AN ANALYTIC STUDY ON GROUP OF COMPANIES DOCTRINE: AN INDIAN PERSPECTIVE

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ABSTRACT

This essay investigates the Group of Companies (GoC) theory in arbitration, concentrating on how it conflicts with the fundamental principles of consent and party autonomy. While arbitration has typically only been binding on signatories, the GoC doctrine allows for the expansion of non-signatories in certain instances, particularly within corporations. The paper critically examines its evolution across jurisdictions, emphasizing disparities in approaches in France, Switzerland, the United Kingdom and Singapore. It also assesses its selective and changing use in Indian law, particularly in light of key decisions like Chloro Controls and Cox and Kings. The article advocates for doctrinal restraint, proposing a consent-based framework to ensure legal certainty and coherence in international arbitration.

Keywords: Group of companies, Arbitration, Non-signatory and Party Autonomy.

I. Introduction

1.Premise

Arbitration is a consensual mechanism for resolving disputes with consent accurately characterizing as the "essential basis" of arbitration. The Arbitration agreement, as the manifestation of that consent, holds fundamental significance in the arbitral process. As a contractual agreement it binds only those individuals or entities that have executed the arbitration agreement[1]. However, the legislation regarding the binding of non-signatory parties has undergone substantial changes in the past two decades. The legitimacy of this doctrine as a principle of international arbitration remains ambiguous, as many jurisdictions deem it invalid, while others, including India, advocate for its application.

1.2 Background

The parties bound by an arbitration agreement, and deemed to have consented to arbitrate, are its signatories. Nonetheless, non-signatories may also be obligated by an arbitration agreement under specific conditions using the Group of company's doctrine developed in the case of ***Dow Chemical France & Ors. V. Isover Saint Gobian***[2], where courts judiciously exercised, when a company within a corporate group exerts substantial control over, or is controlled by, any of its affiliates (the original party to the contract containing an arbitration agreement), and is engaged in the negotiation or execution of the contract established by the affiliate, the company may, under specific circumstances, initiate or be compelled to participate in arbitration proceedings, though it didn't directly execute the contract.[3]

Originating from the principles of international jurisprudence, this doctrine represents a commercial strategy aimed at consolidating all parties involved in a dispute under a single framework, thereby preventing the occurrence of multiple proceedings and conflicting rulings. Despite facing criticism for allegedly conflicting with the principles of privity of contract and the distinct legal entity status conferred by the Companies Act, this doctrine has been invoked by Indian Courts and Tribunals in numerous rulings. In conclusion, the Supreme Court's ruling

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[1] Gary Born, International Arbitration Law and Practice 94 (Kluwer Law International 2012).
[2] *Dow Chemical France v. Isover Saint Gobain*, ICC Case No. 4131, Interim Award of Sept. 23, 1982, 110 J.D.I. 899 (1983).
[3] Amri Gupta, *The Group of Companies Doctrine - Bone of Contention*, 4 Nyaayshastra L. Rev. 1 (2023).

in Cox and Kings Ltd v. SAP Pvt Ltd.,[4] had thoroughly solidified GOC doctrine.[5]

1.3 Relevance

The aspect of Dispute resolution has been incorporated in 91% of the Indian Enterprises contracts[6]. This aspect of Group of Companies Doctrine has raised concerns globally within the arbitration framework. *This essay seeks to examine the conceptual underpinnings and its validity. Further, stresses on evaluating the factors contributing in legislative and judicial hesitance globally with specific reference to its adaptation in Indian Jurisprudence.*

II. Core Argument/Thesis Statement

This essay posits that GOC doctrine has been cautiously resisted in the realm of international arbitration concerning the ideologies surrounding consent and party autonomy. In Indian jurisprudential angle, there had been a selective application, considering the future developments the doctrine necessities doctrinal restraint in furtherance to established global percents to maintain legal certainty.

III.A Critical Delve Into Non-Signatory Liability

3.1The Genisis of the Doctrine

The inception of this doctrine is traced from ***Dow Chemical v. Isover Saint Goabain***[7], wherein ICC had held Dow Chemical Group operates as Single Economic Entity. As a result, though two of the four claimants refrained from signing the agreement, they were still considered essential to the arbitral process. The absence of dissent from the non-signatories regarding their involvement in the arbitral proceedings facilitated the development of the Doctrine of Group of Companies.

