BEYOND THE SIGNATURE: CORPORATE SEPARATENESS, CONTRACTUAL CONSENT AND THE GROUP OF COMPANIES DOCTRINE IN INDIA - A STUDY OF RECENT JUDICIAL DEVELOPMENTS

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ABSTRACT

The increasing complexity of corporate transactions has challenged traditional assumptions concerning contractual consent, separate legal personality and the identity of parties to arbitration agreements. Commercial arrangements frequently involve parent companies, subsidiaries, affiliates and other entities that participate in negotiations or contractual performance without formally executing the principal agreement. This raises a fundamental question: *can a company that has not signed an arbitration agreement nevertheless be bound by it?* Indian arbitration jurisprudence has addressed this question through the group of companies doctrine, most significantly in *Cox and Kings Ltd v SAP India Pvt Ltd (2023)*, subsequently reported *as (2024) 4 SCC 1*. The doctrine permits *a non-signatory group company to be joined to arbitration where the relevant circumstances establish its intention to be bound,* while preserving the principle of separate corporate personality.

Recent judicial developments, including *ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd (2025), Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF) (2026) and Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd (2026),* demonstrate the continuing importance of this issue in complex commercial transactions.[1]

This article critically examines the relationship between corporate separateness and contractual consent, the statutory basis of the doctrine under

[1] Cox and Kings Ltd v SAP India Pvt Ltd, (2024) 4 SCC 1; ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd, (2025) 9 SCC 76; Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), Delhi High Court, ARB.P. 2061/2025, decided 24 February 2026,https://delhihighcourt.nic.in/app/showFileJudgment/SMP24022026AA20612025_200841.pdf
Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd, Delhi High Court, FAO(OS) (COMM) 121/2025, decided 19 May 2026,https://indiankanoon.org/doc/199248616/

the Arbitration and Conciliation Act, 1996, and the circumstances in which non-signatory companies may be bound by arbitration agreements. It argues that the doctrine should be applied through a consent-based, evidence-driven inquiry rather than merely on the basis of corporate affiliation or commercial convenience. The article concludes that a balanced approach can preserve corporate autonomy while preventing entities that have substantively participated in an integrated transaction from evading contractual dispute-resolution obligations.

Keywords: Company Law, Contract Law, Group of Companies Doctrine, Non-Signatory Parties, Separate Legal Personality, Arbitration, Corporate Liability, Contractual Consent.

I. INTRODUCTION

The modern corporate structure increasingly involves interconnected companies performing different functions within a common commercial arrangement. A parent company may negotiate a transaction, a subsidiary may execute the principal agreement, another affiliate may provide financing, and a separate group entity may perform contractual obligations. Although these arrangements facilitate business organisation and operational efficiency, they create legal difficulties when disputes arise and the arbitration agreement has been signed by only one of the participating entities.

The problem becomes particularly significant when a claimant seeks to bring a non-signatory company into arbitration. The claimant may argue that the company participated substantially in the negotiation or performance of the transaction and should therefore be treated as a party to the arbitration agreement. The company, however, may contend that it is a separate legal entity, never consented to arbitration and cannot be made liable merely because it belongs to the same corporate group.

Two foundational principles consequently come into conflict. The *first* is the *principle of separate legal personality*, under which an incorporated company ordinarily possesses a legal identity distinct from its shareholders and affiliated companies. The *second* is the *consensual nature of contractual obligations*, according to which parties should not ordinarily be bound by contractual terms to which they have not consented.

Indian law addresses this tension through the group of companies doctrine, which has developed principally within arbitration jurisprudence. The doctrine recognises that, *in certain*

complex commercial transactions, a non-signatory entity's relationship with the signatories, participation in contractual performance and other surrounding circumstances may demonstrate an intention to be bound by the arbitration agreement. It does not, however, establish that all companies within a corporate group are automatically liable for one another's contractual obligations.[2]

The Supreme Court's Constitution Bench decision in *Cox and Kings Ltd v SAP India Pvt Ltd* is central to this development. The Court retained the group of companies doctrine in Indian law but grounded its application in mutual intention and consent, rather than treating membership of a corporate group or the existence of a single economic unit as sufficient by itself.[3] The issue has continued to receive judicial attention.

