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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# **ARBITRATION AGREEMENT BINDING ON NON-SIGNATORIES TO THE AGREEMENT**

AUTHORIZED BY -TANU KAUSHIK &  
NANCY PRAJAPATI

**RV SOLUTION PVT. LTD. VS AJAY KUMAR DIXIT &ORS AIRONLINE 2019 DEL  
1537, (2019) 257 DLT 104**

**High court of Delhi**

**case no-745/2017**

**date of judgement- 15.1.2019**

**Plaintiff- RV solution Pvt. ltd**

**Defendant-Ajay Kumar dixit & ORS**

**Justice: Jayant Nath**

## **Issues**

- whether an arbitration agreement binding on non- signatories' parties?
- Whether there can be a voluntary assumption of an obligation by contracting parties to resolve their disputes through a private tribunal?

**Facts:** There was dispute arise between the employes and the company due to which the employes resigned from their job and they were on senior post in the companies as they were aware of some important information related to company functioning. After leaving the company plaintiff gets to know that their ex-employers were indulge in activities that are violating the terms of contract with the company. For this breach plaintiff files suit against the defendant.

**Decision:** court held that if there is an arbitration agreement and parties are non-signatories to the agreement but related indirectly in some way to the agreement, then also they can use the remedy of referring the matter to arbitral tribunal provide the arbitration agreement is valid.

## INTRODUCTION

Arbitration is the popular way of solving disputes to limit their legal fees and keep disputes out of the court. Arbitration is more informal than litigation and the procedure are simplified too. Arbitration agreement is the important clause agreed and signed in business agreements, the arbitrator may be a lawyer, a retired judge or a person with expertise skilled and experience. The arbitration agreement is binding on the parties and cannot resolve the same in court as it already added as a clause in agreement priorly signed by the parties.

Arbitration agreement is signed before hand by the parties to the agreement, even before the disagreement arise between them. An arbitration agreement clause states that all arising under the contract will be submitted to binding arbitration. Sometimes a contract also states which all types of disputes will be arbitrated there itself.

However there comes a doctrine “group of companies “which says that a company that is a non-signatory to an arbitration agreement would be bound by the agreement if such a company is a member of the same group of companies that signed the agreement.

## PROVISION INVOLVED

**Section\_7\_**of the arbitration and conciliation act ,1996 defines the arbitration agreement as agreement signed by the parties with inclusive clause for future dispute arise to be resolved in arbitrator. Arbitration agreement may in the form of arbitration clause or separate agreement and must be expressly in written form.

Arbitration agreement includes:

- Document signed
- An exchange of letter or other mean of telecommunication
- An exchange of statement of claim.



**Section 8** of the arbitration and conciliation act ,1996 gives power to court to refer parties to arbitration where there is an arbitration agreement to avoid any kind of conflict between court and other tribunals.

**Section 89 of code of civil procedure ,1908** was introduced to reduce the burden by rendering it power to refer cases to ADR.

### **Doctrine of “Group of companies “**

The "group of companies" doctrine states that a company that is a non-signatory to an arbitration agreement would be bound by the agreement if such a company is a member of the same group of companies that signed the agreement.

The doctrine was introduced in **Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. (2013)**. Since then, courts have applied the doctrine to bind group companies of signatories to arbitration agreements.

The Supreme Court in **ONGC Ltd. vs. Discovery Enterprises (P) Ltd.** Gave some factors to be considered to decide whether the Doctrine would apply or not:

- the mutual intent of the parties the relationship of a non-signatory to a party which is a signatory to the agreement
- the commonality of the subject-matter
- the composite nature of the transaction
- the performance of the contract

