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# Karnataka High Court Cases:

The Karnataka High Court has not specifically discussed the Group of Companies Doctrine but has cited the Judgments of the Hon’ble Supreme Court in the case of Chloro Controls to bind non-signatory parties to arbitration.

## Satyam Cineplexes Limited v. Patel Realty India Ltd., 2013 SCC OnLine Kar 9921

Paragraph 15.

**Respondent No. 2 contends that they are not parties to the MOU and as such they are not bound by the terms and conditions contained therein.** Respondent No. 2 is a subsidiary of respondent No. 1. Both respondent Nos. 1 and 2 are under the control of Patel Engineering Limited. The Managing Director of Patel Engineering Limited — Mr. Rupen Patel is also the Director of respondent Nos. 1 and 2. Respondent No. 1 intimated the petitioners stating that respondent No. 2 shall now step into the shoes of respondent No. 1 and they will lease the premises to the petitioners. This is evident from Clause (I) and (J) in the agreement to lease. Further by E-mail dated 24.07.2012 the petitioners were informed that the name of respondent No. 2 was changed from Bellona Estate Developers Private Limited to Bellona Estate Developers Limited. The agreement to lease and addendum to agreement to lease were initialed by Mr. Rahul S. Mundada - Manager (Legal) of respondent No. 2. **In similar circumstances the Supreme Court in the case of Chloro Controls India Private Limited v. Severn Trent Water Purification Inc [(2013) 1 SCC 641]** , held as under:

“72. **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.**

73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional case. **The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction**. **The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice.** Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.”

**Therefore respondent No. 2 is bound by the agreement to lease and addendum to agreement to lease.**

## Vaswani Estates Developers (P) Limited v. Bangalore Baptist Church, 2017 SCC OnLine Kar 6572

Paragraph 27:

…Normally, the parties to the arbitration agreement calling for arbitral reference should be the same as those to the action. But this general concept is subject to exceptions which are that **when a third party i.e., non-signatory party, is claiming or is sued as being directly affected through a party to the arbitration agreement and there are principal and subsidiary agreements and such 3rd party is signatory to a subsidiary agreement and not to the mother or principal agreement which contains the arbitration clause, it may be possible to say that even such third party can be referred to arbitration.** Admittedly in the present case, it is the specific case of the plaintiff that subsequent to the MoU entered into between the plaintiff and defendant Nos. 1 to 7, the defendant Nos. 1 to 7 executed a subsequent deed/agreement in favour of defendant Nos. 8 to 16 and in turn defendant Nos. 8 to 16 executed an agreement/document in favour of the 17th defendant. Therefore the plaintiff ought to have impleaded the subsequent agreement holders who stepped into the shoes of the original defendants in the arbitration proceedings pending between the plaintiff and defendant Nos. 1 to 7.

**Paragraph 29:**

…**The facts stated in the present applications showing the involvement of the second respondent and the decision of this Court in *Chloro Controls India (P) Ltd.* v. *Severn Trent Water Purification Inc.* [(2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] : (2012 AIR SCW 6359), in my considered view, would justify appointment of an arbitrator on behalf of both the respondents and permit the process of arbitration to be conducted by lifting the corporate veil to ascertain the role of the second respondent in the transactions in question as claimed by the petitioner.**

## **Rajesh Aiyar v. Sathya Reddy, 2015 SCC OnLine Kar 1282** (necessary party)

Paragraph 9:

Having heard the learned counsel for both parties and after careful perusal of the joint development agreement, agreement of sale and the construction agreement, it is clear that the subject matter of dispute in respect of both the agreements i.e., the agreement of sale and the construction agreement are the same. The agreement of sale makes reference to the construction agreement. Indeed the agreement of sale is executed by the 1st respondent through the developer as the Power of Attorney Holder. The construction agreement also makes reference to the agreement of sale and the rights and obligations flowing there from. **Thus, the dispute has overlapping ramifications and it is interlinked. There is arbitration clause in both the agreements. The arbitration clause clearly makes it very clear that the parties have agreed that the differences and disputes shall be referred to arbitration and the decision of the arbitrator so appointed shall be binding on the parties.**

Paragraph 10:

**Even though 1st respondent is not a party to the construction agreement as the obligations cast on the developer and the performance of his function and duties under the agreement are interlinked and dependent upon the agreement of sale entered into by and between the 1st respondent and the petitioners, the 1st respondent becomes a proper and necessary party to the proceedings before the arbitrator.**

# Section 8 Application

## Fernas Construction Co. Inc v. ONGC Petro Additions Ltd., 2019 SCC OnLine Del 8580

Paragraph 1:

This application is filed by the defendant under section 8 of The Arbitration & Conciliation Act to refer the parties to arbitration.

