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MULTIPARTY AGREEMENTS ON INTERCONNECTED AGREEMENTS IN ARBITRATION LAW IN THE LIGHT OF DECIDED CASES BY THE APEX COURT

- Rohit Katara & Vanshika Gupta*

ABSTRACT

Today, many corporate transactions have grown into complicated systems of multi-faceted sub-transactions. Multiple parties enter into a number of different, yet interconnected and interdependent agreements in order to achieve a common commercial objective.

However, one or more of these interrelated agreements may occasionally be missing an arbitration clause, while the others have arbitration provisions that are similar or related. Parties that disagree may then file separate lawsuits and commence arbitration processes against one another.

One opposing group would almost certainly request that the relevant State Court convene a single panel to hear all of the parties. The opposing party, on the other hand would object to any request for arbitration referral because it is not a party to the arbitration clause, and/or to a composite referral because the parties clearly agreed into several agreements.

In this article, I suggest that the Hon'ble Supreme Court (SC) has shifted its focus in such cases to finding the commonality and end objective of composite transactions, rather than simply dividing them into distinct agreements based on a rigid construction.

* B.A LL.B 5TH Year, Himachal Pradesh National Law University, Shimla
B.B.A LL.B 4TH Year Himachal Pradesh National Law University, Shimla

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INTRODUCTION

Arbitral proceedings with more than two parties are referred to as multi-party arbitration. Modern arbitration laws acknowledge multi-party arbitration by combining multiple hearings or enabling a third party to join the proceedings. A multi-party arbitration is essentially a consortium agreement in which numerous parties agree on a means of mutual conflict resolution. In a mutual agreement binding on all parties, they all agree to arbitration as a form of conflict settlement. However, there are other circumstances in which multi-party procedures may be conducted outside of the basic consortium scenario. Several interconnected agreements may form groups, chains, or networks of contracts. Due to the fact that contracts are only enforceable between the parties to them, separate arbitration agreements are rarely construed as referring to combined procedures unless there are circumstances assuming such assent. Thus, multi-party arbitration may conflict with contract privity and party autonomy. However, because a valid arbitration agreement is a legal condition for arbitration, multi-party arbitration cannot be carried out in theory without an agreement or permission. This article will discuss some arbitration rules and substantive law conditions in which privity to an arbitration agreement may be avoided.

Occasionally, the efficiency of dispute resolution, as well as practical considerations such as avoiding several contradictory awards in identical circumstances, may lead the parties to join third parties or consolidate proceedings against their mutual agreement. To avoid the aforementioned issues, it would be preferable if all interrelated conflicts resulting from a single occurrence could be handled in a single arbitration. To achieve these multi-party/multi-contract arbitrations, a variety of strategies have been used. These approaches include "string" arbitrations, concurrent hearings (with the same arbiter for all of the arbitrations), court-ordered consolidation, consolidation by consent, and various mechanisms used by some arbitral institutions to deal with the problem.

This is where the distinction between arbitration as a voluntary agreement-based dispute settlement technique and national litigation comes into play. National courts may impose such joinder or consolidation if given such authority by statute. Arbitral tribunals do not normally have similar statutory powers because their authority stems from the parties' voluntary willingness to resolve any disputes in arbitration, unless such provisions are included in the

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freely accepted rules of arbitration. When reading this article, keep in mind that the idea of a contracting party should be observed in addition to actual multi-party arbitration cases in which numerous contracting parties or parties are joined in procedures or proceedings are consolidated.

Consolidation of actions and joining of parties to proceedings are normally governed by the applicable arbitration rules. However, the concept of a contractual party, as defined by the applicable substantive law, may provide a solution for a party wishing to join the proceedings.

This article outlines specific issues with arbitration in multi-party/multi-contractual conflicts and focuses on court-ordered consolidation as a means of addressing these deficiencies, in order to determine how effective this method is as a remedy.

SINGLE AGREEMENT, SINGLE TRIBUNAL

The preceding paragraph covered the most recent decision is the Supreme Court's decision in DuroFelguera v. Gangavaram Port[1].

In Duro, the Supreme Court was approached with a plea for a composite arbitral referral involving six agreements. An initial tri-party agreement involving all parties was later rebuilt into five separate agreements. A related bank guarantee was the sixth arrangement. All six agreements were put into in connection with a single major project and contained similar arbitration terms.

In Chloro Controls v. Severn Trent[2], since the ‘primary agreement' among the agreements in question contains clause of arbitration, the SC directed even non-signatories to a single international arbitration. The Supreme Court separated Chloro Controls, however, because Duro's arbitration agreements lacked broad language: conflicts originating 'under and in connection with' this agreement.

Despite the fact that "no novation by substitution of all five agreements" had occurred in Duro, the Supreme Court dismissed a reinforcement remark, primarily because Section 11(6A) of the

[1]2017 SCC OnLine SC 1233
[2](2013) 1 SCC 641

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Arbitration Act, 1996 (the Act) limits the applicability of judicial inquiry to determining the authenticity of an arbitration agreement. The parties were ordered to four local arbitrations and two foreign arbitrations after the discovery of six unique arbitration agreements, all of which were chaired by the same panel of arbitrators.

