheran Properties Ltd. v. Kasturi & Sons Ltd.*, (2018) 16 SCC 413. According to Mr. Saraf, these decisions recognise that, in appropriate cases involving group companies, where the circumstances show an intention to bind the other entity, a non-signatory entity may be held bound by the terms of the contract.

20. Mr. Saraf, learned Senior Advocate, submits that, as stated above, there is no dispute that the competing "SURE" business is being carried on by KL Beverages. The audit conducted on 18 and 19 March 2026 found that "SURE" packaged drinking water was being actively manufactured at the franchise premises. The audit found that storage facilities used for BAILLEY products were being used for SURE products and that infrastructure required for manufacture of SURE was available at the premises. The contents of the Audit Report are not disputed. The report was signed by representatives of Udayak, and one of them was present when the inspection was carried out.

21. Mr. Saraf, learned Senior Advocate, submits that the following circumstances support the case of breach:

a) The tax invoice dated 1 March 2026 shows that production and sale of SURE had started before the audit conducted on 18 and 19 March 2026. The invoice bears the KL Group logo and address.

b) The QR code appearing on the SURE bottles identifies KL Beverages as the manufacturer.

c) Packaged drinking water was one of the approved product categories mentioned in the FSSAI licence of KL Beverages.

d) PAPL's sales of packaged drinking water in the concerned territory declined by 32% in value and 24% in volume in FY 2025-26 as compared with FY 2024-25.

e) The procurement of raw materials required for manufacturing BAILLEY products had either stopped or reduced.

22. It is admitted that "SURE" and "BAILLEY" are competing products. Both are packaged drinking water products. They are sold through the same retail and distribution channels in the same territory and are directed towards the same customer base.

23. When PAPL brought the alleged breach to the attention of the Respondents by its email dated 25 March 2026, Mr. Raj Shekhar Agarwal denied only that he personally and Udayak were carrying on any competing business. He did not deny the involvement of KL Beverages in the manufacture and sale of SURE.

24. It is submitted that a Court exercising jurisdiction under Section 9 of the Arbitration Act can, in an appropriate case, grant an injunction even against a third party. Whether KL Beverages is bound by the terms of the Udayak Franchise Agreement is a matter which can be determined by the arbitral tribunal. According to Mr. Saraf, this question does not prevent the Court from considering and granting appropriate interim protection under Section 9. In support of this submission, reliance is placed on the judgment in *Vikas Babulal Khandelwal v. Shree Krishna Sai Development Corporation & Ors.*, Arbitration Petition (L) No. 25100 of 2026, decided on 2 September 2026.

25. Mr. Saraf, learned Senior Advocate, submits that even on a plain reading, Clause 14(a) does not support the interpretation suggested by Udayak. The words "in which the FRANCHISEE has ownership, partnership, contract, agreement or otherwise has any interest" qualify the expression "such other organizations". According to him, these words do not qualify the separate categories of "sister concern, group company, associates, affiliates" which are mentioned in the clause. The interpretation suggested by Udayak would mean that a sister concern having the same ownership and management could carry on the same competing business from an adjoining premises merely because Udayak does not hold shares or a partnership interest in that concern. Such an interpretation would defeat the express restriction against indirect competition.

26. Mr. Saraf, learned Senior Advocate, submits that the Franchise Agreement does not require proof of any separate affirmative act by Udayak as an additional condition. Clauses 5 and 14(a) extend the restriction to competing activities carried on through related entities. If the Court were to require separate proof of an instruction, funding arrangement or direct participation by Udayak, it would add a requirement which is not found in the contract. The common ownership, management and operational links referred to above, according to the Petitioner, establish a prima facie case regarding the competing activity carried on by KL Beverages.

27. The explanations relied upon by the Respondents do not provide an answer to the alleged competing activity. Even if the circumstances relied upon by Udayak had some effect on the decline in BAILLEY sales, those circumstances would not authorise the manufacture of SURE. They would not release Udayak or its sister concerns from the negative covenants contained in the Franchise Agreement. In any event, the material relied upon by the Petitioner shows the following:

a) The restriction concerning 250 ml BAILLEY products does not explain the later decline in BAILLEY sales. There were no sales of the 250 ml SKU in either FY 2024-25 or FY 2025-26. Despite the restriction, total sales had marginally increased in FY 2024-25. The decline took place in FY 2025-26, when the competing SURE business commenced.

b) The surrender of certain territory does not explain the extent of the decline in sales. The districts surrendered by

Udayak accounted for less than 2% of its total sales in 2024 and 2025. Therefore, the surrender of those districts, cannot explain the approximately 32% decline in sales value during FY 2025-26. The decline coincided with the commencement of manufacture of SURE by KL Beverages., the competing SURE business is being carried on within the territory retained by Udayak.

c) The alleged increase in the price of pre-forms, which are used as raw material, is not supported by the document relied upon by Udayak. The relevant price circular has not been annexed to establish that there was such an increase and that it resulted in the decline in sales. In any event, an increase in input costs cannot by provide an answer to the alleged breach of the non-compete obligations.

28. The allegation concerning the Silchar unit does not provide a defence to the Respondents. Delta Four Corporation, another franchisee of PAPL, was allotted the territories of Tripura and Mizoram for manufacture and sale of BAILLEY products. Its manufacturing unit is situated at Silchar in Assam. However, the territory allotted to Delta Four did not overlap with Udayak's territory. The relevant districts in Assam were allotted to Delta Four only after Udayak had surrendered those districts. In any event, the arrangement concerning Delta Four does not authorise the competing SURE business. It cannot amount to consent, waiver or acquiescence by PAPL in respect of the alleged breaches committed by the Respondents.

29. Mr. Saraf, learned Senior Advocate, submits that the contention that the Respondents are separately managed, with Udayak's affairs being entrusted to Mr. Raj Shekhar Agarwal and KL Beverages' affairs being entrusted to Mr. Uday Raj Agarwal under a purported family settlement entered into between July and September 2025, does not appear to be supported by the record. According to the Petitioner, this contention is intended to show that the two Respondents are managed. However, apart from making such an assertion, the Respondents have not produced the alleged family settlement or any other document supporting the same. On the contrary, the following circumstances are relied upon by the Petitioner:

a) By email dated 17 October 2025, KL Beverages requested PAPL to adjust the amounts payable to KL Beverages under the KL Franchise Agreement against the outstanding dues of Udayak under the Udayak Franchise Agreement.

b) The email dated 24 October 2025 concerning trademark charges payable under the Udayak Franchise Agreement was sent by Mr. M.K. Agarwala on behalf of the KL Group. The email was copied to Mr. Uday Raj Agarwal, although, according to the alleged family arrangement, the affairs of KL Beverages alone had been entrusted to him.

c) KL Beverages was converted into an LLP in March 2026. Even thereafter, Mr. Raj Shekhar Agarwal continued as its designated partner. This is despite the assertion that the affairs of KL Beverages had been entrusted to Mr. Uday Raj

Agarwal. Mr. Uday Raj Agarwal is not a designated partner of the LLP.

d) KL Beverages states that it replied to PAPL on 26 March 2026 denying the alleged breach and inviting PAPL to conduct a inspection. That email was sent by Mr. Raj Shekhar Agarwal, who, according to the alleged family arrangement, was entrusted only with the affairs of Udayak.

e) During the factory audit conducted in March 2026, employees of Udayak, who were working with KL Beverages, accompanied PAPL's representative into the premises of KL Beverages. If the businesses and their operations were separate, the presence of Udayak's employees inside KL Beverages' premises would require explanation.

f) As stated above, Udayak's correspondence dated 16 to 22 April 2026 continued to be sent from and copied to the common KL Group purchase, accounts and logistics departments. The same departments had earlier corresponded with PAPL on behalf of KL Beverages.

g) The correspondence relating to negotiations concerning disassociation between PAPL and KL Beverages in and around August 2025 was addressed only to Mr. Raj Shekhar Agarwal, although under the alleged family arrangement he was said to be responsible for Udayak's business.

h) Not a single document produced by KL Beverages is addressed to or issued by Mr. Uday Raj Agarwal, despite the assertion that the affairs of KL Beverages had been entrusted to him. His name appears only once and that too as a co-recipient along with Mr. Raj Shekhar Agarwal.

i) The correspondence concerning the KL Franchise Agreement around the time of the alleged family settlement was exchanged with Mr. M.K. Agarwala, who is a promoter-director of Udayak. In particular, the email dated 23 July 2025 concerning the affairs of KL Beverages was sent by Mr. M.K. Agarwala and signed by him on behalf of the "KL Grroup".

30. Mr. Saraf, learned Senior Advocate, submits that Clauses 26 and 28 of the Udayak Franchise Agreement, in any event, require Udayak to inform PAPL of any change in its management or control. The alleged separation of the businesses and the purported change in management were not communicated to PAPL at the relevant time. According to the Petitioner, this circumstance weakens the Respondents' reliance upon the alleged family arrangement. In any event, even assuming that an internal family arrangement was entered into, such an arrangement between members of the family cannot, override the obligations undertaken by Udayak under the Udayak Franchise Agreement. The rights and obligations arising from that agreement continue to operate in accordance with its terms unless the contract provides otherwise or PAPL has lawfully agreed to a change in those obligations.

31. Mr. Saraf, learned Senior Advocate, submits that the conduct of the Respondents is causing irreparable harm to the Petitioner and that such harm cannot be adequately compensated merely by an award of damages. The alleged breach by the Respondents goes beyond a simple violation of the non-compete obligation. According to the Petitioner, the Respondents are making use of PAPL's technical know-how, operational experience, confidential information, customer relationships and market goodwill. These were made available to the Respondents for the purpose of carrying on the franchise business and were provided subject to safeguards which the Respondents accepted and which were extended from time to time.

32. Mr. Saraf, learned Senior Advocate, submits that Udayak has effectively diverted manufacturing capacity which was meant for BAILLEY products. As a result, PAPL has suffered disruption in the manufacture and distribution of packaged drinking water. The value of sales declined by 32%, from INR 16.42 crore in FY 2024-25 to INR 11.19 crore in FY 2025-26. The volume of sales declined by 24%, from approximately 27.81 lakh units in FY 2024-25 to approximately 21.02 lakh units in FY 2025-26. According to the Petitioner, this decline reflects loss of customers and a change in consumer preference. Such loss, it is submitted, cannot be adequately measured or compensated only in monetary terms.

33. Mr. Saraf, learned Senior Advocate, submits that the Respondents have been given access to confidential information and proprietary know-how of PAPL. Since the same facilities which were used for manufacturing PAPL's products are now being used for manufacturing competing products, there is a reasonable apprehension that such information and know-how may be used for the competing business. In particular:

a) The Respondents are in possession of manufacturing processes and quality-control protocols, product specifications and operational manuals, vendor databases and supply-chain information, procurement strategies, customer databases, distribution and logistics networks, pricing methodologies and market intelligence, sales strategies and business development plans. According to the Petitioner, once confidential information or technical know-how is used for a competing business, the resulting damage cannot be reversed. Such information cannot be "returned" or "unlearned". The competitive advantage obtained from its use may not be adequately compensated through damages.

b) PAPL had provided detailed technical know-how and SOPs to the Respondents. It had assisted them in setting up the plants and in matters relating to design, layout and procurement of machinery. PAPL provided guidance concerning statutory approvals and licences, continuous technical support, training programmes and quality-control workshops. It carried out periodic audits and inspections, provided access to vendor networks and technical consultants and extended marketing support, brand development and distribution guidance. The Respondents were given the benefit of PAPL's established goodwill associated with the BAILLEY brand. PAPL conducted extensive training programmes from 2018 until December 2025. It inspected and approved machinery, deputed personnel for plant layouts and audits and provided access to quality standards through its secure online portal.

c) Courts have held that obligations of confidentiality may arise of an express provision and may continue even after the relationship has ended. Thus, a person who has received confidential information may continue to be restrained from exploiting trade secrets and confidential material after termination of the business relationship. In support of this submission, reliance is placed on *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*, 2003 SCC OnLine Bom 344 and *Tarun Wadhwa v. Saregama India Ltd.*, 2021 SCC OnLine Bom 13993.

34. The Respondents contend that PAPL has not identified any confidential information which was misused. KL Beverages states that it returned PAPL's technical documents and destroyed the relevant materials and moulds. However, the Petition sets out the nature of the confidential information, technical know-how and customer relationships which PAPL had provided to the Respondents. The manner in which such information may have been used is a matter which can be examined in the arbitral proceedings. At the interim stage, the alleged return of documents or destruction of certain materials does not, remove the apprehension arising from the common personnel, facilities and operational arrangements referred to above.

35. Through its business efforts, PAPL introduced the Respondents to important institutional and modern-trade customers, including ABS (Barbeque Nation), Apollo Hospitals, Blinkit, Domino's, IndiGo, SpiceJet and Sodexo India. These institutional accounts generated approximately 95,000 cases of business between 2022 and 2025. According to the Petitioner, the Respondents are now in a position to use those business relationships for competing products.

36. The "BAILLEY" brand has been developed through substantial investment over several decades. According to PAPL, unauthorised use of its know-how and infrastructure for promoting competing products affects the exclusivity and value of the brand. Every day during which the competing business continues gives the Respondents an opportunity to strengthen that business by using capabilities and resources developed through PAPL's investments. The resulting loss of exclusivity, goodwill and competitive advantage may not be capable of precise monetary assessment and may not be adequately compensated through damages.

37. It is submitted that, before its association with PAPL, the KL Group was engaged in businesses unrelated to packaged drinking water and beverages. According to PAPL, the KL Group did not then possess the technical expertise, operational infrastructure or market access required to establish and run such a business. It was through the Franchise Agreements and the extensive support provided by PAPL that the Respondents entered the industry and established their business in this field.