To comprehend the relevance of the GoC theory and its critiques, one must be familiar with

[4] *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, (2023) INSC 1051.

[5] Soorjya Ganguli, Somdutta Bhattacharyya and Radhika Misra, Binding Non-Signatories To An Arbitration- Charting The Shifting Paradigms, MONDAQ Jan. 06, 2026, 5:05 PM), https://www.mondaq.com/india/arbitration-dispute resolution/868694/binding-non-signatories-to-an-arbitration--charting-the-shifting-paradigms

[6] Corporate Attitudes & Practices towards Arbitration in India", available https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf (Last visited on Jan. 06, 2026).

[7] *Dow Chemical France*, *supra* 2.

the essential aspects of an arbitration agreement as per international arbitration law.

1. Privity of contract
2. Party Autonomy
3. Separability from the main contract
4. Consent of the party either express or implied.

3.2 Adoption of the doctrine: A Reception of Divide

The rulings of International Arbitral Tribunals primarily inspire the application of the group of company's doctrine in arbitration law. Before exploring the complexities of the concept, it is essential to understand its origins and development within the global framework.[8]

3.2.1. France

The genesis of the doctrine was largely through the interim awards passed in France in the case of Dow followed by the ruling of the French Court of Appeal in "***Sponsor AB v Lestrade***,[9]" a non-signatory was deemed "the brains of the signatory party" and seen as a contributor to the non-fulfilment of the agreement. Consequently, a comprehension of French law reveals that an arbitration agreement may encompass non-signatories only if all parties involved intended to be bound by it. It is regarded as an exception to the rule in France rather than a standard rule.

3.2.2. Switzerland

Swiss courts have expanded arbitration agreements to include non-signatories, especially in claim assignment, debt assumption, and contract delegation instances. Swiss law allows parties to consent to arbitration explicitly or inferred from their behaviour. The Swiss Federal Court ruled in "***X v Y Engineering***"[10] that certain activities could satisfy arbitration agreement requirements. Courts or tribunals may evaluate whether the non-signatory negotiated and executed the contract to determine implied consent to the arbitration agreement. Contract

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[8] STAVROS L. BREKOULAKIS, THE EVOLUTION AND FUTURE OF INTERNATIONAL ARBITRATION (Wolters Kluwer 2016).
[9] *Sponsor AB v. Lestrade, Pau*, Nov. 26, 1986, [1988] Rev. arb. 153 (Fr.).
[10] *X v. Y Engineering S.p.A. and Y S.p.A.*, 4A_450/2013, ASA Bull., 160 (2015).

discussion or execution should objectively demonstrate subjective assent to arbitration.

3.2.3. United Kingdom

English courts have been wary in enforcing arbitration agreements against non-signatories. They usually uphold privity, which emphasizes contractual compliance. Agency, novation, assignment, legal operation, and succession apply to non-signatories in English arbitration agreements. English law does not allow breaching the corporate veil, equitable estoppel, or the group of company's concepts to enforce arbitration agreements against non-signatories.[11] In "***Peterson Farms INC v. C & M Farming Limited***"[12], the Court of Appeal reversed the lower Court's GoC doctrine ruling because English law doesn't support it.

3.2.4. Singapore

In the "***Manuchar Steel Hong Kong Limited v. Star Pacific Line Pte Ltd***"[13] judgment, the Singapore High Court rejected the doctrine for two reasons: first, it is incompatible with the idea of a consensual basis for an arbitration agreement, and second, the arrangement of businesses within a larger group cannot eliminate the need for a distinct legal organization. They cited England's Court of Appeal's Peterson Farms ruling.

