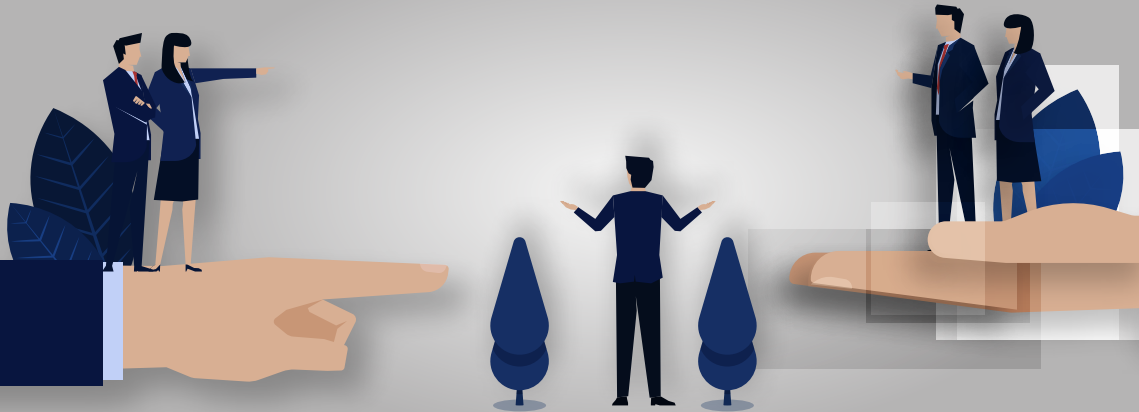


October 2022



High Court of Delhi clarifies that a “confirming party” to a contract may invoke arbitration, despite not being a signatory to the arbitration agreement¹

Brief Facts

A petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (“Act”) was filed before the High Court of Delhi (“Court”) for appointment of a sole arbitrator to adjudicate the disputes between the Petitioners and the Respondents.

The Petitioner No. 1 and Respondent No. 1 had executed a collaboration agreement on 1 February 2005 (“Collaboration Agreement”) for the commercial development of a property located in Jodhpur, Rajasthan (“Property”). As per the terms of the Collaboration Agreement, Respondent No. 1 was required to obtain necessary clearances, whereas Petitioner No. 1 had to carry out the development works and was accordingly granted possession of the Property.

Thereafter, a joint venture agreement (“JVA”) was executed on 4 April 2010 between Petitioner No. 2, Respondent No. 1 and Respondent No. 2 for renovation and development of the Property. Notably, Petitioner No. 1 was only a confirming party to the JVA and had no rights/obligations under the said agreement. Subsequently, Respondent No. 1 arbitrarily revoked possession of the Property from Petitioner No. 1. As a result, Petitioner No. 1 filed a civil suit before the Commercial Court, Jaipur, seeking possession of the suit Property. In addition, an application under Section 8 of the Act was filed by Petitioner No.1. The same was allowed and Petitioner No. 1 was granted liberty to initiate arbitration proceedings in respect of the disputes arising out of the JVA.

Accordingly, Petitioner No. 1 issued a notice invoking arbitration under Clause 15.12 of the JVA to Respondent No. 1. The same was refused by Respondent No. 1. Therefore, the Petitioners approached the Court under Section 11(6) of the Act for appointment of a sole arbitrator to adjudicate the disputes between the parties under the JVA. Respondent No. 1 opposed the said petition *inter alia* contending that Petitioner No. 1 was only a confirming party to the JVA and hence, was not entitled to invoke arbitration in terms of the arbitration clause provided therein.

Issue

Whether a confirming party with no rights/liabilities under an agreement, may invoke the arbitration clause contained in the agreement?

Judgment

The Court reaffirmed the general principle that a non-signatory to an arbitration clause cannot be compelled to arbitrate, as there can be no presumption that the said party has acceded to arbitration. However, the Court clarified that the said rule is not inflexible and the surrounding circumstances may be examined to conclude whether a party has acceded to arbitration in a given factual scenario.

The Court placed reliance on the Hon’ble Supreme Court’s ruling in **Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.**,² regarding the two theories that may be applied to compel non-signatories to an arbitration agreement to arbitrate. These were reiterated by the Court to be:

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- The theory of implied consent used to discern the intentions of the parties; and
- The legal doctrines of agent-principal relations, piercing of veil, joint venture relations, succession and estoppel.

Examining the intention of the parties in the present case, the Court held that notwithstanding the fact that Petitioner No. 1 was only a confirming party to the JVA, the fact that it had signed the JVA which contained the arbitration clause, implied that it had consented to all the disputes being decided through arbitration. In essence, since the JVA was signed by all four parties to the present petition, the arbitration clause contained in the same would also be binding on all the parties.

Analysis

The Court's ruling is significant in further expanding the doctrine laid down in cases such as **Chloro Controls** (*supra*) that even a non-signatory to an arbitration agreement may be compelled to arbitrate. In general, arbitration is invoked for disputes between parties who possess mutual rights or obligations under a contractual understanding. Hence, the question remained unanswered as to whether a confirming party to a contract, i.e., a mere observer to verify the terms of the agreement could be considered as a signatory to the arbitration clause. The Court's decision is of paramount importance as it clarifies that a confirming party to a contract is not *ipso facto* excluded from invoking arbitration under the same. Instead, it is the court's duty to examine the surrounding circumstances and discern the intentions of the parties to such a contract. Hence, the Court's ruling is a welcome affirmation of the fundamental principle of *favorem presumption* in arbitration law.

Endnotes

- 1 Authored by Gauhar Mirza, Partner, Prakhar Deep, Principal Associate and Adya Joshi, Associate; *Ansal Properties & Infrastructure Ltd. v. Dowager Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.*, ARB. P. No. 1050/2021, High Court of Delhi, judgment dated 10 October 2022.

Coram: Neena Bansal Krishna, J.

- 2 (2013) 1 SCC 641.

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