

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 8020 OF 2021)

KIRLOSKAR BROTHERS LIMITED

APPELLANT (S)

VERSUS

ATUL CHANDRAKANT KIRLOSKAR &
ORS.

RESPONDENT (S)

W I T H

CIVIL APPEAL NO. _____ OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 8221 OF 2021)

CIVIL APPEAL NO. _____ OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 13070 OF 2021)

O R D E R

1. I.A. No. 23115/2022 is allowed. M/s Vahine Engineering is impleaded as Respondent No. 28. The memo of parties be amended accordingly.

2. Leave granted.

3. The instant appeals arise out of the common Impugned Judgment dated 03.05.2021 passed by the High Court of Judicature at Bombay (High Court) in Arbitration Appeal (S.T.) No. 1661/2021. The High Court, thereby, allowed the Appeal filed by Respondent Nos. 1, 3-6, and 9-17 and referred the dispute in Special Civil Suit No. 798/2018, pending before the Civil Judge, Senior Division, Pune, to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (1996 Act).

4. For the sake of clarity, the point in issue and the parties are referred to as in the lead matter. The dispute has its genesis

in a Deed of Family Settlement dated 11.09.2009 (DFS) entered into between members of the Kirloskar family, namely Sanjay Kirloskar (Respondent No. 27), Atul Kirloskar (Respondent No. 1), Vikram Kirloskar (Respondent No. 2), Rahul Kirloskar (Respondent No. 3), and late Gautam Kulkarni, for themselves and their respective family members. The DFS was intended to formalise the separation of the businesses and group companies of the Kirloskar Group amongst the different branches of the family. Clause 20 of the DFS contains an arbitration clause for "any issue arising out of interpretation of this DFS including schedules thereto."

5. It is the Petitioner's case that, in breach of the non-compete understanding contained in Clause 15 of the DFS, Respondent No. 21, namely, Kirloskar Oil Engines Ltd., acquired a competing business being La-Gajjar Machineries Pvt. Ltd. (Respondent No. 22). There were also disputes that Sanjay Kirloskar (Respondent No. 27) was not reappointed to the board of Respondent No. 23-company, which holds the trademarks of the Kirloskar Group.

6. The parties initially attempted to resolve the disputes through mediation before Dr. Vijay Kelkar, a civil servant and renowned economist, which commenced in June 2017. However, as no resolution could be arrived at, the same was concluded in May 2018.

7. In June 2018, Petitioner No. 1 and Respondent No. 27 instituted Special Civil Suit No. 798/2018 before the Civil Judge, Senior Division, Pune (Pune Court) against Respondent Nos. 1-21 and 23, seeking specific performance of the DFS, damages, injunction restraining the competing business, and consequential reliefs

concerning the reconstitution of the board of Respondent No. 23 company.

8. Respondent Nos. 1, 3-6, and 12-14 filed an application under Section 8 of the 1996 Act before the Civil Judge, seeking reference of the dispute to arbitration as per Clause 20 of the DFS. By way of order dated 07.12.2020, the Civil Judge rejected the application.

9. Respondent Nos. 1, 3-6, and 12-20, thus, filed an appeal under Section 37 of the Act before the High Court bearing Arbitration Appeal (ST) No. 1661/2021. During the pendency thereof, Respondent Nos. 11 and 21-26 filed affidavits stating that they had no objection to the suit being referred to arbitration, irrespective of them not being parties to the DFS.

10. By the impugned judgment, the High Court allowed the appeal and referred the disputes to arbitration. While noting the submission that the language of Clause 20 was restricted and the stand of certain Respondents that they were not bound by it, the High Court held that the arbitral tribunal ought to consider such matters under Section 16 of the 1996 Act.

11. We have heard learned senior counsel appearing for the parties and perused the material on record.

12. The scope of examination at the stage of a reference under Section 8 is confined to a *prima facie* determination of the existence of an arbitration agreement and its coverage of the dispute. The referral court is not required to conduct a mini-trial

on contested questions of fact or law at that stage. Reference is to be declined only where the claim is manifestly and *ex facie* non-arbitrable, or the arbitration agreement is non-existent, invalid, or *prima facie* does not cover the dispute.

13. That being so, we find that the questions urged by the Petitioner, namely, whether Clause 20 of the DFS extends to the reliefs of specific performance, damages, and injunction claimed in the Suit, and whether Respondents who are not signatories to the DFS but have consented to arbitrate without prejudice to their contentions, can be said to be bound by the arbitration agreement, are not amenable to summary determination on the pleadings alone. These are intertwined questions of fact and law, turning on the construction of the DFS, the conduct of the parties, and the effect of the affidavits filed, which, at the first instance, are more appropriately left to be examined by the Arbitral Tribunal.

14. We are, therefore, of the view that the High Court committed no error in declining to render a final finding on these questions at the Section 8 stage and in leaving them open for determination by the Arbitral Tribunal under Section 16 of the 1996 Act.

