IMPLEADMENT WITHOUT NOTICE: A PRO-ARBITRATION STEP OR A PROCEDURAL SLIPPAGE?

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"Honest men dread arbitration more than they dread lawsuits,"

~Robertson in his History of the Common Law[1]

Introduction

This sentiment continues to resonate with parties caught in the procedural and jurisdictional complexities of modern arbitration. Over time, the arbitral framework has evolved significantly, but questions surrounding notice, consent, and the impleadment of additional parties continue to vex stakeholders and complicate the enforcement of the arbitral process. In a compelling reaffirmation of the centrality of party autonomy and consent in arbitration, the United States Supreme Court in *Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University*[2], held that arbitration is fundamentally a matter of contract and cannot be imposed on a party who has not agreed to it.

This jurisprudential anchor is settled in India as well, where it is a well-established principle that arbitration is premised on mutual consent, and ordinarily, only those who are signatories to the arbitration agreement are bound by its terms. However, Indian courts have progressively broadened the ambit of arbitral jurisdiction to include non-signatory parties through the application of doctrines such as the 'group of companies' principle and the theory of composite transactions. This expansion has not proceeded along a single track: it has unfolded through two parallel judicial sagas, one concerning who may be bound to arbitrate at all, and the other concerning what procedural formalities must precede their being drawn into the process. This article argues that these two sagas, although doctrinally distinct, have followed a common trajectory, and that their point of convergence is the decision discussed at length below.

[1] *Panchu Gopal Bose v Board of Trustees* (1993) 4 SCC 338.
[2] *Volt Information Sciences Inc. v Board of Trustees of the Leland Stanford Junior University* 489 U.S. 468 (1989).

In a recent decision, the Hon'ble Supreme Court in *Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd. & Ors.*[3], held that non-service of an arbitration notice under Section 21,[4] and non-inclusion in an application under Section 11 of the Arbitration and Conciliation Act, 1996,[5] do not bar an arbitral tribunal from impleading additional parties, whether or not they are signatories, provided that the arbitration agreement otherwise binds such parties. While this decision signifies a notable expansion in the tribunal's authority to encompass a broader range of parties within arbitration proceedings, it simultaneously raises significant concerns regarding the dilution of procedural safeguards that are statutorily enshrined within the Arbitration and Conciliation Act, 1996.

This article proceeds in eight further parts. ***Section II*** examines the importance of the Section 21[6] arbitration notice and the conflicting jurisprudence surrounding it. ***Section III*** traces the international genesis of the Group of Companies doctrine. ***Section IV*** reconstructs, in four stages, the Indian judiciary's reception and calibration of that doctrine. ***Section V*** undertakes a comparative detour to jurisdictions that have declined to follow India's lead. ***Section VI*** recounts the Cox & Kings saga through which the doctrine received its most authoritative articulation. ***Section VII*** critically analyses the *Adavya Projects judgment* itself. ***Section VIII*** synthesises the two preceding sagas to show how they converge in that decision. ***Section IX*** concludes with suggestions for calibrated reform.

Section 21 Arbitration Notice: Its Importance vis-à-vis the Conflicting Jurisprudence

The Arbitration and Conciliation Act, 1996 firmly establishes that arbitral proceedings commence only upon the service of a written notice of arbitration, in accordance with Section 21.[7] Such notice fulfils multiple critical objectives: it apprises the respondent of the precise nature and scope of the claim; it invites the narrowing or admission of specific issues; it delineates potential objections or defences; it instigates discussions regarding the appointment of an arbitrator; and it empowers courts to intervene for tribunal formation if necessary.

Courts in India have rendered divergent rulings on whether this statutory requirement is

[3] *Adavya Projects Pvt. Ltd. v Vishal Structurals Pvt. Ltd. & Ors.* 2025 INSC 507.
[4] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 21.
[5] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 11.
[6] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 21.
[7] ibid.

inflexible or amenable to equitable relaxation. In *Rahul Jain v. Atul Jain*,[8] Justice Jalan held that, absent strict compliance with Section 21's mandate, all subsequent arbitral steps, including the constitution of the tribunal, are void ab initio. Similarly, in *Alupro Buildings v. Ozone*,[9] the Court characterised service of the notice as an indispensable antecedent to any arbitration, reasoning that without it there is neither fair notice to the opposing party nor a proper inception of proceedings.

By contrast, the Delhi High Court in *De Lagen Landen Financial Services India (P) Ltd. v. Parhit Diagnostic (P) Ltd.,*[10] recognised that where a respondent acquires actual knowledge of the dispute and demonstrates no objection to the arbitral process, the formal prerequisites of Section 21[11] may be deemed satisfied.

Likewise, in *DP Construction v. Vishvaraj Environment*,[12] the Bombay High Court held that a broadly-worded legal communication from which arbitration could be inferred fulfilled the substance of the Section 21 notice,[13] even if it did not strictly conform to the prescribed format. These decisions reflect a pragmatic approach: arbitration, as a consensual mechanism, should not be defeated by rigid formalism where its substantive purposes are met.

