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Supreme Court Redefines Party Status in Arbitration Proceedings Using The Group of Companies Doctrine

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Beyond the Signature: Supreme Court Redefines Party Status in Arbitration Proceedings using the Group of Companies Doctrine

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Following the decision in *Cox & Kings I*[1], a 5-Judge Bench of the Supreme Court of India was called upon in *Cox & Kings II*[2] to assess the validity of the group of companies doctrine and the jurisprudence surrounding the same in India. The doctrine essentially posits that an arbitration agreement made by one company within a group may extend to its non-signatory affiliates,

provided the circumstances indicate a mutual intention to bind both signatories and non-signatories. The challenge presented to the Supreme Court was to determine whether the group of companies doctrine could be harmonised with established legal principles such as party autonomy, privity of contract, and separate corporate legal personality.

A. The decision of the three-Judge Bench and reference to a larger Bench

In an application in *Cox & Kings I*[3] under Section 11(6) of the Arbitration and Conciliation Act, 1996 (Arbitration Act) seeking the reference of disputes to arbitration, a three-Judge Bench of the Supreme Court of India sought to examine the validity of the group of companies doctrine in the Indian context on the ground that it is premised more on economic efficiency rather than law. The Bench of three Judges doubted the correctness of the doctrine's application in Indian courts.

Chief Justice N.V. Ramana criticised the approach taken by another three-Judge Bench of the Supreme Court in *Chloro Controls India (P) Ltd.* v. *Severn Trent Water Purification Inc.*[4], which relied upon the phrase "claiming through or under" in Section 45 of the Arbitration Act to adopt the group of companies doctrine.

CJI Ramana observed that the doctrine was predominantly a result of economic concepts such as tight group structure and a single economic unit, which, in his view, could not be the sole basis for binding a non-signatory to an arbitration agreement. Accordingly, CJI Ramana referred the matter to a larger Bench seeking clarification on the following questions:

(*i*) Could the phrase "claiming through or under" in Sections 8 and 11 of the Arbitration Act be interpreted to include the group of companies doctrine?

(*ii*) Is the group of companies doctrine, as expounded by *Chloro Controls*[5] and subsequent judgments, valid in law?

In his concurring opinion, Surya Kant, J. in *Cox and Kings I*[6] observed that a catena of decisions which were rendered on the group of companies doctrine adopted a rigid and restrictive approach by placing undue emphasis on formal consent and opined that the doctrine had gained a firm footing in Indian arbitral jurisprudence. However, as per Justice Kant, the Supreme Court had adopted inconsistent approaches while applying the doctrine in India. Accordingly, Justice Kant, culled out the following moot points for determination by a larger Bench:

(*i*) Should the group of companies doctrine be read into Section 8 of the

Arbitration Act, or can it exist in Indian jurisprudence independent of any statutory provision?

(*ii*) Whether the group of companies doctrine should continue to be invoked on the basis of the principle of "single economic reality"?

(*iii*) Whether the group of companies doctrine should be construed as a means of interpreting implied consent or intent to arbitrate between the parties?

(*iv*) Can the principles of alter ego and piercing the corporate veil alone justify pressing the group of companies doctrine into operation, even in the absence of implied consent?

B. Unveiling origins of the doctrine: The Dow Chemicals case

1. Tracing the roots to France

The global jurisprudence on the group of companies doctrine can be traced back to decisions made by international Arbitral Tribunals, with its roots primarily in awards rendered in France. The *Dow Chemicals*[7] case, which concerned an interim award issued by an ICC Tribunal in Case No. 4131, is generally regarded as the origin of the group of companies doctrine. In *Dow Chemicals*[8], Dow Chemical (Venezuela) initially entered into a contract with a French company that later transferred its rights to Isover Saint-Gobain for the distribution of thermal isolation products in France. Subsequently, Dow Chemical (Venezuela) assigned the contract to Dow Chemical AG, a subsidiary of Dow Chemical Company (the holding company).

