IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 41270 OF 2025

Hind Offshore Private Limited ...Petitioner

Versus

OCS Services (India) Private Limited ...Respondent

Dr. Veerendra Tulzapurkar, Senior Advocate, *a/w Nitin Parkhe, i/b Jacob Kadantot for the Petitioner.*

Ms. Fereshte Sethna, *a/w Prakalathan Bathaye, Sushmita Singh, i/b DMD Advocates for Respondent.*

ASHWINI JANARDAN VALLAKATI
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CORAM: SOMASEKHAR SUNDARESAN, J.
DATE: MAY 19, 2026

JUDGEMENT:

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("***the Act***") impugning an order dated November 19, 2025 ("***Impugned Order***"), which rejected an application by the Petitioner, Hind Offshore Private Limited ("***Hind Offshore***"), seeking to implead an entity by the name, Planet Support Services India Private Limited ("***Planet***

Support"), in the course of defending a claim raised by Respondent No.1, OCS Services (India) Private Limited ("***OCS Services***").

2. Two issues fall for consideration in the captioned proceedings:-

A] Whether a challenge is at all maintainable against the rejection of an application for impleadment of a third party as a veritable party; and

B] Whether on merits, in the facts of the case, a case for interference with the Impugned Order has been made out.

3. OCS Services is the claimant in the arbitration proceedings. OCS Services had bagged a contract from Oil and Natural Gas Corporation Limited ("***ONGC***") for painting certain rigs, for which it required two vessels to accommodate labour and material. Towards this end, two Charter Party Agreements for two distinct vessels were executed on July 27, 2021 ("***Subject Agreements***"). OCS Services contended that non-compliance of the vessels with applicable regulatory standards on the part of Hind Offshore led to ONGC terminating its contract with OCS Services, which, in turn, led to OCS Services raising a claim in the arbitration against Hind Offshore.

4. In the arbitration, Hind Offshore filed an application contending that Planet Support is a necessary party to the arbitral proceedings, since it was a party not only affiliated with OCS Services under common ownership

and control but was also involved in the negotiation, finalisation and continued provision of services after the Subject Agreements were signed, thereby making it a necessary party. Therefore, it was contended that Planet Support was not only a group company, but its role also entailed a commonality of subject matter, making it an integral part of the transaction between OCS Services and Hind Offshore.

5. Towards this end, an ownership structure chart was presented and relied upon in the course of the arbitration proceedings, the contents of which are not in dispute. This chart is reproduced in the Impugned Order. It essentially sets out the fact that one Mr. Raju Radhakrishna Shete owns 100% of a Singaporean company, which in turn owns 100% of another company called Planet Energy Services, PTE Ltd. ("***Planet Energy***"), which in turn owns 90% of Planet Support.

6. Planet Energy is also a joint venture partner in a company called OCS Services Ltd., a company incorporated in the British Virgin Islands, which is a 50:50 joint venture, with the other 50% being held by a Norwegian investor through an intermediate holding company. This joint venture company is the holding company of OCS Services, the claimant in the arbitration.

7. Hind Offshore contends that despite owning only 50%, Planet Energy controls the entire voting power in OCS Services because the Norwegian company is only a financial investor, with no control or participation in the management of that entity. Therefore, it is contended that for all legal purposes, the same ultimate owner, Mr. Raju Shete, holds and controls the entire voting power of Planet Support and indeed of OCS Services. That apart, Hind Offshore sought to bring to bear various emails to indicate the involvement of Planet Support in the negotiation and finalisation of the Subject Agreements and in ensuring that they were executed. Another set of emails was relied upon to indicate the continued involvement of Planet Support in the course of the provision of services under the Subject Agreements.

8. The Learned Arbitral Tribunal examined the material on record and the case law on non-signatory veritable parties to arbitration agreements, and rejected the prayer to make Planet Support a party to the arbitration proceedings. Hence this appeal.

Contentions of the Parties:

9. I have heard Dr. Veerendra Tulzapurkar, Learned Senior Advocate on behalf of Hind Offshore and Ms. Fereshte Sethna, Learned Advocate on

behalf of OCS Services and Planet Support. With the assistance of parties, I have examined the material on record.

