WHETHER NON-SIGNATORIES TO AN AGREEMENT CAN BE MADE PARTIES TO AN ARBITRATION PROCEEDING

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Arbitration as a mechanism of dispute resolution is fundamentally premised on the principle of party autonomy, which dictates that only those who have consented to arbitration can be bound by it. This consent is ordinarily manifested through a written arbitration agreement executed between the parties. Consequently, the traditional view has been that arbitration can be enforced only against the signatories to such an agreement. However, with the increasing complexity of modern commercial transactions—often involving multiple entities, layered contractual frameworks, and intricate corporate group structures—this rigid approach has undergone significant evolution. Challenges arise in situations where a non-signatory, though not formally a party to the arbitration agreement, shares a close commercial relationship with the signatories or plays an active role in the underlying transaction. In such cases, it becomes difficult for courts and arbitral tribunals to determine whether such a non-signatory can nonetheless be impleaded as a party to arbitration proceedings. This issue has emerged as one of the most debated questions in contemporary arbitration law in India.

The Arbitration and Conciliation Act, 1996 ("the Act") does not contain any express provision governing or permitting the impleadment of non-signatories to arbitration proceedings. Nevertheless, certain provisions provide a framework within which such questions have been judicially examined. Section 2(1)(h) defines the term "party" as a party to an arbitration agreement, suggesting a restrictive interpretation limited to signatories. Section 7 defines an arbitration agreement as an agreement between the parties to submit disputes to arbitration, requiring such agreement to be in writing. Section 8 empowers a judicial authority to refer parties to arbitration where there exists a valid arbitration agreement, and post the 2015 amendment, extends this power to "any person claiming through or under" a party. Section 11 deals with the appointment of arbitrators and involves a prima facie judicial determination of the existence of an arbitration agreement. Section 16 incorporates the principle of kompetenz-kompetenz, empowering the arbitral tribunal to rule on its own jurisdiction, including objections relating to the existence or validity of the arbitration agreement. Although none of these provisions explicitly address nonsignatories, they have collectively provided the foundation for judicial innovation in this area.

The jurisprudence concerning non-signatories has evolved significantly through a series of landmark judgments of the Supreme Court of India. One of the earliest and most important decisions on this issue was *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.* (2013) 1 SCC 641, wherein the Court examined the scope of Sections 8 and 45 of the Act. The Court particularly emphasized the expression "any person claiming through or under" used in Section 45, holding that it has a wider ambit than the term "parties" under Section 8. The case involved multiple agreements forming a composite transaction, with a principal or "mother agreement" governing several ancillary agreements. The Court held that in such circumstances, even non-signatories could be referred to arbitration if there was a clear intention to bind them. It invoked the Group of Companies doctrine, holding that where multiple entities within a corporate group are involved in a single economic transaction, a non-signatory may be bound if it is evident that the parties intended to include it within the scope of the arbitration agreement.

Following this judgment, the 246th Law Commission of India recommended amendments to harmonize Sections 2(1)(h) and 8 with Section 45 by incorporating the phrase "person claiming through or under such party." Acting upon this recommendation, the legislature amended Section 8 through the Arbitration and Conciliation (Amendment) Act, 2015, thereby expanding its scope. However, Section 2(1)(h), which defines the term "party," was left unchanged, leading to certain interpretational inconsistencies. Despite this, the amendment marked a significant step towards recognizing the role of non-signatories in arbitration proceedings.

The Supreme Court further elaborated upon this issue in *Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd.* (2022) 8 SCC 42, where it laid down a set of cumulative factors to determine whether a non-signatory could be bound by an arbitration agreement. These include the mutual intent of the parties, the relationship between the nonsignatory and the signatory, the commonality of the subject matter, the composite nature of the transaction, and the overall performance of the contract. These factors have since become the guiding principles for courts and tribunals when dealing with the impleadment of non-signatories.

A significant shift in jurisprudence occurred with the Constitution Bench judgment in *Cox and Kings Limited v. SAP India Private Limited* (2023 SCC OnLine SC 1634). The Court revisited the Group of Companies doctrine and clarified its scope and application. It held that the definition of "party" under Section 2(1)(h) is not limited to signatories alone and may include non-signatories in appropriate cases. The Court emphasized that the requirement of a written arbitration agreement under Section 7 does not preclude the possibility of binding non-signatories, provided their consent can be inferred from their conduct. Importantly, the Court held that the Group of Companies doctrine is an independent legal principle arising from a harmonious interpretation of Sections 2(1)(h) and 7, and not derived from the phrase "claiming through or under." It also cautioned that the doctrine cannot be applied solely on the basis of a single economic unit and that the separate legal identity of corporate entities must be respected. The Court reaffirmed that a fact-specific inquiry into the intention of the parties is essential.