In *Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF),* decided by the Delhi High Court on 24 February 2026, the Court considered the proposed reference to arbitration of non-signatories to a family memorandum of understanding involving the division of interests in several companies. The Court appointed an arbitrator and left the determination of which parties should be joined to the arbitral tribunal, having regard to the evidence and the principles governing non-signatory participation.[4] In Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd, decided on 19 May 2026, the Delhi High Court considered the application of the doctrine in a commercial project involving contractual performance, payment obligations and a company alleged not to be a contracting party.[5]

These developments demonstrate that the controversy is no longer merely theoretical. It directly affects the drafting and enforcement of commercial agreements, corporate group structures and the conduct of arbitration proceedings. This article examines *whether the doctrine achieves an appropriate balance between corporate separateness and commercial accountability*. It argues that the decisive consideration should be demonstrable contractual consent, assessed through objective evidence of the non-signatory's conduct and involvement, rather than corporate affiliation alone.

[2] ONGC Ltd v Discovery Enterprises (P) Ltd, (2022) 8 SCC 42, https://indiankanoon.org/search/
[3] Cox and Kings Ltd v SAP India Pvt Ltd, (2024) 4 SCC 1,https://indiankanoon.org/doc/198803407/
[4] Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), Delhi High Court, ARB.P. 2061/2025, decided 24 February 2026,https://delhihighcourt.nic.in/app/showFileJudgment/SMP24022026AA20612025_200841.pdf
[5] Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd, Delhi High Court, FAO(OS) (COMM) 121/2025, decided 19 May 2026, https://indiankanoon.org/doc/199248616/

RESEARCH METHODOLOGY

The article adopts a doctrinal legal research methodology, examining statutory provisions, Supreme Court and High Court judgments, and academic commentary on corporate personality, contractual consent and arbitration. It uses recent Indian judicial developments to evaluate the practical application of the group of companies doctrine and proposes safeguards for its consistent application.

II. Separate Legal Personality and Contractual Privity: The Foundational Principles

A. Separate legal personality under company law

The principle of separate legal personality is a fundamental feature of company law. Upon incorporation, a company acquires a legal identity distinct from its members and ordinarily holds its own property, incurs its own liabilities and enters into contracts in its own name. The classical authority is *Salomon v A Salomon & Co Ltd*, in which the House of Lords affirmed the separate legal personality of a duly incorporated company.[6] The principle has subsequently become central to corporate law in India, where incorporation establishes an independent legal entity under the Companies Act, 2013.

The doctrine of separate corporate personality also provides the foundation for determining the independent rights and obligations of companies within a corporate group. The distinction between a company and its members is essential to understanding why common ownership or managerial control does not, by itself, establish that one company has assumed another company's contractual liabilities. Accordingly, the application of the group of companies doctrine must be distinguished from the ordinary consequences of incorporation and must rest upon the relevant contractual and factual circumstances.[7]

Section 9 of the Companies Act, 2013 recognises the consequences of registration by providing that a registered company becomes a body corporate with the capacity to exercise the functions of an incorporated entity, including holding property and entering into contracts.[8] Consequently, a parent company and its subsidiary do not ordinarily become liable for each

[6] Salomon v A Salomon & Co Ltd [1897] AC 22 (HL),https://www.bailii.org/uk/cases/UKHL/1896/1.html
[7] Avtar Singh, Company Law (18th edn, Eastern Book Company 2025), ch 1, "Corporate Personality"https://opac.nluo.ac.in/cgi-bin/koha/opac-ISBDdetail.pl
[8] Companies Act, 2013, s 9,https://www.mca.gov.in/

other's contractual obligations merely because one controls the other. This separation serves important commercial purposes. It enables businesses to allocate risks among different entities, organise separate operations and structure investments through distinct corporate vehicles. If corporate affiliation alone were sufficient to impose liability, the legal and economic advantages associated with incorporation would be substantially weakened. Nevertheless, separate legal personality does not resolve every dispute concerning the identity of contractual parties. A company may be legally distinct from another entity yet participate directly in a transaction in a manner demonstrating that it intended to assume particular contractual obligations. The relevant inquiry is therefore not whether corporate separateness exists, but whether the facts and applicable legal principles justify treating a non-signatory as a party to a specific arbitration agreement.

B. Contractual privity and consent

The doctrine of privity of contract ordinarily limits contractual rights and obligations to the parties to the agreement, subject to recognised exceptions and applicable statutory principles. It reflects the proposition that contractual obligations arise from agreement rather than from a person's mere commercial relationship with a contracting party.