**Paragraph 15:**

To a similar effect is the judgment of the Supreme Court in *Cheran Properties Limited* v. *Kasturi and Sons Limited* (supra) which reads as follows:—

23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. **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. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfillment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. 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.**

Paragraph 23:

**It clearly follows from perusal of the aforenoted terms of the guarantee issued by the plaintiff that the plaintiff is a guarantor for its wholly owned subsidiary. It falls within the ‘group of companies’ doctrine. The plaintiff has a direct relationship with the party signatory to the arbitration agreement.** There is a commonality of the subject matter and the Agreement is a composite transaction. The plaintiff and FCIPL were to perform jointly various aspects of the contract. It is manifest that plaintiff and FCIPL had a close working relationship to perform the contract between FCIPL and the defendant. The plaintiff was more than just a guarantor. It was providing full financial and technical support and help to FCIPL to help FCIPL perform the contract. The plaintiff though not a signatory to the contract, the intent was to bind the plaintiff to various terms of the contract dated 19.4.2011 including the Arbitration clause.

Paragraph 24:

In my opinion, the aforenoted two judgments of the Supreme Court in Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. (supra) and; Cheran Properties Limited v. Kasturi and Sons Limited (supra) are clearly applicable to the facts of the present case. The plaintiff is bound by the arbitration clause.

Paragraph 25:

Accordingly, in view of the above, the present application is allowed. The parties are referred to arbitration.

## RV Solutions Pvt. Ltd. v. Ajay Kumar Dixit, 2019 SCC OnLine Del 6531

Paragraph 1:

Application filed under section 8

**Paragraph 6:**

Learned counsel for the plaintiff has vehemently opposed the present applications. **He has submitted that in the present case, defendants No. 5 is a foreign entity with whom there is no agreement or collaboration.** He submits that in these facts, the judgment of the Supreme Court in the case of *Sukanya Holdings Pvt. Ltd.* v. *Jayes H. Pandya*, (2003) 5 SCC 531 : AIR 2003 SC 2252 would continue to apply.

**Paragraph 10:**

Over passage of time the law regarding reference to arbitraton has evolved. Even non signatories have now been referred to arbitration. In this context reference may be had to some of the recent judgments of the Supreme Court. In *Chloro Controls India Private Limited* v. *Severn Trent Water Purification Inc.*, (2013) 1 SCC 641

Paragraph 14:

**In the present case, there is clearly commonality of facts which bind the defendants together.** It is the own case of the plaintiff that the defendants have in collusion with each other in a mala fide and unlawful manner acted to cause loss and damages to the plaintiff. Defendants No. 1 to 4 are said to be the ex-employees of the plaintiff. **The said five defendants are said to have together caused loss and damages to the plaintiff. It is manifest that there is commonality of parties, commonalities of interest which would warrant that the matter be referred to arbitration. The objection of the plaintiff is without merit.**

Paragraph 15:

At this stage, learned counsel for the parties request that the matter be referred for arbitration to Delhi International Arbitration Centre. Accordingly, I appoint Mr. Justice N.K. Mody (Retd.) r/o A-192, Defence Colony, New Delhi (Mobile No. 9425115911) as the Sole Arbitrator in the present case. The learned Arbitrator will work under the aegis of Delhi International Arbitration Centre.

## Hay Consultants India Pvt. Ltd. v. P & N Writer and Co. Pvt. Ltd., 2018 SCC OnLine Bom 20195

Paragraph 1:

This application is taken out under Section 11 of the Arbitration and Conciliation Act, 1996 (“the said Act”).