3.3 Group Of Companies Doctrine In Lens Of Indian Arbitration Law

Under Indian Law, arbitration occurs solely with the mutual consent of both parties. The Arbitration and Conciliation Act of 1996[14] emphasize the principle of Party Autonomy, distinguishing the Agreement to Arbitrate from other contracts and indicating a clear intention to engage in the arbitration process. To prove that an Arbitral Agreement exists, no actual physical signature is necessary, but it is the responsibility of both Parties to show an intention to be bound by it.[15] *Section 7 of the Act*[16] simply reiterates the fact that all Arbitral Agreements must be based on mutual consent. In practice, there is little standardisation as to how they should be written (*as is the case in a laissez-faire economy*).[17] One of the common theories

[11] Sarita P. Woolhouse, *Group of Companies Doctrine and English Arbitration Law*, 20 ARB. INT. 435(2004).
[12] Peterson Farms INC v. C & M Farming Limited. [2004] EWHC 121(com).
[13] Manuchar Steel Hong Kong Limited v. Star Pacific Line Pte. Ltd., [2014] SCHC 181.
[14] Arbitration and Conciliation Act, 1996 (India).
[15] Amri Gupta, *supra* 3, at 1–2.
[16] Arbitration and Conciliation Act, 1996, § 7 (India).
[17] Disha Surpuriya, *Group of Companies Doctrine: Caveats to Consider Before Its Application*, 2 Indian Rev. Int'l Arb. 1, 2 (2022).

adopted by the current legal system is the Group of Companies Doctrine, which can provide some benefit to both Parties if adopted, but can also become difficult and very complex.[18]

3.3.1. Chloro Controls: Pushing The Bars

The Supreme Court of India established the doctrine of separability in its ruling in ***Chloro Controls India Pvt Ltd v. Severn Trent Water Purification Inc.***[19] The court's ruling in the Dow Chemical case[20] established that a non-signatory may be included in an arbitration agreement if the company participates in a composite transaction and demonstrates an inclination to resolve disputes via arbitration[21]. The Chloro Controls case presented significant arguments that critically examined the doctrine, pushing its boundaries to an extraordinary extent.[22]

The Court's established standard, in contrast to previous tests that focused on a complex platform structure, prioritized the rectification of injustices and the facilitation of commerce.[23] This has resulted in a reduction in frequency, in contrast to earlier periods when several courts relied on doctrines as a rigorously applied exception to the principle of consent, mainly to avert the presentation of multiple instances before the same court through a singular action.[24]

3.3.2. Distortions: An Effective Expansion

The analytical literature resulting from this expansion has developed three main criticisms in response to this expansion. The first is that the courts did not carefully evaluate the existence of corporate groups based on actual evidence of their existence. Instead, they have made arbitrary decisions based upon either the existence of control by one party over the other or the affiliation of the parties as defined by the proximity of the contract to other actions. Had this been successfully demonstrated, all courts would have permitted an arbitration procedure to address disputes, irrespective of the existence of the corporate group or the relationship between the parties.[25] Secondly, the application represented a profound challenge to the

[18] Sarvagya Chitranshi & H.A. Dhruti, *From Adhesion to Cohesion – Recontextualizing the Application of the Group of Companies Doctrine under the Law of Arbitration*, 4 GNLU SRDC ADR Mag. 31, 31–32 (2024).
[19] *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 S.C.C. 641.
[20] *Dow Chemical France*, *supra* 2.
[21] Charlie Caher, Dharshini Prasad & Shanelle Irani, *The Group of Companies Doctrine – Assessing the Indian Approach*, 9 Indian J. Arb. L. 33, 35–36 (2021).
[22] Tejas Chhura, *The Need to Re-Think the Group of Companies Doctrine in International Commercial Arbitration*, 15 NUJS L. Rev. 27, 38–39 (2022).
[23] *Id.*
[24] Charlie Caher, Dharshini Prasad & Shanelle Irani, *supra* 19, at 45–46.
[25] Disha Surpuriya, *supra* 17, at 8–9.

principle of mutuality of interest. The contextual factors, including mutual communication, awareness of the transaction, and conduct following the signing, indicated that the judge appeared to have acknowledged the consent of the parties despite their inability to formalize a contract, (whether via negotiation or arbitration)[26]. The implementation of the doctrine of dual personality exhibited inconsistencies and was applied with a lower threshold than initially set for preserving distinct legal entities; it seemed that the application had been conflated with the principles of corporate veil-piercing and the alter ego doctrine.[27]

3.3.3. Re-establishing Implied Consent: A Corrective Framework

The doctrine was reconsidered in the case of *Cox and Kings Ltd.*[28] The Supreme Court stated that the concept of a Group of Companies is dependent on the intent rather than the overriding agreement.[29] It was unfair to the non-signatories as they were bound solely because they had a financial gain or belonged to a corporate group.[30] In the end, consent is important, which is carefully analysed in terms of how non-signatories are involved in the contract, their role, and their relationship with the business.[31]

3.3.4. Interim Measure Under Section 17

The other case also discussed the uncertainty in the procedure in interim measures, as provided in *Section 17 of the Act*[32], was the case between *Cox and Kings*.[33]The Court has determined that only those parties who have engaged in an arbitration agreement are eligible to receive interim relief from the arbitral tribunal. Any temporary relief stemming from a suggested collective affiliation by a non-signatory can only be awarded following a preceding determination by the jurisdiction[34]. This elucidation has enhanced the integrity of the procedures and mediated companies that lack a recognized arbitration authority.[35]

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[26] Sarvagya Chitranshi & H.A. Dhruti, *supra* 18 at 33–34.
[27] Amri Gupta, *supra* 3, at 4–5.
[28] *Cox and Kings Ltd.*, *supra* 4.
[29] Aditi Pramanik, *Analysing the Contours of Application of the "Group of Companies" Doctrine in India in the Wake of "Cox & Kings" Decision*, 4 Indian J. Integrated Rsch. L. 931, 933–34 (2024).
[30] Tejas Chhura, *supra* 22, at 38–40.
[31] Charlie Caher, Dharshini Prasad & Shanelle Irani, *supra* 19, at 48–49.
[32] Arbitration and Conciliation Act, 1996, § 17 (India).
[33] Aditi Pramanik, *supra* 29, at 936–937.
[34] *Id.*
[35]Amri Gupta, *supra 3*, at 4.

3.3.4. A Persistent Concern

Debates remain concerning how the separability theory impacts arbitral award enforcement. Many authors have listed elements that courts consider when evaluating whether to enforce an award under the doctrine,[36] especially in situations with little experience with it. Separability states that a non-signatory party may be bound by the award even if it did not sign the arbitration agreement[37]. However, this approach may not apply in all jurisdictions and must be assessed individually[38]. Implied consent to arbitration where there is no written agreement is another factor. Since companies' legal personality characteristics do not apply to humans, applying them to individuals is more complicated. Non-signatory parties to an arbitral procedure may be bound by the award if they meet the criteria to restrict its enforceability on legal defences.[39]

IV. Conclusion

The principle of party autonomy in arbitration was instituted at the inception of arbitration to enhance the capacity of parties to resolve their disputes in a manner that aligns with their preferences. Each party possesses the authority to establish its own conditions for arbitration, appoint its Arbitrator, designate the arbitration venue, and define the appropriate law for the execution of the Award in a Court of Law.

Courts have endeavoured to establish various methods for evidencing consent and to clarify the relationship between the doctrine of party autonomy and arbitration law, but there has not been any clear consensus regarding how the party autonomy doctrine should be interpreted. As there is no clear consensus regarding the relationship between party autonomy and the body of arbitration law, it has the potential to create confusion between party sovereignty and the relationship between arbitration and Court litigation, both of which parties agree they want to work towards in a cooperative resolution.

4.1 Suggestions

Recently, there has been inclination towards restrictive judicial interpretation in accordance to

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[36] Disha Surpuriya, *supra* 15, at 11–12.
[37] Charlie Caher, *supra* 21, at 47–49.
[38] Tejas Chhura, *supra* 22, at 40–41.
[39] Aditi Pramanik, *supra* 29, at 937–938.

the enforceability of arbitration agreements post Cox and Kings. One such implication is such that courts limited interpretation in the term consent and presuming implied consent during course of arbitration. Cases warranting extraordinary measures will require more a rigid analysis, including an analysis of the group's structure and mutuality, and then sequentially applying those analyses when determining whether the arbitration agreement is enforceable. Persistent recognition of separate legal entities entails necessary framework for entities participation in arbitration rather than being present involuntarily. The systematic method of enforceability should provide more confidence and credibility in Indian Arbitration Law internationally.

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