10. Dr. Tulzapurkar would point out that Hind Offshore's reasonable and logical contention on Planet Support being a veritable party has been shut out at the threshold. Whether it is a veritable party is a mixed question of fact and law, and it is only after leading evidence that such a question ought to have been answered. The solution, he would submit, was to permit Planet Support to be impleaded; then permitting evidence to be led; and thereafter answering the question of whether Planet Support is not to be regarded as a veritable party.

11. Dr. Tulzapurkar would rely upon the decision of the Constitution Bench of the Supreme Court in ***Cox and Kings***[1], and in particular, the following extracts:-

> *"**60**. The above discussion shows that **international jurisdictions, in some form or the other, have moved beyond the formalistic requirement of consent to bind a non-signatory to an arbitration agreement**. The primary conclusion is that **the issue of binding a non-signatory to an arbitration agreement is more of a fact-specific aspect**. [Bernard Hanotiau, "May an Arbitration Clause be Extended to Non-signatories : Individuals, States or Other Companies of the Group?" in Complex Arbitrations : Multi-party, multi-contract, multi-issue — A comparative study, Bernard Hanotiau (Eds.) (2nd Edn., 2020) 95, 194.] **In jurisdictions such as France***

1 Cox & Kings Ltd. v. SAP India (P) Ltd. - (2024) 4 SCC 1

and Switzerland, there is a broad consensus that consent or subjective intention of a non-signatory to arbitrate may be proved by conduct. Such subjective intention could be derived from the objective evidence in the form of participation of the non-signatory in the negotiation, performance, or termination of the underlying contract containing the arbitration agreement. However, the Group of Companies doctrine has not been universally accepted by all jurisdictions.

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170. In view of the discussion above, we arrive at the following conclusions:

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;"

[Emphasis Supplied]

12. Dr. Tulzapurkar would point out that the Learned Arbitral Tribunal was presented by OCS Services with a purported agreement between OCS Services and Planet Support to indicate that there was an independent contract governing the terms on which Planet Support was involved and purportedly only provided assistance to OCS Services. This document was specifically assailed by Hind Offshore as being a "*patently fabricated and backdated document styled as a services agreement*" in an Additional Affidavit dated October 24, 2025. However, the Impugned Order states in Paragraph 43 that it is not "*the case of the Applicant that the service agreement is a sham agreement or a surrogate agreement*", and therefore, the Impugned Order is based on a blatantly wrong reading of the record.

13. It was also contended that by placing a very high burden at the very threshold on Hind Offshore, without permitting evidence to be led to show how Planet Support is a veritable party, the application to implead Planet Support was summarily dismissed.

14. In contrast, Ms. Fereshte Sethna, Learned Advocate on behalf of OCS Services would contend that a careful reading of Section 16 and Section 37 of the Act would show that the challenge in the instant case is not at all maintainable. According to her, OCS Services is the claimant in the arbitration and a plain reading of Section 16(2) and Section 16(3) would indicate that the person who can file an application under Section 16 questioning the jurisdiction is the respondent in the arbitral proceedings, and it is the acceptance of such a challenge that is appealable under Section 37(2)(a) of the Act. Since Hind Offshore was the party required to file the Statement of Defence and the one that sought to bring in a third party into the proceedings, the provisions of Section 37 of the Act are not at all attracted at this stage.

15. That apart, Ms. Sethna would submit that OCS Services bagged a contract to paint the rigs of ONGC, for which it had relationships with multiple third parties, such as Planet Support. There is no basis to rope in Planet Support into the arbitration initiated against Hind Offshore, which relates to

the Charter of two vessels. Planet Support also provides services similar to what it provides to OCS Services, to multiple other clients, and such a role is that of a support service, including vendor management. Also relying on ***Cox and Kings***, Ms. Sethna would submit that by helping manage the execution of the Subject Agreements between OCS Services and Hind Offshore, Planet Support would not become party to the arbitration agreement contained in them. Ms. Sethna would emphasise that the test laid down is not to see if parties are related, but to see if the relationship between the parties is of a nature that makes the non-signatory party, a party to the arbitration agreement i.e. being bound by the obligation to settle disputes by arbitration.