Section 10 of the Indian Contract Act, 1872 identifies the essential requirements for agreements that constitute contracts, subject to the other provisions of the Act. *Section 37* generally requires parties to a contract to perform, or offer to perform, their respective promises unless performance is dispensed with or excused under the law.[9] These provisions support the importance of identifying the parties to a commercial agreement and determining the obligations they have undertaken.

In arbitration, the question of consent assumes additional significance because arbitration is based upon an agreement to submit disputes to a private adjudicatory mechanism. A company may participate in the commercial performance of a transaction without necessarily agreeing to arbitrate every dispute arising from it.

For example, a parent company may provide administrative support to a subsidiary, approve internal expenditure or communicate with a supplier. Such conduct does not automatically establish that the parent company accepted the subsidiary's contractual liabilities or agreed to

[9] Indian Contract Act, 1872, ss 10 and 37,https://www.indiacode.nic.in/

the arbitration clause contained in the subsidiary's agreement.

Conversely, where a company actively negotiates the principal agreement, assumes substantial contractual responsibilities, issues purchase orders, makes payments and performs obligations contemplated by the same commercial arrangement, its conduct may provide evidence of an intention to be bound. Whether that evidence is sufficient depends upon the entire factual and contractual context. Accordingly, the group of companies doctrine should not be regarded as a general exception eliminating contractual privity. Its more defensible function is to assist in determining whether a non-signatory has, on the evidence, become a party to the relevant arbitration agreement.

III. Statutory Framework Under the Arbitration and Conciliation Act, 1996

The group of companies doctrine must be understood within the statutory framework governing arbitration agreements and arbitral jurisdiction.

A. Section 2(1)(h): Meaning of a party

Section 2(1)(h) of the Arbitration and Conciliation Act, 1996 defines a "party" as a party to an arbitration agreement. The provision makes the existence of an arbitration agreement central to determining who may be treated as a party to arbitral proceedings.[10]

The provision does not expressly state that every signatory is necessarily bound in every circumstance, nor does it establish that every non-signatory is excluded. Rather, the statutory inquiry concerns whether the person or entity is legally a party to the arbitration agreement. In *Cox and Kings*, the Supreme Court interpreted *Section 2(1)(h) together with Section 7* and recognised that a non-signatory may, in appropriate circumstances, be treated as a party where the relevant evidence establishes consent to arbitration.[11]

The statutory status of an incorporated company and its participation in a particular contractual arrangement are separate questions. The Companies Act, 2013 provides the framework for the company's legal existence and capacity, whereas the Arbitration and Conciliation Act, 1996 determines whether the relevant dispute falls within an arbitration agreement binding upon the parties. The two statutes must therefore be read together without assuming that a company's

[10] Arbitration and Conciliation Act, 1996, s 2(1)(h),https://www.indiacode.nic.in/
[11] Cox and Kings Ltd v SAP India Pvt Ltd, (2024) 4 SCC 1,https://indiankanoon.org/doc/198803407/

corporate relationship with a signatory automatically establishes its consent to arbitration.[12]

B. Section 7: Arbitration agreement

Section 7 defines an arbitration agreement as an agreement by the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. It also addresses the requirement that an arbitration agreement be in writing and identifies circumstances in which the existence of such an agreement may be established through written records or communications.[13]

The provision is important because it demonstrates that the existence of a valid arbitration agreement does not depend exclusively upon a single document bearing every party's signature. However, the absence of a signature does not itself establish consent.

The legal significance of a non-signatory's participation must be determined through the applicable statutory requirements and evidence. In the context of corporate groups, this means that courts and tribunals must examine *whether the contractual documentation, conduct and surrounding circumstances demonstrate an intention to submit the relevant dispute to arbitration.*

C. Sections 8, 11 and 16: Referral, appointment and jurisdiction

Section 8 concerns the referral of parties to arbitration where a judicial authority is seized of an action involving an arbitration agreement. *Section 11* governs the appointment of arbitrators in the circumstances specified by the Act. *Section 16* recognises the competence of an arbitral tribunal to rule on its own jurisdiction, including objections concerning the existence or validity of the arbitration agreement.[14] These provisions perform different functions and should not be treated as interchangeable.