Dow Chemical Europe, another subsidiary of Dow Chemical AG, then entered into a similar contract with three companies, eventually assigning the contract to Isover Saint-Gobain. Both contracts stipulated that product deliveries to distributors would be handled by Dow Chemical France or any other subsidiary of Dow Chemical Company. Pursuant to certain disputes having arisen, legal proceedings were initiated in French courts by way of several suits against Dow Chemical group companies. In response, the four Dow Chemical group companies (including Dow Chemical AG and Dow Chemical Europe, the formal parties to the contract, and Dow Chemical Company and Dow Chemical France, the non-signatories) initiated arbitral proceedings against Isover Saint-Gobain before the ICC Tribunal.

2. Non-signatories in focus

The moot problem in *Dow Chemicals*[9] was whether Dow Chemical Company and

Dow Chemical France — the two non-signatory entities could also participate in the arbitral proceedings. The Arbitral Tribunal examined whether there was a common intention among the parties to be bound by the arbitration agreement. Through a detailed analysis of the factual circumstances surrounding the negotiation, performance, and termination of the contracts, the Arbitral Tribunal concluded that given the predominant role played in the negotiation, performance, and termination of the contract, Dow Chemical France was indeed a party to the contracts and, consequently, to the arbitration agreements.

As regards Dow Chemical Company, the Arbitral Tribunal observed that the said holding entity owned the trade marks under which products were marketed in France. This coupled with Dow Chemical Company's absolute control over its subsidiaries, which were involved in contract negotiation, performance, and termination, led the Arbitral Tribunal to the conclusion that Dow Chemical Company was also a party to the arbitral agreement. The Arbitral Tribunal also placed reliance on the fact that Isover Saint-Gobain had itself filed for the joinder of the holding company in the French court proceedings before the Court of Appeal of Paris. Accordingly, Dow Chemical Company was also held to be a party to the arbitration agreement.

Having established that the non-signatories were parties to the arbitration agreement, the Arbitral Tribunal further examined the factual circumstances surrounding the signatory and non-signatory entities belonging to the same group of companies. While recognising that a group of companies constitutes a single economic reality, the Arbitral Tribunal underscored that an arbitration agreement could bind a non-signatory if it appeared to be a genuine party to the contracts based on its involvement in negotiation, performance, and termination.

Subsequent rulings by the Court of Appeal of Paris have affirmed the extension of arbitration agreements to non-signatories, contingent upon the common intention of all parties. According to the Court of Appeal[10], this common intention could be inferred from the active role played by non-signatories in the performance of the contract containing the arbitration agreement, creating a presumption that they were aware of the arbitration clause.

C. Evolution of Indian jurisprudence on the group of companies doctrine

1. Pre-Chloro Controls era

The evolution of Indian jurisprudence on the group of companies doctrine can be

segmented into two phases — pre and post-*Chloro Controls case*[11]. In the period predating the *Chloro Controls*[12] era, the Supreme Court interpreted the term "parties" narrowly, restricting it solely to the signatories of the arbitration agreement. For instance, in *Sukanya Holdings*[13], the petitioner submitted an application to the High Court under Section 8 of the Arbitration Act seeking enforcement of the arbitration agreement against both the signatories and non-signatories to the agreement. The High Court dismissed the application, asserting that the non-signatories were not considered parties to the arbitration agreement. On appeal, the Supreme Court affirmed the High Court's decision, emphasising the absence of a provision in the Arbitration Act outlining the procedure and treatment of parties who are not signatories to the arbitration agreement.

In *Sumitomo Corpn.* v. *CDC Financial Services (Mauritius) Ltd*.[14], the Supreme Court, in context of international commercial arbitration, defined a "party" to an arbitration agreement as a participant in the judicial proceedings. However, this definition was deemed incorrect in *Chloro Controls*[15], which clarified that "party" must be construed in accordance with Section 2(1)(*h*) to mean a party to an arbitration agreement.

