IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.9200 of 2025
Reserved on: 02.12.2025
Decided on: 29.12.2025

Indian Institute of Technology, Mandi (Kamand), H.P. ... Petitioner

Versus

Central Public Works Department & another ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?[1] **Yes**

For the petitioner	:	M/s Akhil Mittal, Abhinav Purohit and Abhishek Kaundal, Advocates.
For the respondents	:	Mr. Balram Sharma, Deputy Solicitor General of India, for respondent No.1. Mr. Vikram Chaudhari, Senior Advocate (through V.C.), with Mr.Arvind Sharma, Advocate, for respondent No.2. Dr. Sambhav K. Pandey, Registrar, IIT Mandi, present in the Court in person.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has challenged order dated 18.04.2025, passed by learned Arbitrator, in terms whereof, an application filed by it for its impleadment as respondent in the arbitral proceedings, presently going on between M/s Supreme Infrastructure India Limited and Central Public Works Department, stands dismissed.

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

2. Brief facts necessary for the adjudication of the present petition are that a Memorandum of Understanding has been entered into between the petitioner and respondent/CPWD on 25.08.2011 (Annexure P-1), in terms whereof, respondent No.1, i.e. Central Public Works Department (hereinafter to be referred as "CPWD") has agreed to undertake the execution of construction work of academic and residential complex along with necessary infrastructure for the petitioner, that is, IIT Mandi at Kamand, in Himachal Pradesh as a deposit work. The terms and conditions of the Memorandum of Understanding, *inter alia*, provide that CPWD shall ensure quality construction, keeping in view the concern of the petitioner regarding global standard of the building and design specified by the Consultant and CPWD has also agreed to put up an exclusive zone headed by a Chief Engineer, in due course of time, to man and monitor the work of IIT Mandi. The responsibilities of CPWD have been spelled out in Clause-6 of the Memorandum of Understanding, which read as under:-

> "***6. Responsibilities of CPWD-***
>
> *6.1 The prequalification and tendering will be carried out by CPWD in consultation with IIT Mandi from the experienced Agencies/ Empanelled Agencies/Contractors depending*

on value of tender and work experience as prescribed in the tender and as per the norms described in the updated CPWD Works Manual 2010.

6.2 The tenders shall be scrutinized and accepted by the CPWD authorities in accordance with the relevant provisions of CPWD works Manual 2010. Prior concurrence of IIT Mandi would be obtained before acceptance of the tender if the tendered amount is more than the corresponding provisions in the sanctioned preliminary estimate.

6.3 Preparation of tender documents invitation and opening of tenders and award of work etc. based on the details given by the consultant(s) appointed by IIT Mandi in accordance with CPWD Manual 2010 as amended from time to time.

6.4 Execution of Work and Project Management including day to day supervision of work.

6.5 Completing the project as per the broad specifications given by the consultant, duly approved by IIT Mandi.

6.6 Intimating IIT Mandi about any excess over the projected cost or possibility of time over run as soon as it comes to its knowledge.

6.7 IIT Mandi or their representative can inspect the work from time to time to assess the progress and quality in the presence of CPWD Engineers with prior intimation. The day-to-day problems, including the granting of any extension of time will be dealt with by CPWD. Monthly physical and financial progress reports should be forwarded to IIT Mandi in order to enable them to monitor the progress of the work. Further, a joint committee with members and Chairman nominated by Director of IIT Mandi consisting of representatives of IIT Mandi and CPWD shall monitor the progress of work at frequent intervals, preferably once a week, by holding regular site/co-ordination meetings and will take decisions accordingly.

6.8 CPWD shall ensure necessary Quality Assurance and Quality Control in the execution of this project strictly in accordance with procedures described in CPWD Manual 2010 as amended from time to time.

6.9 Replying to the audit objections pertaining to the work in so far as they pertain to its acts in execution of the work.

6.10 Handing over to IIT Mandi or an authorized representative of the IIT Mandi completed

buildings along with a set of completion plans.

6.11 CPWD shall provide to the IIT Mandi complete and correct "As-built Drawings alongwith literature, manuals, warranty certificates etc of various installed fittings, fixtures and equipment for the completed project as soon as the project is completed and handed over.

6.12 CPWD shall facilitate the visits of personnel from TERI to the site during construction stage, complete all paper works leading to issuance of the GRIHA certification The consultant will provide whatever Technical help and services essentially required from them as Environmental Consultant.

6.13 Intimating the final cost of the project.

6.14 Contesting the claims of the contractors in arbitration/Court cases or appearing in other legal matters pertaining to execution of work.

6.15 No Departmental charges would be payable to CPWD by the IIT Mandi as the project is being fully funded by the Govt. of India.

6.16 Advising and assisting the IIT Mandi in obtaining necessary service connections in respect of water supply, sewerage, storm water drainage and electricity.

6.17 VAT/Works contract tax/Workers welfare cess/any other statutory levy etc. shall be

recovered from the contractor as per terms and conditions of the agreement by CPWD and the same will be remitted to the concerned authorities directly, the details of which shall be rendered alongwith the final accounts to IIT Mandi; CPWD will have to indemnify IIT Mandi against any lapses.

6.18 If the amount deposited by the IIT Mandi is more than the actual cost of construction plus service charges, the balance amount will be returned to the IIT Mandi on completion of the work and finalization of accounts by CPWD, preferably within a period of 4 months.

6.19 CPWD shall respond to all observations made by the Accountant General-Audit, Internal Audit of the Ministry of Urban Development, Chief Technical Examiner of Central Vigilance Commission and any other statutory authority and comply with the observations.

6.20 Defects liability period (free maintenance period) shall be taken as twelve months from the date of completion of the work including services and other infrastructure. For specialized works such as water proofing etc.. the defect liability period shall be as per the guarantee bond to be executed with those firms.

6.21 The penalty/compensation levied by CPWD due to delay in completion at any stage of works shall be credited to work deposit, which will be reflected in the final accounts of settlement with IIT Mandi. Similarly any bonus for early completion of the work as per agreement conditions to be payable to contractor shall be paid by CPWD and debited to work deposit.

6.22 CPWD will prepare detailed scope of work for various maintenance modules of buildings, services etc. and help IIT Mandi in preparation of tender documents for maintenance contracts."

3. Similarly, the responsibilities, which IIT Mandi has agreed to undertake, are spelled out in Clause-7 of the Memorandum of Understanding, which read as under:-

"***7. The IIT Mandi agrees to undertake the following:***

7.1 Making fund available to CPWD in accordance with the provisions of this MOU.

7.2 Supplying to the CPWD duly approved designs and drawings, specifications, Bill of Quantities, to be obtained from the consultants(s) appointed by IIT Mandi and passing it on to CPWD for preparation of tender documents etc. However CPWD shall

check the detailed estimate/BOQ submitted by the consultant with reference to DSR and/or market rate, as applicable and shall apprise IIT Mandi if there is any defect or variation in specification and its cost implications.

7.3 Intimating to CPWD detailed specifications of items duly approved by the competent authority desired to be provided in the building.

7.4 Supplying all relevant data regarding site to the CPWD.

7.5 Making available the site of work free from all encumbrances.

7.6 IIT Mandi shall allow CPWD or its Agency to erect a site office, site store yard and workers rest rooms (including toilets) near the place of construction free of ground rent. These structures shall be removed and cleared by CPWD upon completion of the work. Labour camps will be allowed inside the campus for the works after prior approval of IIT Mandi.