The determination of whether a non-signatory may be referred to arbitration may arise at the referral stage. Questions concerning the scope of the arbitration agreement or the participation of additional parties may also arise before the arbitral tribunal, subject to the statutory

[12] A Ramaiya, Guide to the Companies Act, 2013 (19th edn, LexisNexis 2021), commentary on s 9 of the Companies Act, 2013
[13] Arbitration and Conciliation Act, 1996, s 7, https://www.indiacode.nic.in/
[14] Arbitration and Conciliation Act, 1996, ss 8, 11 and 16, https://www.indiacode.nic.in/

framework and applicable judicial decisions.

The Supreme Court's decision in *ASF Buildtech* is particularly relevant because it addresses the arbitral tribunal's authority to implead a non-signatory who is otherwise found to be bound by an arbitration agreement.[15] The recognition of that authority does not permit a tribunal to manufacture consent where none exists. The power must be exercised consistently with the agreement, the Act and the principles governing non-signatory parties.

D. Sections 34 and 37: Judicial review of arbitral decisions

Sections 34 and 37 govern specified forms of judicial challenge to arbitral awards and orders. They do not provide a general mechanism for rehearing every factual or contractual issue decided during arbitration.[16]

This is significant because a party that disputes its inclusion in arbitration should raise its objection at the appropriate stage and preserve the relevant grounds. Failure to do so may affect the arguments available in subsequent proceedings, depending upon the circumstances and applicable law. The statutory framework therefore combines two objectives: *enabling arbitration to operate effectively and ensuring that parties are not subjected to arbitral jurisdiction contrary to the applicable legal requirements.*

IV. Evolution of the Group of Companies Doctrine in Indian Jurisprudence

A. Chloro Controls India (P) Ltd v Severn Trent Water Purification Inc.

The group of companies doctrine entered Indian arbitration jurisprudence prominently through *Chloro Controls India (P) Ltd v Severn Trent Water Purification Inc., (2013) 1 SCC 641.*[17] The case concerned a complex commercial arrangement involving multiple agreements and corporate entities. The Supreme Court considered *whether non-signatory companies could be brought within the arbitration framework where the agreements were interrelated and the transaction formed part of a composite commercial arrangement.* The Court recognised the

[15] ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd, (2025) 9 SCC 76; discussed in Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), https://delhihighcourt.nic.in/app/showFileJudgment/SMP24022026AA20612025_200841.pdf
[16] Arbitration and Conciliation Act, 1996, ss 34 and 37, https://www.indiacode.nic.in/
[17] Chloro Controls India (P) Ltd v Severn Trent Water Purification Inc., (2013) 1 SCC 641,https://indiankanoon.org/search/

possibility of binding non-signatory entities in appropriate circumstances, taking into account the relationship between the parties, the interdependence of the agreements and the nature of the overall transaction.

However, the Court's reliance upon the expression *"claiming through or under"* in the statutory framework subsequently became the subject of significant doctrinal scrutiny. The expression ordinarily concerns persons asserting rights derived from an existing party, whereas the group of companies doctrine seeks to determine whether a non-signatory is itself a party to the arbitration agreement. This distinction became central to the later Constitution Bench proceedings in *Cox and Kings.*

B. ONGC Ltd v Discovery Enterprises (P) Ltd.

In ONGC Ltd v Discovery Enterprises (P) Ltd., (2022) 8 SCC 42, the Supreme Court examined the circumstances in which a non-signatory company could be bound by an arbitration agreement.[18] The Court considered several factors, including the mutual intention of the parties, the relationship between the non-signatory and the signatory, the commonality of the subject matter, the composite nature of the transaction and the performance of the contract.

The decision is important because it moved the analysis beyond mere corporate affiliation. It recognised that the existence of a corporate group may be relevant, but cannot substitute for an inquiry into the actual contractual relationship and the parties' conduct. This approach also helps distinguish legitimate corporate structuring from arrangements in which an entity has actively participated in contractual obligations while later denying that it was bound by the associated arbitration agreement.

C. Cox and Kings Ltd v SAP India Pvt Ltd: Constitution Bench clarification

The Constitution Bench decision in *Cox and Kings Ltd v SAP India Pvt Ltd* provides the central doctrinal framework for the present article.[19] The Court retained the group of companies doctrine in Indian law but clarified that its application must be grounded in mutual consent and intention. The doctrine cannot be invoked solely because two companies belong to the same corporate group or because treating them as a single economic unit would be convenient. The

[18] ONGC Ltd v Discovery Enterprises (P) Ltd, (2022) 8 SCC 42, https://indiankanoon.org
[19] Cox and Kings Ltd v SAP India Pvt Ltd, (2024) 4 SCC 1,https://indiankanoon.org/doc/198803407/

Court also clarified the distinction between a party to an arbitration agreement under *Sections 2(1)(h) and 7*, and a person claiming through or under a party under other provisions of the Act. The judgment therefore represents a significant clarification rather than an unconditional expansion of corporate-group liability.

