

PARTIES TO ARBITRATION

INTRODUCTION

A common issue in arbitration is the effect of arbitration agreements on non-signatories. “Once it is determined that a valid arbitration agreement exists, it is a different step to establish which parties are bound by it. The third parties, who are not explicitly mentioned in an arbitration agreement made in writing, may enter into its *ratione personae* scope”.¹

Indian courts have taken the position that arbitration between a signatory and a third party is permissible. *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and others*, (2013) 1 SCC 641 is a leading authority where the subject matter was an application under Section 45 ACA. A joint venture agreement was involved in *Chloro* which contemplated other ancillary agreements. While the mother agreement and two ancillary agreements contained separate arbitration clauses, four agreements had no arbitration clause. All parties to the proceedings, except two, were parties either to one or more of the several agreements.

When a dispute arose, *Chloro* filed a suit, and some respondents applied Section 45 ACA to refer the matter to arbitration. The court applied the “group of companies” doctrine, which it said has been developed and applied by courts internationally.

The following approach for the application of the doctrine was set out: (i) intention to be bound by the arbitration agreement is a very significant feature. (ii) the court will examine the matter from the touchstone of a direct relationship, direct commonality of the subject matter, and the composite nature of the transaction.

¹ *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and others*, (2013) 1 SCC 641

Another three-judge bench decision on 24 April 2018 was *Cheran Properties Limited v. Kasturi and Sons Limited and others*, (2018) 16 SCC 413, a case involving enforcement of a domestic award on a non-signatory based on the language of Section 35 ACA which states that arbitration award “shall be final and binding on the parties and persons claiming under them respectively.”

The court concluded that the test under Section 35 ACA was fulfilled. It referred to *Chloro*, commented on the group of companies doctrine, and referred to a few commentaries which discuss the theoretical foundation of this principle. The court heavily relied and follow *Chloro* and rejected the argument that *Chloro* should be read to be a decision in the context of a mother agreement and ancillary agreements.

In *R. V. Solutions Private Limited v. Ajay Kumar Dixit and others*, 2019 SCC OnLine Del 6531 a suit before a single-judge bench of Delhi High Court involved former employees of the plaintiff and a company the employees had joined. The allegations were a breach of the employment agreement, breach of confidentiality, and solicitation of clients. Two of the respondent parties were non-signatories but had no objection if the matter was referred to arbitration. The plaintiff R V Solutions objected the court found that there was a clear commonality of the facts, parties and interest “which would warrant that the matter be referred to arbitration”. In another case before single-judge bench of Delhi High Court (Sanjeev Narula J) the court had an application under Section 45 to refer the matter to arbitration and a host of arguments as to why it should not be referred to arbitration. Among others, the argument that one defendant was non-signatory was rejected following *Chloro Controls*. The court also rejected an argument on *Forum Non-Conveniens* (on the ground of financial burden) and said that it did not make the subject matter arbitrable.

Chloro and *Cheran* were referred to in a two-judge bench in *Reckitt Benckiser (India) v. Reynders Label Printing India*, (2019) 7 SCC 62 to say that the legal position on binding a non-signatory to arbitration “is no more res integra”. The court said the crucial question was whether “indisputable circumstances” showed the “mutual intention of the parties” to bind the non-signatory. The fact was assessed, and it was concluded that the burden to establish

that the non-signatory had an intention to consent to the arbitration agreement was not discharged.

The group of companies doctrine has been discussed and applied in *MTNL v. Canara Bank*, 2019 SCC OnLine SC 995 by a 2-judge bench.

Sanjeev Narula J also applied Chloro in the Delhi High Court in *Jes and Ben*, 2019 SCC OnLine Del 10225 (not part of this yearbook)