In *Indowind Energy Ltd.*[16], the first and second respondents entered into a sale agreement, designating the second respondent as the "buyer" and the promoter of Indowind as a non-signatory. Subsequently, a dispute arose, leading the first respondent to file an application under Section 11(6) of the Arbitration Act against both the second respondent and Indowind. Indowind opposed its inclusion, asserting that it was not a party to the original sale agreement and, consequently, had not given consent to be bound by the arbitration clause. The moot point before the Supreme Court was whether the arbitration agreement contained in a clause within the sale agreement could be enforced against Indowind — a non-signatory. The Supreme Court declined to add Indowind to the reference to arbitration, citing three main reasons: (*i*) Indowind was not a signatory to the sale agreement; (*ii*) Indowind and the promoter company maintained distinct and separate legal entities; and (*iii*) the absence of Indowind's signature on the sale agreement indicated the mutual intention of all parties to exclude it from becoming a party to the arbitration agreement.

The judicial position preceding the *Chloro Controls*[17] ruling was characterised by three fundamental principles: (*i*) initiation of arbitration was permissible only when invoked by a signatory to the arbitration agreement and was limited to

disputes involving another signatory party; (*ii*) the courts adhered to a strict interpretation of the provisions of the Arbitration Act, particularly the unamended Section 8, which only permitted the reference of "parties" to an arbitration agreement; and (*iii*) there was a strong emphasis on the formal consent of the parties, thereby excluding any possibility of implied consent by non-signatories to be bound by an arbitration agreement.

2. Choro Controls — A revolution

In *Chloro Controls*[18], the Supreme Court was tasked with deciding an arbitral reference involving multi-party agreements, wherein the execution of ancillary agreements was contingent on the effective execution of the principal agreement. The scenario involved a joint venture established by a foreign entity and an Indian entity for the marketing and distribution of chlorination equipment. A number of related companies of both entities were also parties to the joint venture, leading to the execution of various ancillary agreements, including a shareholders' agreement containing an arbitration clause. However, not all contracting parties were signatories to all agreements, including the shareholders' agreement.

Disputes arose, and the foreign entities sought to terminate the joint venture. The Indian entity, in response, filed an application before the High Court seeking a declaration to prevent the foreign entities from repudiating their obligations under the agreements. The foreign entities, in turn, applied for arbitration, asserting that the agreements were binding on non-signatories due to the composite nature of the transaction. The High Court's Single Judge granted the Indian entity's application, but the Division Bench set it aside. The primary issue for the Supreme Court was the interpretation of Section 45 of the Arbitration Act.

The Supreme Court, considering the language of Section 45, concluded that the expression "any person" indicated legislative intent to broaden the scope beyond signatory parties, encompassing non-signatories. However, it was emphasised that such non-signatory parties must claim "through or under the signatory party". The Supreme Court acknowledged the international development of the group of companies doctrine, which binds non-signatory affiliates within the same corporate group to an arbitration agreement if there is an evident mutual intention.

In view of the above, the Supreme Court held that arbitration could be enforced against a non-signatory without their prior consent in "exceptional cases" based on four key factors:

(*i*) a direct relationship with the signatory party;

(*ii*) a direct commonality of subject-matter and existence of a composite transaction between the parties;

(*iii*) the transaction's composite nature, where performance of the main agreement may be impractical or not feasible without the aid, execution, and performance of ancillary agreements; and

(*iv*) a composite reference serving the interests of justice.

Chloro Controls[19] recognised the challenges posed by multi-party agreements involving composite transactions, where non-signatories may be implicated due to their legal relationship and involvement in contractual obligations. To address such challenges, the Supreme Court endorsed the application of the group of companies doctrine, emphasising the importance of determining the clear intention of the parties to bind both signatory and non-signatory parties to the arbitration agreement.

3. Post-Chloro Controls developments

In 2014, the Law Commission of India issued a report suggesting amendments to the Arbitration Act. The Commission noted a disparity in the Arbitration Act between Section 45, which included the phrase "claiming through or under", and the corresponding provision in Section 8, which lacked this expression. To rectify this inconsistency, the Law Commission proposed an alteration to the definition of "party" in Section 2(1)(*h*) of the Arbitration Act to encompass the phrase "a person claiming through or under such party".