A number of High Courts have taken varying positions on similar facts. The Madras High Court in Globe Detective v. Gammon, insisted on formal dispatch of the notice unless the arbitration agreement expressly dispensed with it, emphasising that the section's procedural safeguard is critical for agreeing upon the arbitrator's appointment.

In *Kailesh Nath Agrawall v. Aaren Exports Ltd.,*[14] however, non-service was construed as a curable irregularity where the respondent remained silent before the arbitrator. Further, in *Central Coalfields v. Powertech,*[15] the Court dispensed with the need for a fresh notice upon the mid-stream substitution of an arbitrator, observing that the initial notice had already effectuated the requisite awareness and thus sufficiently 'commenced' the proceedings.

In an effort to harmonise these divergent outcomes, several benches have invoked principles

[8] *Rahul Jain v Atul Jain* 2022 SCC OnLine Del 3860.
[9] *Alupro Building Systems Pvt. Ltd. v Ozone Overseas Pvt. Ltd*. 2017 SCC OnLine Del 7228.
[10] *De Lage Landen Financial Services India (P) Ltd. v Parhit Diagnostic (P) Limited 2021* SCC OnLine Del 4160.
[11] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 21.
[12] *D.P. Construction v Vishvaraj Environment (P) Ltd.* 2022 SCC OnLine Bom 1410.
[13] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 21.
[14] *Kailash Nath Agarwal v Aaren Exports* 2009 SCC OnLine Del 3691.
[15] *Central Coalfields Ltd. v Eastern India Powertech Ltd*. 2022 SCC OnLine Jhar 1533.

embedded in the Civil Procedure Code, 1908 ('the CPC').[16] The Supreme Court has long endorsed the proposition that procedural stipulations should not operate to cause injustice and that, absent explicit exclusion, CPC principles guide the interpretation of the Act's provisions.

Accordingly, where the functional objectives of Section 21, namely, adequate notice, procedural transparency, and consensual appointment of the tribunal, have been met through implied or substituted means, certain courts have refrained from invalidating the arbitration. This interpretative stance reflects the pro-arbitration ethos of Indian jurisprudence, which prioritises dispute resolution over technical defects in procedure, as illustrated in *DP Construction v. Vishvaraj.*[17]

Furthermore, the Arbitration Act 1996,[18] which governs arbitration in the United Kingdom, stipulates that a party intending to commence arbitral proceedings must serve a notice to that effect. A detailed analysis of the Act reveals that where an arbitrator is expressly named or designated within the arbitration agreement, any party may initiate proceedings by serving a notice calling for the submission of the dispute to the identified arbitrator. Similarly, Article 3 of the UNCITRAL Arbitration Rules,[19] mandates the service of a notice of arbitration as a prerequisite for commencing proceedings.

In *Glencore Agriculture v. Conqueror Holdings*,[20] the court affirmed the necessity of proper service of notice and adherence to the relevant institutional rules, underscoring that failure to do so may give rise to challenges against the validity of the arbitral award. These comparative positions matter because, as Part V shows below, the divergence between Indian and foreign approaches is not confined to the notice question alone; it recurs, in sharper form, in the treatment of the Group of Companies doctrine itself.

These conflicting judicial pronouncements, alongside the foreign jurisprudence, have underscored the need for a definitive resolution. Before turning to how the Supreme Court resolved this question in *Adavya Projects,*[21] however, it is necessary to trace the second, independent thread that the judgment draws upon: the decades-long struggle over whether, and

[16] The Code of Civil Procedure, 1908 (5 of 1908).
[17] *D.P. Construction v Vishvaraj Environment (P) Ltd.* 2022 SCC OnLine Bom 1410.
[18] Arbitration and Conciliation Act, 1996, c.23, Acts of Parliament, 1996 (India).
[19] UNCITRAL Model Law on International Commercial Arbitration, 1985, art. 3.
[20] *Glencore Agriculture v Conqueror Holdings* [2017] EWHC 2893 (Comm).
[21] *Adavya Projects Pvt. Ltd. v Vishal Structurals Pvt. Ltd. & Ors.* 2025 INSC 507.

on what basis, a non-signatory may be bound to arbitrate at all.

The Group of Companies Doctrine: An International Genesis

The premise that only signatories to an arbitration agreement may be compelled to arbitrate is qualified, in a number of jurisdictions, by doctrines that look past the formality of signature to the substance of the parties' relationship. Professor William Park has captured the underlying tension succinctly:

> *"For arbitrators, motions to join non-signatories create a tension between two principles: maintaining arbitration's consensual nature, and maximizing an award's practical effectiveness by binding related persons. Pushed to the limit of their logic, each goal points in an opposite direction. Resolving the tension usually implicates the two doctrines discussed below: implied consent and disregard of corporate personality…"*[22]

The term 'non-signatory', on this account, is useful precisely for what might be called 'less-than-obvious' parties to an arbitration clause: individuals and entities that never put pen to paper, but still should be part of the arbitration under the circumstances of the relevant business relationship. Critically, the fact that a non-signatory might be bound to arbitrate does not dispense with the need for an arbitration agreement; it means only that the agreement takes its binding force through some circumstance other than the formality of signature.