The Court's reasoning reflects an attempt to reconcile *two commercial* realities. *First,* complex transactions may involve several entities whose contractual functions are interconnected. *Secondly,* corporate groups are composed of legally distinct entities, and arbitration remains fundamentally consensual.

The practical consequence is that courts and tribunals must examine the cumulative circumstances of the transaction. Relevant considerations include the relationship between the companies, the commonality of subject matter, the composite nature of the transaction, the non-signatory's involvement in performance and the evidence of mutual intention. None of these factors should be treated mechanically or in isolation. The question remains *whether the non-signatory can properly be regarded as having consented to be bound by the arbitration agreement.*

V. Recent Judicial Developments: The Position in 2025–2026

A. ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd

In *ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd, (2025) 9 SCC 76,* the Supreme Court considered the authority of an arbitral tribunal to implead a non-signatory who may be bound by an arbitration agreement.[20] The decision is relevant because of identifying a non-signatory as a party and determining which institution may decide that question are related but distinct issues. The Court recognised that an arbitral tribunal may possess the power to join a non-signatory who is otherwise bound by the arbitration agreement, subject to the applicable legal principles. The power cannot be exercised merely because joinder would be commercially convenient; it depends upon whether the entity is legally bound by the agreement.

The decision was subsequently considered by the Delhi High Court in *Navneet Kumar Sureka*. It illustrates that the group of companies doctrine has consequences not only for substantive

[20] SF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd, (2025) 9 SCC 76; see the discussion of the decision in Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF),https://delhihighcourt.nic.in/app/showFileJudgment/SMP24022026AA20612025_200841.pdf

contractual liability but also for the procedural administration of arbitration.

B. Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF) (2026)

In *Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), decided on 24 February 2026,* the Delhi High Court considered a dispute arising from a memorandum of understanding concerning the division of interests in several family-held companies. The memorandum contained an arbitration clause, but certain persons sought to be included in the arbitration despite not having signed it.[21] The dispute raised questions concerning the effect of non-signatory participation, the relevance of an earlier family settlement, and whether the surrounding circumstances demonstrated that the non-signatories should be bound by the arbitration agreement. The Court referred to the Supreme Court's decision in *ASF Buildtech* and recognised the arbitral tribunal's authority to determine whether non-signatories should be impleaded. It appointed a sole arbitrator and left the question of which parties should participate to be decided on the evidence and the applicable law.

The decision is particularly relevant because the underlying dispute concerned the allocation of interests in several companies, rather than a conventional bilateral commercial contract. It demonstrates how corporate structures and contractual arrangements may become intertwined in family-controlled business groups. However, the judgment should not be read as holding that every family member, shareholder or company associated with a settlement is automatically bound by its arbitration clause. The Court expressly left the question of participation open for determination by the arbitral tribunal.

C. Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd (2026)

The Delhi High Court's decision in *Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd, dated 19 May 2026*, provides a further example of the doctrine's application to a commercial project.[22] The dispute arose from contractual arrangements relating to the supply and installation of equipment for a thermal power project. The relevant arrangements involved multiple entities, including a company that contested its liability on the ground that it was not a party to the arbitration agreement. The record showed that the disputed

[21] Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), Delhi High Court, ARB.P. 2061/2025, decided 24 February 2026,https://delhihighcourt.nic.in/app/showFileJudgment/SMP24022026AA20612025_200841.pdf
[22] Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd, Delhi High Court, FAO(OS) (COMM) 121/2025, decided 19 May 2026,https://indiankanoon.org/doc/199248616/

company's role went beyond a merely remote association with the transaction. It had issued purchase and work orders, participated in the project arrangements and made payments in connection with the contractual performance. The Court upheld the application of the group of companies doctrine in the circumstances and dismissed the appeal challenging the arbitral award.

