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## CAN NON-SIGNATORY COMPANIES BE BOUND BY ARBITRATION AGREEMENT?:AN ANALYSIS OF COX AND KINGS V. SAP INDIA CASE

### INTRODUCTION

The *Cox and Kings Ltd. v. SAP India*<sup>1</sup> case represented a crucial milestone in Indian arbitration jurisprudence, specifically regarding the group of companies doctrine. This doctrine, centered around economic efficiency, underwent scrutiny as the Supreme Court aimed to assess its legitimacy within the Indian legal framework.

### WHAT IS THE “GROUP OF COMPANIES” DOCTRINE?

According to the "group of companies" doctrine, a company not explicitly mentioned in an arbitration agreement can be obligated by the agreement if it belongs to the same group of companies that did sign the agreement. The doctrine asserts that the parties involved in the arbitration agreement shared a mutual intention for the non-signatory to be legally bound by it.

Unlike non-signatory theories rooted in domestic legal principles, the "group of companies" concept derives from international arbitration jurisprudence. The Indian Supreme Court initially acknowledged the doctrine in the case of *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.*<sup>2</sup> Subsequently, Indian courts have consistently applied this doctrine to obligate group companies associated with signatories to arbitration agreements.

In the case of *ONGC Ltd. vs. Discovery Enterprises (P) Ltd.*<sup>3</sup>, the Supreme Court articulated specific criteria to be taken into account when determining the applicability of the "group of companies" doctrine. These factors include:

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<sup>1</sup> 2023 SCC OnLine SC 1634.

<sup>2</sup> (2013) 1 SCC 641.

<sup>3</sup> (2022) 8 SCC 42.

**1. Mutual Intent of the Parties:** Examining whether there was a shared intention among the parties involved regarding the non-signatory being bound by the arbitration agreement.

**2. Relationship of a Non-Signatory to a Signatory:** Assessing the connection between a non-signatory and a party that did sign the agreement, evaluating the nature and extent of their relationship.

**3. Commonality of Subject-Matter:** Considering whether there is a common subject-matter or substantial connection between the non-signatory and the content of the arbitration agreement.

**4. Composite Nature of the Transaction:** Evaluating whether the transaction in question is of a composite nature, where the actions of both signatories and non-signatories are intertwined in a way that justifies the non-signatory's inclusion.

**5. Performance of the Contract:** Analyzing the role and performance of the non-signatory in the execution of the contract to ascertain its relevance and impact on the application of the doctrine.

The introduction of the 'group of companies' doctrine in India aimed primarily at curbing the fragmentation of disputes within composite transactions. The doctrine serves as a mechanism to address and resolve disputes comprehensively by extending the scope of arbitration agreements to non-signatory entities within the same corporate group. This preventive measure helps streamline the resolution process, ensuring that disputes arising from interconnected transactions are dealt with collectively rather than being fragmented, thereby promoting efficiency and coherence in the arbitration proceedings.

## **BACKGROUND**

In its ruling, the Three-Judge bench referred the matter to a larger bench with the aim of delineating the specific parameters of the 'group of companies' doctrine. The objective was to discern the presence and implications of this doctrine within the framework of the Arbitration and Conciliation Act, 1996. Additionally, the larger bench was tasked with interpreting the phrase "claiming through or under" as it appears in Sections 8, 35, and 45 of the Act. This referral underscores the court's recognition of the need for a comprehensive understanding and application of the doctrine within the context of the relevant provisions of the arbitration legislation.

## **OBSERVATION OF THE HON'BLE SUPREME COURT**

The Constitution Bench comprising Five Judges reached a unanimous decision affirming the independent existence of the 'group of companies' doctrine as a legal principle. This affirmation was derived from a coherent interpretation of Section 2(1)(h) in conjunction with Section 7 of the

Arbitration and Conciliation Act. The Bench emphasized that the doctrine holds a substantial and firmly established position within Indian arbitration jurisprudence.

Furthermore, the Bench highlighted the importance of retaining the doctrine in the Indian legal landscape. It acknowledged the utility of the doctrine, particularly in deciphering the intentions of parties involved in intricate transactions characterized by multiple entities and agreements. By recognizing its significance, the Bench underscored the doctrine's role in providing clarity and effectiveness in ascertaining the intentions of parties engaged in complex transactions with numerous participants and contractual arrangements.

The Supreme Court established that the fundamental principles governing the law of contracts are pertinent to arbitration proceedings. As an arbitration agreement serves as a documented expression of the parties' consent to resolve disputes through arbitration, the general principles of contract law become applicable. This encompasses key concepts such as privity of contract, consensus ad idem (meeting of minds), and the presence of express or implied consent. These principles supplement the conditions outlined in Section 7 of the Arbitration and Conciliation Act. In essence, the court emphasized the holistic application of contract law principles to arbitration agreements, reinforcing the importance of understanding and respecting the consensual nature of arbitration in the legal framework.

The Bench pointed out that the conjunction of Section 2(h) with Section 7 of the Arbitration and Conciliation Act doesn't explicitly mandate a "party" to be a signatory to either the arbitration agreement or the underlying contract containing such an agreement. According to the Apex Court's ruling, the legislative intent behind Section 7 indicates that any legal relationship, even those lacking a formal contract between the individuals or entities involved, could be the subject of an arbitration agreement under Section 7. This interpretation aligns with the prevailing international legislative trend, suggesting that being a signatory may not be a prerequisite for being involved or made a party in arbitration proceedings. The Court's stance underscores a broader and more inclusive understanding of the entities and relationships that can be encompassed within the ambit of arbitration agreements, emphasizing the importance of the legal relationship and conduct rather than strict adherence to contractual signatures.

Drawing on Sections 8, 35, and 45 of the Act, the Apex Court has provided clarification regarding the phrase "parties or any person claiming through or under." In its interpretation, the Court has emphasized that the term "or" in this context is disjunctive, signifying an alternative or a choice

between "parties" or "any person claiming through or under." Consequently, the Court has affirmed that either the party to an arbitration agreement or any person claiming through or under the said party possesses the right to submit an application to the judicial authority seeking referral of the dispute to arbitration.

## **CONCLUSION**

The decision of the Apex Court holds immense significance as it endeavors to usher in a transformative era marked by a more adaptable approach, allowing the inclusion of a non-signatory in an arbitration agreement. This move is a deliberate embrace of the 'group of companies' doctrine, aligning the Indian arbitration jurisprudence more closely with international standards. The monumental judgment reflects an aspiration to foster a progressive development in arbitration law within the Indian legal landscape. It signifies a departure from traditional rigidities, emphasizing a broader and globally resonant perspective that acknowledges the complexities of modern commercial transactions and international business relationships. The overarching aim is to bring about an evolution in arbitration practices, making them more attuned to contemporary business realities and harmonized with established global norms.

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