Analysis and Findings:

16. Having heard the parties, I must record at the threshold that the Petition does not articulate the precise basis on which the jurisdiction of this Court has been invoked. Upon specific queries from the Bench, the Petitioner reformulated its approach to invoke Section 37(2)(a) i.e. acceptance of a plea against jurisdiction raised under Section 16(2) or Section 16(3) of the Act to maintain this appeal.

17. There is consensus between the Learned Advocates for the parties that without the need for formal amendments, this Court may treat this Petition as having been filed invoking Section 37(2)(a), without prejudice to

OCS Services' contention that even in terms of that provision, this challenge is not maintainable. By consent of the parties, the Petition was heard finally with the aforesaid approach.

Consideration of Maintainability of the Challenge:

18. At the threshold, the issue of maintainability must be dealt with, and therefore, the provisions of Section 16 of the Act may be noticed:

> *16. Competence of arbitral tribunal to rule on its jurisdiction.—*
>
> *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*
>
> *a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*
>
> *b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*
>
> *(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.*
>
> *(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.*

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

[Emphasis Supplied]

19. A plain reading of the foregoing would show that under Section 16(1) of the Act, the Arbitral Tribunal has the power to decide on its own jurisdiction – which includes coverage of the existence or validity of an arbitration agreement. Under Section 16(2), the plea of there being no jurisdiction can be raised before the Statement of Defence is filed. Under Section 16(3), a plea that the Arbitral Tribunal is exceeding the scope of its authority may be filed as soon as the matter that gives rise to such contention comes about. A rejection of a plea under Section 16(2) or Section 16(3) would mean that the Arbitral Tribunal has ruled in favour of its own jurisdiction, and this is not amenable to challenge until the Section 34 stage, which may be exercised if the party that raised the jurisdictional objection is aggrieved by the arbitral award. It is possible that the Arbitral Tribunal is against the plea opposing jurisdiction, but on merits, holds in favour of such party eventually. In that event, the decision on jurisdiction would go without challenge even at the Section 34

stage, as during the pendency of arbitral proceedings there is no challenge conceivable to the rejection of such a plea.

20. This brings one to Section 37 of the Act, which reads thus:

> *37. Appealable orders.—*
>
> *(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:*
>
> *(a) to (c) ******
>
> *(2) Appeal shall also lie to a court from an order of the arbitral tribunal—*
>
> *(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
>
> *(b) ******
>
> *(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.*
>
> ***[Emphasis Supplied]***

21. Section 37(2)(a) makes it clear that if the plea raised under Section 16(2) or Section 16(3) were to be accepted by the Arbitral Tribunal, the order so accepting the plea is amenable to an appeal. This is logical inasmuch as once

the Arbitral Tribunal rules that it does not have jurisdiction, the matter ends there and such a decision is amenable to a statutory right of check and balance. This rejection may take the form of a rejection of jurisdiction over the entire dispute, in which case the arbitration then comes to an end and is subjected to an appeal. It may also take the form of a rejection of jurisdiction over a party arraigned in the proceedings, which can then be subjected to a challenge. Therefore, when a party sought to be included within the array of parties raises an objection on the ground that it is not even amenable to the jurisdiction of the Arbitral Tribunal, and such an objection is accepted, the party seeking to rope in such third party whose plea on absence of jurisdiction is accepted, would have a right to challenge that ruling.

22. Considering how the Section 11 Court should not enter upon the facet of veritable party and must leave the issue to the Arbitral Tribunal, the Supreme Court in ***ASF Buildtech***[2] observed the following (in Paragraph 102):

> *"In contrast, **determinations made by the arbitral tribunal — including on issues of jurisdiction and impleadment — are amenable to challenge under Section 16 of the Act, 1996 and, thereafter, under Section 37**. Accordingly, the better course of action is for referral courts to refrain altogether from delving, into the issue of whether a non-signatory is a veritable party to the arbitration agreement, and **to leave such matters for the arbitral tribunal to decide in the first instance**."*
>
> ***[Emphasis Supplied]***

*2 ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd. - **(2025) 9 SCC 76***