7.7 IIT Mandi may permit the following:

a. Electricity for construction. The actual consumption charges will be recovered by CPWD from the bills of contractor and credited to project account

b. *Access to contractor's materials and labour to the site of work will be provided subject to the security regulations of IIT Mandi.*

7.8 *The Contractor shall be allowed to draw ground water from any one of the bore wells or other arrangements available with IIT Mandi subject to payment of electricity and pump maintenance charges.*

7.9 *Enlarging the cost and time stipulated in the preliminary estimate if, changes are made in the approved designs/drawings/specifications.*

7.10 *Providing authenticated ownership documents of the land.*

7.11 *Obtaining necessary clearances for the architectural/structural plans from the concerned statutory bodies. CPWD will also help IIT Mandi in this concern.*

7.12 *Providing the required funds as per cash flow requirements projected by the CPWD.*

7.13 *According revised sanction within a reasonable time in case of cost escalation, if any, duly agreed by the IIT Mandi prior to the submission of revised estimates.*

7.14 *Providing security clearances for CPWD staff/contractors and their workers, in case it is so required.*

7.15 Designating a suitably empowered nodal officer for coordinating with the CPWD for the entire project duration. All communications by the designated officer will be made with the designated officer of CPWD. The designated nodal officer shall be responsible and authorized to take decisions and assist the CPWD in completion of the project. The nodal officer shall also be empowered to take decisions on remedial measures for unforeseen situation arising out of entities external to the project in accordance with the approved procedures

7.16 Paying any claims upheld by an arbitrator or court of law relating to the work.

7.17 Paying compensation / levies, if so, required to be paid under any act/law of the Central or the State Government.

7.18 Providing administrative assistance to the CPWD in the execution of the work.

7.19 Pay suitable compensation to CPWD to be decided by the Chief Engineer concerned of CPWD, if IIT Mandi decides to terminate this MOU or decides to drop the proposal after substantial preliminary work has been done by CPWD on the project. In case of abandonment of project / work during construction stage, pay to CPWD all liabilities

relating to the project / work or to be paid to construction agencies engaged by CPWD for execution of the project."

4. Clause-8 of the Memorandum of Understanding envisages the Arbitration Clause, which reads as under:-

"***8. ARBITRATION***

All differences and disputes arising between IIT Mandi and the CPWD on any matter connected with the agreement or in regard to the interpretation of the contents thereof, shall be referred to the Sole Arbitrator appointed by Director, IIT Mandi in accordance with the Arbitration and Conciliation Act, 1996. Even if any dispute, difference or question arises out of or concerning the agreement and whether the same has been referred to Arbitration or not, the CPWD shall continue to perform their duties under the agreement with due diligence unless the CPWD is instructed in writing by IIT Mandi not to continue with the work. The place of Arbitration proceedings shall be IIT Mandi and for legal proceedings, if any, only the courts at Mandi town, Distt. Mandi (H.P.) shall have the exclusive jurisdiction."

5. For the purpose of execution of the work of IIT Mandi, CPWD invited bids vide NIT No.01/EE/IITM/PD-II/2013-14 for "Different Buildings under Phase-1 North for IIT Mandi at Kamand (H.P.).SH: C/o Hostel Blocks-22 Nos. (G+2), Faculty Housing-28 Nos

[(8 Nos.-G+1), (17 Nos.-G+2), (3 Nos.-G+3), Dining Block-3 Nos. (S/S), Faculty Club House-1 No. (S/S) and Servant Quarters-2 Nos. (G+2) i/c Internal Water Supply, Sanitary Installations, Internal Electrical Installations, Drainage and Development of the site etc" wherein, the estimated cost put to bid was Rs. 188,42,69,684/- and the period of completion of said work was 730 days.

6. As per the record, CPWD accepted the bid of the private respondent. Thereafter, on 18.09.2013, Executive Engineer of CPWD issued a letter to the private respondent to submit its performance and bank guarantee and on 25.10.2013, Executive Engineer CPWD called upon the private respondent to take possession of the site and commence the work, apart from completing formalities, including signing of a formal agreement. The tender was accepted by CPWD on 27.11.2013, culminating into execution of an Agreement between the parties consisting of bid documents, general conditions of contract, CPWD Form-8, CPWD specifications and special conditions etc.

7. As a dispute arose between the private contractor and CPWD, the private respondent filed an arbitration petition, copy whereof is appended with the present petition as Annexure P-3. The claim was preferred against the Central Public Works Department

and in terms of Para-27 of the claim petition, the petition was filed by invoking the Arbitration Clause contained in Clause-25 of the Agreement entered into between the parties, which resulted from filing of a petition under Section 11 of the Arbitration and Conciliation Act before this Court and the appointment of the Arbitrator (Hon'ble Mr. Justice Madan B. Lokur (Retd.), Judge of Hon'ble Supreme Court of India, as the sole Arbitrator.

8. During the pendency of these arbitral proceedings, an application was filed by the petitioner herein for its impleadment as a party. This application is appended with the petition as Annexure P-4. It was, *inter alia*, mentioned in the said application that in the arbitral proceedings, which stood initiated by the private respondent against CPWD, the petitioner was a necessary party in light of the MOU, which was entered into between the petitioner and CPWD. It was further mentioned in the application that as the applicant was having a substantial interest in the Project in issue from which the arbitral proceedings had arisen, therefore, the applicant was a necessary party, as the applicant was dependent upon CPWD for the purpose of safeguarding its interest, who was contesting the claim and to safeguard the interest of the applicant, it be impleaded as a party in the said proceedings. It was also averred in the application

that it was a settled legal position that an additional party could be joined in arbitration proceedings, if the party was to be *prima facie* bound by the Arbitration Agreement. It was also mentioned in the application that a claim of Rs.687,879,498/- was filed by the private contractor against CPWD, which finally fastened the liability upon the applicant and, therefore, as the applicant was to be directly hit by the proceedings and as not only untrue facts were being presented before the Hon'ble Tribunal, but an oblique endeavor was also being made by the claimant to raise a false claim in order to take an undue advantage, which was solely designed to prejudice the rights of the applicant, the applicant was a necessary party for the effective adjudication of the claim petition.

9. Said application was opposed by the private contractor, on the ground that the Arbitration Agreement in the Contract which had resulted in the filing of the claim petition, was strictly between the claimant and CPWD and the applicant neither executed the Contract nor was privy to the said Contract. It was also the contention of the private contractor that Indian Law acknowledges that in rare situations, a non-signatory may be roped into arbitration, particularly under the "Group of Companies" doctrine, however, it applies only when the non-signatory is part of the same

Corporate Group and has played a direct and significant role in the negotiation, performance or termination of the Agreement containing the Arbitration Clause. It was further mentioned in the reply that the applicant was a separate legal entity, not shown to be a part of group with the claimant or the CPWD and, therefore, it could not be said that the applicant had consented or intended to be bound by the Arbitration Agreement.

10. In terms of the Order under challenge, learned Arbitrator dismissed the application filed by the present petitioner for impleadment as a party, by returning the following findings:-

> "*36. At the outset, it may be noted that it is not anybody's case that a non-signatory to a contract cannot be made a party to arbitration proceedings relating to disputes between the contracting parties. Each case deserves to be considered on its own merits and should the necessity arise due to circumstances, a non-signatory to a contract can also be impleaded as a party in a dispute referred to arbitration between the contracting parties.*
>
> *37. The traditional view is that disputes maybe referred to arbitration only between parties who are signatories to an arbitration clause. In* ***S.N. Prasad v. Monnet Finance Limited*** *it was observed that a reference to arbitration can be with respect to only*

parties to the arbitration agreement and not the non-parties. Paragraph 8 reads as follows:

> *"...Thus there can be reference to arbitration only if there is an arbitration agreement between the parties. The Act makes it clear that an Arbitrator can be appointed under the Act at the instance of a party to an arbitration agreement only in respect of disputes with another party to the arbitration agreement. If there is a dispute between a party to an arbitration agreement, with other parties to the arbitration agreement as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can be only with respect to the parties to the arbitration agreement and not the non-parties."*

38. However, this view has undergone a change and now there are occasions when the Hon'ble Courts in India have taken the view that a non-signatory to a contract can also be impleaded as a party to an arbitration between the contracting parties. But, this would depend on the circumstances of each case. The leading judgment on this issue is the five judge decision in ***Cox and Kings Ltd. v. SAP India Pvt Ltd.***

39. What are the circumstances pleaded by IIT Mandi for being impleaded as one of the parties to the subsisting arbitration? The sum and substance of the

case put forward by IIT Mandi for impleadment is submitted in paragraph 16 of the application as follows:

> *That the present applicant has substantial interest in the present proceedings because the outcome of the present proceedings is directly relevant to in concern with the applicant. It is submitted that, in case the Hon'ble Arbitral Forum adjudicates the present dispute without hearing the applicant or allowing the applicant to contest and finally passes an award in favor of the Claimant, then, in such eventuality, the outcome of the award shall cause serious prejudice to the applicant. Moreover, it is the applicant who shall face the outcome/consequences of the award without being heard or granted of natural justice.*

40. It is quite clear that the reason given by IIT Mandi for impleadment is only the possibility of an award being rendered by this Tribunal against the Respondent CPWD and should that eventuality occur, the financial ability will fall on IIT Mandi. It may be noted that the claim by the Claimant is to the extent of INR 689 crore and therefore quite clearly the financial liability on the Respondent/ IIT Mandi, if proved, could be quite substantial.