38. Udayak contends that any decline in BAILLEY sales affects Udayak alone because PAPL receives a fixed franchise fee irrespective of the volume of sales. This contention does not by establish that PAPL suffers no injury. PAPL is the owner of the brand and has an interest in its goodwill, market presence and distribution network. Those interests may be affected by the Respondents' competing activities even if the franchise fee payable to PAPL remains fixed.

39. The Respondents contend that PAPL has not identified any loss caused by SURE and that any loss can be compensated by damages. The Petitioner relies upon the admitted competing activity and the operational links between the Respondents to contend that there is a continuing risk to its customers, goodwill and market position. At this stage, PAPL is not required to establish that the entire decline in sales was caused only by SURE. The detailed records relating to the SURE business are stated to be in the possession and control of the Respondents. PAPL has sought disclosure of those records under prayer (c). The precise extent of any diversion can be examined and determined in the arbitral proceedings.

40. PAPL raised the alleged breach by its communication dated 25 March 2026, within about a week of discovering the competing activity. PAPL sought meetings with the Respondents in April and June. When those efforts did not resolve the dispute, PAPL approached this Court in July. The Respondents rely upon PAPL's failure to carry out another inspection to question the urgency of the relief sought. However, a inspection would not by alter the competing activity which had been discovered. Similarly, the fact that PAPL continued its business dealings with Udayak under the subsisting Udayak Franchise Agreement cannot, amount to consent to the manufacture of SURE.

41. Mr. Saraf, learned Senior Advocate, submits that the balance of convenience is in favour of granting interim protection. The interim reliefs sought by PAPL do not impose a new obligation upon the Respondents. They seek enforcement of obligations which the Respondents had voluntarily undertaken under the Franchise Agreements. The Respondents had enjoyed the benefits of those agreements for several years and had accepted the corresponding non-compete and exclusivity obligations. According to PAPL, requiring the Respondents to comply with those obligations pending arbitration would not cause any independent prejudice to them.

42. The Petitioner submits that the Respondents are using manufacturing infrastructure, operational capabilities, technical expertise and advantages developed with the assistance and investment of PAPL for competing products. This is alleged to deprive PAPL of production capacity, sales opportunities and revenue. PAPL has suffered a decline of approximately 32% in sales value and approximately 24% in sales volume through Udayak in FY 2025-26, after a period of consistent growth. According to PAPL, the Respondents continue to have access to its proprietary know-how. The continued diversion of customers, market share and business opportunities, together with the alleged use of know-how, is submitted to cause greater prejudice to PAPL than the inconvenience which the Respondents may suffer by being required to comply with their obligations pending arbitration.

43. It is submitted that Udayak and KL Beverages have chosen to engage in competing products and business while continuing to enjoy the benefits arising from their association with PAPL. According to the Petitioner, the Respondents have thereby acted contrary to safeguards which formed an important part of the Franchise Agreements. The balance of convenience is stated to favour preservation of PAPL's and interests until the dispute is determined.

44. Udayak contends that an injunction would unfairly prejudice it because Udayak does not manufacture SURE and does not control KL Beverages. However, the common management and operational links relied upon by PAPL have been set out above. The Udayak Franchise Agreement prohibits indirect competition through related entities. The relief sought by PAPL is directed towards enforcement of that restriction and is sought against both Respondents.

45. KL Beverages contends that the discontinuation of its franchise was caused by PAPL and that an injunction would increase its losses, leave its plant idle and adversely affect its lenders and employees. However, the alleged losses arising from discontinuation of the franchise cannot, justify the manufacture and sale of competing SURE products. The figures relating to borrowings, expenses, destruction losses and employees relied upon by KL Beverages are stated to be unsupported by adequate documents. The alleged hardship must be considered against the prejudice claimed by PAPL arising from the continued use of its confidential information, customer relationships and market position. According to PAPL, that prejudice would be greater than the hardship which the Respondents may suffer from being restrained from carrying on the competing activity pending arbitration.

46. Granting the interim reliefs sought would not amount to granting the final relief at the interim stage. The final interpretation of the covenants and the determination of the respective rights and obligations of the parties would remain for the arbitral tribunal. At this stage, interim protection is sought because continued manufacture and sale of SURE may enable the competing business to establish customers, distributors and market presence. If such activities continue, the position created during the pendency of the arbitration may become difficult to reverse and may affect the effectiveness of any eventual award in favour of PAPL.

47. Mr. Prathamesh Kamat, learned Advocate for Respondent No. 1, submits that the Petitioner's case is based on the assumption that, since Respondent Nos. 1 and 2 are sister concerns forming part of the KL Group, they are, in substance, alter egos of each other. The Petitioner proceeds on the basis that the two Franchise Agreements form part of one arrangement. On this basis, the Petitioner seeks to enforce against Respondent No. 2 the non-compete obligation contained in the Franchise Agreement entered into by Respondent No. 1, namely, the Udayak Franchise Agreement.

48. According to Mr. Kamat, this basic assumption is incorrect. Respondent No. 1 is a separate entity. It has no connection with the relationship between Respondent No. 2 and the Petitioner under the KLB Franchise Agreement. The fact that both Respondents may be sister concerns within the KL Group does not, make their separate arrangements part of one undertaking. There must be specific material to establish such a case. It is submitted that the Petition does not seek any or independent relief against Respondent No. 1. The dispute in the present Petition concerns the alleged manufacture, marketing, distribution and sale of "SURE" packaged drinking water. Respondent No. 1 is not carrying on the SURE business. There is no allegation that Respondent No. 1 is manufacturing, marketing, distributing or selling SURE water. The Udayak Franchise Agreement continues to remain in force and Respondent No. 1 continues to manufacture BAILLEY bottles under that agreement.

49. In these circumstances, according to Mr. Kamat, the reliefs sought in prayer clauses (a) and (c), insofar as they seek to restrain the Respondents from "manufacturing, preparing, packaging, distributing, marketing, selling or otherwise dealing in 'SURE' water or any other product competing with the products of the Petitioner", or seek disclosure of particulars relating to competing packaged drinking water products, have no application to Respondent No. 1.

50. It is submitted that Respondent No. 1 appears to have been joined in the Petition because the Petitioner seeks to rely upon the restrictive covenant contained in the Udayak Franchise Agreement for obtaining relief against Respondent No. 2. According to Mr. Kamat, the Petitioner is attempting to use Respondent No. 1 and the Udayak Franchise Agreement as a means to enforce against Respondent No. 2 obligations which arise under that agreement, since such obligations cannot be directly enforced against Respondent No. 2 under the KLB Franchise Agreement. In any event, the existence of a contract between the Petitioner and Respondent No. 1 cannot, justify an injunction or other substantive relief against Respondent No. 1 when no breach of that contract by Respondent No. 1 has been alleged or established. It is submitted that no injunctive or other substantive relief can be granted against Respondent No. 1 in the present Petition. It is submitted that the allegations regarding misuse of confidential information and know-how are not supported by sufficient material.

51. The Petitioner has made broad allegations that the Respondents are misusing its confidential information, technical know-how, customer relationships and goodwill. By prayer clause (b), the Petitioner seeks to restrain the Respondents from using, disclosing, communicating, exploiting or deriving any benefit from its confidential information, trade secrets, technical know-how, manufacturing processes and other proprietary business information which, according to the Petitioner, was made available under the Franchise Agreements. According to Mr. Kamat these allegations are general in nature. In the absence of specific and reliable material showing such misuse, they cannot by justify an interim injunction.

52. It is significant, according to Mr. Kamat, that the Petition does not identify any confidential information, trade secret, manufacturing process, proprietary know-how or other material which has allegedly been misappropriated or misused by the Respondents. It does not state how such information was accessed, disclosed, copied or used in connection with the SURE business. The mere fact that a party possesses information obtained during a relationship, or has acquired general knowledge and experience while carrying on that relationship, does not by establish that confidential information has been misused.

53. It is submitted that, even assuming that Respondent No. 1 had received some confidential information from the Petitioner, the Petitioner was required to place at least prima facie material showing not only that specific confidential or proprietary information existed and that Respondent No. 1 had access to it, but how that information was allegedly passed on or misused. In particular, the Petitioner was required to indicate when and in what manner Respondent No. 1 allegedly disclosed or communicated such information and how Respondent No. 2 is alleged to have received or used it. No such particulars or supporting material have been placed before the Court. The allegation remains speculative.

54. It is submitted that, in any event, if the Petitioner has suffered any loss on account of the activities of the Respondents, such loss can be calculated and, subject to proof before the arbitral tribunal, compensated by an award of damages. The Petitioner has not shown any injury which cannot adequately be compensated in monetary terms. For these reasons, it is submitted that the Petitioner has failed to place sufficient fmaterial to justify interim relief on the ground of alleged misuse of confidential information, technical know-how, customer relationships or goodwill.

55. Mr. Ravi Kadam, learned Senior Advocate for Respondent No. 2, submits that the Petitioner's case is that the Respondents have breached their respective Franchise Agreements, which contain obligations relating to non-compete, exclusivity and confidentiality. The Petitioner is seeking to enforce the post-termination non-compete clause against Respondent No. 2. Both Respondents have entered into separate Franchise Agreements with the Petitioner. The Franchise Agreement of Respondent No. 2 was executed on 16 July 2018. It was entered into about four years after the Franchise Agreement dated 5 February 2014 executed with Respondent No. 1.

56. The Franchise Agreement of Respondent No. 2 contains its own non-compete provision in Clause 15(d). It contains an entire agreement clause in Clause 39, which provides:

> “This Agreement supersedes all prior contracts, agreements or commitments either written or oral and renders them null and void and of no effect.”

57. Both Franchise Agreements contain separate arbitration clauses. The arbitration clause in the Franchise Agreement of Respondent No. 1 is contained in Clause 45, whereas the arbitration clause in the Franchise Agreement of Respondent No. 2 is contained in Clause 43. According to the Respondents, this shows that the two agreements were separately negotiated and were intended to operate. In support of the submission that the agreements are complete agreements in, reliance is placed on the judgment of the Supreme Court in *Joshi Technologies International Inc. v. Union of India*, (2015) 7 SCC 728 and on the judgment of the Division Bench of this Court in *BVM Finance Private Limited v. Vistra ITCL (India) Ltd. & Ors.*, LD VC Appeal No. 294 of 2020.

58. The non-compete obligations relied upon by the Petitioner in the Franchise Agreement of Respondent No. 1 are contained in Clauses 5 and 14(a). Respondent No. 2 entered into a separate and complete Franchise Agreement containing its own non-compete and arbitration clauses. Clause 39 provides that all earlier contracts, agreements and commitments are superseded and rendered null and void. Therefore, according to Respondent No. 2, the non-compete obligations contained in Respondent No. 1's Franchise Agreement cannot be extended to Respondent No. 2.

59. The two Franchise Agreements are complete agreements in and contain separate and distinct arbitration clauses. Therefore, reliance is placed on *Duro Felguera SA v. Gangavaram Port Ltd.*, (2017) 9 SCC 729, paragraphs 22-23, 42 and 49. According to Respondent No. 2, the arbitration clause contained in the Franchise Agreement with Respondent No. 1 cannot be used as a basis to impose any liability upon Respondent No. 2 or to seek reliefs against it.

60. The Petitioner and Respondent No. 2 discontinued the Franchise Agreement dated 16 July 2018 on 20 August 2025. It is submitted that, after termination of the agreement, a non-compete provision cannot be enforced through an injunction when such restriction is void under Section 27 of the Contract Act. It is pointed out that, after termination, both parties jointly carried out an exercise for destruction of the stock lying at Respondent No. 2's plant on 5 September 2025. According to Respondent No. 2, the Petitioner seeks to overcome this difficulty by relying upon the non-compete clause contained in Respondent No. 1's Franchise Agreement and by contending that the said clause binds Respondent No. 2. This argument is based upon Clause 14(a) of Respondent No. 1's Franchise Agreement, which refers to Respondent No. 1 and "... its sister concern, group company, associates, affiliates or such other organizations in which the Franchisee". However, according to Respondent No. 2, Clause 39 of its own Franchise Agreement makes it clear that the earlier Franchise Agreement cannot apply to or bind Respondent No. 2.

61. In support of this submission, reliance is placed on *Niranjan Shankar Golikari v. Century Spinning and Manufacturing Ltd.*, (1976) 2 SCR 378; *Superintendence Company of India (P) Ltd. v. Kishan Murgai*, (1981) 2 SCC 246; *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545; *Percept D'Mark (India) (P) Ltd. v. Zaheer Khan*, (2006) 4 SCC 227; *Taprogge Gesselschaft MBH v. IAFC India*, 1987 SCC OnLine Bom 345; and *Messe Frankfurt Trade Fairs India Pvt. Ltd. v. Netlink Solutions India Limited and Ors.*, (2026) SCC OnLine Bom 210.

62. It is submitted that, by communications dated 23 July 2025 and 24 July 2025, the Petitioner informed Respondent No. 2 that, from 1 August 2025, Keventer would manufacture and service PAPL's products. The Petitioner asked Respondent No. 2 whether it was interested in undertaking co-packaging of the products. According to Respondent No. 2, this resulted in the discontinuation of production under its Franchise Agreement on 20 August 2025. Respondent No. 2 did not accept the co-packaging proposal made by the Petitioner. It is submitted that the Petitioner has been manufacturing and selling its products through Keventer since 1 August 2025, while at the same time seeking to restrain Respondent No. 2 from carrying on its own independent business.

63. It is submitted that, before filing the present Petition, the Petitioner had alleged breaches only against Respondent No. 1. The Petitioner conducted an audit of the plant on 18 and 19 March 2026. The Petitioner's own case, as stated in paragraph 76 of the Petition, is:

> "The breach first came to light during the plant audit conducted by PAPAL at KL Beverages manufacturing facility on 18-19 March 2026."

