

Non-signatories join the arbitration bandwagon

PARADIGM SHIFT. The Supreme Court upholds ‘group of companies’ doctrine; clarifies the definition of ‘parties’ under arbitration law

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In a groundbreaking decision in *Cox and Kings vs SAP India*, a five Judge Bench of the Supreme Court comprehensively examined the ‘group of companies’ doctrine, which states that an arbitration agreement made by one company within a group may extend to its non-signatory affiliates, provided the surrounding circumstances indicate a mutual intention to bind both signatories and non-signatories.

The case posed a formidable challenge—reconciling the doctrine with established legal principles, including party autonomy, privity of contract and the separate legal identity of corporations.

The Supreme Court has delivered a nuanced verdict that carries significant implications for the Indian arbitration landscape, clarifying that the definition of “parties” under the Arbitration and Conciliation Act encompasses both signat-

ory and non-signatory entities.

This expansive interpretation marked a departure from the traditional confines of arbitration agreements and recognised the evolving nature of commercial relationships. Further, the Court acknowledged that the actions of non-signatory parties might serve as a valid indication of their consent to be bound by the arbitration agreement, challenging the conventional understanding of party consent otherwise confined to formal signatures. Notably, the requirement of a written arbitration agreement under the Arbitration Act was deemed not to preclude the possibility of binding non-signatory parties.

The SC believes that the ‘group of companies’ doctrine strikes a delicate balance in maintaining the distinction of entities within a group while establishing the mutual intention of signatory and non-signatory parties to be bound by the arbitration agreement. The Court rejected the notion that the alter ego principle or piercing the corporate veil could serve as the foundation, highlighting the importance



STRIKING A BALANCE. The apex court ruling, while upholding party consent, meets the dynamic needs of modern commerce ISTOCK.COM

of preserving separate corporate identities. It dismissed the notion that the principle of a single economic unit could exclusively form the foundation for its application.

The apex court also clarified that the expression “claiming through or under” in Sections 8 and 45 of the Arbitration Act was intended to confer a derivative right and not enable a non-signatory to become a

direct party to the arbitration agreement. This distinction between the terms “party” and “persons claiming through or under them” served to prevent an unwarranted broadening of the scope of parties bound by an arbitration agreement.

The Court has advised the retention of the Group of Companies doctrine, recognising its efficacy in

discerning parties’ intent.

This ruling is a pivotal moment in Indian arbitration jurisprudence as it strikes a balance between upholding party consent and meeting the dynamic needs of modern commerce. The judgment underscores the significance of implied consent alongside formal signatures and reinforces the principle that a signatory alone is considered a party unless factual evidence suggests otherwise.

As regards corporate groups operating closely in India, these businesses need to reassess their current contractual arrangements. They should analyse whether entities not formally signing the agreements but otherwise participating in the transactions intend to be legally bound by the arbitration agreements within the underlying contracts. A meticulous review of existing contracts is crucial to avoid the involuntary inclusion of non-signatories in arbitration proceedings.

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