Dow Chemical v. Isover-Saint-Gobain: Origins of the 'Group of Companies' Doctrine

One of the earliest known adoptions and promulgation of the 'Group of Companies' doctrine can be traced to the ICC arbitral award in *Dow Chemical v. Isover-Saint-Gobain*[23]. In that matter, the dispute arose out of several contracts executed by various Dow Chemical Company subsidiaries (but not Dow Chemical Company itself) and Isover. Dow Chemical Company, together with its subsidiaries, commenced arbitration. Isover objected to jurisdiction over the claims asserted by Dow Chemical Company on the ground that the latter was not a party to the contract. The tribunal upheld its jurisdiction.

[22] Pietro Ferrario, 'The Group of Companies Doctrine in International Commercial Arbitration: Is There any Reason for this Doctrine to Exist?' (2009) 26(5) Kluwer Journal of International Arbitration 647,673.
[23] *Dow Chemical v Isover-Saint-Gobain* ICC Award No. 4131 (1984) IX Yearbook Commercial Arbitration 131.

In its award, the ICC arbitral panel stated that mere corporate ties between different companies were not enough to bind them to a single arbitration, and that the non-signatory companies must have played an essential role in the 'conclusion, performance or the termination' of the contracts. It was held therein as follows:

> *"Considering that irrespective of the distinct juridical identity of each of its members, a group of companies constitutes one and the same economic reality (une réalité économique unique) of which the arbitral tribunal should take account when it rules on its own jurisdiction… Considering, in particular, that the arbitration clause expressly accepted by certain of the companies of the group should bind the other companies which, by virtue of their role in the conclusion, performance, or termination of the contracts containing said clauses, and in accordance with the mutual intention of all parties to the proceedings, appear to have been veritable parties to these contracts or to have been principally concerned by them and the disputes to which they may give rise."*

Two features of this reasoning bear emphasis, since they recur throughout the doctrine's subsequent life. First, the tribunal did not treat corporate affiliation, without more, as sufficient; it demanded evidence of a role in the negotiation, performance, or termination of the underlying contract. Second, and more fundamentally, the tribunal grounded its jurisdiction not in a disregard of corporate personality as such, but in a finding of mutual intention that the non-signatories were treated as 'veritable parties' because the facts disclosed that all concerned had intended them to be bound. This consent-based framing, as the following Part shows, was not uniformly preserved as the doctrine travelled into Indian law, and its partial loss and eventual recovery forms the central arc of the Indian saga.

The Indian Reception : A Four Act Judicial Saga

A major evolution in Indian arbitration law concerns the circumstances under which additional, non-signatory parties may be impleaded into ongoing arbitral proceedings. The jurisprudence surrounding this question did not develop as a single coherent line; it oscillated, retreated, and was recalibrated across roughly two decades, in a sequence that is best understood as four distinct acts.

Act One: Sukanya Holdings: The Signatories-Only Baseline (2003)

In *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya*[24], disputes had arisen between several parties in relation to the same transaction. However, not all of these parties were signatories to the agreement containing the arbitration clause, and the Supreme Court held that non-signatory parties could not be referred to a single arbitration in the context of Section 8 of the Act as it then stood.[25] It was further held that causes of action cannot be bifurcated in an arbitration, and that arbitral proceedings could therefore be restricted only to the parties to the arbitration agreement. The Court reasoned as follows:

> *"The relevant language used in Section 8 is – 'in a matter which is the subject matter of an arbitration agreement'. Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of 'a matter' which the parties have agreed to refer and which comes within the ambit of arbitration agreement… It would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action… is possible. This would be laying down a totally new procedure not contemplated under the Act."*

A reading of Sukanya Holdings clearly suggests that, as of 2003, party autonomy was considered supreme, and judicial interpretation favoured excluding non-signatories irrespective of the commercial intent between the contracting parties. It bears mention that, to date, the judgment has never been formally overruled; its subsequent erosion, traced below, has instead proceeded by way of distinction, statutory amendment, and confinement to its own facts.

Act Two: Chloro Controls — The 2013 Rupture

The year 2013 saw the Supreme Court set down a landmark precedent in *Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc.*[26]. Not only did the concept of party autonomy get diluted significantly, but the Court also highlighted the commercial prudence of bringing an entire dispute resolution process under one umbrella, encompassing both signatories and non-signatories to the arbitration agreement.

[24]*Sukanya Holdings Pvt. Ltd. v Jayesh H. Pandya* (2003) 5 SCC 531.
[25] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 8.
[26]*Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc*. (2013) 1 SCC 641.

