



Supreme Court refuses to apply ‘group of companies’ doctrine and bind a non-signatory to arbitration agreement in absence of a manifest intention to be bound¹

Brief Facts

The Applicant/Petitioner had entered into a packaging material supply agreement dated 1 May 2014 (“**Agreement**”) with Respondent No. 1, which contained an arbitration clause. During the course of the Agreement, disputes arose between the parties and the Applicant filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Act**”) before the Supreme Court seeking the appointment of a sole arbitrator (“**Application**”). The Applicant sought to implead Respondent No. 2, which is a Belgian affiliate of Respondent No. 1. The Applicant invoked the jurisdiction of the Supreme Court on the ground that Respondent No. 2 is an entity incorporated in a country other than India and consequently, this was an international commercial arbitration.

The Applicant contended that Respondent No. 2 be made to participate in the arbitration proceedings on the ground that it is the parent and holding company of Respondent No. 1 and that the liability under the indemnity clause contained in the Agreement extends to the Applicant’s group companies. It also relied on correspondence between the parties and sought to establish that Respondent No. 2 participated in negotiations pertaining to the Agreement, and is therefore bound by the Agreement.

The Applicant asserted circumstances exist which require that the ‘group of companies’ doctrine, as applied by the Hon’ble Court in

*Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and Ors*² (“**Chloro Controls**”), be invoked to bind Respondent No. 2 to the arbitration agreement. Respondent No. 2 denied all contentions and submitted that the entities are distinct, and that it had no role to pay in the execution or performance of the Agreement. Accordingly, the ‘group of companies’ doctrine cannot be applied where there is no causal connection between the non-signatory and the arbitration agreement.

Issue

Whether the ‘group of companies doctrine’ can be applied to make Respondent No. 2 a party to the Agreement?

Judgment

The Supreme Court referred to the law laid down by *Chloro Controls* and *Cheran Properties Limited v. Kasturi and Sons Limited and Ors.*³ to hold that while there are circumstances where a non-signatory affiliate company can be bound by the arbitration agreement by invoking the ‘group of companies’ doctrine, the present case is not one of them. The Court reasoned that there must be mutual intention of the parties to bind the non-signatory to the arbitration agreement, and this mutual intention must be indisputably manifest from the circumstances of the case and conduct of the parties. In the present case, it was abundantly clear that Respondent No. 2 was neither signatory

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to the arbitration agreement nor did it have any causal connection with the process of negotiations preceding the Agreement or the execution of the Agreement. Moreover, the burden was upon the Applicant to establish that Respondent No. 2 had an intention to consent to the arbitration agreement and it had failed to discharge this burden. Therefore Respondent No. 2 cannot be bound by the Agreement, and the Application to implead Respondent no. 2 is liable to be dismissed. Having held that Respondent No. 2 could not be impleaded to the Application, in the interest of justice, the Court went ahead and appointed an arbitrator to conduct a domestic commercial arbitration between the Applicant and Respondent No. 1.

Analysis

With this judgment, the Hon'ble Court has

further clarified the principles expounded in Chloro Controls, including that the express intention to bind a non-signatory to the arbitration proceedings is paramount. Moreover, by going ahead and appointing the arbitrator to adjudicate the disputes between the Applicant and Respondent No. 1, the Hon'ble Court has demonstrated that it will prefer to save time and costs, and expedite dispute resolution over giving in to technicalities. This is in line with the recent trend of Indian courts favouring arbitration. In the present circumstance, it is a welcome view and parties should be mindful when seeking to implead a non-signatory party. They must only do so where the facts clearly demonstrate an intention on part of the non-signatory to consent to and be bound by the arbitration agreement.

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1 Authored by Ila Kapoor, Partner and Mitali Daryani, Associate; *Reckitt Benckiser India Private Limited v. Reynders Label Printing India Private Limited*, Arbitration Petition No. 65 of 2016, Supreme Court, 2019 SCC OnLine SC 809, judgment dated 1 July 2019.

Quorum: A.M. Khanwilkar and Ajay Rastogi, JJ.

2 (2013) 1 SCC 641.

3 (2018) 16 SCC 413.

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