The judgment demonstrates why contractual liability cannot always be determined by examining the signature page of a single agreement in isolation. In a multi-party project, the contractual documentation, allocation of responsibilities, payment arrangements and actual conduct may collectively indicate whether an entity was substantively involved in the transaction. At the same time, the decision must be understood within its procedural context. The appeal arose *under Section 37 of the Arbitration and Conciliation Act, 1996*, following proceedings *under Section 34.* The Court also considered the limits of judicial interference with an arbitral award. It should not be treated as a general rule that issuing purchase orders or making payments, by itself, always makes a non-signatory liable.

D. Comparative significance of the recent decisions

The three decisions illustrate complementary aspects of the developing law.

Decision	**Principal significance**
ASF Buildtech (2025)	Authority of an arbitral tribunal to implead a non-signatory who is otherwise bound by the arbitration agreement.
Navneet Kumar Sureka (2026)	Complex family-company arrangements, non-signatory participation and leaving joinder questions to the tribunal on the evidence.
Shristi Infrastructure (2026)	Substantial involvement in commercial performance and the application of the doctrine in a multi-entity project dispute.

Together, these decisions indicate that the doctrine must be applied through a fact-sensitive assessment of consent and contractual involvement. They do not dispense with the requirement to establish that the non-signatory is legally bound by the arbitration agreement.

VI. Critical Analysis: Balancing Corporate Separateness and Commercial Accountability

The group of companies doctrine addresses a genuine difficulty in modern commercial transactions. However, its legitimacy depends upon maintaining a clear distinction between commercial involvement and legally established consent.

A. Corporate affiliation cannot be the sole basis of liability- A corporate group may consist of several entities with different ownership structures, business functions, assets and contractual obligations. The fact that one company controls another does not necessarily establish that the two intended to enter into a joint contractual arrangement. Treating corporate affiliation as sufficient to bind a non-signatory would risk undermining the separate legal personality recognised under company law. It could also introduce uncertainty into corporate transactions by making the scope of contractual liability difficult to predict.

The Supreme Court's approach in *Cox and Kings* provides an important safeguard by rejecting the proposition that membership of a group or the existence of a single economic unit is independently sufficient. The relevant question must remain *whether the non-signatory's conduct and the surrounding circumstances establish an intention to be bound by the particular arbitration agreement.*[23]

B. Consent must be established through objective evidence- The strongest justification for applying the doctrine arises where the non-signatory has actively participated in the negotiation, execution or performance of a transaction in a manner that indicates acceptance of the associated contractual obligations. Relevant evidence may include correspondence during negotiations, contractual representations, purchase orders, payment records, participation in project meetings, performance of substantive obligations and conduct after the agreement was concluded.

However, these factors must be evaluated cumulatively. A payment made on behalf of another company, for example, may be consistent with several legal arrangements and does not automatically establish an intention to accept arbitration. Similarly, a parent company's approval of a subsidiary's transaction may be a matter of internal governance rather than evidence of contractual consent. A sound application of the doctrine therefore requires courts and tribunals to distinguish between conduct that merely facilitates a transaction and conduct

[23] Cox and Kings Ltd v SAP India Pvt Ltd, (2024) 4 SCC 1.

that objectively indicates an intention to assume contractual obligations.

C. The risk of extending contractual obligations beyond consent- The principal objection to an expansive application of the doctrine is that it may compel a company to arbitrate a dispute despite the absence of genuine consent. Arbitration differs from ordinary commercial involvement because it entails agreement to a particular dispute-resolution mechanism, including the potential consequences of the resulting award. A company may be willing to assist in a commercial transaction without agreeing to submit disputes to arbitration. It may also have consented to one agreement but not to an arbitration clause contained in another agreement. The doctrine should therefore not be used to infer consent merely because the non-signatory benefited economically from a transaction. Economic benefit can be relevant evidence, but it is not a substitute for establishing the necessary contractual intention.

D. Corporate separateness and contractual autonomy are compatible- The group of companies doctrine is sometimes presented as a conflict between commercial reality and corporate personality.

A comparative company-law perspective reinforces the importance of distinguishing the legal personality of a corporate entity from the obligations it voluntarily assumes through commercial transactions. Separate incorporation allocates legal rights, liabilities and risks among distinct entities; it does not, however, prevent a company from becoming bound by an agreement where the applicable law and evidence establish its consent. The group of companies doctrine should therefore be applied in a manner that preserves corporate autonomy while recognising contractual obligations genuinely undertaken by a non-signatory.[24]

That characterisation is incomplete. Corporate separateness concerns the legal identity of entities. *Contractual consent concerns whether a particular entity has undertaken particular obligations*. These questions are related but not identical. Recognising that a company may be bound by an arbitration agreement does not necessarily mean that the corporate veil has been lifted or that all its liabilities are transferred to another company.