CHANGE THE PARADIGM FROM THIS RULE

In this context, the Supreme Court was indeed placed upon to resolve a similar case in Ameet Lalchand Shah v. Rishabh Enterprises[3], {Para 14 and Para 16}

In a nutshell, four parties signed four concurrent agreements for the aim of constructing a photovoltaic solar facility in Uttar Pradesh, India. An mandatory binding arbitration was incorporated in three of the four interconnected contracts. When disagreements emerged, one of the parties filed an arbitration notice, while the other filed a case in the Delhi High Court before a Single Judge (HC). The plaintiff made severe claims of deceit and fraud in connection with the subject matter of all four agreements at issue in the case. In Ameet Shah, the Supreme Court looked into a few aspects of fraud arbitrability.

The defendant in the proceeding subsequently filed an application to have the disagreement arbitrated under Section 8 of the Act. On appeal, both the Single Judge and the Division Bench (DB) refused this motion.

The SC initially reassessed its ratio in Chloro Controls before ruling on the plea for a single reference. The Supreme Court purposefully construed not just the arbitration language in the primary agreement, as well as the whole transaction in this case.

The Supreme Court in Ameet Shah decided that all parties could be protected by the arbitration clause in the framework agreement using its formative analysis from Chloro Controls because all four agreements were evidently interrelated and intended to achieve the single commercial goal of establishing the Solar Plant in Uttar Pradesh, India. Unlike in Duro, the Hon'ble Supreme

[3](2018) 15 SCC 678

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court did not require the existence of a very broadly specified arbitration clause, such as the one in Chloro Controls, to permit a single arbitral referral.

Furthermore, in Ameet Shah, the Supreme Court deviated from its previous judgement in ***Sukanya Holdings v. Jayesh H. Pandya***[4]. Sukanya reached the conclusion because the Act makes no option for partial referral to arbitration, if all parties to a civil complaint are not aware of the arbitration agreement, the issue cannot be referred to arbitration. The Supreme Judicial properly alluded to the Act's 2015 Amendments in Ameet Shah, noting that the new Section 8(1) expressly authorises anybody claiming through or under a party to the arbitration agreement to seek an arbitral reference, independent of any court precedent. The Supreme Court then ordered that all disputing parties submit to arbitration. Notably, while no official ruling has been issued, the amended Section 8 and the Supreme Court's judgement in Ameet Shah should effectively render Sukanya null and void.

OBSERVATION

Duro, on the other hand, was not included in the Ameet Shah research and so was not publicly dismissed. If future disputes are controlled by both local and international treaties, parties may attempt to claim on Duro to reject a composite reference.

The Supreme Court used Chloro Controls properly in the case of Ameet Shah. However, it did so only after identifying a primary agreement among the four agreements. As a result, Ameet Shah may be able to avoid using Chloro Controls in a similar multi-contract conflict that lacks the centrifugal force of a primary agreement. In all multi-contract disputes where the overall agreement is similar and includes inextricably related components, Indian courts should reject a Shylockian interpretation of contract and instead utilise the Chloro Controls ratio.

[4] (2003) 5 SCC 531

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CONCLUSION

According to Lord Hoffman in Fiona Trusts v. Primalov[5], the formulation of an arbitration provision should begin with the presumption that the parties, as competent companies, intended for every dispute arising from their economic relationship to be resolved by the same tribunal. India may have had an ideal chance in Ameet Shah to openly accept this notion. Nonetheless, the Supreme Court's deliberate approach to commercial deals is a positive trend in India's arbitration arena. Would a party, however, be permitted to bring its objection to consolidation as a ground for opposing the arbitral award? The majority of the world's major arbitral institutions currently allow for consolidation. It has been claimed that a decision to consolidate an institution is administrative in character and hence cannot be challenged in isolation. The combined procedures tribunal, on the other hand, can evaluate the legitimacy of the consolidation order since it retains the kompetenz-kompetenz to decide its own jurisdiction, which included a challenge based on the institution's decisions to consolidate.

Parties to an Indian arbitration may use a tribunal's judgment on consolidation to set aside the judgment before the relevant Court if it is jurisdictional (Sections 16(6) and 34(2)(a)(v) of the Act). In PR Shah v. BHH[6] Securities, when a party presented analogous claims against two corporations under separate arbitration agreements, the tribunal permitted for combined arbitration, which resulted in the verdict being reversed. The Supreme Court rejected the consolidation claims, stating that denying the two parties the advantage of a single arbitration would result in a plethora of hearings, contradictory conclusions, and unfairness. If, as argued in the preceding post, the decision to consolidate is made by a court of the arbitration tribunal in accordance with its laws, it will be difficult to sustain a conundrum to the award on the grounds that the arbitration proceedings procedure and/or constitution of the tribunal were not in accordance with the parties' agreement(s) or the law of the arbitral seat.

[5] [2007] UKHL 40
[6] (2012) 1 SCC 594

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That's not to claim that all contractual conflicts must all be resolved by a unitary arbitral tribunal. In even multi-party operations including many connected contracts, parties may design the agreement to impose separate duties on every set of parties to the contract. The parties' contractual arrangements in Trust Risk Group v. AmTrust Europe included:

i. a normal London-form agreement with English law and jurisdiction for dispute resolution, and
ii. a following framework agreements designed closer to the Italian market, with arbitration in Milan under Italian law.

Both agreements addressed distinct areas of the parties' economic relationship, and the parties' decision to adopt diverse dispute settlement made complete sense. The notion that the latter agreement required all issues between the parties to be addressed through arbitration was rejected by the Court. As a consequence, even though the issues resulted from similar transactions, they might be assigned to unrelated tribunals.

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