Subsequently, in 2016, the legislature amended Section 8 to align it with Section 45 of the Arbitration Act. The original Section 8(1) allowed only a party to an arbitration agreement to apply for a reference to arbitration. The amended Section 8(1) expanded this scope, enabling "a party to an arbitration agreement or any person claiming through or under him" to seek a reference to arbitration. Notably, no corresponding modifications were made to the language of Section 2(1)(*h*) or Section 7 of the Arbitration Act.

In *Cheran Properties*[20], the moot point addressed by the Supreme Court revolved around the enforceability of an arbitral award under Section 35 of the Arbitration Act against a non-signatory who served as a nominee of one of the signatories to the arbitration agreement and was also a direct beneficiary of the underlying contract between the signatories. Section 35 of the Arbitration Act stipulates that an arbitral award is "final and binding on the parties and persons claiming under

them respectively". The Supreme Court opined that the phrase "persons claiming under them" encompasses every individual whose capacity or position is derived from and identical to that of a party involved in the proceedings. The Supreme Court concluded that the non-signatory, being a nominee of one of the signatory parties, was obligated by the arbitral award as it fell within the category of persons claiming under the signatory. In interpreting the group of companies doctrine, the Supreme Court clarified that its true essence lies in upholding the common intention of the parties when the circumstances suggest that both signatories and non-signatories were intended to be bound by the arbitration proceedings.

In *Ameet Lalchand Shah* v. *Rishabh Enterprises*[21], a two-Judge Bench of the Supreme Court addressed an arbitral dispute arising from four interconnected agreements related to the same commercial project. The issue at hand was whether the four agreements were sufficiently linked to mandate a composite reference of all involved parties to arbitration. Notably, not all parties were signatories to the primary agreement that contained the arbitration clause. Citing the precedent set in *Chloro Controls*[22], the Supreme Court ruled that a non-signatory party involved in an interconnected agreement could be bound by the arbitration clause present in the main agreement. The Supreme Court emphasised that due to the composite nature of the transaction, effective resolution of disputes among parties to various agreements could be achieved by referring all of them to arbitration.

In *Reckitt Benckiser (India) (P) Ltd.* v. *Reynders Label Printing India (P) Ltd.*[23], a two-Judge Bench of the Supreme Court was presented with an application under Section 11(6) of the Arbitration Act, seeking the appointment of an arbitrator. It was noted that prima facie, all parties were affiliated as part of the same group of companies. The issue brought before the Supreme Court was whether there existed a discernible intention on the part of the parties to obligate both signatory and non-signatory parties, based on their involvement in negotiating the underlying contract. The Supreme Court determined that the non-signatory party, despite being a part of the corporate group, lacked any causal connection with the process of negotiations leading to the agreement or its execution, in any manner.

Consequently, the Supreme Court emphasised that the pivotal factor in establishing the parties' intention to be bound by an arbitration agreement was the involvement of the non-signatory party in the negotiation and fulfilment of

the underlying contract.

In *Canara Bank*[24] case, the Supreme Court underscored the applicability of the group of companies doctrine based on the principle of a "single economic unit". The case involved Canbank Financial Services Ltd. (CANFINA), a wholly-owned subsidiary of Canara Bank, subscribing to bonds issued by MTNL. Subsequently, CANFINA transferred the bonds to Canara Bank. The dispute arose when MTNL cancelled the bonds, prompting Canara Bank to file a writ petition before the Delhi High Court challenging the cancellation. The High Court referred the parties to arbitration. However, Canara Bank objected to the inclusion of CANFINA in the proceedings. The Supreme Court rejected Canara Bank's objection, asserting that CANFINA was a necessary and proper party to the arbitral proceedings as the original purchaser of the bonds. While delving into the parameters of the group of companies doctrine, the Supreme Court acknowledged that the doctrine could be invoked in cases where there exists a tightly knit group structure with robust organisational and financial ties, giving rise to a single economic unit or a single economic reality.