23. It is clear that the Supreme Court too had examined the scheme of the Act and the relevance of Section 37 in a challenge to a ruling accepting a plea of absence of jurisdiction. A decision of an Arbitral Tribunal to permit or reject impleadment of a party as a veritable party can have far-reaching consequences. However, bearing in mind the provisions of Section 5 of the Act, where the Court is prohibited from interfering in the conduct of arbitral proceedings under Part I of the Act except where specifically provided, this Court should simply not interfere where the decision of the Arbitral Tribunal is to permit impleadment. However, where there is an acceptance of a plea for impleadment, it would necessarily follow that there is scope for intervention because Section 37(2)(a) so provides. If the arbitration proceedings are conducted entirely without the involvement of someone who is later, after the award is passed, held to be a veritable party, the parties would be put to severe hardship with the entire arbitral proceedings being found to have been conducted without the necessary party's involvement.

24. A learned Single Judge of the Delhi High Court in ***Era Infra***[3] has analysed this facet threadbare and indicated that an Arbitral Tribunal's refusal to proceed against a party sought to be made a veritable party is amenable to

3 ERA Infra Engineering Ltd. v. National Highways Authority of India - ***2026 SCC OnLine Del 1199***

challenge under Section 37(2)(a) of the Act. Among others, the Learned Single Judge has expressed the following view:

> *"20. The rejection of the application for impleadment brings a dead end to the proceedings so far as the non-signatory seeking impleadment is concerned. The wait for seeking remedy till passing of the award and thereafter in case of success, the entire arbitration exercise to be undertaken de novo would defeat the object of the enactment of the Act especially when a right to appeal is provided on a conjoint reading of Sections 16 and 37 of the Act. For this reason the statutory remedy mentioned in ASF Buildtech (P) Ltd. (supra) is not a remedy under Section 34 of the Act which would be against the spirit of the Act of time bound conclusion of dispute resolution by arbitration."*
>
> *[Emphasis Supplied]*

25. Against this backdrop, Ms. Sethna's contention that the jurisdiction under Section 37(2)(a) has not been attracted must be dealt with. In the facts of the case, both OCS Services and Planet Support filed replies to the application for impleadment moved by Hind Offshore, and took up the plea that the Arbitral Tribunal did not have jurisdiction over Planet Support. This plea has been accepted. Acceptance of such plea is amenable to a challenge under Section 37(2)(a) of the Act and that should be the end of the matter on whether this Court has jurisdiction.

26. I find the parsing of literal construction of Section 16(2) and mooring it to the right of only an original defendant, to be contrary to the scheme of the

Act. Hind Offshore has sought to defend and raise a counterclaim, in which it wants to also move against Planet Support. The time to raise an objection as seen from the deadline indicated in Section 16(2) is to be linked to the Statement of Defence to the counterclaim. Indeed, both OCS Services and Planet Support have raised objections and taken a plea that the Arbitral Tribunal does not have jurisdiction over Planet Support. The only provision to which such an objection is referable is Section 16(1) of the Act. That plea has been accepted by the tribunal. The acceptance of such a plea is amenable to challenge under Section 37(2)(a) of the Act. ***ASF Buildtech*** sets that out clearly. Although that was a decision in relation to how the Section 11 Court should not have to sit in judgement on whether a party is a veritable party, since it may actually involve review of mixed questions of fact and law, the judgement is a clear declaration of the law on how this element is in the domain of the Arbitral Tribunal and is subject to a check and balance under Section 37 of the Act.

27. The Supreme Court has specifically and carefully declared that a decision on impleadment is amenable to an appeal, and when one reads that in the context of the scheme of Section 37(2)(a) read with Section 5 of the Act, the inexorable and necessary conclusion is that an order of the Arbitral Tribunal accepting the objection by a party to the Arbitral Tribunal having jurisdiction over it, is amenable to challenge. To the extent the application

filed by Hind Offshore entailed impleadment of Planet Support, and the objection to impleadment has been accepted, the challenge under Section 37(2)(a) would lie. Therefore, the captioned Petition is indeed maintainable.

Consideration of Merits of the Challenge:

28. The key question to ask is what the role of Planet Support has been in the agreement between Hind Offshore and OCS Services, and whether a commitment by Planet Support to have any disputes in this regard be referred to arbitration under the arbitration agreement between these two parties is discernible.