64. According to Respondent No. 2 the Petitioner knew that the audit was conducted at the manufacturing facility of Respondent No. 2. Despite this knowledge, the Petitioner's subsequent communications continued to treat the alleged breaches as breaches committed by Respondent No. 1 and not by Respondent No. 2. Reliance is placed upon the following correspondence:

a) Email dated 25 March 2026:

In this email, the Petitioner stated that the Franchise Agreement "between PAPL and Udayak Agro Products Private Limited ("Company")... is valid and subsisting..." and stated that the "... production of packaged drinking water under the brand name 'SURE'... is nothing but a breach of the said Agreement". According to Respondent No. 2, the subject of the email referred only to the Franchise Agreement of Respondent No. 1. The corresponding pleading in paragraph 47 of the Petition is stated to show that the email concerned alleged breaches by Respondent No. 1.

b) Emails dated 16 and 17 April 2026:

The Petitioner addressed these emails to its suppliers. According to Respondent No. 2, the Petitioner did not seek any information or make any enquiry concerning Respondent No. 2. The enquiries were confined to Respondent No. 1.

65. It is submitted that the Petitioner has expanded the scope of its case in the present Petition by alleging breaches against Respondent No. 2 under its separate Franchise Agreement.

66. Respondent No. 2 submits that the Petitioner's remedy, if any, is to seek damages. According to Respondent No. 2, the Petitioner is not entitled to an injunction. Respondent No. 2 has approximately 455 employees and workers whose employment and livelihood depend upon the continued operation of the business. Respondent No. 2 incurs monthly fixed and committed expenses of approximately Rs.1,50,88,784, including salaries and other expenses. It has obtained borrowings of approximately Rs.11,93,45,285/-, which are secured by personal guarantees. Assets valued at approximately Rs.25,07,00,000/- have been provided as collateral security. It is submitted that any restraint on the business of Respondent No. 2 would affect its ability to meet its financial obligations and would make its workers and employees idle, resulting in loss of employment.

67. Mr. Kadam, learned Senior Advocate for Respondent No. 2, submits that the judgment in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.,* (2024) 4 SCC 1, has no application to the facts of the present case. According to him, that judgment concerns cases where a non-signatory entity is sought to be brought within an arbitration or dispute on the principles stated therein. The present case is different because the parties consciously entered into separate Franchise Agreements.

68. It is submitted that the judgment in *Elster Instromet BV v. Mrunal Gandhi,* 2024 SCC OnLine Bom 350, has no application. According to Mr. Kadam, that case concerned proceedings against a joint venture partner and involved principles arising from partnership law. The present Franchise Agreements provide that they do not create a partnership or joint venture relationship. Clause 29 of one Franchise Agreement and Clause 27 of the other contain such provisions.

REASONS AND FINDINGS:

I. Nature of the two Franchise Agreements and the scope of the restriction:

69. I have considered the submissions made by the learned Advocates appearing for the Petitioner, Respondent No.1 and Respondent No.2. I have gone through both the Franchise Agreements and the documents relied upon by the parties, including the audit material and other documents placed on record. At this stage, the matter has to be looked at from what was agreed between the parties and from what is prima facie coming from the documents. It cannot be decided only because Respondent Nos.1 and 2 have different names and are separate entities. Their separate identity is important. But that alone cannot decide the issue when the Agreement speaks about carrying on the activity indirectly through an associate or sister concern. Therefore, both things have to be seen together, that is, what was agreed in the 2014 Agreement and how the business has been carried on.

70. At the beginning, there is one important difference between the two Agreements which needs to be noticed. The Franchise Agreement dated 5 February 2014 between the Petitioner and Respondent No.1 was for manufacture, filling, packing, distribution and sale of Packaged Drinking Water. The recitals of that Agreement show that the Petitioner was carrying on manufacture, distribution and sale of Packaged Drinking Water and Respondent No.1 was appointed for manufacturing, filling, packing and distributing the said Products at its factory in Assam. Clause 1 shows the appointment of Respondent No.1 as franchisee for those Products. Therefore, the 2014 Agreement was not a general Agreement by which Respondent No.1 was given freedom to deal with every kind of beverage or product. It was for one business, namely, the Packaged Drinking Water business of the Petitioner. The words used in the Agreement have to be understood in this background. It would not be proper to read the Agreement as if Respondent No.1 was only purchasing goods from the Petitioner and there was no restriction upon it from doing competing business.

71. This distinction is important while reading the restrictive clauses. The words “said Activities” and “said Products”, wherever they are used in the Agreement, have to be understood with reference to the business for which Respondent No.1 was appointed. They cannot be read separately from the main purpose of the Agreement. Therefore, while considering whether the Respondents are carrying on competing activity, the nature of the product and the activity have to be seen in the background of the packaged drinking water franchise given to Respondent No.1. On the other hand, the Franchise Agreement dated 16 July 2018 between the Petitioner and Respondent No.2 was for a different line of products. The material in that Agreement shows that the products covered were Frooti, Appy and Appy Fizz. These products are separately mentioned in the Intellectual Property and Product appendices of that Agreement. Respondent No.2 was brought under a separate franchise arrangement for those beverage products and not as a franchisee for the packaged drinking water business covered under the 2014 Agreement.

72. There is some substance in the submission of Respondent No.2 that the two Agreements are separate Agreements and the products covered by them are different. The Court cannot ignore this distinction only because both Agreements were entered into with the same Petitioner. The 2018 Agreement cannot be treated as continuation of the 2014 Agreement for every purpose. However, this distinction does not decide the present Petition. The fact that Respondent No.2 had a separate franchise for Frooti, Appy and Appy Fizz does not mean that Respondent No.1 could carry on, through Respondent No.2, an activity which Respondent No.1 had separately agreed not to carry on under the 2014 Agreement. These are two different questions. The question is whether, even though Respondent No.2 had a separate franchise for different products, Respondent No.2 could be used as the associate or sister concern through which Respondent No.1 could indirectly carry on a business which Respondent No.1 had agreed not to carry on. This question has to be seen from the words used by the parties in the 2014 Agreement. At this stage, it is not necessary to hold that Respondent No.2 is a party to the 2014 Agreement. The question at this interim stage is somewhat narrower. It is whether the activity complained of is prima facie the type of activity which the parties intended to prevent by the restrictions contained in the 2014 Agreement.

73. Clause 5 of the 2014 Agreement is important for considering this issue. It provides:

> "[Udayak] accepts that it will not, either directly or indirectly through any associate /sister concern or in any other manner, carry out the said Activities in relation to any existing products of any other manufacturer/franchisor or any other product which may be launched by any other manufacturer in future which is similar to the said Products in the Territory during the subsistence of this Agreement".

74. The first part of this clause is important. The words "directly or indirectly through any associate /sister concern or in any other manner" cannot be treated as if they have no meaning. When parties enter into a Agreement, the words used in a negative covenant have to be given some meaning. Here, the parties have not only said that Respondent No.1 will not manufacture or deal in a competing product. They have said that such prohibited activity will not be carried out "indirectly through any associate /sister concern or in any other manner". This wording shows that the parties had in mind a situation where the same competing business could be carried on through another connected concern. Therefore, the restriction was not limited only to the name of Respondent No.1 or its direct acts. The manner in which the business is carried on becomes relevant. If the intention was only to stop Respondent No.1 from manufacturing a competing product in its own name, there was not much reason to put the words relating to an associate or sister concern. Those words are there for some purpose. They become more important when the Petitioner says that the competing water activity is being carried on through Respondent No.2. Whether the evidence proves this allegation is something which can be decided in arbitration. But at this interim stage, the Court cannot ignore the words which the parties have put in the Agreement. Those words have to be given their ordinary meaning so far as the present dispute is concerned.

75. Another important expression is "similar to the said Products". The "said Products" under the 2014 Agreement are the packaged drinking water products. Therefore, the restriction is not only for a product having the same name or trade mark as the Petitioner's product. It covers a product which is similar to the products covered by the Agreement. Packaged drinking water manufactured by another manufacturer would, on the face of the clause, come within such description. This is supported by Clause

14(a), which refers to competitive products including mineral and packaged drinking water. Therefore, there is a direct connection between the product protected by the restriction and the competing water activity alleged by the Petitioner.

76. For deciding this interim application, it is not necessary to accept the argument that Respondent No.2 was appointed under the 2018 Agreement to manufacture packaged drinking water. That is not the case of the Petitioner. The case of the Petitioner is that Respondent No.1 had agreed not to carry on competing activity indirectly through an associate or sister concern. The difference between the 2014 water franchise given to Respondent No.1 and the 2018 beverage franchise given to Respondent No.2 is relevant, but it does not answer the question arising under Clause 5. The Court still has to see whether the later activity of Respondent No.2 is an activity through which Respondent No.1 is prima facie carrying on indirectly what it had agreed not to carry on. In my view, on a plain reading of Clause 5, the words used by the parties are wide enough to cover a situation where Respondent No.1 does not manufacture the competing product but the same activity is carried on through an associate or sister concern. This does not mean that every act of Respondent No.2 becomes an act of Respondent No.1. There has to be supporting material showing the required connection. The relationship between Respondent Nos.1 and 2 and whether the documents are sufficient to establish that Respondent No.2 was being used for this purpose will have to be considered from the other material on record. But at this stage, the language of agreement cannot be read so narrowly that the words "indirectly through any associate /sister concern" are practically taken out from the Agreement.

77. The same intention becomes more clear from Clause 14(a) of the 2014 Agreement. It provides:

> "In recognition to the valuable rights granted by [PAPL] to [Udayak] pursuant to this Agreement, during the tenure of this Agreement and after expiry/termination of this Agreement (if any) for a period of 2 years or 1/4th of period of business association between [PAPL] and [Udayak] whichever is earlier, [Udayak) or its sister concern, group company, associates, affiliates or such other organizations, in which [Udayak] has ownership, partnership, contract, agreement or otherwise has any interest and whether located within or outside the Territory, shall not manufacture, prepare, package, distribute, sell, market, deal in or be otherwise concerned with any competitive products including mineral/packaged drinking water."

78. The language of this clause is wider than Clause 5 in some respects. Clause 14(a) does not speak only about Respondent No.1. It refers to "its sister concern, group company, associates, affiliates or such other organizations" in which Respondent No.1 has the type of interest mentioned in the clause. This part of the clause cannot be ignored while considering the objection of Respondent No.2. The parties have considered that the restriction should not become ineffective merely because the competing activity is put in the name of another concern having the relationship mentioned in the Agreement. The clause uses different expressions, namely, sister concern, group company, associates, affiliates and other organisations. It refers to ownership, partnership, contract, agreement or otherwise having an interest.

This shows, at least prima facie, that the parties wanted to cover different ways in which a connected business could be operated. Therefore, at this stage, it would be difficult to read the clause as if it applies only when Respondent No.1 manufactures the competing product in its own factory and in its own name. Such a narrow reading would leave out a considerable part of the words which the parties have put in the Agreement. The nature of the prohibited activity is stated in wide terms. The clause does not only say that competing manufacture is prohibited. It refers to manufacture, preparation, packaging, distribution, sale, marketing, dealing in and being otherwise concerned with competitive products. This is important because the expression "or be otherwise concerned with" indicates that the restriction was not meant only for the physical act of manufacturing.

79. A concern may be involved in a competing business in different ways. It may manufacture, distribute, market, sell or otherwise take part in it. The clause appears to cover these different forms of involvement. The scope will depend upon the facts and the final interpretation by the Arbitral Tribunal, but for the present purpose the wording is wide enough to require examination of the conduct of the Respondents. The clause mentions "mineral/packaged drinking water". Therefore, there is little difficulty in identifying the type of competing product which is relevant here. The 2014 Agreement concerns packaged drinking water and Clause 14(a) protects the Petitioner against competitive products including mineral and packaged drinking water. For this reason, the argument of Respondent No.2 that its own Franchise

Agreement was for Frooti, Appy and Appy Fizz does not,, answer the case of the Petitioner. It is correct that Respondent No.2 was not appointed under the 2018 Agreement as a packaged drinking water franchisee. But that is not the question which is required to be answered at this stage.

80. The question is whether Respondent No.2 is one of the entities through which Respondent No.1 has, prima facie, carried on or attempted to carry on an activity which Respondent No.1 had agreed not to carry on. That activity is manufacture, preparation, packaging, distribution, sale, marketing or dealing with competitive products including packaged drinking water.

81. There is one more reason for taking this view at the interim stage. If Clause 14(a) is understood to mean that Respondent No.1 can freely carry on the prohibited business merely by using another connected entity, then the words relating to sister concerns, group companies, associates and affiliates would become practically useless. Such interpretation would make it possible to avoid the restriction merely by changing the name of the entity through which the business is carried on. Normally, the Court should avoid an interpretation which makes a substantial part of a clause ineffective, where the clause appears to have been made to deal with connected entities. On the material available the Petitioner has made out a prima facie case that the restriction in Clause 14(a) was intended to operate not merely against Respondent No.1 in its own name but in respect of the connected entities and organisations mentioned in the clause. Whether Respondent No.2 comes within those descriptions, and what is the consequence of that relationship, will be decided in the arbitral proceedings. For the limited purpose of interim protection there is sufficient material to examine the relationship between Respondent Nos.1 and 2 and their conduct. The Court cannot stop such examination only because the two entities have separate names.

82. There is one more clause in the 2014 Agreement which is relevant for considering the case of the Petitioner. Clause 16 provides:

> "The FRANCHISEE shall not use the facilities, know how, procedures, information in the Quality Manual, distribution and retail networks, the machines which are being used for carrying on the said Activities in relation to the said Products as a result of this Agreement for the manufacture/distribution/marketing/sale of any other product which may be produced or marketed by the FRANCHISEE, except with the prior written approval of the COMPANY, which approval will not be normally denied unless it involves a conflict of interest with the COMPANY."