The doctrine should instead operate as a means of identifying the parties to a particular

[24] Paul L Davies and Sarah Worthington, Gower: Principles of Modern Company Law (12th edn, Sweet & Maxwell 2026), chs 7–8, on corporate actions, contractual rights and liabilities, limited liability and lifting the corporate veilhttps://openlibrary.org/works/OL28606980W/Gower's_principles_of_modern_company_law

arbitration agreement, where the evidence supports that conclusion. This distinction is important because the group of companies doctrine and the doctrine of piercing the corporate veil serve different purposes. The former concerns consent to arbitration; the latter concerns circumstances in which separate legal personality may be disregarded under applicable legal principles.

E. The importance of procedural fairness- The power to join non-signatory parties must also be exercised in a manner consistent with procedural fairness. A non-signatory should receive notice of the claim that it is bound by the arbitration agreement and a meaningful opportunity to contest the factual and legal basis for its inclusion. Relevant evidence concerning contractual negotiations, performance and intention should be considered before a final determination is made.

The decision in *ASF Buildtech*, as considered in *Navneet Kumar Sureka*, illustrates the importance of distinguishing the tribunal's authority to consider joinder from the separate question whether a particular non-signatory is in fact bound by the arbitration agreement[25]. An efficient arbitration process should not come at the expense of the right to challenge jurisdiction. Equally, jurisdictional objections should be determined within the statutory framework rather than becoming an automatic means of avoiding arbitration by an entity that has genuinely consented to it.

F. The comparative perspective- Academic commentary on the group of companies doctrine reflects a wider debate in international arbitration concerning the relationship between consent, corporate affiliation and multi-party transactions. *In India's tryst with the group of companies doctrine: the end or the beginning of a new dawn?* published in *Arbitration International,* the authors examine the development of the doctrine and the concerns raised by the Supreme Court in Cox and Kings.[26] The discussion illustrates that *the doctrine is controversial because it seeks to accommodate complex commercial arrangements without abandoning the foundational principle that arbitration is consensual.*

Comparative company-law literature, including Gower: Principles of Modern Company Law,

[25] ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd, (2025) 9 SCC 76.
Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), Delhi High Court, ARB.P. 2061/2025, decided 24 February 2026.
[26] 'India's tryst with the group of companies doctrine: the end or the beginning of a new dawn?', Arbitration International (Oxford University Press),https://academic.oup.com/arbitration/article/39/1/109/7085538

can also assist in examining corporate personality and the rights and obligations of separate legal entities. Such literature should be used to frame comparative arguments, while the applicable Indian legal position must be derived from Indian statutes and judicial authority. The comparative lesson is not that one approach should automatically be adopted in India. Rather, it is that a predictable consent-based test is necessary if the doctrine is to serve commercial certainty without undermining corporate autonomy.

VII. Recommendations for a More Predictable Legal Framework

The developing jurisprudence demonstrates that the group of companies doctrine is useful in resolving disputes arising from complex commercial arrangements. However, its continued application should be supported by a consistent and transparent framework.

First, courts and tribunals should adopt a structured consent-based inquiry. The relationship between the non-signatory and the signatories, the commonality of subject matter, the composite nature of the transaction and the non-signatory's participation in contractual performance should be examined together. No single factor should ordinarily be treated as conclusive.

Second, corporate affiliation should remain a relevant circumstance rather than an independent ground of liability. A parent-subsidiary relationship may explain the commercial context, but it should not displace the need to establish consent to the arbitration agreement.

Third, commercial contracts should expressly address the intended scope of arbitration. Where a transaction involves several corporate entities, the parties should identify the entities intended to be bound, the obligations allocated to each entity and the extent to which the arbitration clause applies to related agreements. Express joinder provisions and carefully drafted dispute-resolution clauses can reduce uncertainty.

Fourth, courts and tribunals should distinguish the existence of consent from the procedural power to join a party. Even where the tribunal has authority to consider joinder, it must separately determine whether the non-signatory is legally bound by the arbitration agreement. Procedural efficiency cannot replace the substantive requirement of consent.