29. The approach of Hind Offshore is apparent – so long as a group relationship between OCS Services and Planet Support is shown, it believed Planet Support ought to be made a party to the arbitration proceedings, leaving the material particulars of what precise role it played to the stage of evidence and trial. Indeed, Hind Offshore has also brought to bear emails to show involvement of Planet Support in the negotiation of the Subject Agreements as well as emails after the execution, to make out a suggestion that Planet Support was involved in the transaction and therefore has a subject matter commonality. Therefore, the contentions have all been centred around demonstrating that Planet Support is a group company of OCS Services, and to

that is added, the existence of the email correspondence before and after the execution of the Subject Agreements.

30. I am afraid this would not suffice to show that Planet Support is a group company against which a counterclaim is to be mounted. When one examines the email correspondence sought to be relied upon for this purpose, it is apparent that the emails indicate Planet Support playing a role in the execution of the contract. While this may appear to be a role in negotiation and execution, one cannot lose sight of the fact that Planet Support's role during such involvement was of a vendor management service provider. There is also nothing to indicate that key and critical decisions on any material terms of the contract were finally approved only by Planet Support, making it the real controller of the bargain struck between the parties. The record does not have such an indication and the Learned Arbitral Tribunal has returned a finding to that effect.

31. For all purposes of my analysis, it is quite clear that Planet Support is a group company and an affiliate of OCS Services. The two entities have common ownership going back to the hands of Mr. Raju Shete. However, it is difficult to accept that the Norwegian joint venture partner does not have any voting power shy of 50% in the holding company of OCS Services. The disclosure relied upon (Page 601 of the Paperbook) only states that the joint

venture partner does not have joint control over the holding company of OCS Services. The statement is that this investor does not have power over more than half of the voting rights and that the treatment of the joint venture in its books of accounts is purely on the basis of its equity holdings. This is only an assertion of what the Norwegian joint venture partner does not have. It is not a disavowal of even the 50% of the voting power.

32. Indeed, it is stated that Planet Energy takes care of the day-to-day operations of the holding company of OCS Services. Taking this at its highest i.e. that all decisions of OCS Services are taken by Planet Energy and its promoters i.e. Mr. Raju Shete, it would at best make OCS Services a group company, but by no stretch could its independent legal existence and its independent autonomy be undermined and wished away to lift the corporate veil. This is what the Learned Arbitral Tribunal has impeccably held. The Learned Arbitral Tribunal has chosen not to extract from the emails relied upon but has returned a finding that these emails do not show involvement of a nature that makes Planet Support privity to the arbitration agreement between Hind Offshore and OCS Services.

33. I have examined the email correspondence and indeed the application for impleadment which sets out Hind Offshore's characterisation and depiction of these emails to seek roping in Planet Support. I find that the

email correspondence relied upon relates to support services and would at best point to Planet Support playing an agency role for OCS Services. There is neither any privity of contract between Planet Support and Hind Offshore, nor is there anything to show that a commitment by Planet Support to be bound by arbitration in any dispute between Hind Offshore and OCS Services is discernible. The emails substantially indicate a vendor management support role. The claim in the arbitration is by OCS Services. The impleadment application does not even indicate the nature of the counterclaim for which Planet Support's participation in the arbitration proceedings would be necessary. Planet Support could well be a witness in the proceedings and reliance on Section 27 of the Act may be placed to force Planet Support to lead evidence, of course with the leave of the Learned Arbitral Tribunal.

34. However, to seek to rope in Planet Support as a party to the arbitration without anything more to show than the fact that it is a group company of OCS Services and that it had some support role or other to play in the course of the hire of Hind Offshore's vessels by OCS Services, would not make it a veritable party to the arbitration agreement. As stated earlier, the nature of the email correspondence appears to be that of a coordinator of clerical activities, such as invoicing, signature of contracts etc.

35. Indeed, the Additional Affidavit had alleged that the services agreement between OCS Services and Planet Support, brought on record by OCS Services to demonstrate an arm's-length relationship between two group companies, is fabricated and backdated. However, apart from a bald allegation there is nothing to indicate why and how such services agreement is to be regarded as fabricated and forged. The Impugned Order indeed contains an erroneous observation that it is not Hind Offshore's case that the services agreement with Planet Support is a sham or surrogate agreement. However, even if one accepts this error at its highest, for its apparent conflict with the assertion in the Additional Affidavit, in my opinion, the needle does not turn in Hind Offshore's favour.