The facts involved a principal agreement, being a Shareholders' Agreement, between an Indian party and a foreign party, governed by English law with London as the seat of arbitration, and several interconnected agreements stemming from that Shareholders' Agreement but not between the same parties. Addressing the question whether all these parties could be referred to a single arbitration, and whether such an order would conflict with Sukanya Holdings, the Supreme Court held that Sukanya Holdings had been decided in the context of Section 8 of the Act,[27] whereas the facts before it fell within the ambit of Section 45,[28] which admitted a much wider interpretation. It was held that the expression 'person claiming through or under' in Section 45,[29] could be given a wide import and "would mean and take within its ambit multiple and multiparty agreement, though in exceptional cases." The Court went on to apply the Group of Companies doctrine:

> *"Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them, the Courts under the English Law have, in certain cases, also applied the 'Group of Companies Doctrine'. This doctrine has developed in the international context, whereby an arbitration agreement entered into by a company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates… This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, 'intention of the parties' is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties."*

Even before the Act was amended, Indian courts had already begun to test the reach of this reasoning beyond Section 45. In an application under Section 9,[30] seeking pre-arbitration reliefs against non-signatory parties, a Division Bench of the Bombay High Court in *Rakesh S.*

[27] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 8.
[28] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 45.
[29] ibid.
[30] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 9.

Kathotia v. Milton Global Ltd.[31] referred to the ratio in *Chloro Controls*[32] and to the power of courts to refer non-signatory parties to arbitration, even though the dispute before it was between domestic parties. This signalled, well ahead of any legislative amendment, that the logic of Chloro Controls would not remain confined to its own statutory provision.

Act Three: The Domestic Arbitration Question (2015–2018)

Since Chloro Controls was decided in the context of Section 45,[33] and Sukanya Holdings continued to govern the domestic-arbitration field under Section 8, it might have seemed an automatic presumption that non-signatories could never be bound by an arbitration agreement in a Section 8 reference. That presumption did not survive long. Major amendments were carried out to the Act through the Arbitration and Conciliation (Amendment) Act, 2015,[34] which replaced the word 'party' in Section 8 with the phrase 'a party to the arbitration agreement or any person claiming through or under him', and added the words 'notwithstanding any judgment, decree or order of the Supreme Court or any Court' language transplanted almost verbatim from Section 45.

Whether this amendment permitted the Chloro Controls ratio to migrate wholesale into domestic arbitration produced, in the years immediately following, a mixed judicial response. In *Duro Felguera, S.A. v. Gangavaram Port Ltd.*[35], the fact situation involved multiple contracts between Gangavaram Port Ltd. ('GPL') and a Spanish company, as well as between GPL and the Spanish company's subsidiary, FGI. GPL argued for a composite reference to arbitration, following Chloro Controls. The Supreme Court held the ratio inapplicable: unlike Chloro Controls, where all agreements were part of a single composite transaction emanating from one principal agreement containing the arbitration clause, the GPL contracts were multiple, separate agreements each with its own arbitration clause one contemplating international arbitration, the other domestic.

A composite reference in such circumstances would have generated irreconcilable uncertainty as to which provisions of the Act applied to any resulting award. *Duro Felguera*[36] thus stands

[31] *Rakesh S. Kathotia v Milton Global Ltd.* 2014 SCC OnLine Bom 1119.
[32] *Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc*. (2013) 1 SCC 641.
[33] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 45.
[34] The Arbitration and Conciliation (Amendment) Act, 2015.
[35] *Duro Felguera, S.A. v. Gangavaram Port Ltd* (2017) 9 SCC 729.
[36] ibid.

as an important corrective: it confirms that the doctrine was never meant to operate as a general licence to consolidate unrelated arbitration clauses, but required the kind of unified commercial transaction that Chloro Controls itself had involved.

The question returned squarely in *Ameet Lalchand Shah v. Rishabh Enterprises*[37], where the Supreme Court was asked whether, post-amendment, non-signatory parties could be referred to a single composite domestic arbitration where such parties had entered into several contracts (not all containing arbitration clauses) in connection with the execution of the same project. Drawing on the 246th Report of the Law Commission of India, which had recommended the amendment precisely to correct the rigidity of *Sukanya Holdings*[38] for parties who were 'proper' rather than merely 'necessary' parties, the Court held that since all the agreements were entered into in pursuance of a single project and were intrinsically connected, with one agreement (the Equipment Lease Agreement) being the principal agreement containing the arbitration clause and the rest ancillary, all parties involved could be referred to a single composite arbitration. This judgment is significant for two reasons: it applied the *Chloro Controls* rationale, though not in express terms, to a *Section 8* fact situation; and, by relying on the amended language of *Section 8* together with the Law Commission's recommendations, it substantially diluted the field of application of Sukanya Holdings without formally overruling it.

This dilution was subsequently confirmed by the Supreme Court itself in *Emaar MGF Land Limited v. Aftab Singh*[39], where the Court observed that the amended Section 8 confines judicial intervention to the single question of whether a valid arbitration agreement exists prima facie, and that the several other conditions noticed in pre-amendment jurisprudence, including that developed in *Sukanya Holdings,* were no longer to be adhered to a clear legislative departure that the Court read into the 2015 amendment itself.

