

# Dispute Resolution Hotline

November 05, 2014

## BOMBAY HIGH COURT: NON-SIGNATORIES BOUND BY ARBITRATION AGREEMENT

Bombay High Court:

- Holds that in an arbitration agreement between two groups, group entities which are not signatories to the agreement may also be made party to the arbitration agreement if they are referred to in the contract.
- Reiterates that an arbitration agreement ought to be construed in a broad and common sense manner.
- Reiterates that the arbitration agreement should be interpreted having regard to words and phraseology therein and no term / phrase should be treated as meaningless, especially if they are consistent with the other parts of the agreement.

### INTRODUCTION

The Division Bench of the Bombay High Court (“**Court**”) has, in the case of *Rakesh S. Kathotia and Anr. v. Milton Global Ltd. and Ors.*<sup>1</sup>, liberally and purposefully interpreting an arbitration agreement, has held that group entities (who are referred to in but are non-signatories to an agreement) will be bound by the terms of the arbitration agreement.

### FACTS

Under a Joint Venture Agreement (“**JVA**”), the ‘Subhkam Group’ and ‘Vaghani Group’ constituted ‘*Milton Global Limited*’ as a Joint Venture Company (“**JVCo**”). The management of the JVCo was vested in a Board of Directors to be appointed by ‘Subhkam Group’ and ‘Vaghani Group’, holding 49.99% and 50.01%, respectively, of the total issued and paid up capital of the JVCo.

Under the JVA, the definition of the ‘Subhkam Group’ included “*such other entities controlled by him or his immediate relatives or his group companies directly or indirectly*”. Similarly, the definition of the ‘Vaghani Group’ included “*...and their immediate relatives taken together and such other entities controlled by them or their immediate relatives directly or indirectly*”.

Disputes arose between the parties when the Appellants alleged that the Respondents were carrying on a competitive business set up by the Respondents through Hamilton Housewares Pvt. Ltd. The Subhkam Group approached the Court to seek certain interim reliefs under **Section 9** of the Arbitration and Conciliation Act, 1996 (“**Act**”).

The **Section 9** petition was dismissed by the Learned Single Judge of the Court on the ground that the identities of the parties to the arbitration agreement under the JVA and identities of the parties to the **Section 9** application were not the same. The order of the Learned Single Judge was carried in appeal before the Division Bench.

### JUDGMENT

#### Interpretation of Arbitration Agreements

The Court reiterated that an arbitration agreement ought to be construed in a broad and common sense manner. A commercial document should be interpreted having regard to words and phraseology therein and no term / phrase should be treated as meaningless, especially if they are consistent with the other parts of the agreement. In case of ambiguity, the intention of the parties should be determined and honoured to the extent possible.

It was observed that the legislative intent of the Act was to encourage arbitration. In accordance with the same, it was held that the aforesaid principles were required to be applied to the JVA and the arbitration agreement therein.

#### Identity between the Parties to the Arbitration Agreement and the **Section 9** Petition

The Court observed that the JVA made elaborate references to the ‘Vaghani Group’ and the ‘Subhkam Group’ and authorized representatives had been appointed for both the groups. The JVA specifically stated that while there were multiple parties, they belonged to either the Vaghani Group or the Subhkam Group.

The Court observed that the JVA was entered into between the ‘Vaghani Group’ and the ‘Subhkam Group’, and not between specific individuals and / or entities. Thus, the immediate relatives and the entities controlled by the respective groups (who were admittedly not signatories to the JVA), were also held to be bound by the terms of the JVA.

Although the ‘group of companies doctrine’ (as accepted by the Supreme Court of India in *Chloro Controls*<sup>2</sup>) was

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briefly discussed, it was not applied by the Court. The Court held that the JVA was unambiguously between the whole of the Vaghani Group and Subhkam Group, including the entities who were not signatories to the JVA.

Interestingly, after determining that the **Section 9** petition was, in fact, maintainable on the ground of identities of parties, the Court rejected the application on merits.

## ANALYSIS

In the present case, the Court once again has indicated that the intention of the parties to arbitrate is paramount. The Court has favoured a liberal and broad interpretation of arbitration agreements, to ensure that parties' intention to arbitrate is not frustrated on mere technicalities and red-tape.

Liberal interpretation has, in the peculiar facts of this case, been extended to include the non-signatory related entities of a company / person, which may be considered as parties to an arbitration agreement and thus, bound by the dispute resolution mechanism without even being signatories.

Parties should observe caution while entering into agreements containing an arbitration agreement and consciously determine if they desire to bind their related parties/group entities to the agreement. Potential misuse of this view is also possible where it may be attempted to drag non-signatories into arbitration.

We expect this judgment to be taken up to the Supreme Court of India.

— **Varuna Bhanrale & Sahil Kanuga**

You can direct your queries or comments to the authors

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<sup>1</sup> Appeal no 366 of 2014 in Arbitration Petition No. 66 of 2014

<sup>2</sup> *Chloro Controls(I) P. Ltd v. Severn Trent Water Purification*, (2013) 1 SCC 641

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