36. Finally, one must examine the contents of ***Cox and Kings***, which both sides rely on, reading it as indicative of their line of argument. Indeed, Courts (and Arbitral Tribunals) would need to adopt a pragmatic approach to discerning consent of a non-signatory as being a veritable party to the arbitration agreement. At the risk of the extraction being a copious and prolix one, in my view, the following extracts are noteworthy:

> *"E. Group of Companies doctrine*
>
> *(i) Separate legal personality*

88. The principle of separate legal personality has been the cornerstone of corporate law. In Aron Salomon (Pauper) v. A. Salomon & Co. Ltd. [Aron Salomon (Pauper) v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)], the House of Lords famously observed that a company is at law a different person altogether from the promoters, directors, shareholders, and employees. The principle of separate legal personality equally applies to corporate groups. A parent company is not generally held to be liable for the actions of the subsidiary company of which it is a direct or indirect shareholder. The Companies Act, 2013 ("the 2013 Act") has statutorily recognised a subsidiary company as a separate legal entity. [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] Section 2(46) of the 2013 Act defines a holding company as a company of which one or more other companies are subsidiary companies. Section 2(87) defines "subsidiary company" to mean a company in which the holding company exercises control over the composition of the Board of Directors and has a controlling interest of at least 50% over the voting rights. Although a holding company owns a controlling interest in the subsidiary company, they are considered as separate legal entities. Group companies' structures allow multinational corporations to structure their businesses at both the national and international level to leverage better returns for the investors and ensure business growth of the corporation.

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(ii) Adopting a pragmatic approach to consent.

102. Increasingly, multinational groups often adopt new and sophisticated corporate structures for execution and delivery of complex commercial transactions such as construction contracts, concession contracts, licence agreements, long-term supply contracts, banking and financial transactions, and maritime contracts. For the execution of such contracts, corporate structures may take the form of groups based on equity, joint ventures, and informal alliances. [Stavros Brekoulakis, "Parties in International Arbitration : Consent v. Commercial Reality" in Stavros

Brekoulakis, Julian DM Lew, et al. (Eds.) in The Evolution and Future of International Arbitration (2016) 119, 120.] ***A multi-corporate structure helps a group in adopting commercially effective models of operation as different companies can get involved at different stages of a single transaction. Often, persons or entities, who are not signatories to the underlying contract containing the arbitration agreement, are involved in the negotiation, performance, or termination of the contract****. In the context of arbitration law,* ***the challenge arises when only one member of the group signs the arbitration agreement, to the exclusion of other members. Should the non-signatories be excluded from the arbitration proceedings, even though they were implicated in the dispute which forms the subject-matter of arbitration? As a response to this challenge, arbitration law has developed and adopted the Group of Companies doctrine, to allow or compel a non-signatory party to be bound by an arbitration agreement****.*

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(iii) Group of Companies doctrine — A fact based doctrine

103. ***The Group of Companies doctrine is used in the context of companies which are related to each other by virtue of their being a part of the same corporate group. Since every company in a group has a separate legal personality, a contract formally entered by one member of a group will not be binding on the other members by virtue of the limited liability principle****. The Group of Companies doctrine is used to bind a non-signatory company within a group to an arbitration agreement which has been signed by other member of the group. [Uncitral, "Settlement of Commercial Disputes : Possible uniform rules on certain issues concerning settlement of commercial disputes : Conciliation, interim measures of protection, written form of arbitration agreement : Report of the Secretary General" A/CN.9/WG.II/WP.108/Add.1 (26-1-2000).]* ***The underlying basis of the Group of Companies doctrine rests on maintaining the corporate separateness of the group companies while determining the common intention of the parties to bind the non-***

signatory party to the arbitration agreement. In other words, the Group of Companies doctrine is a means of identifying the common intention of the parties to bind a non-signatory to arbitration agreement by emphasising and analysing the corporate affiliation of the distinct legal entities. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1563.]