41. With respect, the reason advanced is not good enough. In a civil suit, IIT Mandi may perhaps be a proper party, but those principles do not apply to

proceedings under the Arbitration and Conciliation Act, 1996.

42. It is true that IIT Mandi has a substantial interest in the dispute between the Claimant and the Respondent, but there is no reason to take the view that its interests will not be suitably taken care of or protected by the Respondent. After all, IIT Mandi entrusted the execution of a large project to the Respondent CPWD and there is nothing on record to suggest that it will not protect its own interest as well as that of IIT Mandi to the best of itsabilky in the arbitral proceedings.

43. The Tribunal notes that the principles governing impleadment as laid down in Order 1 Rule 10 of the CPC are not applicable to proceedings under the Arbitration and Conciliation Act, 1996. Proceedings under the said Act are governed by an arbitration clause agreed upon by the parties and the Tribunal cannot travel beyond the terms of the Agreement between the parties. However, as noted above, an exception can be made with regard to the impleadment of a third-party but circumstances must exist for such a decision. Unfortunately, IIT Mandi has not been able to bring out any such circumstance, other than pleading the possible adverse consequences of a Award against the Respondent CPWD.

*44. **In Cox and Kings** it was held by the Hon'ble Supreme Court that consent of a non-signatory to be*

bound by the arbitration clause in an agreement is necessary. Moreover, the conduct and intention of the non-signatory in performance of the contract must also be considered. It was held in paragraph 123 of the Report that:

> *"123. The participation of the non-signatory in the performance of the underlying contract is the most important factor to be considered by the courts and tribunals. The conduct of the non-signatory parties is an indicator of the intention of the non-signatory to be bound by the arbitration agreement. The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The UNIDROIT Principle of International Commercial Contract, 201672 provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances:(a) preliminary negotiations between the parties;*
>
> *(b) practices which the parties have established between themselves,*
>
> *(c) the conduct of the parties subsequent to the conclusion of the contract;*
>
> *(d) the nature and purpose of the contract;*

(e) the meaning commonly given to terms and expressions in the trade concerned; and

(f) usages."

45. Following the decision in Cox and Kings, it was held by the Hon'ble Delhi High Court in ***Indraprastha Power Generation Company Ltd v. Hero Solar Energy Pvt. Ltd.*** *as follows:*

"……a non-signatory could be impleaded in arbitral proceedings only if there is some kind of connection or positive act by the conduct of the non-signatory subsequent to the execution of the contract, or participation by the non-signatory in the negotiation, performance or termination of the contract indicating a connection in the contractual duties of the parties."

46. IIT Mandi has not pleaded any of the requirements as postulated by the Hon'ble Supreme Court or the Hon'ble Delhi High Court. Merely because IIT Mandi has a substantial interest in the subject matter of the contract between the Claimant and the Respondent is not a ground to implead it in a contractual dispute between the contracting parties. It is also important to note that IIT Mandi has had no direct role to play in execution of the project and the Claimant has not claimed any relief against IIT Mandi.

47. IIT Mandi suggests that the fact it has moved this application is an indication that it consents to be a party to the arbitration agreement. Unfortunately, post

facto consent or intention to participate in an arbitration agreement or in arbitration proceedings is not at all relevant. The consent and intention as well as participation should exist at the inception or at least at the initial stages of execution of the contract. For IIT Mandi to wake up at this stage is waking up too late and missing the bus, so to speak.

Disposition

48. Under the circumstances, the Tribunal is of the opinion that there is no substantial legal reason for impleading IIT Mandi as a Respondent in the present arbitral proceedings. Accordingly, the application is not accepted."

11. Learned Counsel for the petitioner argued that the order passed by the learned Arbitrator was not sustainable in the eyes of law. He submitted that the work being executed by the contractor was assigned to CPWD by the petitioner. He submitted that the petitioner was responsible for overseeing its development funds, which obviously included Construction Projects also, which were being managed by CPWD. Learned Counsel submitted that in the present case, in light of the terms of the contract entered into between the petitioner and CPWD, whatever liability is affixed by the learned Arbitrator upon CPWD will have to be made good by the petitioner and this extremely important aspect of the matter was

ignored by the learned Arbitrator while rejecting the application of the petitioner. Learned Counsel also argued that in light of the judgments of the Hon'ble Supreme Court, it was not as if only signatories to a contract could be parties before the learned Arbitrator and as the petitioner had deep interest in the matter which was being adjudicated by way of arbitration by the learned Arbitrator, petitioner was a necessary party. Learned Counsel further submitted that because the work being executed was for the benefit of IIT, therefore, it was the petitioner/IIT, which was in the best position to put-forth its contention before the learned Arbitrator and by dismissing the application, learned Arbitrator had denied this right to the petitioner. Learned Counsel also argued that all the necessary tests for implementation of a non-signatory in arbitral proceedings as stood spelled out by the Hon'ble Supreme Court in *ASF Buildtech (P) Limited Versus Shapoorji Pallonji & Co.(P) Ltd.*, *(2025) 9 SCC 176*, were fulfilled by the petitioner, but despite this, learned arbitrator dismissed the application of the petitioner. Learned Counsel argued that earlier also, whenever and wherever CPWD has suffered awards against it connected with the works being carried out by it of the Development Projects of the petitioner, it has recovered the amount from the petitioner. Learned Counsel

also argued that one more perversity which was there in the order passed by the learned Arbitrator was that on one hand, learned Arbitrator returned the findings that the petitioner indeed would be affected by the outcome of the arbitral proceedings, but thereafter, learned Arbitrator went on to reject the application of the petitioner by observing that its interest was being looked after by CPWD. On these grounds, he urged that as the impugned order was not sustainable in the eyes of law, the petition be allowed and the petitioner be ordered to be impleaded as a party in the arbitral proceedings.

12. Learned Deputy Solicitor General of India submitted that the CPWD was not having any objection qua impleadment of the petitioner as a party respondent in the arbitral proceedings, but even without being impleaded, learned Deputy Solicitor General of India submitted that the petitioner could assist CPWD by engaging a lawyer of its choice, who could argue on behalf of the CPWD, but at the expense of IIT.

13. On the other hand, learned Senior Counsel for respondent No.2 defended the order passed by the learned Arbitrator. He referred to the order passed by the learned Arbitrator and submitted that all aspects of the matter stood covered by the

learned Arbitrator in the order and in this backdrop, there was no occasion for this Court to interfere with the order passed by the learned Arbitrator. He submitted that there was no previty of contract between the contractor and the petitioner and because it was the contractor who had invoked the arbitration clause in light of the contract entered into between the contractor and CPWD, the petitioner was not having any right or locus to be impleaded and included as a party in the arbitration proceeding. He further submitted that the parameters which stood laid by the Hon'ble Supreme Court of India for a non-signatory to be impleaded as a party in the arbitral proceedings were not met with by the petitioner, which was evident from the findings returned by the learned Arbitrator. Accordingly, he prayed that as there was no merit in the petition, the same be dismissed.