Paragraph 10:

Though, the arbitration agreement is limited to parties entering into it and those claiming under or though them, **the courts have applied the group of Companies doctrine. Under this doctrine, 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. Courts have applied this theory in number of arbitrations so as to justify a Tribunal taking jurisdiction over a party who is not signatory in a contract containing the arbitration agreement.**

Paragraph 11:

**In my view, circumstances demonstrate that the mutual intention of the parties was to bind the signatories as well as the non-signatory parties.** I am saying this because on the part of the respondents, the agreement and terms and conditions have been signed by Writer Corporation, i.e., respondent no. 4. Respondent no. 4, actually, as per respondents' case is a generic brand which collectively describes the various entities of Writer Group of Companies which comprises of respondent nos. 1, 2 and 3. The agreement dated 22nd April, 2016 is on the letter head of the respondent no. 4, and the letter dated 12th July, 2016 on behalf of respondent nos. 2 and 3 are not separate agreements but communications addressed under the agreement between the parties because in both these letters respondent nos. 2 and 3 are referring to the payment terms under the agreement. In both these letters it is also stated “rest of the terms and conditions would be the same as the contract between Writer's Corporation and Hay group, dated 27th April 2016”. There is no agreement dated 27th April, 2016, Mr. Palakkal for respondents, in fairness, stated that it is a typographical error and it should be 22nd April, 2016 which is the agreement.

Paragraph 12:

In the circumstances, I am unable to agree to the stand taken on behalf of respondents. I am satisfied that there is an arbitration agreement between applicant and respondent nos. 1, 2 and 3. I am not including respondent no. 4 because Mr. Sehgal also submits, as there is no legal entity by the name of Writer Corporation, it would make no sense in having arbitration against a non-existent entity.

# Supreme Court Judgments: Group of Companies Doctrine

## ONGC Ltd. v. Discovery Enterprises (P) Ltd., 2022 SCC OnLine SC 522

Paragraph 36:

In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors:

(i) The mutual intent of the parties;

(ii) The relationship of a non-signatory to a party which is a signatory to the agreement;

(iii) The commonality of the subject matter;

(iv) The composite nature of the transaction; and

(v) The performance of the contract.

## MTNL v. Canara Bank, (2020) 12 SCC 767

Paragraph 10.6:

**The circumstances in which the “group of companies” doctrine could be invoked to bind the non-signatory affiliate of a parent company, or inclusion of a third party to an arbitration, if there is a direct relationship between the party which is a signatory to the arbitration agreement; direct commonality of the subject-matter; the composite nature of the transaction between the parties.** A “composite transaction” refers to a transaction which is interlinked in nature; or, where the performance of the agreement may not be feasible without the aid, execution, and performance of the supplementary or the ancillary agreement, for achieving the common object, and collectively having a bearing on the dispute.

Paragraph 10.7:

**The group of companies doctrine has also been invoked in cases where there is a tight group structure with strong organisational and financial links, so as to constitute a single economic unit, or a single economic reality.** In such a situation, signatory and non-signatories have been bound together under the arbitration agreement. This will apply in particular when the funds of one company are used to financially support or restructure other members of the group. [ ICC Case No. 4131 of 1982, ICC Case No. 5103 of 1988.]

## Cox & Kings Ltd. v. SAP India (P) Ltd., 2022 SCC OnLine SC 570

**Paragraph 34:**

**The 2015 Amendment brought in four amendments to Section 8(1). Firstly, the scope of the concept of “party” has been expanded to include persons claiming “through or under”.** Secondly, the amendment also clarified the scope of judicial interference, and that the same is to be limited only to the *prima facie* examination regarding the existence of the arbitration agreement. Thirdly, the cut-off for submitting an application under Section 8 of the Arbitration Act has been stated to be “the date of” submitting the first statement on the substance of the dispute. Fourthly, the aforesaid amendment shall apply notwithstanding prior judicial precedent. **However, it may be observed that the Parliament has not carried out any amendment to Section 2(1)(h) of the Arbitration Act. The impact of the absence of such an amendment needs to be clearly examined by this Court. This has created an anomalous situation wherein potentially a party “claiming through or under” could be referred to an arbitration, but would not have the right to seek relief under Section 9 of the Arbitration Act. This is merely an illustrative example to indicate a potentially anomalous result.**

## Chloro Controls India Private Limited v. Severn Trent Water Purification Inc [(2013) 1 SCC 641]

Relevant paragraphs are referred by the Hon’ble High Court in myriad cases, a few of such cases citing the judgment have been cited above. Not repeating for the sake of brevity.