83. Thus, the Agreement did not contain only a general restriction against competition. There was a separate protection regarding the facilities and business material which Respondent No.1 had received or developed because of its franchise relationship with the Petitioner. Clause 16 refers to "facilities", "know how", "procedures", information in the "Quality Manual", "distribution and retail networks" and the "machines" used for carrying on the activities relating to the Petitioner's products. These words cannot be treated as having no importance. They show that the parties were concerned about the possibility of franchise resources and business knowledge being used for another product. The clause protects more than the Petitioner's name or finished product. It protects the systems and resources which came into the hands of the franchisee because of the business relationship. The franchisee was not permitted to use these things for another product without prior written approval of the Petitioner where such use would involve a conflict of interest. This becomes important because the grievance of the Petitioner is not only that another bottle of water was being manufactured. The Petitioner says that the competing activity was being carried on in a set-up where the Petitioner's business had earlier been conducted and with the benefit of infrastructure, personnel, systems and business knowledge developed during the franchise relationship. If this allegation is proved, it may have a bearing not only on Clauses 5 and 14(a), but on the separate obligation contained in Clause 16. Therefore, the Court cannot look at the dispute only from the narrow question whether Respondent No.1 was physically filling a bottle of competing water. At the same time, at this stage I am not required to decide whether any know-how, procedure or information was copied or used by Respondent No.2. Such a question may require evidence, examination of documents and detailed consideration in the arbitral proceedings.

84. What is relevant now is that the Agreement recognised the possibility of such use and put an express restriction on the use of the franchise facilities and material for another product. The Court has to look at the audit material and other documents to see whether there is sufficient prima facie material showing such use or such arrangement. This clause shows why the case has to be looked at from a little wider angle. The protection covers use of facilities, know-how, procedures, Quality Manual, machinery and distribution and retail networks. Therefore, if the competing activity is found to be connected with the facilities or business arrangements created and maintained under the 2014 franchise, that fact would become relevant while deciding whether interim protection is required. It does not mean that every facility or every person connected with the franchise is protected forever from being used in any other business. The question has to be decided with reference to the words of the Agreement and the circumstances in which the alleged competing activity is being carried on. The Court has to avoid both extremes, namely, treating every activity of Respondent No.2 as prohibited and, on the other hand, ignoring the protection only because the competing activity is being carried on in the name of another entity. The effect of Clause 16 will have to be considered along with the audit report and other material relating to the use of the premises, machinery, personnel and business arrangements.

II. Whether Respondent No.2 is covered by the restriction contained in the 2014 Agreement:

85. The main submission of Respondent No.1 is that Respondent No.1 and Respondent No.2 are two separate entities. Respondent No.1 entered into the Franchise Agreement dated 5 February 2014 with the Petitioner, whereas Respondent No.2 entered into a separate Franchise Agreement with the Petitioner in 2018. Therefore, according to Respondent No.1, the rights and obligations under one Agreement cannot be mixed with the rights and obligations under the other Agreement. It is submitted that there is no material to show that Respondent No.1 is manufacturing the competing product. According to Respondent No.1, it is still manufacturing the BAILLEY products under its Agreement with the Petitioner and there is no breach on its part.

86. Merely because two entities are connected with the same family or are doing business as part of the same group, it cannot be said that they have lost their separate identity. The Court cannot ignore the separate identity of Respondent No.2. At this stage, the Court is not holding that Respondent Nos.1 and 2 are one and the same company or one and the same person. Such a finding would require much more detailed examination of the facts and the position. But that is not the question which comes from the language of Clause 5 and Clause 14(a) of the 2014 Agreement. The Petitioner is not relying only upon the fact that both Respondents belong to the same business group. The Petitioner is relying upon the words used in the Agreement entered into with Respondent No.1. Those words deal with a situation where the prohibited activity is carried on indirectly through an associate or sister concern. If the Agreement had only said that Respondent No.1 shall not manufacture or deal with a competing product, then the submission of Respondent No.1 would have had more force. In that situation, the Court would first have to see whether Respondent No.1 had undertaken the competing activity. But Clause 5 does not end there. It says that Respondent No.1 shall not carry out the prohibited activity "directly or indirectly through any associate /sister concern or in any other manner”. Therefore, the Agreement recognises that the prohibited business may be carried on through another entity. The Court is not bringing the concept of indirect conduct on its own. This is found in the words used by the parties. When the parties entered into the 2014 Agreement, it appears that they had kept in mind that Respondent No.1 should not be able to avoid the restriction merely by putting the competing business in the name of another connected concern. Therefore, merely because Respondent No.1 is not shown to have manufactured the competing product in its own name, the matter cannot end there. At the same time, this does not mean that every activity of Respondent No.2 becomes an activity of Respondent No.1. There has to be some material showing the connection between the restriction and the conduct complained of. The Court has to look at the surrounding circumstances, the relationship between the two entities and the manner in which the competing business was being carried on. Only after seeing all these circumstances together can the Court consider whether there is a prima facie case of indirect conduct contemplated by the 2014 Agreement.

87. The documents placed before the Court show something more than only a general relationship between the two Respondents. The shareholding and control chart placed on record shows that the same family members are connected with both entities. It records that the persons who collectively hold the majority interest in Respondent No.1 are designated partners of Respondent No.2. It records the role of Mr. Manoj Kumar

Agarwala, Mrs. Sangeeta Agarwal, Mr. Raj Shekhar Agarwal and other members of the same family in the two entities. The chart describes Respondent No.1 as the Petitioner's franchisee for packaged drinking water and Respondent No.2 as the Petitioner's franchisee for beverages. The fact that common family members or common persons have interest in both entities may not be enough to ignore their separate identity. A company or partnership does not lose its separate existence only because the same family members are interested in more than one business. Therefore, this Court is not proceeding on the basis that common family ownership proves that the two Respondents are the same entity. Such a conclusion would be too wide and would not be proper only from the material which is available. But this is not the only material before the Court. The relationship between the two Respondents becomes important when it is seen along with the other circumstances placed on record. The material refers to common directors or persons having management roles, common designated partners, common personnel, common premises and common business arrangements. There is material relied upon by the Petitioner showing that the two businesses were functioning from the same larger premises and that certain personnel were connected with the activities of both Respondents.

88. These circumstances cannot be looked at separately. One circumstance may not prove the case of the Petitioner. But at this stage, the Court has to look at the total material to see whether a prima facie case for interim protection is made out. The Court is not conducting a final trial regarding the corporate structure or deciding the final rights of the parties. The question now is whether there is sufficient material to protect the restriction contained in the 2014 Agreement till the arbitration is decided. The case of the Petitioner is not based only on the fact that Respondent Nos.1 and 2 are connected with the same family. The allegation is based on a combination of circumstances. The restriction speaks about associate and sister concerns. There is material showing a connection between the two Respondents. There is material about their common business premises and personnel. These circumstances become important when seen together with the audit material relating to the competing water activity. It is necessary to remember that Clause 14(a) was not limited only to a concern in which Respondent No.1 had direct ownership. It refers to a sister concern, group company, associate, affiliate and other organisation in which Respondent No.1 has ownership, partnership, contract, agreement or otherwise has any interest. Therefore, the language is wider than a simple shareholding test. The nature and extent of the interest and the manner in which the concerned entities are functioning are matters which can be looked into from the material on record. For this reason, I am unable to accept the submission that the existence of separate entities answers the Petition. The separate identity has to be respected. But at the same time, the Court has to give effect to the promise made by Respondent No.1 that it would not carry on the competing activity indirectly through the type of connected entity which is referred to in the Agreement.

89. The decision in *Elster Instromet B.V.*, is relevant on this point. In that case, the Court considered the meaning and effect of a negative covenant containing the words “directly or indirectly” and whether such restriction could extend to affiliates. The facts of that case arose from a joint venture arrangement and are not the same as the facts before this Court. Therefore, that decision cannot be applied as if both cases are factually the same. But the manner in which the Court considered the words used in the negative covenant is relevant to the present issue. In paragraph 117, the Court observed:

> “117. When the question fall for consideration, whether the second proviso in clause 6.2 would extend to Affiliates, the answer has to be found in the purpose of the formation of JVC and the nature of the JVA. Clause 6.2 has to be read as a whole for the operation of JVC and when the joint venture was conceived, it was definitely indicative of the two parties coming together and clause 6.2 contain a reference to the Affiliates of the parties to the Agreement, conduct of business by the parties to the Agreement, directly or indirectly or through subsidiary companies.”

90. This observation shows that while considering a negative covenant, the clause should not be read by taking only one word or one sentence separately from the whole clause. The purpose of the Agreement and the words used by the parties have to be seen together. In the present case, Clause 5 cannot be read only by looking at the words relating to Respondent No.1. The words “directly or indirectly through any associate /sister concern” are part of the same clause and have to be given their proper meaning. The Court further observed in paragraph 118:

> "118. What is implicit in the proviso is conduct of any competing business directly or indirectly or through a subsidiary company and it is the duty of the Arbitrator as well as of the Court to give effect to the intention of the parties."

91. The principle which can be taken from this observation is that when the parties have consciously provided for direct as well as indirect conduct, the Court should not interpret the clause in such a manner that the indirect part of the restriction becomes ineffective. The Court has to give effect to what the parties have agreed. At the same time, the Court cannot extend the clause beyond its words. Therefore, the present case has to be decided from the language of the 2014 Agreement and the material showing the relationship and conduct of the Respondents. The facts of *Elster* are not the same as the present case and this Court is not treating them as the same. But the principle of reading a negative covenant as a whole is relevant. Here, the words "associate /sister concern" and "indirectly" are used in Clause 5 and the words "sister concern, group company, associates, affiliates" are used in Clause 14(a). The presence of these words cannot be treated as accidental or without any meaning. The relevance of *Elster* is limited to this. Where the parties have agreed that a competing activity cannot be carried on directly or indirectly through connected entities, the Court should not interpret the covenant in a way which allows the same competing activity to be carried on through such entity merely by changing the name under which the business is conducted. Whether the facts establish such indirect conduct is another question and has to be seen from the material placed before the Court. Paragraph 125 of *Elster* is relevant. It states:

> "125. The clause providing for a restriction in permitting a competitive business to be carried out must receive a wide interpretation and it cannot be defeated by permitting an Affiliate of either party to indulge in competing business indirectly. Keeping in mind the purpose of JVA i.e. to promote business not only of Instromet, but of the entities in the group to which, Instromet is a part of and the definition of the term "Affiliates" alongwith the explanation appended indicate that the term 'control' shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the parties, as the case may be, whether to ownership of shares or by contract or otherwise."

92. The above observation has to be applied carefully to the present case. As observed, the present Agreement is not a joint venture agreement and Respondent No.2 is not a party to the 2014 Agreement. Therefore, the decision cannot be read as saying that every affiliate or connected entity becomes bound by a contract to which it was not a party. That is not the question which has to be decided at this stage. What is relevant is that the covenant in the present case uses words dealing with indirect competition. Clause 5 states that Respondent No.1 shall not carry out the prohibited activity "directly or indirectly through any associate /sister concern". Clause 14(a) goes further and refers to the "sister concern, group company, associates, affiliates or such other organizations". Thus, unlike a case where the Court would have to bring an indirect obligation into a contract which is silent about it, here the parties have used such language.

93. The present Clause 5 is clear in this respect because it uses the words "through any associate /sister concern". Clause 14(a) is wide because it extends the restriction to sister concerns, group companies, associates and affiliates. Therefore, if the Court were to accept the submission that Respondent No.2 can carry on the very competing packaged drinking water business merely because it is a separate entity, the words "indirectly", "associate/sister concern" and the corresponding words in Clause 14(a) would have little effect. Such an interpretation would create a difficult situation. Respondent No.1 would remain personally bound by the negative covenant, but could allegedly achieve the same competing activity by using another connected concern. In that case, the restriction would operate only when Respondent No.1 performs the prohibited act. The part of the covenant which deals with indirect conduct would then become almost ineffective. At this interim stage, such an interpretation cannot be accepted when the language of the Agreement shows otherwise. However, it is necessary to make it clear that the Court is not saying that merely because Respondent No.2 is a separate entity, it comes within the 2014 Agreement. The Court is only holding that separate personality cannot defeat a restriction which covers indirect conduct through an associate or sister concern. The application of the clause depends upon the material showing the relationship and conduct of the parties. Thus, the issue has to be seen at two levels. First, what did Respondent No.1 promise under the 2014 Agreement? The answer is that it promised not to carry on the specified competing activity directly or indirectly through an associate or sister concern. Secondly, whether the conduct now complained of is such indirect activity through Respondent No.2? That question has to be answered from the documents, audit material, common infrastructure, personnel, business arrangements and other circumstances on record. The first question comes from the Agreement. The second question is a prima facie fassessment.

94. The submission of Respondent No.2 that Clause 39 of its 2018 Agreement supersedes all prior contracts does not persuade me at this stage. Clause 39 of the 2018 Agreement provides that the later Agreement supersedes prior contracts, agreements or commitments. Respondent No.2 submits that whatever was agreed earlier cannot be relied upon against Respondent No.2 after execution of the 2018 Agreement. This submission has to be seen in its proper context. The 2018 Agreement was entered into between the Petitioner and Respondent No.2. The 2014 Agreement was entered into between the Petitioner and Respondent No.1. They are different Agreements and have different contracting parties. Therefore, the effect of Clause 39 has to be seen with reference to the parties and obligations to which that clause relates. The 2018 Agreement may govern the relationship between the Petitioner and Respondent No.2 concerning Frooti, Appy and Appy Fizz. It may contain its own non-compete clause, termination provisions and arbitration clause. I am not deciding at this stage that those provisions have no effect. Respondent No.2 is entitled to rely upon its own Agreement and the terms contained in it. The fact that the 2018 Agreement contains an entire agreement clause cannot be ignored. But a different question comes when Respondent No.2 relies upon that clause for releasing Respondent No.1 from an obligation undertaken by Respondent No.1 under the 2014 Agreement. The 2018 Agreement is an agreement to which Respondent No.2 is a party. Respondent No.1 is not shown to be a party to that later Agreement. Therefore, prima facie, there is no basis to say that a clause in the later Agreement between the Petitioner and Respondent No.2 has changed or ended an obligation which Respondent No.1 had undertaken under a different Agreement.