The principles laid down in *Discovery Enterprises* were further reaffirmed in *Ajay Madhusudan Patel v. Jyotrindra S. Patel* (2024 SCC OnLine SC 2597), wherein the Supreme Court emphasized that the intention of a non-signatory to be bound by an arbitration agreement must be inferred from its conduct, including its participation in the negotiation, performance, and termination of the contract. This judgment strengthened the conduct-based approach in determining the applicability of arbitration agreements to non-signatories.

The most recent and significant development in this area came with the judgment in *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd.* (2025 SCC OnLine SC 1016), wherein the Supreme Court addressed the critical question of whether an arbitral tribunal has the power to implead a non-signatory as a party to an ongoing arbitration proceeding. The dispute arose out of a works contract containing an arbitration clause, followed by a settlement agreement and subsequent disputes. The respondent sought to implead certain non-signatory entities belonging to the same corporate group based on their involvement in the transaction. The arbitral tribunal rejected the jurisdictional objections raised by the non-signatories under Section 16 and allowed their impleadment. This decision was upheld by the Delhi High Court and subsequently by the Supreme Court. The Court held that an arbitral tribunal, by virtue of its powers under Section 16, is competent not only to determine the existence of an arbitration agreement but also to identify the parties bound by it. It further held that the absence of a notice under Section 21 to the non-signatories does not preclude their impleadment, as such notice is required only for initiating arbitration between signatories. The Court reaffirmed that a non-signatory need not be a formal signatory to be bound by an arbitration agreement if its conduct demonstrates an intention to be so bound.

The application of these principles is not limited to corporate entities but extends to individuals as well, as seen in *A.C. Chokshi Sharebroker Pvt. Ltd. v. Jatin Pratap Desai* (2025) 5 SCC 321. In this case, the Supreme Court upheld an arbitral award against a nonsignatory individual based on an oral agreement and the composite nature of the transaction, reiterating that conduct and surrounding circumstances play a crucial role in determining consent.

The doctrinal basis for impleading non-signatories in arbitration proceedings thus rests on several principles, including the Group of Companies doctrine, the composite transaction doctrine, agency principles, estoppel, and in limited cases, piercing the corporate veil. Among these, the Group of Companies doctrine has emerged as the most significant, particularly in cases involving complex corporate structures. However, its application requires careful scrutiny to ensure that the fundamental principle of consent is not undermined.

In the context of institutional arbitration, the Delhi International Arbitration Centre (DIAC) Rules, 2023 provide procedural flexibility that facilitates the handling of multi-party disputes. Although the DIAC Rules do not expressly codify detailed provisions on joinder of non-signatories, they grant broad procedural discretion to the arbitral tribunal, consistent with Section 19 of the Act. The tribunal is empowered to conduct proceedings in a manner it considers appropriate, which includes determining issues of jurisdiction and party participation. The Rules also provide for emergency arbitration under Rule 14, reflecting the adaptability of institutional arbitration to complex disputes involving multiple parties. The interplay between the DIAC Rules and the Act ensures that while statutory principles govern substantive issues, institutional rules provide the procedural framework necessary for effective adjudication.

Despite the significant judicial developments, there is no straightjacket formula to determine whether a non-signatory can be impleaded in arbitration proceedings. Courts and tribunals must undertake a fact-specific analysis, considering factors such as the intention of the parties, the nature of the transaction, the relationship between the parties, and the conduct of the non-signatory. While this flexible approach allows for adaptability, it also introduces a degree of uncertainty and subjectivity.

In conclusion, the question of whether non-signatories can be made parties to arbitration proceedings has evolved from a rigid, consent-based doctrine to a more flexible and pragmatic framework that accommodates the complexities of modern commercial transactions. Judicial pronouncements in cases such as *Chloro Controls*, *Discovery Enterprises*, *Cox & Kings*, and

ASF Buildtech have significantly expanded the scope of arbitration to include non-signatories in appropriate cases. However, the absence of explicit statutory provisions continues to create ambiguity and uncertainty. The Supreme Court has rightly urged the legislature to address this gap and incorporate clear provisions in future amendments to the Act. Until such legislative intervention takes place, the issue will continue to be governed by judicially evolved principles, requiring careful and contextspecific application in each case.