14. I have heard learned Counsel for the parties and have also carefully gone through the pleadings, including the order under challenge.

15. It is not in dispute that there is a contract entered into between the petitioner and CPWD, in terms whereof, the development works of the IIT Campus are to be executed by CPWD. The relevant provisions of this Memorandum of Understanding

entered into between CPWD and IIT have already been quoted by me hereinabove. Similarly, on the other hand, there is a contract entered into between CPWD and respondent No.2/contractor for the execution of said work. Now incidentally, a perusal of the Memorandum of Understanding entered into between the petitioner and CPWD demonstrates that the contractor/private respondent herein is not a signatory thereto and it is an independent Agreement/Contract/ Memorandum of Understanding, with which the contractor has got nothing to do. Similarly, the contract that has been entered into between CPWD and the contractor, i.e. respondent No.2 is further an independent contract, in which the petitioner is neither a party nor a signatory. Thus, these are two completely distinct and independent contracts, though, fact of the matter remains that the contract entered into between CPWD and the contractor is to execute the work, which in terms of the Memorandum of Understanding entered into between the petitioner and CPWD was to be executed by CPWD.

16. The claim petition has been filed by the contractor, which is pending adjudication before the learned Arbitrator, feeling aggrieved by the acts of omission and commission of CPWD. It is obvious that this arbitration petition has been preferred in light of

the arbitration clause that exists in the contract entered into between CPWD and the contractor. In this backdrop, if one peruses the legal position as it exists, the same is that non-signatory can be made a party to an arbitral proceeding, provided that there is participation of the non-signatory in the performance of the underlying contract and conduct of non-signatory parties is also an indicator of the intention of non-signatory to be bound by the Arbitration Agreement.

17. A Five Judge Bench judgment of the Hon'ble Supreme Court of India in *Cox and Kings Limited* Versus *Sap India Private Limited and Another, (2024) 4 SCC 1*, on the issue of a non-signatory being made party to the arbitral proceedings has been pleased to hold as under:-

> *"H. Conclusions*
>
> *170. In view of the discussion above, we arrive at the following conclusions:*
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> *170.1. The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;*
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> *170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;*

170.3. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;

170.4. Under the Arbitration Act, the concept of a "party" is distinct and different from the concept of "persons claiming through or under" a party to the arbitration agreement;

170.5. The underlying basis for the application 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 b non-signatory party to the arbitration agreement;

170.6. The principle of alter ego or piercing the corporate veil cannot be the basis for the application of the Group of Companies doctrine:

170.7. The Group of Companies doctrine has an independent existence as a principle of law which stems from a harmonious reading of Section 2(1)(h) along with Section 7 of the Arbitration Act;

170.8. To apply the Group of Companies doctrine, the Courts or tribunals, as the case may be, have to consider all the cumulative factors laid down in Discovery Enterprises. Resultantly, the principle of single economic unit cannot be the sole basis for invoking the Group of Companies doctrine;

170.9. The persons "claiming through or under" can only assert a right in a derivative capacity;

170.10. The approach of this Court in Chloro Controls to the extent that it traced the Group of Companies doctrine to the phrase "claiming through or under" is erroneous and against the well-established principles of contract law and corporate law;

170.11. The Group of Companies doctrine should be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements;

170.12. At the referral stage, the referral court should leave it for ƒ the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement; and

170.13. In the course of this judgment, any authoritative determination given by this Court pertaining to the Group of Companies doctrine should not be interpreted to exclude the application of other doctrines and principles for gbinding non-signatories to the arbitration agreement."

18. The above quoted portion of the judgment was authored by Hon'ble the then Chief Justice Dr. D.Y. Chandrachud, for himself, Hon'ble Justice Hrishikesh Roy, Hon'ble Justice J.B. Pardiwala and Hon'ble Justice Manoj Mishra, JJ. Hon'ble Justice P.S. Narsimha, while concurring with the same, held as under:-

"*226. A conjoint reading of Section 9 of the Code of Civil Procedure and Section 28 of the Contract Act informs us*

that the jurisdiction of an Arbitral Tribunal to settle disputes between the parties, to the exclusion of ordinary civil $ courts, must arise out of a contract to arbitrate between them. An arbitration oral agreement, but need not be signed by the parties. The written arbitration agreement, being a contract, must necessarily be in writing, as against an agreement can be in the form of a document signed by the parties, or be evidenced in the record of agreement. Section 7(4)(b) prescribes the written material from which a non-signatory's consent and intention can be deciphered by a court or Arbitral Tribunal.

227. The existence of an arbitration agreement with a non-signatory is by the parties enable the Court to ascertain the intention of the parties and a matter of interpretation and construction. The express words employed their agreement to resolve disputes through arbitration. For ascertaining the true meaning of the express words, the Court or tribunal may look into the surrounding circumstances such as nature and object of the contract and the conduct of the parties during the formation, performance, and discharge of the contract. While interpreting and constructing the contract, courts or tribunals may adopt well-established principles, which aid and assist proper adjudication and determination. The Group of Companies doctrine is one such principle. It d may be adopted by courts or Arbitral Tribunals while

interpreting the record of agreement to determine whether the non-signatory company is a party to it.

228. Although the application of the Group of Companies doctrine in India has until now been independent of Section 7, its juxtaposition with Section 7(4)(b) case law shows that the inquiry under both is premised on determining the mutual intention of parties to submit to arbitration. The mutual intention of the parties is discernible from their conduct in the performance of the contract and this inquiry is common to Section 7(4)(b) jurisprudence and the Group of Companies doctrine. Even the precedents on the doctrine, national and international, look to additional factors beyond the non-signatory being in the same group of companies, such as commonality of subject-matter, composite nature of transaction, and interdependence of the performance of the contracts to determine mutual intent.

229. Since the fundamental issue before the Court or tribunal under Section 7(4)(b) and the Group of Companies doctrine is the same, the doctrine can be subsumed within Section 7(4)(b). Consequently, the record of agreement that evidences conduct of the non-signatory in the formation, performance, and termination of the contract and surrounding circumstances such as its direct relationship with the signatory parties, commonality of subject-matter, and composite nature of transaction, must be comprehensively used to ascertain the existence of the arbitration agreement with the non-

signatory. In this inquiry, the fact of a non-signatory being a part of the same group of companies will strengthen its conclusion. In this light, there is no difficulty in applying the Group of Companies doctrine as it would be statutorily anchored in Section 7 of the Act.

230. In view of the above, while concurring with the judgment of the learned Chief Justice, my conclusions are as follows:

230.1. An agreement to refer disputes to arbitration must be in a written form, as against an oral agreement, but need not be signed by the parties. Under Section 7(4)(b), a court or Arbitral Tribunal will determine whether a non-language employed by the parties in the record of agreement, coupled with surrounding circumstances of the formation, performance, and discharge of the b signatory is a party to an arbitration agreement by interpreting contract. While interpreting and constructing the contract, courts or tribunals and determination. The Group of Companies doctrine is one such principle may adopt well-established principles, which aid and assist proper adjudication and determination. The Group of Companies doctrine is one such principle.

230.2. The Group of Companies doctrine 152 is also premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement. The doctrine requires the intention to be gathered from additional c factors such as direct relationship with the signatory parties, commonality of subject-matter,

composite nature of the transaction, and performance of the contract.

230.3. Since the purpose of inquiry by a court or Arbitral Tribunal under Section 7(4)(b) and the Group of Companies doctrine is the same, the doctrine can be subsumed within Section 7(4)(b) to enable a court or Arbitral Tribunal to d determine the true intention and consent of the non-signatory parties to refer the matter to arbitration. The doctrine is subsumed within the statutory regime of Section 7(4)(b) for the purpose of certainty and systematic development of law.

