

Enforceability of Arbitral Awards Against Non-Signatories to the Arbitration Agreement

Analysis of judgment of the Supreme Court in Cheran Properties Limited v. Kasturi and Sons Limited

The Supreme Court of India in *Cheran Properties Limited v. Kasturi and Sons Limited* has construed in respect of execution of awards under the Arbitration and Conciliation Act, 1996 viz-a-viz **the power of forums other than Civil Courts to execute particular remedies under the arbitral awards.**

Any party in whose favor the award is passed can now enforce the award anywhere in the country where a decree would have been executed and there is no requirement of obtaining transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings. In *Cheran Properties Limited v. Kasturi and Sons Limited*, the Supreme Court has affirmed that an arbitral award for transfer/transmission of shares can be executed before the appropriate bench of NCLT rather than the civil court by seeking rectification of register of members of a company to give effect to the transmission of shares.

In brief, the Supreme Court has held that, an award is binding on the persons who claim at the enforcement stage, even if they are not signatories to the arbitration agreement. The other issue decided in this case is **"if a party who is not a signatory to an arbitration agreement is bound by the same or not."** The Apex Court has held that in certain scenarios/situations, an arbitration agreement between two or more parties may operate to bind other parties as well. The Apex Court has observed that the fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can be enforced against it on the ground that it claims under a party.

Facts of the Case:

KC Palanisamy ("**KCP**"), Kasturi & Sons Limited ("**KSL**"), Sporting Pastime India Limited ("**SPIL**") and Hindcorp Resorts Pvt. Ltd. ("**Hindcorp**") entered into an arbitration agreement. Disputes arose between the parties resulting into commencement of arbitral proceedings. Under the terms of an award, a direction was issued under which KCP and SPIL were directed to return the documents pertaining to the title and share certificates contemporaneously with KSL paying an amount of Rs.3,58,11,000/- together with interest at 12% p.a. on a sum of Rs 2.55 crores. KCP challenged the award of the arbitral tribunal under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground that the arbitral award could not be executed against the appellant as the appellant is not a signatory to the agreement. The challenge was dismissed by the Madras High Court by Judgment dated 30th April 2015. The Hon'ble Supreme Court of India dismissed the Special Leave Petition and the award attained finality. KSL went ahead and initiated proceedings under section 111 of the Companies Act, 1956 r/w sections 397, 398, 402 and 403, for rectification of the register of SPIL. NCLT

allowed the petition by its Order dated 6th March 2017 and NCLAT confirmed the Order passed by the NCLT by its order dated 3rd May 2017.

Final Verdict:

The Three-Judge Bench of the Supreme Court dismissed the appeal and made the following observations in the case:

ISSUE I

Whether a party not a signatory to arbitration agreement is bound by the outcome of the arbitration?

The Apex Court made reference to the “group of companies doctrine” to state that the doctrine essentially intended to facilitate the fulfilment of an intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. An intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.

The Apex Court also pronounced that in holding a non-signatory affiliates or sister or parent concerns bound by an arbitration agreement, the Court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them i.e. it evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, “intention of the parties” is a very significant feature which must be established to weigh in the balance.

ISSUE II

That an arbitration agreement be in writing exclude the possibility of binding third parties who may not be signatories to an agreement between two contracting entities?

In this context the Apex Court remarked that the evolving body of academic literature as well as adjudicatory trends indicate that in certain situations, an arbitration agreement between two or more parties may operate to bind other parties as well.

As explained by Redfern and Hunter, **the group of companies doctrine has been applied to pierce the corporate veil to locate the “true” party in interest, and more significantly, to target the creditworthy member of a group of companies.** Though the extension of this doctrine is met with resistance on the basis of the legal imputation of corporate personality, the application of the doctrine turns on a construction of the arbitration agreement and the circumstances relating to the entry into and performance of the underlying contract. While the alter ego principle is a rule of law which disregards the effects of

incorporation or separate legal personality, in contrast the group of company's doctrines is a means of identifying the intentions of parties and does not disturb the legal personality of the entities in question.

The Apex Court also made reference to Section 35 of the Arbitration and Conciliation Act 1996 which postulates that an arbitral award "shall be final and binding on the parties and persons claiming under them respectively". The expression 'claiming under', in its ordinary meaning, directs attention to the source of the right. The expression includes cases of devolution and assignment of interest. The expression "persons claiming under them" in Section 35 widens the net of those whom the arbitral award binds. It does so by reaching out not only to the parties but to those who claim under them, as well.

The Supreme Court held the view that the expression "persons claiming under them" is a legislative recognition of the doctrine that besides the signing parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. Having derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. The issue in every such a case is whether the person against whom the arbitral award is sought to be enforced is one who claims under a party to the agreement.

CONCLUSION:

The Apex Court in the case has eventually held that the fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can be enforced against it on the ground that it claims under a party. Under the provisions of Section 35, the award can be enforced in the same manner as if it were a decree of the Court. The award has attained finality. The transmission of shares as mandated by the award could be fully effectuated by obtaining a rectification of the register under Section 111 of the Companies Act, 1956 and the remedy resorted by the Respondent No.1- KSL was competent. The Apex Court held that, the view of NCLT, which was affirmed by the NCLAT does not warrant interference.

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