95. In simple terms, Respondent No.2 may have its own arrangement with the Petitioner, but that does not answer what Respondent No.1 had promised in 2014. Respondent No.1 cannot, merely because Respondent No.2 later entered into another Agreement with the Petitioner, say that its own earlier promise not to carry on competing business through an associate or sister concern has disappeared. The two relationships have to be considered separately. There is no necessary contradiction in the Petitioner giving Respondent No.2 a franchise for Frooti, Appy and Appy Fizz in 2018 and, at the same time, Respondent No.1 remaining bound by its earlier restriction concerning competing packaged drinking water business. The 2018 Agreement permitted Respondent No.2 to carry on the business covered by that Agreement. It does not show that Respondent No.1 was released from the obligations which it had separately undertaken in 2014. It is relevant that the 2018 Agreement was for identified products.

The fact that Respondent No.2 was permitted to manufacture or deal with Frooti, Appy and Appy Fizz does not mean that Respondent No.2 was thereby permitted to manufacture every other product, including a product which is described as a competitive product under the 2014 Agreement. Permission to carry on one business cannot, without more, be treated as permission to defeat a separate negative covenant binding upon another contracting entity. For these reasons, the reliance upon Clause 39 does not, at this stage, answer the Petitioner's case. The 2018 Agreement may have its own field of operation, its own restrictions and its own consequences. Those questions can be considered by the Arbitral Tribunal in the appropriate proceedings. But the existence of the 2018 Agreement cannot,, wipe out the obligations of Respondent No.1 under the 2014 Agreement. I find, prima facie, that the separate status of Respondent Nos.1 and 2 and the existence of the 2018 Agreement do not, by, prevent the Petitioner from relying upon Clauses 5 and 14(a) of the 2014 Agreement.

III. The material showing indirect competing business and use of the franchise facilities:

96. The clauses of the Agreement cannot be considered separately from what was found at the premises during the audit. The words of the Agreement give one part of the matter, but the Court has to see whether there is some material which prima facie shows that the alleged activity was taking place. The Petitioner relies upon the audit conducted on 18 and 19 March 2026 at the premises. This audit is of importance because at that time the 2014

Agreement with Respondent No.1 was still in force and, according to the Petitioner, it was during this audit that the competing water activity was noticed for the first time. The Executive Summary of the audit report records as follows:

> "Executive Sumary: Udayak Agro Pyt. Ltd. Facility is located in the KL Industries Estate compound alongwith the two separate buildings named as Udayak Agro Pvt Ltd and KL Beverages Pvt. Ltd. In the first building the site has Bailley Jar & Retail packs operation. However, in the second building i.e., in KL Beverages the site has started the production of Reliance Beverages Still under trial) where earlier the Parle's Frooti & Appy filling facility was there. On the second floor the Water treatment plant is located which used for the Bailley operation.
>
> Beside this the site established another new water RO system plant (false celling work is going on during the plant visit) solely for the Reliance water supplies. On the same second floor at the right side of this facility (Over the KL Beverage building) the site established the water filling operation for Rellance. During the visit the Reliance water plant was in operation. Also, during the visit the Bailley Jar filling was in operation while the Bailley retail was closed due to shortage of Preforms & Closures. The site also allocated the existing finish goods warehouse to the Reliance water and start the new shade build up for the Bailley water besides this warehouse. Plant Visit was accompained by: 1) Chandra Hajongh - QC Executive 2) Subash Sharma - Store Incharge"

97. If the report is read as a whole, the broad meaning which is recorded can be understood. It says that in the first building there was BAILLEY jar and retail pack operation. It says that in the second building, namely KL Beverages, production of another water product had started and it was still under trial when the audit visit was made. The report further says that the water treatment plant used for BAILLEY was situated on the second floor and, apart from that, another new RO water system was being established for the other water supplies. The report records that some changes were being made in the finished goods warehouse and a new shade was being made for BAILLEY water beside that warehouse. Therefore, the report is not merely saying that some machine was lying there or that some future plan for another product was being discussed. It records a manufacturing arrangement, another water treatment system and changes at the premises for different water activities. Whether each detail of the audit report is proved in arbitration is another question. For the present, the report gives some material which cannot be ignored while considering the need for interim protection. There is one more aspect which is required to be noticed. The audit report uses the words “Reliance Beverages” and “Reliance water”, whereas in the pleadings and submissions the competing water activity is at some places referred to as “SURE”. At this stage, I am not required to decide the name or decide the identity of the brand only from the words used in the Executive Summary. What is relevant for the present application is the fposition recorded in the audit, namely, that water production other than the BAILLEY operation was found at the KL Beverages premises, with a separate RO system and other arrangements being made for that activity. The identity of the competing product and its effect can be considered in the arbitration.

98. The report says that the water treatment plant used for the BAILLEY operation was on the second floor, whereas another RO system was being established for the other water supplies. Therefore, from the material before the Court, it cannot be said that the competing business was some totally unrelated business at a place having no connection with the franchise activities. The competing water activity was found in the same KL Industries Estate compound where the BAILLEY operation was being carried on. The second building is shown as the KL Beverages facility. This fact alone may not prove that the competing activity was being carried on by Respondent No.1. Merely because both activities were at the same place, the Court cannot say that the business of Respondent No.2 becomes the business of Respondent No.1. That question is not required to be decided at this stage. The Court has to see whether there is prima facie material which, along with the clauses and other documents, shows that the competing activity may be connected with the associate or sister concern arrangement contemplated by the 2014 Agreement. The separate water infrastructure is relevant. The report says that another new RO water system had been established and false ceiling work was going on during the visit. This shows, at least prima facie, that the competing water activity was not only about using some ordinary office space or keeping finished goods. There was a water treatment and production arrangement being put in place. The separate RO system for the competing water supplies is one circumstance which supports the Petitioner's case that another water business had started or was being established at the premises. The report refers to changes in the finished goods warehouse and construction of a new shade for BAILLEY water. This is relevant because it shows that the two water activities were not separate in the surroundings where they were being carried on. There appears to have been some adjustment and rearrangement of the available space for the different activities. This fact cannot prove breach of contract. But when it is seen along with the common premises, common personnel and the corporate relationship relied upon by the Petitioner, it becomes relevant for seeing whether a prima facie case is made out.

99. The audit records the presence of Chandra Hajongh, QC Executive, and Subash Sharma, Store Incharge. The Petitioner has relied upon other material to say that persons connected with these functions were working for both concerns. The Respondents may dispute their designation, employment relationship or responsibility. These matters may require further evidence. But for the present, the presence of the same or connected personnel in the operations of both concerns is a relevant circumstance. This becomes more relevant because the Petitioner's case is not that two independent businesses happened to be situated in the same locality. The case of the Petitioner is that the two Respondents are connected entities and that the competing water business was being carried on through Respondent No.2 while Respondent No.1 continued to take the benefit of the Petitioner's franchise. Therefore, the role of the personnel, the use of the premises and the manner in which the two activities were being carried on have to be looked at together. I find that the audit report gives prima facie material which requires consideration. It cannot be ignored only because the language of the report is not perfect. At the same time, I am not treating every statement in the report as proved. The final weight to be given to the audit report and the evidence of the persons concerned can be considered in the arbitration. For the present, the report is sufficient to require protection of the Petitioner's rights until the dispute is decided.

100. The case of the Petitioner is that the competing water activity was not only some proposal or idea which had not yet started. The Petitioner relies upon a tax invoice dated 1 March 2026, the QR code appearing on the bottles and other material to show that activity had started before the audit of 18 and 19 March 2026. The invoice is relied upon as showing an transaction and not only an internal plan to start a new business. The QR code is relied upon by the Petitioner to connect the product with Respondent No.2 as the manufacturer. Respondent No.2 disputes the nature and extent of this activity. It relies upon the fact that its earlier franchise production under the 2018 Agreement had been stopped on 20 August 2025. According to Respondent No.2, the earlier beverage business had come to an end and the present proceedings cannot be based upon that discontinued activity.

101. The earlier business of Respondent No.2 and the date on which it was discontinued are relevant facts. But the present case of the Petitioner is not only about the earlier Frooti, Appy and Appy Fizz operations. The material relied upon by the Petitioner relates to a later water activity which is alleged to have started in 2026. Therefore, even if the submission regarding discontinuation of the earlier franchise production is accepted, that does not explain the documents relied upon by the Petitioner regarding the new water activity. The period which is relevant for this interim application is the period when the 2014 Agreement with Respondent No.1 was still continuing. The Petitioner says that the competing water activity was found in March 2026, when Respondent No.1 was still bound by the obligations under the 2014 Agreement. This is what gives importance to the audit and the invoice. It is necessary to keep in mind the difference between proving a completed breach and showing a prima facie ground for interim protection. At the Section 9 stage, the Court is not required to conduct a full trial about every invoice, every sale and every manufacturing transaction. The Court has to see whether the material is sufficient to show a serious and reasonable apprehension that the restriction is being breached or may be defeated if protection is not given. The invoice dated 1 March 2026, the material relating to the bottles and the audit soon are relevant when they are read together. If these documents are proved and accepted, they may have a bearing on whether the competing water business had started. If the Respondents have an explanation for these documents, that explanation can be placed before the Arbitral Tribunal. But at this stage, the documents cannot be ignored. I find that the material relied upon by the Petitioner is sufficient to raise a prima facie case that the competing water activity was not merely something proposed for a future date, but had started or was in the process of starting around the time of the audit. The production, number of sales and extent of the activity are matters which can be decided after evidence. But these matters do not prevent the Court from considering interim protection.

102. The Petitioner has relied upon the financial and corporate relationship between the Respondents. It points to the description of Respondent No.2 as an "Associate" in the financial records of Respondent No.1. It relies upon related-party transactions, common address, common KL Industries Estate, common email domain and shared functional mailboxes. The Petitioner has further relied upon common management and personnel and the manner in which communications and business functions were being carried out. The Petitioner has relied upon the fact that the financial records of Respondent No.1 describe Respondent No.2 as an "Associate". If this description is correct and is supported by the relevant financial records, it becomes important because Clause 5 and Clause 14(a) use the word "associate". Therefore, it is not a situation where the Court is bringing some unrelated concept into the Agreement. The Agreement refers to an associate or sister concern, and the documents relied upon by the Petitioner prima facie describe Respondent No.2 as an associate. There is material regarding the common address and common estate. The two entities are shown as functioning within the KL Industries Estate compound. The Petitioner relies upon the common email domain and shared mailboxes for purchase, accounts, logistics and digital filing. These facts alone may not make the two entities one entity. But they are relevant for seeing how closely the day-to-day business activities of the two concerns were connected. The same position applies to the common personnel. If the same persons are doing quality control, store or plant-related work for both concerns, that can have some importance in understanding how the competing water activity was established and managed. At this stage, it is not necessary to decide the employment status of every person. The question is whether the material taken as a whole gives a reasonable basis to the Petitioner's allegation that the two businesses were not functioning as unrelated operations.

103. Respondent No.1 says that these circumstances do not make the two entities one and the same. To this limited extent, I agree with the Respondent. Separate corporate identity cannot be ignored merely because there is common management, common premises or related-party transactions. The Court is not piercing the corporate veil for deciding the rights of the parties. But this does not mean that these circumstances should be ignored. They are being considered for a narrower purpose. Clause 5 and Clause 14(a) contemplate indirect activity through an associate, sister concern, group company or affiliate. Therefore, when the Court is considering whether the competing activity was being carried on through such a connected concern, the relationship between the two entities becomes relevant. If the Agreement had no reference to associates or sister concerns, the importance of these facts could have been different. But here the parties have used such words. Therefore, the financial description, common premises, common business functions, common personnel and other material regarding the relationship between the Respondents become relevant parts of the overall picture. The Court is not saying that any one of these facts proves the Petitioner's case. The Court is only saying that these facts, when seen along with the clauses and the audit findings, cannot be treated as unrelated or having no relevance. Taken together, they give prima facie support to the Petitioner's allegation that Respondent No.2 was not an entirely independent stranger carrying on some unrelated business. When all these circumstances are seen together, the material is sufficient at this stage to show a prima facie connection between Respondent Nos.1 and 2 for the limited purpose of considering the interim protection sought by the Petitioner. The final question regarding the relationship, the extent of control or interest of Respondent No.1 in Respondent No.2 and the final consequences is kept open for decision in the arbitration.

104. The Petitioner has relied upon the fall in its BAILLEY business. It says that the sales declined by about 32% in value and about 24% in volume in the relevant financial year. According to the Petitioner, this decline happened during the period when the competing water activity was being carried on and it is a circumstance showing the adverse effect of the competing business. Respondent No.2 disputes the connection between the alleged competing water business and the fall in BAILLEY sales. It is submitted that there can be many reasons for reduction in sales and that only from these figures the Petitioner cannot say that the whole decline was because of the competing product. It is submitted that any financial loss can be calculated and compensation by damages can be given. There is some force in the submission that at this interim stage the Court should not connect the entire fall in sales with one reason without detailed evidence. Sales may go up or down for many reasons. Market conditions, competition from other manufacturers, distribution changes, consumer preference, pricing, availability and other factors may have an effect. Therefore, I do not consider it proper at this stage to hold that the entire decline of 32% in value or 24% in volume was because of the competing water activity. But this does not mean that the sales figures have no relevance. They are one of the circumstances placed before the Court. The Court is not treating them as final proof of breach. They are being looked at along with the other material discussed.

