The Group of Companies Doctrine vs. Conflict of Laws & Public Policy

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The use of Group of Companies Doctrine (**the "doctrine"**) creates a binding effect to an arbitration agreement for a non-signatory. It is an exception to the general rule that arbitration can be invoked only against signatories to the arbitration agreement. The doctrine is not unanimously adopted by arbitration tribunals and national courts. Therefore, it is important to determine the jurisprudence prevailing in the national court system, to which the defendant and its assets are subject.

Under Indian Arbitration Law, the doctrine finds an inconsistent use and application in judicial pronouncements. Its use and application have been expanded without even defining its contours.[1] There are decisions that have been passed without choosing proper law and without considering related principles.

Recently[2], the Supreme Court has acted to settle the issue as it pertains to the doctrine and its applicability under the arbitration law. In doing so, there appears to be a recognition that the doctrine may in fact be in conflict with domestic laws and public policy. For example, it may be against distinct legal identities of companies and party autonomy itself.

Concepts such as "*single economic entities*" fall in the domain of economics and not in the domain of law. The Supreme Court has rightly held that the line of judgments beginning with *Chloro Controls* are premised more on convenience and economic efficiency in resolution of disputes rather than on a consistent and clear legal doctrine. The Court has, therefore, rightly assessed the need for having a thorough relook at the doctrine – whether it may be read into arbitration law;

[1] See for example Chloro Controls India Pvt. Ltd. *v.* Severn Trent Water Purification and subsequent pronouncements
[2] Cox and Kings Limited v. SAP India Private Limited and Anr.

whether it may be recognized as valid law; whether it may be invoked on the basis of 'single economic unit'?

A comprehensive re-look is essential because party autonomy is central to arbitration and the principle of the relativity of contractual obligations requires that only the contracting parties are bound to an arbitration agreement included in the contract. Any exceptions ought to be based on specific and definite criteria.

The decision to re-look is of great significance to arbitration practitioners. It shall clarify the position of Indian national law on the doctrine. It shall have direct impact on annulment and enforcement proceedings. And it shall also have impact on the decision of parties choosing India as a seat of arbitration.

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