230.4. The expression "claiming through or under" in Sections 8 and 45 is intended to provide a derivative right; and it does not enable a non-signatory to become a party to the arbitration agreement. The decision in Chloro Controls[1] tracing the Group of Companies doctrine through the phrase "claiming through or under" in Sections 8 and 45 is erroneous. The expression "party" in Section 2(1)(h) and Section 7 is distinct from "persons claiming through or under them". This answers the remaining questions referred to the Constitution Bench."

19. Thereafter, in *ASF Buildtech (P) Limited Versus Shapoorji Pallonji & Co.(P) Ltd., (2025) 9 SCC 176,* Hon'ble Supreme Court of India has been pleased to reiterate the said view in the following terms:-

"111. The aforesaid may be looked at from one another angle. This Court in Cox & Kings (1)2 also discussed the role and scope of jurisdiction of the Referral Courts and Arbitral Tribunals under Section(s) 11 and 16 of the 1996 Act, particularly in the context of binding a non-signatory to the arbitration agreement. It reiterated that under Section 11, the Referral Court only has to determine the prima facie existence of an arbitration agreement. Whereas, the issue of determining parties to an arbitration agreement is quite distinct from "existence" of the arbitration agreement, as such issue goes to the very root of the jurisdictional competence of the Arbitral Tribunal, and thus, empowered to decide the same under Section 16. Placing reliance on the decision of this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. 30, it held that the Referral Court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction for deciding such issues.

112. The relevant observations read as under: [Cox & Kings (1) case², SCC pp. 88-89, paras 162-63 & 166]

> *"162. When deciding the referral issue, the scope of reference under both Sections 8 and 11 is limited. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the court's jurisdiction to the existence of the examination of an arbitration agreement.*

163. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. 52 The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

166. The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the Referral Court cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal. The Referral Court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. In Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. 30, this Court observed that there are distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the Tribunal..."

113. Cox & Kings (1) further observed that in case of joinder of non-signatory parties to an arbitration agreement, the Referral Court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration. However, it further clarified that, due to the inherent complexity in determining whether the non-signatory is indeed a veritable party, the Referral Court should leave this question for the Arbitral Tribunal to decide as it can delve into the factual and circumstantial evidence along with its legal aspects for deciding such an issue. The relevant observations read as under: (SCC p. 90, paras 168-69)

> *"168. Thus, when a non-signatory person or entity is arrayed as a party at Section 8 or Section 11 stage, the Referral Court should prima facie determine the validity or existence of the arbitration agreement, as the case may be, and leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.*
>
> *169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the Referral Court will be*

required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the Referral Court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16."

114. Thus, even if it is assumed for a moment, that the question whether a non-signatory is a veritable party to the arbitration agreement is intrinsically connected with the issue of "existence" of arbitration agreement, the Referral Courts should still nevertheless, leave such questions for the determination of the Arbitral Tribunal to decide, as such an interpretation gives true effect to the

doctrine of competence-competence enshrined under Section 16 of the 1996 Act.

115. This hands-off approach of Referral Courts in relation to the question of whether a non-signatory is a veritable party to the arbitration agreement or not was reiterated in Cox & Kings (2), wherein one of us, (J.B. Pardiwala, J.), observed that once an Arbitral Tribunal stands constituted, it becomes automatically open to all parties to raise any preliminary objections, including preliminary objections touching upon the jurisdiction of such tribunal, and to seek an early determination thereof. Consequently, the issue of impleadment of taking into consideration the evidence adduced before it by the parties and the a non-signatory was deliberately left for the Arbitral Tribunal to decide, after principles enunciated under Cox & Kings (1)2.

116. Similarly, in Ajay Madhusudan it was held that since a detailed examination of numerous disputed questions of fact was required for determining whether the non-signatory is a veritable party to the arbitration in the limited the Arbitral Tribunal was found to be the appropriate forum for deciding the Section 11 of the 1996 Act as it would tantamount to a mini trial. Accordingly, said issue on the basis of the evidence that may be adduced by the parties.

117. This approach is necessitated by the inherent complexity involved in determining whether a non-signatory qualifies as a veritable party to the arbitration

agreement, a determination that hinges upon a multiplicity of factual aspects and demands a high threshold of satisfaction based on a cumulative and holistic evaluation of the entire factual matrix. Such an intricate and evidence-driven exercise makes the Arbitral Tribunal the most appropriate forum to adjudicate the matter, as it possesses the institutional advantage of conducting a comprehensive scrutiny of all evidences and materials adduced by the parties.

118. Furthermore, the legislative intent underlying Section 11 of the 1996 Act-particularly sub-section (6-A) is to ensure the expeditious disposal of applications for the appointment of arbitrators. This legislative objective militates against Referral Courts undertaking any elaborate or detailed factual inquiry, which would inevitably delay proceedings. Prudence thus dictates that the Referral Courts confine themselves to a prima facie examination of the existence of the arbitration agreement and leave substantive determinations, such as the binding nature of non-signatories, to the Arbitral Tribunal. An additional and equally compelling consideration is that the power exercised by the Referral Courts under Section 11 of the 1996 Act is judicial in nature. Consequently, the Referral Courts must refrain from embarking upon an intricate evidentiary inquiry or making final determinations on matters that are within the jurisdiction of the Arbitral Tribunal. Any premature adjudication or opinion by the Referral Court would not

only usurp the Tribunal's role as the forum of first instance for dispute resolution but could also cause irremediable prejudice. In particular, if the Referral Court were to refuse impleadment of a non-signatory, there would be no statutory right of appeal available to challenge such a refusal. In contrast, determinations made by the Arbitral Tribunal-including on issues of jurisdiction and impleadment-are amenable to challenge under Section 16 of the 1996 Act and, thereafter, under Section 37. Accordingly, the better course of action is for the 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.

119. At this juncture, it would be apposite to refer to the three-Judge Bench decision of this Court in Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd.63 In the said decision, this Court was called upon to determine the existence of an arbitration agreement on the basis of the documentary evidence b produced by the parties. Although, this Court prima facie opined that there was no conclusive evidence to infer the existence of a valid arbitration agreement between the parties, yet it referred the dispute along with the issue of existence of the arbitration agreement to the Arbitral Tribunal to decide after conducting a detailed examination of documentary evidence and cross-examination of witnesses. Thus, even where the referrals courts either find that there is no e

arbitration agreement in "existence" or as a logical sequitur never embarked upon determining such "existence", for whatever reasons, the matter should still nevertheless be referred to arbitration.

120. It is not difficult to comprehend why the above approach, endorsed in Pravin Electricals63 ought to be adopted and followed. The rationale behind this, as explained in Krish Spg.3, is that there exists no right to appeal under the 1996 Act against an order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Any refusal for appointment runs the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected. However, on the contrary, appointment of an arbitrator causes no prejudice, as all these issues can again be espoused by leading cogent evidence and material before the Arbitral Tribunal under Section 16 of the 1996 Act and thereafter, in appeal under Section 37.

121. Cox & Kings (1) at para 169, observes that in case of joinder of non-signatory parties to an arbitration agreement, two scenarios will prominently emerge; first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party and second, where a non-signatory party itself seeks invocation of an arbitration agreement. It then holds that in both scenarios the Referral Court (emphasis) will be required to prima

facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party.

122. However, this by no stretch means that all issues or instances of joinder or impleadment of a non-signatory will have to be first brought before the Referral Court, who in turn may leave it for the Arbitral Tribunal to decide. It by no stretch precludes a scenario where the issue of joinder of a non-signatory although never brought before the Referral Court, yet is later raised for the first time before the Arbitral Tribunal. We say so, because the aforesaid decision of Pravin Electricals63 where this Court referred the matter to the Arbitral Tribunal despite prima facie opining that there is no existence of arbitration agreement was approvingly referred to by Cox & Kings (1) to hold that "If a the Referral Court cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal". The natural corollary to the aforesaid is that, where the Referral Court is either unable to decide the issue as to whether, the non-signatory is a veritable party to the arbitration agreement, or finds in its opinion that such non-signatory is not a veritable party, or in the extreme alternative, had no occasion to decide such an issue, still it would be open for the Arbitral b Tribunal to look into the issue and decide the same.