105. The Court has before it a continuing non-compete covenant in the 2014 Agreement. There is audit material showing a competing water operation at the KL Beverages premises. There is material regarding the relationship between the two Respondents, the common premises and personnel and the separate water RO system which was being established. There is material relied upon by the Petitioner showing that water-related activity had started around the relevant period. When all these facts are considered together, the sales decline becomes a relevant supporting circumstance. It is not the only basis for granting relief. Even without relying upon the sales decline, the restriction and the audit material require consideration independently.

106. There is a reason why the Court need not insist upon a complete connection between every rupee of loss and the competing product before granting interim protection. If the competing activity is contrary to a subsisting negative covenant, the issue is not only how much monetary loss has taken place. The issue is whether the continued activity may further affect the business and the rights which the Petitioner says are protected under the Agreement. At the same time, the Court is conscious that the Section 9 proceedings cannot be used for giving a final finding about damages or diversion of sales. The loss, if any, and the connection between the competing product and the fall in BAILLEY sales are matters for the arbitration. The present finding is limited to whether there is sufficient prima facie material requiring interim protection. I find that the sales figures, when seen with the other circumstances, support the Petitioner's case to a limited prima facie extent. They do not by prove the breach. But they add to the overall circumstances which make the Petitioner's apprehension of continuing prejudice a one and not only an assumption.

107. The Petitioner's reliance upon Clause 16 cannot be ignored. The clause protects not only the machinery used in the franchise business but “facilities, know how, procedures, information in the Quality Manual, distribution and retail networks” obtained or used because of the franchise relationship. This is important because the protection in the Agreement was not limited only to the Petitioner's trade mark or the finished BAILLEY product. The parties intended to protect the business methods, operational knowledge and infrastructure connected with the franchise. The language of Clause 16 shows that the parties understood that a franchisee, after receiving technical and operational help from the franchisor, may get knowledge and systems which may be useful for another business. Therefore, the clause prevents the franchisee from using those facilities, know-how, procedures, Quality Manual information, distribution and retail networks and machinery for another product without prior written approval, where such use involves the prohibited conflict. The audit material becomes relevant in this background. The report records the place of the water treatment plant being used for the BAILLEY operation. It records that another RO system was being established for the competing water supplies in the same overall premises. It further records changes in the warehouse arrangements and construction of a new shade for BAILLEY water. These facts do not prove that the Petitioner's know-how was misused. But they show that the competing water activity was being established at a place where the Petitioner's water franchise operation was being carried on.

108. The Petitioner has placed material showing that during the long franchise relationship it had provided technical assistance, quality standards, audits, training and operational support. According to the Petitioner, this included support regarding plant layout, machinery, quality control, manufacturing processes and other operational matters. The Respondents dispute the extent to which any such information was used for the competing product. That issue cannot be decided only from the pleadings. There is a difference between saying that misuse has been proved and saying that there is sufficient risk of misuse which requires interim protection. At this stage, I am not recording a final finding that every part of the competing product was made by using the Petitioner's confidential know-how. I am not holding that every machine or every procedure found at the premises belongs to the

Petitioner or was supplied by it. These matters may require evidence, examination of records and, if required, technical evidence before the Arbitral Tribunal. However, the risk which Clause 16 was intended to prevent cannot be said to be imaginary. This clause was put in the Agreement because the franchise relationship involved facilities, know-how, procedures, quality information, machinery and business networks. The material now before the Court shows that a competing water activity was being established in the same overall business premises while the 2014 Agreement was continuing. This is enough to make the Petitioner's apprehension a matter requiring protection.

109. It is relevant that the Petitioner says that the Respondents had access for a long period to its manufacturing standards, quality requirements, operational methods and distribution arrangements. If such information or experience is used in a competing water business, the harm may not be limited to one sale. The competing business may get a continuing advantage from the knowledge and infrastructure developed during the franchise relationship. Whether this has happened is a matter for final decision. But the possibility is directly connected with the protection given under Clause 16. For the purpose of Section 9 I find that the material regarding the use of the premises, water treatment infrastructure, personnel and the continuing franchise relationship is sufficient to show a prima facie risk which the Court should protect. The Court is not deciding whether confidential information or know-how was misused. It is only preserving the position so that the and proprietary interests claimed by the

Petitioner are not defeated before the arbitral proceedings can effectively decide these issues. Thus, when the audit report, the invoice and other material relating to the competing water activity are seen together with the relationship between the Respondents and Clauses 5, 14(a) and 16 of the Agreement, there is sufficient prima facie material showing that the competing activity requires examination and interim protection. The material is not being treated as final proof of every allegation made by the Petitioner. But it is more than a bare apprehension without documents. It gives a reasonable basis to the Court to go further and consider whether the requirements of Section 9, including balance of convenience and irreparable prejudice, are satisfied.

IV. Section 9 relief against Respondent No.2 and the objections raised by the Respondents:

110. The next objection of Respondent No.2 is that it is not a party to the 2014 Agreement. Therefore, according to Respondent No.2, an injunction cannot be passed against it in a Petition under Section 9 of the Arbitration and Conciliation Act, 1996. Respondent No.1 says that it is a separate entity and the arbitration agreement in the 2014 Agreement is only between the Petitioner and Respondent No.1. Therefore, according to the Respondents, the interim protection under Section 9 should remain only between the parties to that Agreement.

111. This submission has to be looked into because it is admitted that Respondent No.2 has not signed the 2014 Agreement. The Court is not ignoring this position. As seen, Respondent No.2 has its own Franchise Agreement with the Petitioner. Therefore, at this stage, it will not be proper to hold that Respondent No.2 is a party to the 2014 Agreement. That question is not being decided in the present proceedings. The question is whether, when a party to an arbitration agreement comes before the Court under Section 9 for protecting the subject matter of the arbitration, and shows that the prohibited activity is allegedly being carried on through a connected concern which is not a signatory, the Court has no power at all to pass any protective order which may affect such concern.

112. The judgment in *Girish Mulchand Mehta v. Mahesh S. Mehta*, 2009 SCC OnLine Bom 1986, explains the scope of Section 9. In paragraph 10, the Court observed:

> "10. On plain language of section 9, it would appear that a party to an Arbitration Agreement can invoke jurisdiction of the Court under this provision for interim measures as specified therein at any stage of Arbitral proceedings but before the Arbitral Award is enforced in accordance with section 36. The power of the Court under section 9 of the Act is very wide and is not controlled by the provisions of the Code of Civil Procedure. Indeed, the Court has to be guided by the equitable considerations keeping in mind that the award to be passed by the Arbitral Tribunal is capable of enforcement."

113. From this observation, one thing becomes clear. Section 9 is meant to give interim protection to a party to an arbitration agreement so that the rights which have to be decided in arbitration are not defeated before the arbitral proceedings can properly take place. Therefore, it is not only a procedural provision. It gives a protective power to the Court. Thus, the fact that the present Petition is filed by the Petitioner, which is a party to the arbitration agreement with Respondent No.1, is enough to invoke the jurisdiction of this Court under Section 9. But this is only the first part of the question. The next question is whether, while exercising this power, the Court can pass an order which may affect a person who is not a signatory to that arbitration agreement. That question has to be considered separately on the facts of the present case.

114. Paragraph 12 of *Girish Mulchand Mehta* directly considers this question. The Court observed:

> "12. The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings. As is noticed earlier, the jurisdiction under section 9 can be invoked only by a party to the Arbitration Agreement. Section 9 does not limit the jurisdiction of the Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under section 9 of the Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject-matter of the Arbitration Agreement."

115. This principle is important while considering the objection of Respondent No.2. It shows that the jurisdiction under Section 9 cannot be rejected only because the person who may be affected by the interim order is not a signatory to the arbitration agreement. The Court has to see what relief is being asked and for what purpose it is being asked. At the same time, this does not mean that Section 9 gives unlimited power to the Court to put obligations upon every third person. The relief must have some connection with the arbitration and must be in the nature of an interim measure for protecting or preserving the subject matter or rights which are before the arbitral process. The Court has to see whether the third party has any independent right which should not be disturbed. Therefore, the objection of Respondent No.2 cannot be accepted in the broad manner in which it is made. The fact that Respondent No.2 has not signed the 2014 Agreement does not take away the jurisdiction of the Court under Section 9. But the Court still has to see the relationship between Respondent No.2 and Respondent No.1 and the nature of the relief which is being sought. In the present case, the relief against Respondent No.2 is not being considered as a final finding that Respondent No.2 is a party to the 2014 Agreement. The purpose is to protect the rights of the Petitioner under the 2014 Agreement until the disputes are decided in arbitration. The Court is not deciding in this Section 9 proceeding whether Respondent No.2 can be made liable for all the obligations contained in the 2014 Agreement. That question can be considered by the Arbitral Tribunal in the proper proceedings. The Court is only considering whether the material available is enough to justify an interim restraint so that the protection claimed by the Petitioner is not defeated before the dispute is decided.

116. Paragraph 13 of *Girish Mulchand Mehta* makes distinction where an independent right of a third party is involved. It records:

> "The Principle expounded in this decision is that if a third party has independent right in the subject-matter of the Arbitration Agreement, section 9 cannot be invoked to affect his rights. At the same time, the Kerala High Court has plainly opined that it is possible to pass orders under section 9 against a third party if such person is claiming under the party to the Arbitration Agreement. Thus understood, section 9 can be invoked even against a third party who is not party to an arbitration agreement or arbitration proceedings, if he were to be person claiming under the party to the arbitration agreement and likely to be affected by the interim measures."

117. It would not be correct to say that every third party can be restrained under Section 9 only because the applicant says that there is some connection with that third party. If a third party has a genuinely independent right in the subject matter, the Court has to take care that the interim order does not wrongly interfere with such independent right. The present case is not placed before the Court as a case of some unrelated stranger. The Petitioner's case is that Respondent No.2 is the connected concern through which Respondent No.1 is alleged to be carrying on indirectly the competing water activity which Respondent No.1 had agreed not to carry on directly or indirectly. Therefore, the connection between the two Respondents is not relied upon only for bringing Respondent No.2 into the Petition. It is directly connected with the words of the restriction. Clause 5 refers to activity being carried out "indirectly through any associate /sister concern or in any other manner." Clause 14(a) refers to "its sister concern, group company, associates, affiliates or such other organizations". Therefore, the involvement of another concern is contemplated in the contract between the Petitioner and Respondent No.1. The Court is not taking some ordinary independent business of Respondent No.2 and saying that because the Petitioner has a dispute with Respondent No.1, Respondent No.2 has to stop its business. If that was the situation, the objection of Respondent No.2 would have more force. Here the allegation is that the competing activity is being carried on through the very kind of connected concern which the 2014 Agreement refers to.

118. The documents show the relationship between Respondent Nos.1 and 2, common premises, common personnel, business connections and the competing water activity at the KL Beverages premises. These circumstances give prima facie support to the Petitioner's case that Respondent No.2 is not being proceeded against merely as some unrelated third party. At the same time, I make it clear that the Court is not holding that Respondent No.2 is bound in every respect by the 2014 Agreement. The final question regarding the extent to which the obligations under the 2014 Agreement can operate against Respondent No.2 and the effect of its relationship with Respondent No.1 can be considered in arbitration. The present finding is only for considering the requirement of interim protection. Thus, the principle in *Girish Mulchand Mehta* supports the view that the fact that Respondent No.2 is not a signatory to the 2014 Agreement is not,, enough to reject the Petitioner's prayer for interim protection. The Court still has to see whether the order sought is necessary for protecting the rights which are the subject matter of the arbitration. On the material before me, such connection is shown prima facie.

119. The submission of Respondent No.2 that an injunction would amount to enforcing a post-termination restraint does not, in the facts of the present case, defeat the relief which is being considered. Respondent No.2 relies upon the discontinuation of its 2018 Franchise Agreement and submits that any attempt to stop it from carrying on competing business after termination will have to be considered in the light of Section 27 of the Contract Act. It relies upon the post-termination restriction contained in its own Agreement and the position regarding negative covenants after termination. This objection may require consideration if the relief is based only upon the post-termination covenant contained in the 2018 Agreement. But that is not the only basis on which the present interim protection is being considered. The present order is concerned with the subsisting obligation under the 2014 Agreement. The material before me shows, prima facie, that the 2014 Agreement between the Petitioner and Respondent No.1 continues to subsist. Clause 5 provides that the restriction operates "during the subsistence of this Agreement." Therefore, as long as the 2014 Agreement continues, Respondent No.1 is required to follow the negative covenant contained in that clause.

120. This is important because, for deciding the present interim application, the Court need not decide the larger question whether the post-termination part of Clause 14(a) can be enforced after termination. That question may require consideration of Section 27 of the Contract Act and the authorities relied upon by the

Respondents. If that question becomes necessary for final adjudication, it can be considered by the Arbitral Tribunal in accordance with law. The present case can be considered on the simpler question of the obligation during the subsistence of the 2014 Agreement. The clause prevents Respondent No.1 from carrying out the prohibited activity directly or indirectly through an associate or sister concern. The Agreement is stated to be continuing. The competing water activity is alleged to have taken place during that period. The audit material prima facie supports the existence of such activity. Therefore, the Court is not, by this interim order, enforcing a post-termination restraint against Respondent No.2. The concern is to preserve the position during the period when the 2014 obligation is still continuing. The relief is connected with the existing obligation of Respondent No.1. It is for this reason that the Court need not decide at this stage every question arising from Clause 15(d) of the 2018 Agreement. The 2018 Agreement and its post-termination consequences may be part of the disputes before the Arbitral Tribunal. But the Petitioner's case under the 2014 Agreement has a separate basis which can be considered without deciding those questions. I find that the objection based upon post-termination restraint does not, at this stage, prevent the Court from granting limited interim protection based upon the subsisting obligation under the 2014 Agreement.