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(iv) The determination of mutual intention

110. In multi-party agreements, the Courts or tribunals will have to examine the corporate structure to determine whether both the signatory and non-signatory parties belong to the same group. This evaluation is fact specific and must be carried out in accordance with the appropriate principles of company law. Once the existence of the corporate group is established, the next step is the determination of whether there was a mutual intention of all the parties to bind the non-signatory to the arbitration agreement.

111. The Group of Companies doctrine requires the Courts and tribunals to consider the commercial circumstances and the conduct of the parties to evince the common intention of the parties to arbitrate. It is important to note that the Group of Companies doctrine concerns only the parties to the arbitration agreement and not the underlying commercial contract. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1567.] Consequently, a non-signatory could be held to be a party to the arbitration agreement without becoming a formal party to the underlying contract. The existence of a group companies is one of the essential factors to determine whether the conduct amounts to consent but membership of a group is not sufficient in itself. This has been the consistent position of law, starting from the Dow Chemical [Dow Chemical v. Isover Saint Gobain ICC Case No. 4131, dated 23-9-1982 (ICC, Interim Award)] award, where it was observed that the common intention of the parties to bind the non-signatory party to the arbitration

*can be inferred from the "circumstances that surround the conclusion and characterise the performance and later the termination of the contracts". **In other words, it was held that a non-signatory party could be considered as a "true party" to the arbitration agreement on the basis of their role in the conclusion, performance, or termination of the underlying contract containing the arbitration agreement**."*

[Emphasis Supplied]

37. What becomes clear is that whether a non-signatory is a veritable party to the arbitration agreement is the subject matter of assessment. The doctrine does not relate to the underlying agreement and the transactions contracted therein, but to the arbitration agreement. The doctrine is not that every group company that had any role at all to play must be subjected to arbitration proceedings. The enquiry is always meant to be fact-specific. In any operating contract, there could be multiple other parties with which one of the contracting parties has a contract. They would not become liable to action in any arbitration that a group company has with any third party.

38. Therefore, when one examines the concluding portion of ***Cox and Kings***, to see the "conduct" of the non-signatory third party, the conduct to be examined is whether such third party indicated being an integral party to the arbitration agreement. Towards this end, the party seeking impleadment of the third party has to make out the case of how the cause of action involved

necessarily entails roping in such third party whose conduct necessarily indicates a discernible veritable privity to the arbitration agreement. At the least, Hind Offshore would have had to indicate the nature of its cause of action against Planet Support for which it sought impleadment. That facet of the matter is sorely missing.

39. Instead, Hind Offshore's approach has simply been to indicate that there is a group company that has played some role, and therefore, without even indicating what the cause of action against the group company is, and why its involvement as a party to the arbitration is necessary, the group company should be first dragged into the proceedings, leaving the material detail of the cause of action to some undefined subsequent stage. That, in my opinion, is not an acceptable approach at all. It was always open to Hind Offshore to indicate the cause of action it desired to pursue against Planet Support and also seek to lead evidence to make that good, and thereby bring to bear its contention now being made, that a mixed question of fact and law is involved. It is for the party seeking to bring in a non-signatory party to frame that mixed question of fact and law. What Hind Offshore has done is frame a question of Planet Support being a group company without pleading material facts of how it is vital to make Planet Support a party to the arbitration proceedings.

40. Even taking the assault on the Impugned Order about the erroneous reading that the services agreement between Planet Support and OCS Services had not been assailed by Hind Offshore as a sham or surrogate at its highest, no case has been made out for interference. There is not even a *prima facie* case made out to substantiate the contention that the services agreement is a sham or surrogate. Indeed, OCS Services has brought to bear invoices raised by Planet Support on OCS Services pursuant to the services agreement and compliance with Goods and Services Tax requirements, to indicate that it is not a sham agreement.

41. Therefore, I do not find any reason to interfere with the Impugned Order. It contains an excellent summary of the state of the law on veritable party to arbitration proceedings and applies the law to the facts of the case as presented to the Learned Arbitral Tribunal. There is nothing perverse in it.

42. Therefore, even while holding that the challenge mounted in the Petition was maintainable as a matter of jurisdiction, the captioned Petition is ***dismissed*** on merits. The costs for this round of litigation shall be considered by the Learned Arbitral Tribunal in the course of the conduct of the proceedings.

43. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]