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THE ARBITRATION DIGEST

Bibliographic Information:

Contemporary Developments in Arbitration law, Vol. 1, December 2023, pp. 69-72

Extending the scope of Arbitration Agreements: Navigating the Group of Companies Doctrine in Indian Jurisprudence

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Arbitration is a voluntary dispute resolution method where parties to the agreement agree to accept the decision of a neutral third party, the arbitrator. Consent to arbitrate is one of the fundamentals of an arbitration agreement. However, due to complex commercial transactions dealt with there are certain cases in which even non-signatories to Arbitration agreement have been made party to the dispute. The "Group of Companies" doctrine is a legal principle that allows for the extension of an arbitration agreement to include entities within a corporate group that are not direct signatories to the original agreement.

INDIAN JURISPRUDENCE ON THE GROUP OF COMPANIES DOCTRINE

The Supreme Court in the case of S.N Prasad V. Monnet Finance Ltd held *"There can be a reference to arbitration only if there is an arbitration agreement between the parties* [¶7]*"* Even in the case of Sukanya Holdings V. Jayesh H Panda the Supreme Court held that a "*person who is not a party to the arbitration agreement cannot be roped into the proceedings"*. However there have been various instances where there have been judicial exceptions carved out where even a non-signatory can be made a party to the Arbitration. One of the most important Judicial Exception is the Group of Companies Doctrine.

In the case of Chloro Controls India Pvt. Ltd. v Severn Trent Water Purification Inc {hereinafter referred to as Chloro Controls} the Supreme Court first gave the exception of the Group of Companies Doctrine, wherein if the signatory of the Arbitration agreement is a part of a group of companies and enters into an arbitration agreement the agreement can also bind its non-signatory and affiliates. In this case, a joint venture called Capital Controls (India) Pvt. Ltd. was formed between Chloro Controls Pvt. Ltd. and Capital Controls (Delaware). This joint venture collaborated with Capital Controls (Colmar) Co. Inc., a sister company of Capital Controls (Delaware), both subsidiaries of Severn Trent Services (Delaware) Inc. Disputes arose, and when Chloro Controls Pvt. Ltd. initiated litigation, Capital Controls (Delaware) and Severn Trent

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invoked the arbitration clause present in the agreement. They argued that since all entities were integral to a "composite transaction," the non-signatory entities were obligated to the arbitration agreement based on the doctrine.

The Supreme Court outlined factors such as a Direct Relationship with the signatory, a shared Subject Matter, the agreement being a part of a larger transaction, and conduct that shows consent in such cases. The core idea as laid by the Supreme Court is to gauge whether the parties had a common intention and whether the agreements are closely interconnected to achieve a common goal [¶68].

While the Chloro Controls case was decided under Section 45 of the Arbitration and Conciliation Act, which applies only to foreign seated jurisdictions, the Supreme Court in the case of Ameet Lalchand Shah V. Rishabh Enterprises extended the principles in Chloro Controls to apply to even arbitrations seated in India under Section 8(5) of the Arbitration and Conciliation Act 1996. The Supreme Court ruled that when agreements are interconnected and involve multiple parties in a single project, all parties can be subjected to arbitration [¶21].

In Cheran Properties V. Kasturi and Sons the Supreme Court applied the Doctrine to enforce an arbitral award against a non- signatory. The Supreme Court reiterated the Ameet Lalchand Shah case and doctrine can be applied on a non- signatory if there is a group of companies and their conduct and statements show an intention to be bound by the relevant contracts. Section 35(2) of the Arbitration and Conciliation Act 1996 was quoted and said “parties to reference” includes any persons claiming under any of the parties and litigating under the same title [¶25].

RE-EVALUATING ARBITRATION WITH NON-SIGNATORIES: CONSENT AND COMPLEXITIES

The Group of Companies Doctrine is fundamentally changing how Arbitration is conducted, the doctrine has diluted consent and has allowed addition of non-signatory to Arbitrations. The doctrine exhibits similarities to legal principles such as piercing the corporate veil, alter ego and third-party beneficiary doctrines.

What the Group of Companies Doctrine does is treat several different corporate entities as a single economic unit for purposes of convenience in Arbitration Proceedings. While this may be beneficial for purposes of the Arbitral Proceedings the legal soundness of the Doctrine is still debatable. The Judgement of the Supreme Court in the Chloro Controls case has been driven more by economic and practical considerations rather than legal principles.

Furthermore, involving non-signatory entities through joinder could undermine the significance of maintaining a separate corporate entity, as seen in subsidiary relationships. The concept of a single economic entity, the court observed, is challenging to implement as a legal principle. The gaps left open by the Chloro Controls case were deemed by the Supreme Court not only contradictory to the distinct legal personalities of companies but also contrary to the fundamental concept of party autonomy.

AWAITING THE JUDGEMENT OF THE LARGER BENCH IN COX AND KINGS LTD V. SAP INDIA LTD.

The Supreme Court in the Cox and Kings V. SAP India Ltd case has expressed criticism towards the development and application of the doctrine in India [¶46]. Consequently, the court has referred the matter to a larger bench for further deliberation. The Supreme Court posed several crucial questions for considerations before the larger bench such as If the phrase "claiming through or under" in section 8 and 11 of the Arbitration and Conciliation Act 1996 can be interpreted to encompass the Group of Companies Doctrine and should the doctrine be invoked based on the principle of "single economic reality" [¶47].

As the Cox and Kings case is still pending resolution, the larger bench should consider foundational principles of arbitration such as "consent" and "party autonomy". Consent, whether explicit or implicit, is a cornerstone of arbitration and contract law. This holds particular significance as India is a signatory to the New York Convention, signifying its commitment to "consent" and "party autonomy" in its arbitration framework, making consent an essential requirement.

CONCLUSION

To conclude evolution and application of the Group of Companies Doctrine in Indian Arbitration has raised intriguing legal debates and considerations. While arbitration is based on the fundamental principle of voluntary consent, the doctrine challenges this principle by extending arbitration agreements to include non-signatory entities within a corporate group.

In navigating the evolving landscape of the "Group of Companies" doctrine in Indian arbitration, it is imperative to uphold the sanctity of arbitration agreements and a respect for corporate identity as the Doctrine should not lead to undermining the separate legal identity of distinct corporate entities within a group.