123. The only thing the Arbitral Tribunal needs to be mindful of when deciding such an issue is that it adheres to the principles of natural justice by affording the non-signatory a fair opportunity to raise objections with

regard to the jurisdiction of the Arbitral Tribunal, earnestly makes an endeavour to determine this issue at the earliest possible stage to prevent any grave prejudice being occasioned to such non-signatory, makes all possible efforts whether by way of imposition of costs or through other appropriate measures to mitigate and deter the possibility of any abuse by the signatories who might seek to coerce or arm twist the non-signatory by frivolously or vexatiously subjecting it to arbitration, and lastly, that its decision is grounded in the factors and threshold requirements laid down in Cox & Kings (1) as explained by us.

124. Moreover, one must not lose sight of the fact that, the provision of Section 11 of the 1996 Act only comes into the picture where there has been a failure in appointment of an arbitrator. Could it be said that where, the signatories have consensually appointed an arbitrator in terms of the arbitration agreement, then in such cases, the Arbitral Tribunal that has been so constituted, would not be empowered to implead a non-signatory as well, merely because, the Referral Court did not either determine the "existence of the arbitration agreement qua the non-signatory" or did not leave such question for determination of the Arbitral Tribunal, even though no such occasion had arisen for the Referral Court to do so? The answer to the aforesaid, must be an emphatic "no". Arguendo even if one were to proceed on a stretch and rather strained construction of the law, that where a

notice of invocation is served by a party to both the signatories and the non-signatories, pursuant to which an Arbitral Tribunal has been constituted consensually by the signatories, yet there would still be a failure in appointment of an arbitrator inasmuch as the non-signatory has not agreed to appoint an arbitrator, and the only recourse here would be to prefer to move a Referral Court under Section 11 of the 1996 Act, the aforesaid contention, merits outright rejection. Not only does 9 it reflect a hypertechnical and overly dogmatic approach to the procedural framework of arbitration-which is to be construed in a manner that facilitates, rather than frustrates, party autonomy and consensual resolution but it also fundamentally misunderstands the legislative purpose and limited procedural function of Section 21 of the 1996 Act, which we shall now discuss, in the later parts of this judgment.

(ii) Arbitral Tribunal has the authority and power to implead non-signatories to the arbitration agreement on its own accord

(a) There is no inhibition in the scheme of the 1996 Act which precludes the Arbitral Tribunal from impleading a non-signatory on its own accord

125. From the above exposition of law, it can be seen that there is nothing within the scheme of the 1996 Act, which prohibits or restrains an Arbitral Tribunal from, impleading a non-signatory to the arbitration proceedings on its own accord. So long as such impleadment is

undertaken upon a consideration of the applicable legal principles including, but not limited to, the doctrines of "group of companies", "alter ego", "composite transaction", and the like -the Arbitral Tribunal is fully empowered to summon the non-signatory to participate in the arbitration. This autonomy stems from the broad jurisdiction. conferred upon the Arbitral Tribunals under the 1996 Act to rule upon their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, as enshrined under Section 16. The impleadment of a d non-signatory, being fundamentally a question of jurisdiction and consent, falls squarely within the province of the Tribunal's powers, free from any statutory prohibition.

126. The aversion towards recognising such power of the Arbitral Tribunal to implead a non-signatory, that previously prevailed, had stemmed from two major misconceptions a lack of power being vested on the Arbitral Tribunal e and a corresponding entrustment of this duty to implead a non-signatory to the Referral Courts alone.

126.1. First, the initial understanding of Chloro Controls that the legal basis for the doctrine of "group of companies" and other alike principles for determining mutual consent was only under the provisions which empowered the courts to make a reference to arbitration i.e. under Section(s) 8 and 45 of the 1996 Act, was construed to mean that only the courts have the power to

resort to and apply the aforesaid principles for determining mutual consent. Similarly, the unaltered general definition of "party" under Section 2(1)(h) of the 1996 Act as opposed to the wide meaning assigned to the term "party" under Section(s) 8 and 45 of the 1996 Act, was misconstrued as a positive indicium that an Arbitral Tribunal lacks the power to implead a non-signatory as the scope and exercise of its jurisdiction is confined to the narrow meaning of "party" under Section 2(1)(h) i.e. only signatories or those specifically referred to arbitration, whereas the power and jurisdictional reach of the courts extends to the wider meaning of "party" i.e. "a party to an arbitration agreement or any person claiming through or under him" under Section(s) 8 and 45 of the 1996 Act i.e. it extends to even non-signatories.

126.2. Secondly, the position of law which existed at the time of Chlore, Controls, required the Referral Courts to make a determination of all issues fundamental to making a reference to arbitration including the issue whether a non-signatory could be said to be bound by the arbitration agreement Since this primary duty of identifying and then in turn impleading a non-signatory who is bound by the arbitration agreement was cast upon the courts, it was presumed that the Arbitral Tribunal even if empowered is incapable b or incompetent to undertake this task, as otherwise it would tantamount to usurping the jurisdiction of the Referral Courts.

127. Thus, the combined effect of the aforesaid was that an Arbitral Tribunal could not, on its own accord, resort to or apply the various principles for determining mutual consent, and thereby implead a non-signatory since both: (1) the power to do so was presumed to lie within the exclusive domain c and jurisdiction as well as the, (ii) the corresponding duty to undertake this exercise was understood to have been entrusted solely to the Referral Courts.

128. However, with the advent of Cox & Kings (1)2, the legal foundation for the application of the "Group of Companies" doctrine, or any analogous principles designed to determine mutual consent was clarified to exist in the definition of "party" under Section 2(1)(h) read with the meaning of "arbitration agreement" under Section 7 of the 1996 Act. Unlike Section(s) 8 and 45 of the 1996 Act, the provisions of Section(s) 2(1)(h) and 7 are not confined in their applicability to only judicial forums or courts, and rather extend equally to both courts and Arbitral Tribunals, as these provisions form the bedrock of the framework of arbitration under the 1996 Act. The logical sequitur of this is that Arbitral Tribunals, too, are vested with the requisite authority to engage with and apply principles, such as the "Group of Companies" doctrine, when determining whether a non-signatory may be bound by an arbitration agreement.

129. It is well within the jurisdiction of the Arbitral Tribunal to decide the issue of joinder and non-joinder of

parties and to assess the applicability of the Group of Companies Doctrine. Neither in Cox & Kings (1)2 nor in Ajay Madhusudan, this Court has said that it is only the Reference Courts that are empowered to determine whether a non-signatory should be referred to arbitration. The law which has developed over a period of time is that both "courts and tribunals" are fully empowered to decide the issues of impleadment g of a non-signatory and the Arbitral Tribunals have been held to be preferred forum for the adjudication of the same.

130. In Ajay Madhusudan, this Court, placing reliance on Cox & Kings (1)2, has expressly held that Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal and the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

131. The case of Ajay Madhusudan also recognises that the legal relationship between the signatory and non-signatory assumes significance in determining whether the non-signatory can be taken to be bound by the arbitration agreement. This Court also issued a caveat that the "courts and tribunals should not adopt a conservative approach to exclude all persons or entities who are otherwise bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties. The mutual intent of the parties, relationship of a non-

signatory with a signatory, commonality of the subject-matter, the composite nature of the transactions and performance of the contract are all factors that signify the intention of the non-signatory to be bound by the arbitration agreement".