Fifth, the law should preserve the distinction between the group of companies doctrine and piercing the corporate veil. The former concerns the identification of parties to an arbitration

agreement; the latter concerns the circumstances in which separate legal personality may be disregarded. Conflating these doctrines could create uncertainty in both company law and contract law.

Finally, courts should continue to explain the evidentiary basis for binding a non-signatory. Reasoned findings concerning negotiation, contractual performance, payment obligations and the parties' conduct would improve consistency and assist businesses in assessing the legal consequences of complex transactions.

These measures would allow the doctrine to respond to modern commercial realities while preserving the principles of corporate autonomy, contractual certainty and party consent.

VIII. Conclusion

The group of companies doctrine occupies an important position at the intersection of company law, contract law and arbitration in India. It addresses the practical difficulty of determining the parties to an arbitration agreement where a commercial transaction involves several interconnected entities, but only some have formally signed the relevant contract.

The principle of separate legal personality remains fundamental to company law. Equally, the consensual character of arbitration requires that a company should not be compelled to arbitrate merely because it belongs to the same corporate group as a signatory. These principles need not be incompatible. The central question is whether the non-signatory's relationship with the transaction and its objectively established conduct demonstrate an intention to be bound by the arbitration agreement.

The Supreme Court's decision *in Cox and Kings Ltd v SAP India Pvt Ltd* provides the essential doctrinal foundation by retaining the group of companies doctrine while grounding its application in mutual intention and consent. Subsequent decisions, including *ASF Buildtech, Navneet Kumar Sureka and Shristi Infrastructure*, illustrate the continuing importance of this framework in complex commercial transactions.

The recent cases also demonstrate why the analysis must remain fact-sensitive. Participation in contractual performance, issuing purchase orders or making payments may provide significant evidence of involvement, but none should automatically establish consent in isolation. The contractual documents, the nature of the transaction and the conduct of the relevant parties

must be considered together.

Ultimately, the legitimacy of the group of companies doctrine depends upon its ability to distinguish genuine contractual participation from mere corporate association. Its purpose should not be to impose liability upon every entity connected with a transaction, but to ensure that a company which has, in substance and in law, consented to an arbitration agreement cannot evade the consequences of that consent solely by relying upon the absence of its signature. A predictable and evidence-based approach would therefore serve both commercial efficiency and legal certainty. Corporate separateness should remain the starting point, contractual consent the decisive inquiry, and the group of companies doctrine a carefully applied means of identifying the true parties to an arbitration agreement.

Bibliography

A. Legislation

1. Companies Act, 2013, s 9.

2. Indian Contract Act, 1872, ss 10 and 37.

3. Arbitration and Conciliation Act, 1996, ss 2(1)(h), 7, 8, 11, 16, 34 and 37.

B. Cases

1. *ASF Buildtech (P) Ltd v Shapoorji Pallonji & Co (P) Ltd, (2025) 9 SCC 76.*

2. *Chloro Controls India (P) Ltd v Severn Trent Water Purification Inc., (2013) 1 SCC 641.*

3. *Cox and Kings Ltd v SAP India Pvt Ltd, (2024) 4 SCC 1.*

4. *Navneet Kumar Sureka v Vishnu Kumar Sureka (HUF), Delhi High Court, ARB.P. 2061/2025, decided 24 February 2026.*

5. *ONGC Ltd v Discovery Enterprises (P) Ltd, (2022) 8 SCC 42.*

6. *Salomon v A Salomon & Co Ltd [1897] AC 22 (HL).*

7. *Shristi Infrastructure Development Corporation Ltd v Scorpio Engineering Pvt Ltd, Delhi High Court, FAO(OS) (COMM) 121/2025, decided 19 May 2026.*

C. Books

1. A Ramaiya, Guide to the Companies Act (LexisNexis). Consult the relevant commentary on corporate personality, contractual capacity and corporate obligations. Verify the edition, volume and page references against the copy used.

2. Avtar Singh, Company Law (Eastern Book Company). Consult the chapters on separate legal personality, corporate governance and the legal consequences of incorporation. Verify the edition and page references against the copy used.

3. Paul L Davies and Sarah Worthington, Gower: Principles of Modern Company Law (Sweet & Maxwell). Use the relevant chapters for comparative analysis of corporate personality and corporate governance. Verify the edition and pinpoint references before submission.

D. Journal article

1. 'India's tryst with the group of companies doctrine: the end or the beginning of a new dawn?', Arbitration International, Oxford University Press.