In *Discovery Enterprises*[25], a three-Judge Bench of the Supreme Court was dealing with a case where ONGC entered into a contract with Discovery Enterprises for the operation of a shipping vessel. When a dispute arose, ONGC invoked the arbitration clause against both Discovery Enterprises and Jindal Drilling and Industries Ltd., a sister company of Discovery Enterprises. However, the Arbitral Tribunal declined to proceed with the claim against Jindal Drilling and Industries Ltd., contending that it was not a signatory to the arbitration agreement. Aggrieved by the Arbitral Tribunal's decision, ONGC filed an appeal under Section 37 of the Arbitration Act, which came to be dismissed. The dismissal of the appeal before the High Court led the parties to the Supreme Court. Citing the precedent set in *Chloro Controls*[26] and subsequent decisions, the Supreme Court affirmed the applicability of the group of companies doctrine to bind a non-signatory company within a group to an arbitration agreement. The Supreme Court stressed that, in addition to the factors outlined in *Chloro Controls*[27], the performance of the contract was a crucial consideration for courts and Arbitral Tribunals in binding a non-signatory to the arbitration agreement. Ultimately, the Supreme Court set aside the Arbitral Tribunal's decision, citing its failure to address ONGC's plea, and remanded the matter for a fresh decision.

D. Party autonomy and independent corporate existence — Two fundamental forces against the group of companies doctrine

1. Party autonomy — The fountainhead of arbitral jurisprudence

The arbitral process is fundamentally rooted in the principle of party autonomy, which grants parties the authority to circumvent technical formalities and collaboratively establish the substantive and procedural laws governing the merits of their dispute. This autonomy encompasses pivotal decisions, including the selection of the arbitration seat, determination of the number of arbitrators, establishment of the procedure for arbitrator appointments, choice of rules governing the arbitration process, and specifying of the administering institution.

The mutual consensus amongst the parties serves as the cornerstone of arbitration, with the arbitration agreement acting as the written expression of the parties' willingness to resolve their conflicts through arbitration. In *Bihar State Mineral Development Corpn.* v. *Encon Builders (India) (P) Ltd.*[28], a two-Judge Bench of this Court delineated the following four essential components of an arbitration agreement:

(*i*) A current or anticipated dispute related to a contemplated matter must exist.

(*ii*) The parties must have the intention to settle such a disparity through a private Tribunal.

(*iii*) There must be a written agreement between the parties to be bound by the decision of this Tribunal.

(*iv*) The parties must share a mutual understanding and be ad idem.

Given that party autonomy is so fundamentally and inextricably associated with arbitration, the group of companies doctrine has sparked intense academic discussions among experts in the field. One perspective challenges the need for embracing the doctrine, proposing that in intricate multi-party arbitration scenarios, consent determination can be accomplished through traditional contractual and commercial law theories.

Conversely, another viewpoint contends that the group of companies doctrine is an integral facet of arbitration law. According to this stance, specific patterns of corporate structure serve as valuable indicators to establish the shared intention of the parties in making the non-signatory a party to the arbitration agreement. For instance, the active participation of a non-signatory group company in facilitating and executing a commercial project led by other signatory companies within the group can signify the non-signatory's implicit consent to arbitration. The assessment of mutual intention in multi-party agreements involves scrutiny

of the corporate structure by courts or Arbitral Tribunals to ascertain whether both signatory and non-signatory parties belong to the same group. The Supreme Court in *Cox & Kings II*[29] opined that this evaluation is case-specific and should adhere to the relevant principles of company law. Once the existence of the corporate group is confirmed, the subsequent step entails determining whether there was a mutual intention among all parties to bind the non-signatory to the arbitration agreement.

2. Independent corporate existence — The foundation of company law

The cornerstone of corporate law is the principle of separate legal personality. In the renowned case of *Salomon* v. *A. Salomon & Co. Ltd.*[30], the House of Lords emphatically stated that, in the eye of the law, a company is an entirely distinct entity from its promoters, directors, shareholders, and employees. This principle extends to corporate groups, where a parent company is typically not held accountable for the actions of its subsidiary, whether it is a direct or indirect shareholder.