132. Recently, a coordinate Bench of this Court in Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd.64, also held that an Arbitral Tribunal under Section 16 of the 1996 Act has the power to implead the parties to an arbitration agreement, irrespective of whether they are signatories or non-signatories, to the arbitration proceedings. This Court speaking through P.S. Narasimha, J. observed that since an Arbitral Tribunal's jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, any person or entity who is found to be a party to the arbitration agreement can be made a part of the arbitral proceedings, and the Tribunal can exercise jurisdiction over him. Section 16 of the 1996 Act which empowers the Arbitral Tribunal to determine its own jurisdiction, is an inclusive provision that covers all jurisdiction questions including the determination of who is a party to the arbitration agreement, and thus, such a question would be one which falls within the domain of the Arbitral Tribunal. It further observed that, although most national legislations do not expressly provide for joinder of parties by the Arbitral Tribunal, yet an Arbitral Tribunal can direct the joinder of a person or entity, even if no such provision exists in the statute, as long as such person or

entity is a party to the arbitration agreement. Accordingly, this Court held that since the respondents therein were parties to the underlying contract and the arbitration agreement, the Arbitral Tribunal would have the power to implead them as parties to the arbitration proceedings in exercise of its jurisdiction under Section 16 of the 1996 Act.

133. The relevant observations read as under: (Adavya Projects case SCC paras 37-40 & 59)

> *"37. As briefly stated above, the determination of who is a party to the a arbitration agreement falls within the domain of the Arbitral Tribunal as per Section 16 of the ACA, Section 16 embodies the doctrine of kompetenz-kompetenzi.e that the Arbitral Tribunal can determine its own jurisdiction. the existence and validity of the arbitration agreement, who is a party to the The provision is inclusive and covers all jurisdictional questions, including arbitration agreement, and the scope of disputes referrable to arbitration b under the agreement 65 Considering that the Arbitral Tribunal's power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the Arbitral Tribunal's jurisdiction must be determined against the touchstone of the arbitration agreement.*

38. This view finds support in the jurisprudence and practice of international commercial arbitration. It is notable that while most national legislations do not expressly provide for joinder of parties by the Arbitral Tribunal, this must be done with the consent of all the parties.

39. Gary Born has taken the view that the Arbitral Tribunal can direct d the joinder of parties when the arbitration agreement expressly provides for the same. However, he states that in reality, most arbitration agreements, whether ad hoc or providing for institutional arbitration, neither expressly preclude nor expressly permit the Arbitral Tribunal to join parties. In such cases, the power must be implied, 67 particularly when there is a multi-party arbitration clause in the same underlying contract that does not expressly e address the joinder of parties in the arbitral proceedings. He states that:

> *'In these circumstances, there is a substantial argument that the parties have impliedly accepted the possibility of consolidating arbitrations under their multi-party arbitration agreement and/or the joinder or intervention of other contracting parties into such arbitrations... the parties' joint acceptance of a single dispute resolution mechanism, to deal with disputes under a single contractual relationship, reflects their agreement on the*

possibility of a unified proceeding to resolve their disputes, rather than necessarily requiring fragmented proceedings in all cases."

Further, in jurisdictions where there is no provision in the national arbitration statute authorising the courts to consolidate arbitrations or to join parties, it is left to the Arbitral Tribunal to determine this issue at the first instance,

40. Therefore, as per the legal principles under the ACA as well as in international commercial arbitration, it is a foundational tenet that the Arbitral Tribunal's jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, which must be recorded in an arbitration agreement. The proper judicial inquiry to decide a jurisdictional issue under Section 16 as to whether a person/entity can be made a party to the arbitral proceedings will therefore entail an examination of the arbitration agreement and whether such person is a party to it. If the answer is in the affirmative, such person can be made party to the arbitral proceedings and the Arbitral Tribunal can exercise jurisdiction over him as he has consented to the same.

> *59. Since they are parties to the underlying contract and the arbitration agreement, the Arbitral Tribunal has the power to implead them as parties to the arbitration proceedings while exercising its jurisdiction under Section 16 ACA and as per the kompetenz-kompetenz principle."*

134. As observed in Adavya Projects, Gary Born in his seminal work: the International Commercial Arbitration, Vol. 2 (3rd Edn., Kluwer Law International 2021) has held that consolidation and joinder/intervention may be ordered by an Arbitral Tribunal, Arbitral Tribunal institution, as long as the same is pursuant to parties' (unanimous) agreement thereto. He has observed that:

> *"In almost all cases, the approach taken by national law is that consolidation and joinder/intervention may be ordered by an Arbitral Tribunal, Arbitral Tribunal institution, or a national court, but only pursuant to the parties' (unanimous) agreement thereto. If the parties have not so agreed, both the tribunal and local courts will lack the authority under national law to order either consolidation or joinder/intervention."*

135. Since the aspect of joinder of a party to the arbitration agreement, either signatory or non-signatory stems from a conjoint reading of Section(s) 2(1)(h) and 7 of the 1996 Act as explained by Cox & Kings (1) and by us in the foregoing paragraphs, even if the parties are to

agree that a tribunal or for that matter a Referral Court will not have the power to implead any party to the arbitration proceeding, such an agreement will only operate to the extent that (i) the arbitration agreement is not governed by the 1996 Act i.e. does not fall under Part I of the 1996 Act and (ii) that such party is not otherwise bound by the arbitration agreement. This is because such an agreement is an agreement in respect of the rules of procedure of arbitration, and as per Section 19 of the 1996 Act, more particularly sub-section (2), any such agreement is subject to Part I i.e. the parties are free to agree on the procedure to be followed by the Arbitral Tribunal insofar as it is not inconsistent with Part 1. Since, the legal basis for the joinder or impleadment of any party who is bound by the arbitration agreement originates from the substantive provisions of the 1996 Acti. Section(s) 2(1)(h) and 7, respectively, the parties cannot denude the Arbitral Tribunal of such power in terms of the non obstante clause of Section 19(2) of the 1996 Act. Gary Born, further observes that "this approach is consistent with that prescribed by the New York Convention with the general respect for the parties' procedural autonomy in international o arbitration". Thus, it acknowledges, that such stipulation as to consolidation or joinder is purely within the realm of procedural autonomy, hence Section 19 of the 1996 Act which is the source of procedural autonomy will be subject to the conditions stipulated therein.

136. Further, it is true that the entire scheme of the 1996 Act is silent on the power of a Court or Arbitral Tribunal to join or implead a party to the arbitration d proceedings. Gary Born argues, that "In the absence of specific statutory provisions, the topics of consolidation and joinder/intervention are generally subject to the Model Law's basic requirement that arbitration agreements be recognised and enforced in accordance with the parties' intentions. That is, consolidation and joinder/intervention should be both permitted and required - as an element of the parties' agreement to arbitrate." The UNCITRAL Model Law being the genesis of the 1996 Act, even if there is no explicit statutory provision recognising such power of impleadment, it nevertheless should not only be permitted but also required, as long as it is exercised within the confines of the intention of the parties and the scope of arbitration agreement, which is exactly what has also been laid down in so many words by Cox & Kings (1)2.

137. He says that, more often than not arbitration agreements, particularly for ad hoc arbitration "will neither expressly preclude nor expressly authorize consolidation". But, "there is no reason, however, that an agreement authorizing (or forbidding) consolidation or joinder/intervention cannot be implied... various aspects of an arbitration agreement are routinely implied (such as confidentiality, a tribunal's power to order provisional relief or disclosure, the choice of applicable law and the like". He accordingly, g advocates that: "The same

approach can, and indeed must, be taken to questions of consolidation and joinder/intervention" where the "questions of implied agreement to consolidation and joinder/intervention depend in substantial part on the structure of the parties' contractual relations and the terms of their agreements to arbitrate.