Act Four: Consolidation and Calibration (2018–2019)

The final act of this saga concerns not the extension of the doctrine but its calibration, the Supreme Court's effort, across three decisions within a single year, to prevent Chloro Controls from becoming an unbounded license. The first of these was *Cheran Properties Ltd. v. Kasturi*

[37] *Ameet Lalchand Shah v. Rishabh Enterprises* (2018) 15 SCC 678.
[38] *Sukanya Holdings Pvt. Ltd. v Jayesh H. Pandya* (2003) 5 SCC 531.
[39] *Emaar MGF Land Limited v. Aftab Singh* 2018 SCC OnLine SC 2771.

and Sons Ltd.[40], which extended the doctrine's reach for the first time to the post-award, execution stage. The award-holder sought to execute an arbitral award against a third party on the footing that it was a nominee of the judgment-debtor, even though the principal Share Purchase Agreement containing the arbitration clause, and the arbitral proceedings themselves, involved only the award-holder and the judgment-debtor. The Supreme Court held that an arbitral award may bind a third party where that party falls within the meaning of 'parties and persons claiming under them' under Section 35 of the Act,[41] reasoning as follows:

> *"As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements… In holding a non-signatory bound by an arbitration agreement, the Court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them… The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory."*

The tenets in Cheran Properties were, however, adopted with evident caution. In *Reckitt Benckiser (India) Pvt. Ltd. v. Reynders Label Printing India Pvt. Ltd.*[42], decided the following year, the Supreme Court declined to extend the doctrine on facts that superficially resembled those that would have justified it. The petitioner sought to implead, alongside the signatory respondent, a group company of that respondent by invoking the Group of Companies doctrine; although a clause in the underlying agreement provided that the non-signatory group company would indemnify the petitioner in the event of the signatory's breach, that company was not shown to have participated in the negotiation or execution of the agreement in any other way.

Reynders Label[43] is, in this sense, the necessary counterweight to Cheran Properties,[44] it confirms that mere corporate affiliation, or even a contractual reference to a group company's indemnity obligations, does not discharge the burden of showing a mutual intention to arbitrate. The doctrine, the Court reiterated, does not dispense with consent; it merely locates consent in

[40] *Cheran Properties Ltd. v. Kasturi and Sons Ltd* (2018) 16 SCC 413.
[41] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 35.
[42] *Reckitt Benckiser (India) Pvt. Ltd. v. Reynders Label Printing India Pvt. Ltd* (2019) 7 SCC 62.
[43] ibid.
[44] *Cheran Properties Ltd. v. Kasturi and Sons Ltd* (2018) 16 SCC 413.

something other than a signature.

The most systematic statement of the doctrine's governing criteria followed shortly after, in *Mahanagar Telephone Nigam Ltd. v. Canara Bank & Ors.*[45] There, the non-signatory subsidiary of a bank ('CANFINA') was held bound by an arbitration agreement between its parent and MTNL, on facts showing that the original transaction had emanated from a tripartite dealing between all three entities. After surveying *Dow Chemical* and the preceding Indian authorities, the Court distilled the doctrine into an operative test, holding that it may be invoked where:

(i) it is established that it was the intention of all the parties to bind the signatory as well as the non-signatory group companies to the arbitration agreement;

(ii) the non-signatory company has either been engaged in the negotiation, performance, or termination of the contract, or has made statements expressing its intention to be bound by it;

(iii) the non-signatory has a direct relationship with the signatory party, or the parties are involved in the execution of a composite transaction sharing a common business objective that would not be possible without the non-signatory's participation; and

(iv) the signatory and non-signatory parties exist within a tight group structure with strong organisational and financial links, so as to constitute a single economic unit or single economic reality.

MTNL v. Canara Bank thus performs, for Indian law, the same consolidating function that the Dow Chemical award performed at the doctrine's international origin: it re-anchors the enquiry in mutual intention, while providing four concrete indicia, through which that intention may be evidenced. It is this refined, four-factor test, rather than the looser 'commercial prudence' language of *Chloro Controls*, that the Constitution Bench in *Cox & Kings* would later take as its starting point, as Part VI discusses.

[45] *Mahanagar Telephone Nigam Ltd. v. Canara Bank & Ors* 2019 SCC OnLine SC 995.

A Comparative Detour: Where India Stands Alone

The wholehearted acceptance of the Group of Companies doctrine reflected in *Chloro Controls,*[46] *Ameet Lalchand Shah,*[47] *and Mahanagar Telephone Nigam*[48] marks a significant departure from the position in other major common law jurisdictions, where the doctrine has been received with considerably greater scepticism, if at all.