### **FACT OF THE CASE**

**RV solution private limited vs Ajay Kumar dixit & others**

**Plaintiff-** RV solution Pvt ltd

**Defendant-**Ajay Kumar dixit & ORS

**Facts of the case -**

1. Plaintiff **RV SOLUTION PVT LTD VERSUS DEFENDANT** is ex- employees of the company defendant 1 to defendant 2.

2. The petition filed by defendants 1 to Defendant 5 against the company under section 8 of the arbitration and conciliation act 1996.
3. The dispute arises because the defendants are not satisfied by clause 14 of the agreement.
4. The suit is filed by plaintiff against the defendants because they suffered the damages of 1.10 crores.
5. Defendant 1 to Defendant 4 is the ex -employees of the company. They had joined at the different time but they left at the same time. They make conspiracy and acted in breach of express agreement in manner causing damage to the plaintiff. Later on, defendant 1 to defendant 4 joined the defendant 5 company. Defendant 1 being **CEO** have complete control on defendant 5 company. Plaintiff claimed that defendant 1 had misuse confidential information of the company to put in for client, vendors and staff of the Plaintiff. The plaintiff suffered huge losses of the soliciting activities committed by the defendant. Hence the suit has been filed.
6. The suit was filed under sec 8 of the arbitration acts 1996. Learned counsel of defendant 3 & defendant 5 does not oppose this application as there is no agreement between the plaintiff and defendant.
7. As noted above present application opposed by the learned counsel of the plaintiff. The judgement of supreme court in case **Sukanya holding Pvt ltd vs Jayes h. Pandey & others (AIR 2003 SC 2252)** would submit as the fact of this case.
8. Learned counsel of d1 to d4 defended by submitting the judgement of supreme court in case of **Ameet Lalchand shah & ORS VS Rishabh enterprises & ORS (2018 SCC online 487)** and **MGRM Medicare ltd vs Narang Surgical and ORS (MANU/de/4043/2018)**.

9. According to section 8 of arbitration act 1996- power to refer parties to arbitration where there is an arbitration agreement

### **DECISION**

Court quoting the section 8 of the Arbitration and Conciliation Act, 1996 that there is nothing in this act which prevent non-signatories from resorting to the option of submitting the dispute to the arbitral tribunal. Also said that the only condition under this section which prevent the dispute to be referred to the arbitral tribunal is that arbitration agreement is not valid.

Overall, it refers that arbitration agreement and parties are not-signatories to the agreement are related indirectly in some way to the agreement and can refer the matter to the arbitral tribunal that makes the agreement valid. Also, court noted the point that defendant no.3 and defendant no. 5 who were not signatories did not object against the matter to be refer to the tribunal. Court said that in few circumstances dispute of non-signatories' parties without the consent can be referred to arbitral tribunal but, in this case, court has to examine the relation of the parties also referring the dispute to the arbitration procedure will fulfil the purpose of serving the justice. Court finally decided to refer the matter to the arbitral tribunal.

### **RECENT CASE LAWS**

In the case of **Cox and Kings Limited v. SAP India Private Limited [ Arbitration Petition (civil) no. 38 of 2020]**, held that non-signatories to an arbitration agreement can be bound by the arbitration agreement based on mutual intension. Consequently, the supreme court upheld the 'group of companies' doctrine.

The Supreme Court held that the definition of "parties" is inclusive of both the signatory as well as non-signatory parties according to the Section 2(1)(h) read with Section 7 of the Arbitration Act and the consent of the parties to be bound by the arbitration agreement and it does not exclude the possibility of binding non-signatory parties.

The application of the Doctrine has an independent existence as a principle of law which originated from the harmonious construction of the Section 2(1)(h) read along with the Section 7 of the Arbitration Act. The Supreme Court held that the utility of Doctrine in determination

of the intention of the parties in case of complex transactions which involves multiple parties and multiple agreements should be considered . It was also held by the Supreme Court that the referral court should leave it for the arbitral tribunal to decide on the issue whether it applies on non signatories.

And in the case of **Oil and Natural Gas Corporation Limited v. Discovery Enterprises Private Limited [5 (2022) 8 SCC42]** held that the evolution of the group of companies' doctrine in the context of domestic arbitration in India, the decision uphold the group of companies doctrine which provides that the non-signatory to the contract containing an arbitration clause may bound by the agreement.

### CONCLUSION

Arbitration agreement is a way to limit litigation costs and keep disputes confidential. even signing of the arbitration means waving of the right. signing of the agreement is must, may be in form of agreement clause or separate agreement.

There comes the view of group of companies' doctrines that must ascertain based on the intention of the parties to an agreement. the intention must be gathered from the various factors including direct relationship with signatories' party. the supreme court held that an agreement can be binding on a non- signatory firm which is a member of a group of companies which are party to the agreement. Arbitration agreement can be binding on non -signatories firm under the doctrine of group of companies.

The constitutional bench headed by the CJI D.Y. Chandrachud held in the judgment," The group of companies doctrine must be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements"