

DOCTRINE OF GROUP OF COMPANIES

COX & KINGS LIMITED V. SAP INDIA PRIVATE LIMITED

Recently, last year in December, 2023, the Hon'ble Supreme Court of India in the case Cox & Kings Limited v. SAP India Private Limited¹ determined the application of the Group of Companies doctrine [Doctrine] in the Arbitration realm of India.

The said Doctrine to some extent disparages the principles of consent and privity of contract. It conditions that a non-signatory to an arbitration agreement may be bound if it is a member of the same group of companies. The Doctrine has found its genesis from the case of *Dow Chemicals v. Isover Saint Gobain*² wherein a subsidiary company being a non-signatory to the agreement, but being a member of the parent company was made a party to the arbitration proceedings.

The fundamental approach to the application of the Doctrine is to avoid the multiplicity of disputes and transactions when they can altogether be tried in one matter. In India, the Doctrine was first applied by the Apex Court in the case of *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. & Ors.*³, wherein the Court recognized the non-signatories a party to the arbitration who belongs to the same corporate group. Before this case, India had a restrictive approach towards the arbitration matter. Thereafter, Indian Courts confidently went ahead to broaden the scope of the Doctrine.

In the instant case of *Cox & Kings Limited v. SAP India Private Limited*, the court has elucidated that the principle of "alter ego" or "piercing the corporate veil" cannot be the bedrock for applying the said Doctrine. Primarily, the term "alter ego" refers to the alternate self hereinafter referred to the persons or individuals acting on behalf of the Company and "piercing of the corporate veil" refers to the situation where the court disdains the limited liability and hold a company's shareholders or directors personally liable for the company's actions or debts.

The Court in the said case referred to another case of *Cheran Properties Ltd. v. Kasturi & Sons Ltd.*⁴, wherein, it was elucidated that the Doctrine and the 'principle of veil piercing' or 'alter

¹https://main.sci.gov.in/supremecourt/2020/21647/21647_2020_1_1501_48956_Judgement_06-Dec-2023.pdf [Last accessed on 03:18 PM on 11.12.2023]

² ICC Case No. 4131, IX Y.B. COMM. ARB. 131 (1984)

³ (2013)1 SCC 641

⁴ (2018) 16 SCC 413

ego' have significant distinction. The Court further held that the said principle disparage the individuality of the Company whereas the Doctrine enables to identify the common intention of the parties to determine the parties to the arbitration agreement without posing a question to the legal existence of the Company. Thus, the Court believed that the principle of alter ego or piercing the corporate veil cannot be the basis for the applying the Doctrine.

The instant case involved the substantial question of interference of Doctrine with the settled legal principles of autonomy of party, privity of contract and separate legal entity. The Apex Court has closely reviewed the issues and observed that:

1. The meaning of term "parties" in an arbitration agreement includes both signatory and non-signatory parties irrespective of the explicit consent in a written arbitration agreement because the agreement does not bar the possibility of binding non-signatory parties if there exists a distinct legal relationship between the signatory and non-signatory parties.
2. The independent existence of the Doctrine has been examined by the court in view of Section 8⁵ of the Arbitration and Conciliation Act, 1996. The phrase "claiming through or under" has been used in Sections 8, 35 and 45 of the Act in different specific contexts. Section 8 explains that any party can make an application to arbitration by a party or any person claiming through or under him. Section 8 is read in line with Section 45⁶ in order to adjudicate the disputes of parties having mutual intention.

Further by virtue of Section 35, the arbitral award passed shall be final and binding on the parties or the persons claiming under thereon who derives the capacity or the position from a party to the proceedings. Similarly, Section 73 of the said Act is interpreted in the same manner.

As a result, the dispute sent to arbitration may be made to the judicial authority by any party to an arbitration agreement or by any person claiming through or under the party. The aforementioned provisions allow the party or any person "claiming through or under him" to refer the disputes to arbitration in the interest of upholding the parties' intentions and fostering business efficacy.

3. Lastly the Doctrine of Group of Companies should only be invoked on the basis of the principle of 'single economic reality'. This means that the Company operating with its

⁵ Power to refer parties to arbitration where there is an arbitration agreement.

⁶ Power of judicial authority to refer parties to arbitration.

subsidary companies will be considered as one single entity in reference to the same transactions and derivative capacity. Therefore the said Doctrine will be applied independently without placing reliance on principles of alter ego and piercing the corporate veil.

Therefore, the Doctrine of Group of Companies is independent of other doctrines and principles and has its own independent applicability. As a result, this case has resolved the long-standing issue of non-signatories being a party to the arbitration agreements.