In *Peterson Farms Inc. v. C&M Farming Ltd.*[49], an arbitral tribunal had accepted the Group of Companies doctrine to extend an award's findings to members of the claimant group who were not parties to the underlying agreement. The respondent challenged the award before the English Commercial Court, which held that the tribunal's decision was "open to a number of substantial criticisms" and "seriously flawed in law". Since the governing law of the contract was found to be equivalent to English law, the Commercial Court went on to hold, in terms that admit of little ambiguity, that the Group of Companies doctrine "forms no part of English law", and set aside the arbitral award on that basis.

Singapore has arrived at a similar position by a more deliberate route. In *Manuchar Steel Hong Kong Ltd. v. Star Pacific Line Pte Ltd.*[50], the High Court of Singapore, after surveying Peterson Farms and a body of Singaporean authority, held that it was "not persuaded by the case law that the single economic entity concept was recognised under the common law, or at any rate under Singapore law".

The Court noted that the concept had similarly failed to receive clear endorsement under United States corporate law, observing that "the single economic entity concept in the context of company law was not clearly settled" in American jurisprudence, and drew support from the tribunal's observation in the investment-treaty arbitration *CME Czech Republic B.V. v. The Czech Republic* that "only in exceptional cases… have tribunals or law courts accepted a concept of a 'single economic entity'… and there are no precedents… for its general acceptance." The Singapore High Court concluded that it was "not persuaded, on balance, that the single economic entity concept was recognised at law in Singapore nor was there a good

[46] *Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc*. (2013) 1 SCC 641.
[47] *Ameet Lalchand Shah v. Rishabh Enterprises* (2018) 15 SCC 678.
[48] *Mahanagar Telephone Nigam Ltd. v. Canara Bank & Ors* 2019 SCC OnLine SC 995.
[49] *Peterson Farms Inc. v. C&M Farming Ltd*. [2004] EWHC 121 (Comm).
[50] *Manuchar Steel Hong Kong Ltd. v. Star Pacific Line Pte Ltd* [2014] SGHC 181.

legal basis to support its recognition."

This comparative divergence is not merely of academic interest. It carries a practical implication for the enforceability of Indian arbitral awards abroad: an award rendered against a non-signatory on the strength of the Group of Companies doctrine, while unimpeachable within India, may face resistance at the enforcement stage in a jurisdiction that does not recognise the doctrine as a valid basis for extending an arbitration agreement's reach, particularly where the enforcing court applies its own law, rather than Indian law, to determine whether a valid arbitration agreement existed as against that party.

The Indian judiciary's comparatively expansive posture, in other words, purchases domestic procedural efficiency at a potential cost to the international portability of its awards, a tension that the Constitution Bench in Cox & Kings, discussed next, did not resolve so much as inherit.

From Doctrine to Codification: The Cox & Kings Saga

By the early 2020s, the four-act sequence traced above had left Indian law with a working doctrine but an unsettled institutional question: which body, the court exercising Section 11 referral jurisdiction,[51] or the arbitral tribunal itself was competent to make the final determination that a non-signatory was in fact bound? Prior to *Cox & Kings,*[52] referral courts had often proceeded on the assumption that they themselves had to be satisfied, to a considerable degree of finality, that a non-signatory was bound by the arbitration agreement before a reference could issue. The line between this referral-court function and the arbitral tribunal's own jurisdiction to rule on its competence remained unclear, especially where impleadment was contested only after the tribunal had already been constituted.

This uncertainty prompted the first act of what may be called the Cox & Kings saga proper: in 2022, a three-judge bench of the Supreme Court, in the course of considering the reference in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*,[53] doubted whether the phrase 'claiming through or under' in Sections 8,[54] and 45 of the Act,[55] could properly accommodate the Group of Companies doctrine as Chloro Controls had applied it, and referred the question to a

[51] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 11.
[52] *Cox & Kings Ltd. v SAP (India) (P) Ltd*. (2025) 1 SCC 611.
[53] ibid.
[54] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 8.
[55] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 45.

Constitution Bench for authoritative resolution.

This referral order: 'Cox & Kings I' did not itself decide the doctrine's fate; it registered, at the highest judicial level, the very tension that Professor Park had identified at the doctrine's international origin, between arbitration's consensual character and the practical desirability of binding related, commercially involved persons.

The Constitution Bench delivered its resolution 'Cox & Kings II' on 6 December 2023.[56] The five-judge bench clarified that, although the referral court under Section 11 must perform a prima facie examination of whether an arbitration agreement exists involving the parties, it is the arbitral tribunal that holds the authority to conduct a thorough and final determination on the joinder of non-signatories.

In doing so, the Court endorsed the principle of Kompetenz-Kompetenz, allowing the tribunal to decide its own jurisdiction, including whether a non-signatory is bound under the group of companies doctrine, estoppel, or implied consent. Significantly, the Constitution Bench did not simply ratify *Chloro Controls'* looser 'single economic reality' language; consistent with the trajectory traced in Part IV above, it re-emphasised that the doctrine's foundation lies in the mutual intention of the parties to bind the non-signatory, with factors such as those identified in *Mahanagar Telephone Nigam* serving as evidentiary indicia of that intention rather than as a substitute for it.

