SC Declines to Apply 'Group of Companies' Doctrine to Implead Foreign Company in Arbitration with its Indian Affiliate

written by Ram Bharathwaj | July 17, 2019

The Bench comprising of
Justice A. M. Khanwilkar and Justice Ajay Rastogi of Hon'ble Supreme Court of India in the Judgement dated 1st July 2019 in the matter of Reckitt Benckiser (India) Private Limited
versus Reynders Label Printing India Private Limited and Anr[1],
refused to invoke the 'group of companies' doctrine to implead a foreign company in an Application for appointment of Arbitrator for a dispute arising out of an agreement with its India affiliate.

FACTS:

In this case, Reckitt Benckiser (India)
Private Limited wanted to implead a Belgian associate company (Respondent No. 2) of Reynders Label Printing India Private Limited in an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, based on the doctrine of 'groups of companies'.

The agreement was executed on May 1st
2014, between Reckitt Benckiser(India) Pvt Ltd and Reynders Label Printing (India) Pvt Ltd, the agreement was for providing packaging material to the Petitioner and its affiliates, during pre-negotiations stage, the Petitioner shared a draft of agreement along with its code of conduct and anti-bribery policy with Respondent No. 1. This email was reverted by one Mr Fredrick Reynders who as per the Petitioner was the promotor of Reynders Etiketten NV (Respondent No. 2) which is one of the group companies of Reynders Label Printing Group and is established and bound by the laws of Belgium.

The Respondents are constituents of a
group of companies known as "Reynders Label Printing Group".

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The Hon'ble Supreme Court of India
considered the following question of Law and facts:

Whether the indisputable circumstances
go to show that the mutual intention of the parties was to bind both the signatory as well as non-signatory parties, namely Respondent No. 1, and Respondent No. 2 respectively, qua the existence of an Arbitration agreement between the Applicant and the said Respondents.

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The counsel of Petitioner heavily
relied on doctrine of "group of companies", based on the email sent by Mr. Fredrick Reynders, "*please find attached the contract with some comments of our HQ in Belgium*". The Counsel contended that the email made Respondent
No. 2 a party to the agreement entered into between Respondent No.1 and the Petitioner and therefore, the Petitioner filed under Sections 11(5), 11(9) and
11(12)(a) of the Act, that the appointment of arbitrator in relation to certain
disputes arising out of the agreement are binding on the Belgian Company of the
Reyndes group of companies and an International Commercial Arbitration is required. Applicant opined that the Belgian company was the holding company

of
Reynders India.
The Respondent No. 2 contended that both
Respondent No. 1 and 2 are part of the Reynders Label Printing Group, which is an
internationally operating group of seven printing companies and each of these companies has its own separate legal entities and operates in different offices
independently. Further these companies only share a common parent entity, namely, Reynesco NV, the Holding company of both the Respondent Companies. The
Respondent no. 2 held that they had no presence or operation whatsoever in India and was not involved in the negotiation, execution and/or performance of
the agreement. There was no privity of contract between the Applicant and the Respondent No. 2.
The Respondent No.2 clearly stated that
Mr Fredrick Reynders was not the promotor and he was an employee of Respondent
No. 1. The Signatory to the stated agreement, Mr Kari Vandenbussche, had neither exercised any managerial functions for Respondent No. 2 nor was an Authorised Representative or a Director, with any authority to appoint the said
Respondent.
The Applicant vehemently relied upon the circumstances and correspondence post-contract but that cannot be the basis to answer the matter in issue, the Respondent No. 2 had relied on Godhra Electricity Co. Ltd. and Anr. Vs. State of Gujarat and Anr.,[2] wherein it was held that "It is enough to say that there is nothing in that decision which would prevent a court from looking into the subsequent conduct or acting's of parties to find out the meaning of the terms of a document when there is latent ambiguity:" to buttress the argument that post negotiations in law would not bind the Respondent No. 2 qua Arbitration agreement limited between the Applicant and Respondent No.1.
JUDGEMENT: Group of Companies Doctrine
The Hon'ble Supreme Court considering,
legal position as to when a non-signatory to an arbitration can be impleaded to
an Arbitration agreement can be implemented and subjected to arbitration proceedings is no more res integra. In the case of Chloro Controls India Private Limited Vs Severn Trent Water
Purification Inc and Ors.,[3]
a three Judge bench of the Hon'ble Supreme Court opined that ordinarily an arbitration takes place between the persons who have been parties to both the arbitration agreement as well as the substantive contract underlying it invoking the doctrine of " group of companies", The Bench went on to observe that an arbitration entered into by a company, being one within a group of corporate entities, can in certain circumstances, bind its non-signatory affiliates. The Same exposition has been followed and applied by another three
Judge Bench of the Hon'ble Supreme Court in Cheran Properties Limited Vs.

Kasturi and Sons Limited and Ors.[4]

Keeping in mind the exposition in Chloro Controls and Cheran Properties, the crucial question is whether it is manifest from indispensable correspondence exchanged between the parties, culminating in the agreement dated 1st May 2014, that the transactions between the Applicant and Respondent No.1, were essentially with the group of companies and whether there was a clear intention of the parties to bind both the signatory as well as non-signatory parties, qua the existence of an arbitration agreement between the Applicant and the said Respondents.

In the wake of the amended Section 11(6) read with Section 11(6A) of the Act, confined itself to the examination of existence of an arbitration agreement. No more and no less, after hearing both the sides Bench went on to dismiss the Petition while concluding that-

"*Respondent No. 2 was neither the signatory to the arbitration agreement nor did have any casual connection with the process of negotiations preceding the agreement or the execution thereof, the arbitration agreement shall be dismissed as no relief can be granted to the Applicant against the Respondent No. 2.*

However, with the consent of the parties other than the Respondent No. 2, Bench appointed the sole arbitrator to conduct domestic commercial arbitration at New Delhi, between the Applicant and the Respondent No. 1 on the terms and conditions as specified in the Arbitration and Conciliation Act of 1996.

CONCLUSION:

The Hon'ble Supreme Court harmoniously balanced the principles of natural justice and legislative intent to safeguard the interests of the Respondent No. 2, as the Respondent No. 2 was impleaded without any basis and no nexus prevailed between the Applicant and the Respondent No. 2. The Opportunity has been given to Applicant as well by way of arbitration proceeding against the Respondent No. 1. It shall be rightly concluded that purposive interpretation adopted by the Hon'ble Supreme Court serves the purpose of the applicability of the Doctrine of 'group of companies' in true letter and spirit.

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[1] Petition for Arbitration (Civil) No. 65 of 2016

[2] (1975) 1 SCC 199

[3] (2013) 1 SCC 641

[4] (2018) 16 SCC 413

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