138. Thus, the natural corollary to the aforesaid is that even in the absence of any express statutory provision, such power exists impliedly. In this regard, we may profitably refer to the recent five-Judge Bench decision of this Court in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. 69, wherein this Court recognised the applicability of the doctrine of "implied power" to the 1996 Act. in the context of Section 34. The majority opinion held that, the doctrine of implied power may be read into the 1996 Act for the purpose of effectuating and advancing its object and to avoid hardship. The relevant observations read as under: (SCC p. 40, para 53)

> *"53. The doctrine of implied power is to only effectuate and advance the object of the legislation i.e. the 1996 Act and to avoid the hardship. It would, therefore, be wrong to say that the view expressed by us falls foul of express provisions of the 1996 Act."*

139. K.V. Viswanathan, J. in his dissenting opinion in Gayatri Balasamy69 observed that if a statute confers a power and circumscribes its exercise on certain conditions, any power which is inconsistent with those

express conditions cannot be implied. He observed that the doctrine of implied powers is invoked to effectuate the final power, where it is impossible to effectuate the final power for doing something which although not provided in express terms but nevertheless is required to be done. In such scenarios, the power by virtue of the doctrine of implied powers will be supplied as a necessary intendment of the legislation, to advance its object and avoid grave hardship. The relevant observations read as under: (SCC pp. 108-109, paras 192 & 194)

> *"192. Undeterred, an attempt was made to fall back upon the doctrine of implied powers to somehow vest in Section 34 Court a power to modify the award. It is well settled that if a statute conferring a power to be exercised on certain conditions, the conditions prescribed are normally held to be mandatory and a power inconsistent with those conditions is impliedly negatived. No doubt, there is a principle in law that a court must as far as possible adopt a construction which effectuates the legislative intent and purpose and that an express grant of a statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective.*
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> *194. As is clear, the doctrine of implied powers is invoked to effectuate the final power. Where it is impossible to effectuate the final power unless*

something not authorised in express terms be also done, in such an event, the power will be supplied by necessary intendment as an exception. The exceptional situation is to advance the object of the legislation under consideration and to avoid grave hardship."

140. Reliance was also placed on the decision of Savitri v. Govind Singh Rawat70, wherein it was held that: (SCC pp. 341-42, para 6)

"6 Whenever anything is required to be done by law and it is found a impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means passed to subsist until the final order is passed."

It further observed that: (SCC p. 341, para 6)

"6. Every court must be deemed to possess by necessary intendment is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo all such powers as are necessary to make its orders effective. This principle res ipsa esse non potest" (Where anything is conceded, there is conceded also

anything without which the thing itself cannot exist)."

141. What can be discerned from the above is that the recourse to doctrine of implied powers would be permissible, if without it, it is impossible to effectuate a final power, and such exercise of implied power would effectuate and advance the object of the legislation.

142. Cox & Kings (1)2 has elaborately acknowledged the unique complexities posed by contemporary business transactions to the traditional framework of arbitration. Historically, arbitration gained prominence in the context of straightforward and linear bilateral transactions under the mercantile system of law. While over the past century, the nature of modern commercial transactions has undergone a profound transformation with the involvement of multifaceted obligations between multiple parties and complex contractual structures more sophisticated than the linear parent-subsidiary type of organisation, that has rendered the traditional dyadic paradigms of business obsolete, particularly in areas such as construction contracts, financing transactions, reinsurance contracts, the framework of arbitration has, to a significant extent remained unchanged, leading to a mismatch between procedural form and commercial substance.

143. For arbitration to remain a viable and effective alternative mechanism for dispute resolution, it is imperative to ensure that commercial reality does not

outgrow this mechanism. The mechanisms of arbitration must be sufficiently elastic to accommodate the complexities of multi-party and multi-contract arrangements without compromising foundational principles such as consent and party autonomy. The approach of courts and Arbitral Tribunal in particular must be responsive to the emerging commercial practices and expectations of the parties who submit themselves to it.

144. It was in this backdrop and the emerging best international practices that Cox & Kings (1)2 recognised the applicability of the "Group of Companies" doctrine and other principles of determining mutual consent, to bind even non-signatories to the arbitration agreement as parties, as long as they were a veritable party and found to have impliedly consented to such agreement. The legal basis of these principles was traced to not only the object of the 1996 Act, but to the substantive provisions of Section(s) 2(1)(h) and 7 thereto. However, mere recognition of these principles which ultimately seek to make the Indian arbitration law more responsive to the contemporary requirements, would be a farce, if the power to actually effectuate such principles, is not recognised, merely due to the absence of any explicit provision in this regard. We are of the considered opinion, that recognition of the power of joinder or impleadment of a non-signatory by an Arbitral Tribunal is a necessary intendment of the express provisions of Section(s) 2(1)(h)

and 7 and the overall scheme and object of the 1996 Act as well as the fundamental canons of the law of arbitration of providing an effective alternative dispute resolution mechanism.

145. Thus, even in the absence of an express provision in the 1996 Act empowering the Arbitral Tribunal to implead or join a party who is otherwise bound by the arbitration agreement, the Arbitral Tribunal does possess such power by virtue of the doctrine of implied powers, as long as the same is in d tandem with the scheme of the 1996 Act i.e. as long as the parties had either expressly or impliedly consented to the arbitration agreement as held in Cox & Kings (1)2."

19. In terms of the judgments of the Hon'ble Supreme Court reproduced above, the intention of the parties to be bound by an Arbitration Agreement can be gauged from the circumstances that surround the participation of the non-signatory parties in the "**negotiation, performance and termination of the underlying contract containing such Agreement**". Hon'ble Supreme Court has also held that the intention of the parties can be ascertained from circumstances like (a) preliminary negotiation between the parties; (b) practices, which the parties have established between themselves, (c) The conduct of the parties subsequent to the conclusion of the contract; (d) the nature and purpose of the contract; (e) the meaning commonly given to terms and expressions in the trade concerned,

and (f) usages.

20. Now, if one applies these principles and tests to the contract which has been entered into between CPWD and the Contractor, one finds that there is no participation whatsoever of the present petitioner in the execution of the contract between CPWD and the Contractor. In other words, said contract was entered into between CPWD and the Contractor independent of the petitioner and the petitioner was neither consulted nor it was in any manner whatsoever associated with the execution of the contract. Perusal of the contract also demonstrates that the petitioner, played no role either in the course of the negotiation of the terms of the contract nor it has any role in the performance of the contract or determination of the contract. The petitioner has no concern whatsoever as far as the execution of the contract between CPWD and the contractor is concerned.

21. In fact, this Court fails to understand how the Award, if any, passed against CPWD by the learned Arbitrator, may be enforced and thrusted upon the petitioner by CPWD, as is being apprehended by the petitioner, because the terms and conditions of the contract entered into between CPWD and the Contractor do not envisage so. Therefore, this mere apprehension of the petitioner is no

ground to implead it as a party in the arbitral proceedings. As far as the contents of the Memorandum of Understanding entered into between the petitioner and CPWD are concerned, this Court is of the considered view that they come into picture only if a dispute arises between CPWD and the petitioner and such dispute lands before learned Arbitrator and results in passing of an Award.

22. In the backdrop of what has been observed by this Court hereinabove, if one peruses the order passed by the learned Arbitrator, one does not finds any perversity therein. Learned Arbitrator rightly held that though IIT, Mandi has interest in the dispute between the claimant and the respondent, but the petitioner had not pleaded any of the requirements, as postulated by the Hon'ble Supreme Court in its judgments, under which a non-signatory can be impleaded in arbitral proceedings. Merely because the petitioner had a substantial interest in the subject matter of the contract, the same was not a ground to implead it as a party in the arbitration proceedings going on between the parties before the learned Arbitrator.

23. This Court holds that the petitioner had no direct or indirect role to play in the execution of the contract between CPWD and the Contractor. Claimant before the learned Arbitrator has also

not claimed any relief against the present petitioner. This Court again reiterates that the petitioner played no role in the negotiations which resulted in the contract being entered into between CPWD and the Contractor, nor it has any role in the performance thereof. It played no role in the preliminary negotiations between the parties, nor the petitioner has any role in the execution of the contract entered into between the CPWD and the Contractor etc.

24. Accordingly, in light of the above observations, as this Court does not finds any perversity in the order under challenge or any merit in the present petition, the same is dismissed. No order as to costs. Pending miscellaneous application(s), if any also stand disposed of accordingly.

Ajay Mohan Goel)
Judge

December 29, 2025
(Rishi)