121. The argument that the injunction will make the plant of Respondent No.2 idle and will affect its employees and lenders has been considered. Respondent No.2 has placed material regarding the number of employees, its monthly fixed and committed expenses, borrowings and the securities and guarantees given for those borrowings. According to Respondent No.2, if the Court restrains the water activity, the plant may remain idle, its obligations may become difficult to meet and its employees may suffer. These are consequences which the Court cannot ignore. While exercising jurisdiction under Section 9, the Court has to consider the balance of convenience and the likely prejudice to both sides. Therefore, the financial position of Respondent No.2 has been considered. But there is another side. The Court cannot treat the continuation of a business which is prima facie covered by a subsisting restriction as a reason to refuse protection. If a party is carrying on an activity despite a binding restriction, the fact that the activity has resulted in employees, expenses or financial commitments cannot give a right to continue that activity. Otherwise, the longer a prohibited activity continues, the stronger the argument would become against granting an injunction. The Court has to distinguish between the business of Respondent No.2 generally and the activity which is the subject matter of this Petition. Respondent No.2 has a separate business relationship with the Petitioner. It may have other activities which are not the subject matter of the present dispute. The Court is not required to stop Respondent No.2 from carrying on every kind of business merely because there is a dispute regarding competing packaged drinking water. The relief has to be kept limited. What requires restraint is the competing packaged drinking water activity which is prima facie covered by the restriction and the use or exploitation of the Petitioner's protected facilities, know-how, Quality Manual information, distribution or retail networks and other protected business material in connection with such competing activity. This limited approach reduces prejudice to Respondent No.2. If there are activities of Respondent No.2 which do not come within the prohibited field, those activities are not required to be stopped merely because of this order. Respondent No.2 would not be prevented from carrying on lawful and independent business which is outside the scope of the interim protection.

122. The Court has to consider the prejudice which may be caused to the Petitioner if no protection is granted. If the competing water activity continues during the arbitration, the business may develop further. Customers, distributors and market arrangements may become established. Manufacturing systems and business practices may become more connected. In such a situation, even if the Petitioner succeeds in arbitration, bringing back the earlier position may become more difficult. Therefore, the balance of convenience cannot be considered only from the point of view of the financial burden which an injunction may cause to Respondent No.2. The Court has to see the prejudice on both sides. The financial difficulty of Respondent No.2 is a relevant consideration, but it cannot outweigh a prima facie restriction where the material shows a continuing competing activity. The fact that employees or lenders may be affected is unfortunate, but those consequences have to be weighed against the and rights claimed by the Petitioner. The present order does not decide that Respondent No.2 has no right to carry on any business. It only protects the field which is prima facie covered by the negative covenant until the dispute is decided.

123. The reliance of Respondent No.1 on its separate corporate identity does not require rejection of the Petition. As stated, the Court is not declaring Respondent No.1 and Respondent No.2 to be one entity. There is no finding in the present order that the separate personality of Respondent No.2 has ceased to exist or that the assets, liabilities and rights of the two Respondents are to be treated as belonging to one entity. The Court is only giving effect, at the interim stage, to the words which Respondent No.1 had agreed to. Respondent No.1 agreed to a restriction which was not limited to its own direct acts. It agreed that it would not carry out the prohibited activity "directly or indirectly through any associate /sister concern or in any other manner." The ordinary meaning of these words cannot be ignored. When a person agrees not to do something indirectly through another concern, the Court has to consider whether the conduct complained of is, in substance, such indirect conduct. Otherwise, the promise may be defeated without violating its literal wording. A party could put the competing activity in the name of another connected entity and then say that it has not manufactured the competing product. That cannot be the intended meaning of the clause at this interim stage. The parties have used the words "indirectly" and "through any associate /sister concern". These words have to be given some effective meaning. The Court should not adopt an interpretation which makes these words practically useless. There is a reason for such a negative covenant. A restriction against indirect competition is generally meant to prevent the same prohibited business from being carried on through another connected concern while the contracting party formally remains outside that activity. The Court is not adding such a restriction to the Agreement. The Agreement contains it. The Court only has to see whether the conduct shown by the material comes within that language. At the same time, this finding should not be understood to mean that Respondent No.1 is liable for every independent act of Respondent No.2. There must be sufficient connection between the competing activity and the relationship contemplated by the clause. That is why the Court has considered the corporate relationship, common premises, common personnel, audit findings, water infrastructure and other surrounding circumstances together. On the material before the Court, such connection is prima facie present. There is sufficient basis to grant interim protection without making a final declaration that Respondent Nos.1 and 2 are one entity or that Respondent No.2 is a signatory to the 2014 Agreement. The relief under Section 9 can accordingly be framed in a manner which protects the Petitioner's rights under the 2014 Agreement while keeping the final questions open for decision by the Arbitral Tribunal.

124. For these reasons, I am of the view that the objection of Respondent Nos.1 and 2 that no interim order can operate against Respondent No.2 merely because Respondent No.2 is not a signatory to the 2014 Agreement cannot be accepted. The Court has jurisdiction to consider protective relief which may affect a non-signatory where the circumstances justify such relief. In the present case, the language contemplates indirect conduct through an associate or sister concern, and the material on record prima facie connects Respondent No.2 with the competing activity complained of. The question is whether, pending arbitration, the Court should allow the competing activity to continue when there is prima facie material that it is the activity which Respondent No.1 had agreed not to carry on directly or indirectly. On the material before me, limited interim protection is required.

V. Balance of convenience, irreparable prejudice and final conclusion:

125. The next question is whether, in the facts of the present case, the Petitioner has shown sufficient reason for getting interim protection. In my view, the answer is yes. The Petitioner has not approached the Court only on the basis of some future possibility or because of a general fear that Respondent No.2 may start a competing business later. There is material before the Court showing that the competing activity had started, or was in the process of being started, when the audit was carried out. The audit conducted on 18 and 19 March 2026 is important in this regard. The Executive Summary records water production activity at the KL Beverages premises. It records that another RO system was being set up for the other water supply, changes in the finished goods warehouse and construction work at the premises. The report records the presence of persons connected with quality control and stores. These things are not only about some future possibility. They relate to what was seen at the premises when the audit was done. The Petitioner has relied upon material showing activity before the audit. The tax invoice dated 1 March 2026 and other material relating to the competing bottles are relied upon to show that the activity was not only some internal trial or preparation. Respondent No.2 disputes these allegations and disputes the extent and nature of the activity. That issue will have to be decided on evidence. But at the stage of a Section 9 Petition, the Court is not required to conduct a full trial regarding every transaction or every bottle.

126. The Court has to see all the material together. If every document is looked at separately, the Respondents may have some explanation for each circumstance. But the combined effect of the material cannot be ignored. There is the continuing 2014 Agreement. There is a negative covenant which covers indirect activity. There is a connected concern. There is common or connected infrastructure and personnel. There is audit material showing another water operation. There is material relied upon by the Petitioner showing activity around the same period. The purpose of Section 9 is to give protection where such protection is necessary before the arbitral proceedings decide the dispute. Therefore, the Court does not have to reach the same level of proof which may be required after a full trial. At this stage, what is required is a prima facie case along with the other requirements for interim relief. On the material before me, this requirement is satisfied.

127. The Petitioner has shown that its relationship with Respondent No.1 was not of supplying a finished product for sale. The 2014 Agreement created a business arrangement. Respondent

No.1 was required to manufacture, fill, pack, distribute and sell the Petitioner's packaged drinking water products. The Agreement dealt with quality control, machinery, manufacturing processes, the Quality Manual, distribution and retail networks and other operational matters. Clause 16 is important in this regard. It gives protection not only to the physical machinery but to the “facilities, know how, procedures, information in the Quality Manual, distribution and retail networks” connected with the franchise. Therefore, Respondent No.1 received more than only a right to manufacture a product under the Petitioner's brand. Through the franchise relationship, it got access to systems, processes, technical knowledge and business arrangements connected with manufacture and distribution of the Petitioner's products. This makes the possibility of continuing competing activity more serious. If the competing water business is allowed to continue during the subsistence of the 2014 Agreement, the possible prejudice to the Petitioner is not only the loss from sale of some bottles. There is a possibility that the competing business may get benefit from the manufacturing experience, quality systems, technical processes, operational knowledge and business relationships which were developed during the franchise relationship. The Petitioner has stated that during the long franchise relationship Respondent No.1 received technical assistance, training, quality support, audits, machinery related assistance and other operational support. Whether all this material was used for the competing business is a matter for final decision. But the Court cannot ignore that Clause 16 was put in the

Agreement to prevent use of these kinds of facilities and information for another product where there is a conflict with the Petitioner's business. The possible injury is not only about one sale. A competing business may develop its own customers, distributor relationships, market knowledge and other arrangements. Once such relationships are developed, merely counting the number of bottles sold may not fully show the effect. For this reason, the Court is not satisfied that the dispute can be adequately protected only by saying that the Petitioner can later claim damages for every sale which may have been lost. The rights claimed by the Petitioner require protection during the period when the arbitral proceedings are pending.

128. I have considered the submission that the Petitioner can be compensated by damages. There is no doubt that damages are an important remedy in a dispute. If a party suffers a proved financial loss, damages can normally compensate such loss. But this does not mean that an injunction cannot be granted where there is a financial loss. In the present case, the Petitioner relies upon an express negative covenant. Respondent No.1 has agreed not to carry on the prohibited competing activity directly or indirectly through an associate or sister concern during the subsistence of the Agreement. When such covenant is prima facie shown to be continuing to be breached, the Court has to consider whether allowing the breach to continue and asking the Petitioner to claim damages later would protect the right. In my view, in the facts of the present case, it would not. The reason is that the possible injury is not limited to some easily measurable sale. The competing business may develop customers, distributors, suppliers, market relationships and goodwill while the arbitration is pending. The Petitioner alleges possible use of its know-how, quality systems, manufacturing methods and business information. The extent of such use, if any, may not be capable of being fully calculated only from the number of units sold. The Court cannot wait until the competing business becomes fully established and then tell the Petitioner that the loss can be calculated. Such an approach may defeat the purpose of an interim protective order. Section 9 is intended to protect the subject matter and the rights involved in the arbitration while the final decision is still pending. At the same time, I am conscious that the findings in the present Petition are only prima facie findings. The Court is not deciding that every sale made by Respondent No.2 caused loss to the Petitioner. The Court is not deciding the amount of loss, if any. These matters will require evidence and proper adjudication. The Arbitral Tribunal will remain free to consider the whole dispute, including the defence of the Respondents, the extent of the competing activity, the alleged use of confidential information or know-how, the financial effect on the Petitioner's business and the question of damages. The present order only seeks to prevent the position from becoming more difficult to reverse before these questions are decided.

129. The balance of convenience lies in granting limited protection to the Petitioner. While considering this question, I have kept in mind that an injunction should not be wider than what is necessary for protecting the right which is the subject matter of the dispute. The Court has to balance the possible prejudice to both sides and not only consider the case of the Petitioner. Respondent No.1 can continue its lawful BAILLEY operations under the subsisting 2014 Agreement. The present order does not prevent Respondent No.1 from carrying on the business which it is permitted to carry on under that Agreement. Similarly, the order is not intended to prevent Respondent No.2 from carrying on every form of business which is otherwise lawful and outside the prohibited field. The restraint is against the competing packaged drinking water activity which, on the material before the Court, is prima facie covered by the negative covenant. It is against the use of the Petitioner's protected know-how, confidential information, Quality Manual and business networks in a manner which is contrary to the 2014 Agreement.

130. The Court is not shutting down the whole business of Respondent No.2. It is only protecting the field which is in dispute. If Respondent No.2 has an independent business which does not involve the competing packaged drinking water activity or misuse of the Petitioner's protected material, that business need not be stopped only because of the present proceedings. On the other side, if the competing activity is allowed to continue, the prejudice to the Petitioner may increase with time. With every passing day, more customers, distributors and market relationships may be developed by the competing business. The business may become more established in the market and later it may become more difficult to bring the earlier position back. The Respondents had entered into their respective business arrangements with knowledge of the framework. Respondent No.1 had agreed that it would not carry out the prohibited activity directly or indirectly through an associate or sister concern. Therefore, at this stage, the Respondents cannot rely only upon the financial consequences of continuing the competing activity as a reason to ignore the restriction. The balance of convenience does not require refusal of interim relief. Rather, it requires a carefully limited order which protects the Petitioner's rights without unnecessarily interfering with independent and lawful business activities of the Respondents.

131. The principle stated in *Elster Instromet* supports this approach. Paragraph 135 states:

> “135. An attempt on the part of Mr. Nankani to read the words “directly” and “indirectly” synonymously would defeat the entire purpose of the proviso appended to clause 6.2 in form of a non compete clause, which was intended to ensure that the parties do not compete with the business of the JVC i.e. deal in the products of Elster, Instromet and its Affiliates. The understanding of the parties definitely was not only to restrict it to the products of Instromet, as an investment company, as it did not carry any activity and manufacturing or sale of any product. Feeling the pulse of the discord, the learned Arbitrator has refused to construe them as synonymous terms and opined that the parties intended to have a wide sweep of this clause and its intent cannot be defeated, by permitting the Affiliates to carry on competing business, which would be nothing short, to carry on business “indirectly”.

132. The facts of *Elster Instromet* are not the same as the present case. The arrangement there was different. Therefore, the above observation cannot be applied mechanically to the present facts. But the reasoning is relevant because the present Agreement uses the words “directly” and “indirectly” and refers to an associate or sister concern. If the words “indirectly” and “associate/sister concern” in Clause 5 are given a very narrow meaning, the protection which Respondent No.1 agreed to give to the Petitioner can be defeated quite easily. Respondent No.1 could remain outside the competing business in its own name while the same activity is carried on through a connected concern. In such a situation, only the name or form of the business will change, but the prohibited activity will remain. The Court cannot, at this stage, take an interpretation which gives such a result. These words were put in the Agreement for some purpose. They have to be given a meaning which fits with the rest of the provision. This does not mean that every business of an associate or sister concern is prohibited. It only means that where the connected concern is being used for the very competing activity which Respondent No.1 agreed not to carry on indirectly, the restriction has to be given effect. The same principle is reflected in paragraph 136:

> “136. The learned Arbitrator's interpretation of clause 6.2 is consistent with the scope and purpose of the JVA, being to promote the business not only of the Respondent, but of the entities in the Group to which the Respondent belongs and if the restrictive interpretation was to be applied to the proviso, it would cause damage to the very clause 6.2, by construing that the negative covenant did not extend to its Affiliates and thus permit the Affiliates to carry on competing business, and this would amount to circumventing the JVA and defeat the purpose for which the JVC was founded.”

