Dispute Resolution Hotline

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SUPREME COURT: NON-SIGNATORY CANNOT BE IMPLEADED WITHOUT ESTABLISHING ITS INTENTION TO BE BOUND TO ARBITRATION

- Burden is upon the party seeking to implead a non-signatory, to show its intention to consent to the arbitration agreement
- A non-signatory without any causal connection with the process of negotiations preceding the arbitration agreement cannot be made party to the arbitration
- Circumstances and correspondence post execution of an arbitration agreement cannot bind a non-signatory to the arbitration agreement

INTRODUCTION

The Supreme Court of India ("**Court**") in Reckitt Benckiser (India) Private Limited ("**Reckitt India**") vs Reynders Label Printing India Private Limited ("**Reynders India**") & Anr[1] had occasion to revisit the principles expounded in *Chloro Controls India Private Limited Vs. Severn Trent Water Purification Inc. and Ors*[2], on whether a non-signatory affiliate of a party to an arbitration agreement can be impleaded and subjected to arbitration proceedings.

FACTUAL MATRIX

An application under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Act**") was filed by Reckitt India for appointment of an arbitrator pursuant to an agreement between Reckitt India and Reynders India ("**Agreement**"). Reckitt India also impleaded a Belgian based affiliate of Reynders India ("**Reynders Belgium**") despite it being a non-signatory to the Agreement. Both Reynders India and Reynders Belgium were constituents of the same group of companies known as Reynders Label Printing Group ("**Reynders Group**"). The application was accordingly filed before the Supreme Court on the premise that Reynders Belgium was an entity incorporated in a country other than India and consequently, this was an International Commercial Arbitration.

In deciding the application, the Court had to, *inter alia*, consider whether it was manifest from the correspondence exchanged between the parties, culminating in the Agreement, that the relationship envisaged in the Agreement was between Reckitt India and the Reynders Group and whether it was a clear intention of the parties to bind both the signatory as well as non-signatory party i.e. Reynders Belgium.

ARGUMENTS FOR IMPLEADING THE NON-SIGNATORY

Reckitt India referred to a clause in the Agreement whereby Reynders Belgium agreed to indemnify Reckitt India in case of any loss or damage caused on accounts of acts and omissions by Reynders India, therefore arguing that Reynders Belgium formed an integral party to the Agreement which contained an arbitration clause. Reckitt India further argued that Reynders Belgium was a part of the exhaustive negotiations in relation to execution of the Agreement. To further this point, it pointed out correspondence between a Mr. Frederik Reynders, purportedly a promoter of Reynders Belgium, and who was allegedly acting for and on behalf of Reynders Belgium while the Agreement was being finalized; therefore, indicating Reynders Belgium's consent to arbitration. Reckitt India argued that Reynders Belgium was the disclosed principal on whose behalf Reynders India had executed the Agreement.

ARGUMENTS AS TO WHY NON-SIGNATORY SHOULD NOT HAVE BEEN IMPLEADED

Reynders Belgium submitted that it had no presence or operation in India and was not involved in the negotiation, execution and/or performance of the Agreement; neither was there any privity of contract between itself and Reckitt India. It further argued that Reynders India and Reynders Belgium were only part of the Reynders Group, which was an internationally operating group of seven printing companies each with their own separate legal entities operating from different offices. Both Reynders India and Reynders Belgium had a common holding company being Reynesco NV. Reckitt Belgium also clarified that Mr. Frederik Reynders wasn't the promoter of Reynders Belgium and was only an employee of Reynders India.

JUDGMENT

Having considered the submissions of both sides, the Court held that the burden was on Reckitt India to establish that Reynders Belgium had an intention to consent to the arbitration agreement and be a party thereto, even if it was for the limited purpose of its obligations to indemnify Reckitt India for damages and loss caused due to acts and omissions of Reynders India. This burden, the Court found, had not been successfully discharged by Reckitt India.

The Court found that Reynders Belgium was neither the signatory to the arbitration agreement nor did it have any causal connection with the process of negotiations preceding the Agreement or the execution thereof. From the facts placed before it, it found that Mr. Frederik Reynders was only an employee of Reynders India, who acted in that capacity during the negotiations preceding the Agreement, and was in no way associated with Reynders Belgium.

Having considered the facts on record, it therefore held that Reynders Belgium was neither a party to the Agreement nor had it given its assent to the arbitration agreement and that the fact of Reynders Belgium and Reynders India

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belonging to the same group of companies made no difference.

ANALYSIS

Having held that Reynders Belgium could not be made party to the arbitration, technically, the Court could therefore no longer grant reliefs under the application filed on the premise of an international commercial arbitration. However, in the interest of justice and possibly by virtue of the consent of Reynders India, it went ahead and appointed an arbitrator to conduct domestic commercial arbitration between Reckitt India and Reynders India.

While it was important that the Supreme Court added further clarity to the principles that were expounded in Chloro Controls, going ahead and appointing the arbitrator to pursue domestic arbitration saves parties the cost and time in having to file a fresh Section 11 petition, in a court of appropriate jurisdiction. This is very much in keeping with the recent trend of Courts not allowing technicalities to get in the way of the larger picture of expediting arbitration. However, with this judgment in place, parties should take care while seeking to implead such non-signatory affiliates and must only do so if facts show a clear intention on their part to consent to arbitration.

– Siddharth Ratho & Sahil Kanuga
You can direct your queries or comments to the authors

[1] Petition for Arbitration (Civil) No. 65 of 2016
[2] (2013) 1 SCC 641

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