The institutional consequence of Cox & Kings II followed quickly. The Bombay High Court, in *Cardinal Energy and Infrastructure Pvt. Ltd. v. Subramanya Construction and Development Company Ltd.*,[57] confirmed that tribunals possess the competence to implead non-signatories, reasoning that Cox & Kings II did not leave the question open for referral courts to conclusively decide, but instead assigned that task to the tribunal on the basis of a full evidentiary appraisal. Since Cox & Kings II, Indian courts have broadened the scope of arbitration agreements to permit the inclusion of non-signatory parties wherever circumstances warrant, and this interpretative expansion set the stage for the further question that Adavya Projects would go on to answer: if the tribunal, and not the referral court, now holds final authority over joinder, does the procedural formality of a Section 21 notice retain any independent significance as a

[56] *Cox and Kings Ltd. v SAP India Pvt. Ltd. & Anr.* 2023 INSC 1051.
[57] *Cardinal Energy & Infra Structure (P) Ltd. v Subramanya Construction & Development Co. Ltd.* 2024 SCC OnLine Bom 964.

precondition to that authority being exercised?

VII. Analysing Adavya Projects: Expanding Arbitral Powers, or Eroding Procedural Safeguards?

In its ruling in *Adavya Projects*, the Supreme Court advanced the reasoning of Cox & Kings II a step further, holding that arbitral tribunals may implead non-signatory parties even in the absence of a formal notice under Section 21 of the Act. This development has been widely regarded as a further affirmation of India's pro-arbitration posture; however, it also raises concerns over the erosion of procedural safeguards traditionally associated with arbitration, especially those grounded in principles of consent and fair notice.

The appellant, Adavya Projects Pvt. Ltd., and Respondent No. 1, Vishal Structurals Pvt. Ltd., had entered into agreements to execute a project. Disputes arose in 2018, leading the appellant to issue a notice invoking arbitration under Section 21 only against Respondent No. 1, followed by a Section 11 application also against Respondent No. 1 alone. The appellant later sought to implead Respondents No. 2 and 3 in the arbitration, without having served them a Section 21 notice or included them in the Section 11 application. The arbitral tribunal, whose decision was upheld by the Delhi High Court, had held that the absence of notice and non-impleadment at the Section 11 stage rendered the arbitration against Respondents No. 2 and 3 not maintainable. The appellant then challenged that decision before the Supreme Court.

The Court reasoned that where a tribunal, once constituted, is satisfied that a non-signatory is sufficiently bound by the arbitration agreement, whether through implied consent, agency, alter ego, or the Group of Companies doctrine, it is empowered to implead such a party during the proceedings. A notice under Section 21 remains mandatory in the sense that it fixes the date of commencement of arbitration for purposes of limitation and forms a prerequisite to a Section 11 application; but the Court held, importantly, that a lack of such notice does not vitiate the tribunal's jurisdiction to implead a party during the proceedings, provided the fundamental elements of jurisdiction, namely the existence of a valid arbitration agreement binding that party, are otherwise met. This effectively decouples the impleadment process from strict procedural prerequisites, and places a greater degree of trust in the tribunal's capacity to manage fairness internally.

While the judgment reiterates that referral courts under Section 11 are limited to a prima facie

review of the parties to be included, its implications for parties brought into arbitration post hoc are significant. Non-signatories impleaded after the tribunal's constitution are deprived of the opportunity to influence the composition of the tribunal. This exclusion may generate doubts regarding neutrality, particularly in high-stakes commercial disputes where the identity of the arbitrator can substantially affect strategy and outcomes.

Additionally, by holding that notice is not a mandatory condition for impleadment, the Court risks enabling strategic circumvention of early procedural safeguards. A party might delay impleadment intentionally to avoid challenge or delay, and involve third parties only after substantive proceedings are underway. This approach, though efficient, may compromise transparency and procedural balance. The judgment appears to rest on the assumption that the tribunal will exercise due care and ensure fairness in impleadment, but it offers limited guidance on how or when this responsibility should be operationalised.

It has been suggested that even if not statutorily mandated, a supplementary notice to non-signatories, akin to a modified Section 21 notice, could serve as a best practice to cure potential prejudice. Nonetheless, the absence of an enforceable requirement leaves a lacuna in procedural uniformity. As such, the ruling reflects a judicial preference for functional justice over strict procedural form, but one that may come at the cost of perceived legitimacy.

The Adavya Projects judgment marks a decisive evolution in Indian arbitration law. By recognising that service of a Section 21 notice is not a precondition for impleading non-signatories, the Court has widened the operational scope of arbitration agreements. Much like in Cox & Kings II, where judicial intervention expanded the reach of arbitration to complex commercial structures, this judgment consolidates arbitral discretion at the potential expense of procedural precision. Whether this balance will withstand future scrutiny remains to be seen, but it undoubtedly signals a significant shift in favour of arbitral autonomy.