15. In such circumstances, we find no ground warranting interference with the impugned judgment. The instant appeals are accordingly disposed of.

16. Having regard to the number of parties involved, and the complexity of the disputes referred to arbitration, and the absence of any agreed procedure between the parties for constitution of the

Arbitral Tribunal, we consider it just and proper that an Arbitral Tribunal of three arbitrators be constituted to adjudicate the disputes.

17. We, thus, appoint:

- (i) Justice Nitin Madhukar Jamdar, former Chief Justice, Kerala High Court, as the nominee Arbitrator on behalf of the Petitioner; and
- (ii) Justice K.R. Shriram, former Chief Justice, Madras and Rajasthan High Court, as the nominee Arbitrator on behalf of the contesting Respondents.

18. The nominee Arbitrators shall jointly appoint the Presiding Arbitrator, preferably within four weeks.

19. The seat of arbitration shall be Pune.

20. It is clarified that all contentions on arbitrability, including as to the true scope of Clause 20 of the DFS and whether Respondents contesting to be non-parties to DFS are bound by the arbitration agreement, are left open and shall be decided by the Arbitral Tribunal as a preliminary issue, before the Tribunal proceeds to the merits of the claims.

21. The observations made by the High Court in the impugned judgment are limited for the purpose of appointment of the arbitrator and shall have no binding effect on the learned Arbitral Tribunal. All issues shall be decided as per their own merits.

22. The Arbitral Tribunal shall be at liberty to fix its own procedure and remuneration.

23. Pending interlocutory applications, if any, in these petitions stand disposed of.

.....CJI.
(SURYA KANT)

.....J.
(JOYMALYA BAGCHI)

.....J.
(V. MOHANA)

NEW DELHI;
AUGUST 11, 2026.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 8020/2021

[Arising out of impugned judgment and order dated 03-05-2021 in ARBA(ST.) No. 1661/2021 passed by the High Court of Judicature at Bombay]

KIRLOSKAR BROTHERS LIMITED

Petitioner(s)

VERSUS

ATUL CHANDRAKANT KIRLOSKAR & ORS.

Respondent(s)

(IA No. 23143/2022 - APPLICATION FOR PERMISSION, IA No. 23033/2022 - APPLICATION FOR PERMISSION, IA No. 152089/2021 - APPLICATION FOR PERMISSION, IA No. 23162/2022 - APPLICATION FOR PERMISSION, IA No. 23158/2022 - APPLICATION FOR PERMISSION and IA No. 23115/2022 - INTERVENTION/IMPLEADMENT)

WITH

SLP(C) No. 8221/2021 (IX)

(IA No. 152106/2021 - APPLICATION FOR PERMISSION and IA No. 54468/2022 - APPLICATION FOR TAKING ON RECORD)

SLP(C) No. 13070/2021 (IX)

Date : 11-08-2026 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JOYMALYA BAGCHI
HON'BLE MRS. JUSTICE V. MOHANA

For Petitioner(s)

in Item No.42 & 42.1

Mr. Aarohi Bhalla, Sr. Adv.
Mr. Ujjwal A. Rana, Adv.
Mr. Saurabh Sinha, Adv.
Mr. Himanshu Mehta, Adv.
M/S. Gagrat And Co, AOR

For Petitioner(s)

in Item No.42.2

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Mr. Abhishek Gupta, Adv.
Ms. Pratiksha Sharma, AOR
Mr. Ankit Acharya, Adv.
Ms. Sukanya Sehgal, Adv.
Ms. Ritu Chaudhary, Adv.
Mr. Ayush Jain, Adv.
Mr. Mukesh Kumar, Adv.

For Respondent(s)

in Item Nos.42 & 42.1

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Mr. Tushar Ajinkya, Adv.
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Ms. Pratiksha Sharma, AOR
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Ms. Ritu Chaudhary, Adv.
Mr. Ayush Jain, Adv.
Mr. Mukesh Kumar, Adv.
Mr. Rohan Phadke, Adv.
Ms. Misha Mathlani, Adv.

For Respondent(s)

in Item No.42.2

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Ms. Sadapurna Mukherjee, Adv.
Mr. Himanshu Mehta, Adv.
M/S. Gagrath And Co, AOR

For Respondent(s)

in Item Nos.42, 42.1
& 42.2

Mr. Balbir Singh, Sr. Adv.
Mr. Tushar Ajinkya, Adv.
Ms. Misha Mathlani, Adv.
Ms. Shivali Shah, Adv.
Ms. Radhika Gautam, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. I.A. No. 23115/2022 is allowed. M/s Vahine Engineering is impleaded as Respondent No. 28. The memo of parties be amended accordingly.
2. Leave granted.
3. The appeals stand disposed of in terms of the signed order.
4. Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(PREETHI DILEEP KUMAR)
DY. REGISTRAR

(Signed order is placed on the file)