Only in a handful of exceptional cases can the courts set aside the separateness of corporate personality, particularly when a company becomes a tool for members and shareholders to perpetrate fraud or avoid tax obligations. If the Court, based on factual evidence, determines that the company acted as an agent of its members or shareholders, it may disregard the company's separate legal personality and assign liability to the individuals involved.

The Supreme Court in *Cox & Kings II*[31] observed that in scenarios involving group companies, there may be instances where a holding company exercises complete dominance over the affairs of a subsidiary, to the extent of exploiting its control to evade or conceal liability. In such cases, courts invoke the doctrine of "alter ego" or pierce the corporate veil to disregard the corporate distinction between the two entities and treat them as a unified whole. Similarly, in *LIC* v. *Escorts Ltd*.[32], a Constitutional Bench of the Supreme Court emphasised that the principle of distinct corporate legal personality can be set aside when associate companies are so intricately linked that they are, in essence, part of a single enterprise.

The application of the corporate veil-lifting doctrine is grounded in paramount considerations of justice and equity.[33] The courts pierce the corporate veil in a limited subset of cases[34] when upholding the separation of corporate personalities is deemed contrary to principles of justice, convenience, and public interests.[35]

The theory of a single economic entity, or the single economic unit, imposes collective enterprise liability on a corporate group. Merely having common shareholders or a shared Board of Directors between two companies would not suffice as adequate grounds to conclude that they form a single economic entity. In *DHN Food Distributors Ltd.* v. *Tower Hamlets London Borough Council*[36], Lord Denning ruled that a group of companies should be regarded as a single economic entity based on two factors: firstly, when the parent company owns all shares in the subsidiary companies, exerting control over every aspect of their operations, and secondly, when all companies in the group functioning as partners and cannot be treated independently. Consequently, determining whether two or more companies constitute a single economic entity depends on their joint efforts to pursue a common endeavour or enterprise.

3. Performing the balancing act

Upon having examined the principles of party autonomy and separate corporate existence, the Supreme Court in *Cox & Kings II*[37] observed that the correct approach was to perform the balancing act. The Supreme Court opined that in the realm of arbitration law, the parties' intentions must be gleaned from the language employed in the arbitration agreement. When interpreting the arbitration agreement, the courts must refrain from delving into the intricacies of the human mind and instead focus solely on the expressed intentions of the parties.[38] In this regard, the language utilised in the contract serves as a reflection of the commercial understanding between the parties, which is to be deduced from the contract's wording while also taking into account the surrounding circumstances and the contract's objective.[39]

In *Cox & Kings II*[40], it was also observed that in contemporary commercial scenarios, it is typical for a company that has signed a contract containing an arbitration clause not to be the entity negotiating or fulfilling the underlying contractual obligations. In such instances, a strict emphasis on formal consent would exclude these non-signatories from the scope of the arbitration agreement, resulting in unwarranted multiplication of proceedings and the fragmentation of disputes. As per the Supreme Court[41], multinational groups are increasingly adopting intricate corporate structures for the execution and delivery of complex commercial transactions, including construction contracts, concession contracts, licence agreements, long-term supply contracts, banking and financial transactions, and maritime contracts. These corporate structures may involve equity-based groups, joint ventures, and informal alliances. A multi-corporate structure provides flexibility for a group to implement commercially practical

operational models, allowing different companies to participate at various stages of a single transaction. In this process, more often than not, individuals or entities not signatory to the underlying contract with the arbitration agreement are involved in negotiating, performing, or terminating the contract.

In view of the above analysis, the Supreme Court in *Cox & Kings II*[42] culled out the moot question that emerged: should non-signatories be excluded from arbitration proceedings, even if they were implicated in the dispute under arbitration? In view of the Supreme Court, it was only in response to this challenge, arbitration law jurisprudence evolved and embraced the group of companies doctrine, enabling or compelling a non-signatory party to be bound by an arbitration agreement. The Supreme Court also opined that in multi-party agreements, courts or Arbitral Tribunals must scrutinise the corporate structure to determine whether both signatory and non-signatory parties belong to the same group. This assessment is fact-specific and must adhere to the relevant principles of company law. Once the existence of the corporate group is confirmed, the next step involves determining whether there was a mutual intention among all parties to bind the non-signatory to the arbitration agreement.