133. Again, the present case is not being treated as the same as *Elster Instromet*. But the reasoning is useful for understanding why the words cannot be read in a way which makes them ineffective. Here, Clause 5 and Clause 14(a) contemplate indirect competition through connected entities. If Respondent No.1 remains bound not to compete directly but is allowed to achieve the same competing business through an associate or sister concern, the negative covenant would lose much of its meaning. The Court has to give effect to the protection while keeping the relief within proper limits. The purpose is not to stop every activity of the Respondents. The purpose is to stop the conduct which the material prima facie shows to be covered by the restriction.

134. On considering the material as a whole, I am satisfied that the Petitioner has made out a prima facie case that the competing packaged drinking water activity being carried on through Respondent No.2 falls within the field protected by the 2014 Agreement with Respondent No.1. This conclusion is not based on one document only. It comes from reading the provisions together with the audit material and the other circumstances placed before the Court. The 2014 Agreement contains a specific negative covenant. Clause 5 refers to activity carried out "directly or indirectly through any associate /sister concern". Clause 14(a) separately refers to "sister concern, group company, associates, affiliates or such other organizations" and mentions competitive products including mineral and packaged drinking water. These provisions give the basis for the protection sought by the Petitioner. Thereafter, there is material showing a connection between

Respondent Nos.1 and 2. The material relied upon includes the corporate and financial relationship, common premises, common personnel and business arrangements. There is the audit material showing another water production activity at the KL Beverages premises and the setting up of a separate RO system for that water activity. The material relied upon by the Petitioner indicates activity around the same period.

135. I have considered the submission that the 2018 Agreement with Respondent No.2 concerned different products. That submission is correct as a matter of fact. The 2018 Agreement concerned Frooti, Appy and Appy Fizz. Therefore, it would not be correct to say that the 2018 Agreement was a packaged drinking water franchise. But this fact does not answer the separate question which arises under the 2014 Agreement. The competing product which is the subject of the present complaint is packaged drinking water. The 2014 Agreement protects that field and restricts Respondent No.1 from carrying on such competing activity directly or indirectly through an associate or sister concern. Therefore, the fact that Respondent No.2 earlier had a separate franchise for different beverage products does not,, amount to permission for carrying on the competing packaged drinking water activity. The 2018 Agreement cannot, at this stage, be treated as having released Respondent No.1 from its own obligations under the 2014 Agreement. The two Agreements are between different combinations of parties and concern different arrangements. The final effect of those Agreements can be considered by the Arbitral Tribunal. For the present Section 9 proceedings, the continuing obligation of Respondent No.1 under the 2014 Agreement remains relevant. I find that the Petitioner's case is not defeated merely because Respondent No.2 had a separate franchise for Frooti, Appy and Appy Fizz. The separate Agreement explains the earlier business relationship between the Petitioner and Respondent No.2. It does not, on the material before the Court, explain or authorise the later competing packaged drinking water activity which is the subject matter of the present proceedings.

136. I have considered the submission that the material does not establish that Respondent No.1 manufactured the competing product. Respondent No.1 submits that it continues to manufacture BAILLEY products and that there is no evidence of any competing product being manufactured by Respondent No.1 in its own name. This submission cannot defeat the Petition. Clause 5 is not limited to direct manufacture by Respondent No.1. It covers activity carried out "directly or indirectly through any associate /sister concern or in any other manner." Therefore, absence of a document showing that Respondent No.1 filled every competing bottle is not decisive when the clause deals with indirect activity. Clause 14(a) is even more clear. It extends the restriction to a "sister concern, group company, associates, affiliates or such other organizations" in which Respondent No.1 has the specified interest. The Court has to see whether the material shows sufficient connection between Respondent No.1 and the entity through which the competing activity is alleged to have been carried on. The audit material, the corporate relationship, the common premises, common personnel and the water manufacturing activity shown at the KL Beverages facility, when considered together, are sufficient for the limited purpose of Section 9. These circumstances do not establish the manner in which the competing business was conceived, financed, managed or operated. But a final finding on all these details is not necessary before interim protection can be granted. The Petitioner may have to establish before the Arbitral Tribunal the precise flow of instructions, funds, profits, raw materials, management decisions and other matters, if these issues become relevant. The Respondents will have an opportunity to place their evidence and explanation. These are matters for final adjudication. For the present purpose, the Court has to decide whether the material gives sufficient reason to believe that the competing activity may be the indirect activity contemplated by the negative covenant. In my view, it does. I do not accept the submission that the Petition must fail only because the Petitioner has not produced material showing that Respondent No.1manufactured the competing water. Such a requirement would in effect remove the word “indirectly” from Clause 5. The Court cannot impose such a requirement when the parties have agreed to cover indirect activity.

137. I find that the Petitioner is entitled to interim protection in terms of the prayers made in the Petition. However, this relief has to be understood as an interim protective order. It is not a final declaration that Respondent No.2 is a party to the 2014 Franchise Agreement. It is not a final declaration that Respondent No.2 is bound by every provision of that Agreement in the same manner as Respondent No.1. The Court is exercising jurisdiction under Section 9 to preserve the position pending adjudication. It is not deciding every question between the parties. The final determination of the rights and obligations of the parties will remain with the Arbitral Tribunal. The Arbitral Tribunal will be free to decide, on the pleadings and evidence which may be placed before it, the relationship between Respondent Nos.1 and 2. It may decide the extent to which Respondent No.2 falls within the expressions “associate”, “sister concern” or “affiliate” used in the 2014 Agreement. Similarly, the question whether and to what extent the Petitioner's know-how, confidential information, Quality Manual, manufacturing processes, facilities, distribution and retail networks or other protected material were used in the competing business will remain open. The loss suffered by the Petitioner, if any, and the connection between such loss and the competing activity will be decided by the Arbitral Tribunal. The Respondents will be entitled to place before the Arbitral Tribunal their case regarding the separate identity of the entities, the separate 2018 Agreement, its termination, the discontinuation of the earlier beverage business, the alleged independent nature of the water business and all other defences available to them. For the present certain things are sufficient. The restriction is clear in its material parts. The 2014 Agreement is subsisting. Clause 5 covers indirect activity through an associate or sister concern. Clause 14(a) refers to competitive products including mineral and packaged drinking water. There is material on record showing a competing water operation at the connected KL Beverages premises during the subsistence of the 2014 Agreement. These circumstances, taken together, make out the necessary prima facie case for interim protection. The Court is not required to decide the disputed questions before granting such protection. The purpose of the present order is to preserve the rights which are to be considered in arbitration.

138. The overall consideration leads me to the conclusion that refusal of interim protection would create a possibility of allowing the very activity which the parties had sought to prevent by incorporating the negative covenants in Clauses 5 and 14(a). The Petitioner has shown a continuing protection, material indicating competing water activity and circumstances connecting that activity with Respondent No.2. If no interim protection is granted and the competing activity continues, the position may become more difficult to restore. The competing business may get further customers, distributors, market relationships and information. The use of the facilities, know-how or business arrangements which the Petitioner says are protected may continue. If the Petitioner succeeds in arbitration, it may then have to face a business position which has changed during the pendency of the proceedings. On the other hand, order does not require Respondent No.2 to stop every activity carried on by it. It does not prevent it from carrying on business which is outside the prohibited competing packaged drinking water activity. It does not prevent Respondent No.1 from carrying on its permitted BAILLEY business under the subsisting Agreement. The protection has to be limited to the field which is the subject matter of the present dispute. The Respondents cannot be permitted to say that their entire business has been stopped. At the same time, the Petitioner cannot use the order to obtain relief against activities which are not shown to fall within the restriction. The appropriate balance is to restrain the competing packaged drinking water activity which is prima facie covered by Clauses 5 and 14(a), and to restrain use or exploitation of the Petitioner's confidential information, know-how, Quality Manual, manufacturing processes, facilities, distribution and retail networks and other protected material in connection with such competing activity, while leaving independent lawful business activities unaffected. Such an order protects the rights of the Petitioner without giving a final decision in its favour. It leaves the Respondents free to place their complete case before the Arbitral Tribunal. The interim protection is necessary not because the Court has decided every disputed issue, but because the material before it shows that without protection the subject matter of the arbitration may be affected.

139. In the result, having considered the pleadings, the provisions, the documents relied upon by the parties, the audit material and the submissions made by all sides, I am satisfied that the Petitioner has made out a case for grant of interim measures in terms of the prayers. The Petitioner has shown a prima facie case, the balance of convenience is in its favour to the limited extent stated above, and the possible prejudice from continued competing activity cannot be adequately dealt with merely by leaving the Petitioner to a future claim for damages. The findings recorded above are for deciding the present Petition under Section 9. They are not intended to be final findings on the merits of the disputes. Nothing stated in this order shall prevent the Arbitral Tribunal from considering the matter afresh on the basis of the pleadings, documents and evidence placed before it. The Arbitral Tribunal shall decide all questions within its jurisdiction independently and in accordance with law. In particular, the Arbitral Tribunal will remain free to decide the precise effect of the 2014 and 2018 Agreements, the relationship between Respondent Nos.1 and 2, the applicability of the expressions “associate”, “sister concern” and “affiliate”, the question of misuse of confidential information or know-how, the extent of competing activity, the question of damages and all other disputed questions. For the present the material justifies protection against continuation of the competing packaged drinking water activity which is prima facie covered by the 2014 Agreement. The relief must extend to manufacture, preparation, packaging, distribution, sale, marketing or dealing in such competing products through Respondent No.2 or through any other associate, sister concern, group company or affiliate, where such activity is carried on in a manner prohibited by the 2014 Agreement.The protection must extend to use or exploitation, for such competing activity, of the Petitioner's confidential information, know-how, Quality Manual, manufacturing processes, distribution and retail networks and other protected material covered by the obligations. This is necessary so that the interim protection is meaningful and the negative covenants are not defeated indirectly. At the same time, the order shall not be understood as restraining Respondent No.2 from carrying on any independent business which does not fall within the prohibited competing packaged drinking water activity and which does not involve use or exploitation of the Petitioner's protected information, know-how, facilities, machinery or business networks contrary to the 2014 Agreement. Accordingly, the reliefs sought by the Petitioner deserve to be granted, subject to the above clarification and limitations, pending adjudication of the disputes in the arbitral proceedings.

140. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

i) The Petition is partly allowed in terms of prayer clauses (a) and (b), subject to the following terms and conditions;

ii) Pending the adjudication of the disputes between the parties before the learned Sole Arbitrator, the Respondents, their affiliates, associates, sister concerns, group companies and/or such other organisations claiming through or under them are hereby restrained, directly or indirectly, from manufacturing, preparing, packaging, distributing, marketing, selling or otherwise dealing in "SURE" water or any other packaged drinking water product competing with the products of the Petitioner, in a manner contrary to the obligations contained in the Franchise Agreements;

iii) The Respondents, their affiliates, associates, sister concerns, group companies and/or such other organisations claiming through or under them are further restrained from using, disclosing, communicating, exploiting or deriving any benefit, in connection with such competing activity, from the Petitioner's confidential information, trade secrets, technical know-how, manufacturing processes, Quality Manuals, standard operating procedures, customer information, vendor information, supply-chain information, pricing information, distribution networks and other proprietary business information made available under the Franchise Agreements;

iv) The aforesaid restraint shall not be understood as preventing Respondent No.2 from carrying on any independent and lawful business which does not involve manufacture, preparation, packaging, distribution, marketing, sale or dealing in the competing packaged drinking water products referred to above and which does not involve use or exploitation of the Petitioner's protected information, know-how, facilities, machinery or business networks contrary to the obligations under the 2014 Franchise Agreement;

v) As regards prayer clause (c), the Respondents shall, within four weeks from today, disclose on affidavit the particulars available in their records concerning competing packaged drinking water products manufactured, bottled, packaged, distributed, marketed or sold by them or through their affiliates, associates, sister concerns and/or group entities from 5 February 2014 till date;

vi) The disclosure directed above shall be confined to the competing packaged drinking water activity forming the subject matter of the present proceedings. The Respondents shall not be required, under this order, to disclose information relating to independent business activities which do not fall within the aforesaid competing field;

vii) It is clarified that the findings recorded in this order are prima facie findings for the purpose of considering the Petition under Section 9 of the Arbitration and Conciliation Act, 1996. Nothing contained in this order shall be construed as a final adjudication of the rights and obligations of the parties;

viii) In particular, this order shall not be construed as a final declaration that Respondent No.2 is a party to the Franchise Agreement dated 5 February 2014 or that every provision thereof is binding upon Respondent No.2. All such questions, including the relationship between Respondent Nos.1 and 2 and the applicability of the expressions “associate”, “sister concern”, “affiliate” or “group company”, are left open for determination by the learned Sole Arbitrator;

ix) The learned Sole Arbitrator shall be free to decide all questions relating to the extent of the competing activity, alleged use or misuse of confidential information and know-how, the financial effect of such activity, damages and all other disputed questions on the basis of the pleadings, documents, and evidence which may be placed before the learned Sole Arbitrator;

x) The Respondents shall be entitled to place before the learned Sole Arbitrator all their defences and contentions, including those relating to the separate Franchise Agreement, its termination, the separate identity of the Respondents and the alleged independent nature of the competing business.

xi) The Petition is accordingly disposed of in the above terms;

xii) There shall be no order as to costs.

(AMIT BORKAR, J.)