Synthesis: Two Sagas, One Trajectory

Read in isolation, Parts II and IV of this article might appear to address unrelated questions: one concerns a procedural formality (notice), the other a substantive jurisdictional question (who may be bound). Read together, however, they disclose a single underlying trajectory, of which Adavya Projects is the logical, if not inevitable, endpoint.

The notice-dilution thread traced in Part II shows Indian courts steadily relaxing strict compliance with Section 21,[58] wherever the section's functional purposes, principally adequate notice and procedural transparency, were otherwise satisfied. The consent-dilution thread traced in Parts III, IV and VI shows a parallel, and in places more dramatic, relaxation of the requirement that only signatories be bound, culminating in *Cox & Kings II's* allocation of final authority over that question to the arbitral tribunal itself, rather than to the referral court. *Adavya Projects* sits precisely at the intersection of these two threads: having already been told, by Cox & Kings II, that it alone holds final authority to determine whether a non-signatory is bound, the tribunal was in *Adavya Projects* further told that it need not wait for, or be constrained by, the formal notice mechanism that had previously served as an early checkpoint on that very determination.

This convergence is analytically significant for two reasons. First, it means that the procedural safeguards lost are not merely additive but multiplicative: a non-signatory joined after the tribunal's constitution loses both the opportunity to object to jurisdiction before a Section 11 court applies even prima facie scrutiny, and the earlier opportunity that timely Section 21 notice would have afforded to contest impleadment before the tribunal's composition was fixed. Second, it suggests that any reform proposal addressing one thread in isolation, for instance, mandating a supplementary notice to non-signatories without also revisiting the scope of the tribunal's unilateral authority to determine who is bound, would address only half of the problem that *Adavya Projects* has created. The two sagas, having converged, are unlikely to be disentangled by a reform directed at only one of them.

Conclusion and Suggestions

The trajectory of Indian arbitration law, particularly through the prism of Section 21 of the Arbitration and Conciliation Act, reveals an evolving balance between procedural safeguards and institutional efficiency. Courts have oscillated between strict and liberal interpretations of the notice requirement, reflecting a broader tension between formalism and the flexible nature of arbitration. That tension, this article has argued, cannot be understood in isolation from the parallel and equally consequential evolution of the Group of Companies doctrine, which travelled from Dow Chemical's cautious, intention-anchored formulation, through *Sukanya Holdings'* signatories-only baseline, *Chloro Controls'* rupture, the domestic-arbitration

[58] The Arbitration and Conciliation Act, 1996 (26 of 1996) s 21.

recalibrations of *Duro Felguera* and *Ameet Lalchand Shah*, and the consolidating triad of *Cheran Properties*, *Reynders Label* and *MTNL v. Canara Bank*, before receiving its most authoritative articulation in *Cox & Kings II*.

The Supreme Court's ruling in Adavya Projects is a turning point precisely because it is the point at which these two trajectories meet. By affirming that arbitral tribunals can implead non-signatory parties without the service of a Section 21 notice, it builds on the institutional logic of Cox & Kings II and signals a decisive shift towards expansive tribunal powers.

This approach underscores party autonomy and expedites resolution in complex disputes, but simultaneously raises questions around procedural fairness, particularly for non-signatories who may not have had any role in arbitrator selection or early-stage objections. The comparative material canvassed in Part V underlines that this expansive posture is not one India shares with the other major common law arbitration centres, a divergence that carries implications for the enforceability of Indian awards abroad even as it strengthens the efficiency of the domestic process.

While the Court's intention to facilitate multi-party arbitration is clear, the absence of a requirement for supplementary notice could enable strategic avoidance of fair disclosure. This may dilute the principle of consent which forms the bedrock of arbitration. The ruling assumes that tribunals will safeguard fairness internally, but it leaves a procedural gap that merits cautious scrutiny.

Therefore, there is a need for calibrated safeguards, such as structured post-constitution notices or detailed jurisdictional inquiries, to ensure transparency without undermining efficiency. Three concrete suggestions follow from the analysis above. First, given that Cox & Kings II already vests tribunals with final authority to determine whether a non-signatory is bound, a modified, post-constitution notice to such a party, even if not styled as a Section 21 notice, should be treated as a near-mandatory best practice rather than a merely permissive one, since it is the only remaining procedural checkpoint once the referral court's role has been confined to prima facie scrutiny. Second, tribunals should be encouraged, if not required, to record express findings on the four MTNL v. Canara Bank factors, mutual intention, negotiation or performance, direct relationship or composite transaction, and single economic reality, before ordering impleadment, so that the internal fairness the Adavya Projects Court trusts tribunals to exercise is at least made visible and reviewable. Third, given the comparative divergence

traced in Part V, parties and tribunals alike would be well advised to consider, at the drafting and enforcement stages respectively, whether an award impleading a non-signatory on Group of Companies grounds is likely to face resistance in a jurisdiction whose courts, unlike India's, decline to recognise the doctrine at all. The future success of this jurisprudential expansion will depend on how consistently tribunals apply these powers, and how courts, both in India and abroad, review their use in preserving equitable treatment.