E. The final verdict

The Supreme Court, upon extensively examining the judicial precedents and other relevant authorities, summarised its final verdict as below:

(*i*) The definition of "parties" as per Section 2(1)(*h*) in conjunction with Section 7 of the Arbitration Act encompasses both signatory and non-signatory parties.

(*ii*) The actions of non-signatory parties may serve as an indication of their consent to be bound by the arbitration agreement.

(*iii*) The stipulation of a written arbitration agreement under Section 7 does not preclude the possibility of binding non-signatory parties.

(*iv*) Within the framework of the Arbitration Act, the term "party" holds a distinct and separate meaning from the concept of "persons claiming through or under" a party to the arbitration agreement.

(*v*) The foundation for applying the group of companies doctrine is rooted in maintaining the corporate separateness of group companies while establishing the mutual intention of the parties to bind the non-signatory party to the arbitration agreement.

(*vi*) The principle of alter ego or piercing the corporate veil cannot serve as the foundation for applying the group of companies doctrine.

(*vii*) The group of companies doctrine possesses an independent standing as a legal principle, derived from a cohesive interpretation of Section 2(1)(*h*) in conjunction with Section 7 of the Arbitration Act.

(*viii*) To invoke the group of companies doctrine, courts or Arbitral Tribunals must consider all the cumulative factors outlined in *Discovery Enterprises*[43]. Consequently, the principle of a single economic unit cannot serve as the exclusive foundation for applying the group of companies doctrine.

(*ix*) The expression "claiming through or under" in Sections 8 and 45 is intended to provide a derivative right; and it does not enable a non-signatory to become a party to the arbitration agreement. The expression "party" in Section 2(1)(*h*) and Section 7 is distinct from "persons claiming through or under them".

(*x*) The Supreme Court's approach in *Chloro Controls*[44], insofar as it links the group of companies doctrine to the phrase "claiming through or under", is incorrect and contradicts established principles of contract law and corporate law.

(*xi*) The retention of the group of companies doctrine in Indian arbitration jurisprudence is advisable, given its efficacy in discerning the parties' intent in the context of intricate transactions involving numerous parties and agreements.

(*xii*) During the referral stage, the Court referring the matter should leave it to the Arbitral Tribunal to determine whether the non-signatory is bound by the arbitration agreement.

Conclusion

The ruling in *Cox & Kings II*[45] signifies a crucial juncture in Indian arbitration jurisprudence, achieving a delicate balance between upholding the importance of party consent and meeting the practical needs of modern commerce. Instead of relying solely on a signature as conclusive evidence, the judgment underscores the importance of implied consent, recognising that parties may be bound by an agreement even without a formal signature.

The application of the group of companies doctrine involves a two-step assessment. Firstly, it necessitates establishing the presence of a group of companies. Secondly, it calls for an examination of the circumstances which

surround both signatory and non-signatory parties, demonstrating a mutual intention to bind the non-signatory to the arbitration agreement. The decision reinforces the principle that a signatory alone is considered a party unless factual evidence suggests otherwise. The responsibility of proving the inclusion of a non-signatory in arbitration proceedings lies with the party making the request, preventing baseless applications without a substantive foundation. The judgment ensures accountability in the inclusion of non-signatories, guarding against the misuse of the doctrine and preserving party autonomy without descending into disorder.

The verdict in *Cox & Kings II*[46] resolves inconsistencies in different Supreme Court decisions, streamlining the application of the group of companies doctrine. Notably, the ruling also propels the doctrine of kompetenz-kompetenz forward in Indian law by passing the batón to the Arbitral Tribunals to determine the binding nature of the arbitration agreement on a non-signatory. The further evolution of the jurisprudence on the group of companies doctrine depends on the treatment meted out to the principles laid in *Cox & Kings II*[47] by the Indian courts at the time of referring the disputes to arbitration.

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