

Legal experts laud SC decision on 'Group of Companies' Doctrine, say it gives much-needed clarity to arbitration

By vesting the authority to decide on a group of companies with the arbitral tribunal, the Supreme Court has given greater powers to the process of arbitration, say experts, and also removes any confusion on who can be party to a dispute

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Legal experts hail SC's decision on group of companies doctrine

The Supreme Court's judgment recognising and upholding the 'group of companies' doctrine in Indian arbitration jurisprudence brings a much needed clarity to the law, experts have said.

On December 6, **[a constitution bench of the Supreme Court](https://www.moneycontrol.com/news/trends/legal/sc-upholds-application-of-group-of-companies-doctrine-in-indian-arbitration-law-11861921.html)** **<https://www.moneycontrol.com/news/trends/legal/sc-upholds-application-of-group-of-companies-doctrine-in-indian-arbitration-law-11861921.html>**, upheld the application of the "Group of Companies" Doctrine in Indian arbitration law. According to the doctrine, a non-signatory to an arbitration agreement could be made a party to an arbitration dispute if they are a part of the group of companies.

Tejas Karia, Partner and Head of Arbitration and Shardul Amarchand Mangaldas & Co said, " This decision brought much awaited clarity with regard to the highly debated and misunderstood concept of Group of Companies' Doctrine. It will reduce the controversy pending on this issue before numerous arbitrations and court matters."

What is the Group of Companies Doctrine?

Arbitration is a mechanism to resolve disputes between parties without going to court. A neutral person is appointed to adjudicate the dispute and the judgment of an arbitrator is legally enforceable. For parties to resolve their dispute through arbitration, they must necessarily have an agreement expressing their intention to arbitrate, as arbitration is consensual.

Arbitration proceedings cannot begin when one party disputes the existence of an agreement. Under such circumstances, a Group of Companies Doctrine states that a non-signatory can be asked to participate in arbitrations if they belong to the group of companies.

A group of companies ideally has a parent company and many subsidiary companies, these companies are created for various purposes. As per law, each company is a separate legal entity, which does not have any connection with the other. When a company incurs a liability, it cannot be claimed from another company belonging to the same group.

According to the Supreme Court judgment, the doctrine may be applied when “a holding company completely dominates the affairs of the subsidiary company, to the extent of misusing its control, to avoid or conceal liability.”

Shweta Sahu, leader of International Dispute Resolution Practice, Nishith Desai Associates said, “With the applicability of the Group of Companies doctrine to arbitration proceedings, we can expect a drop in dilatory tactics to evade or delay compliances (to arbitration awards).”

Judgment in line with modern commercial transactions

Experts have opined that the judgment of the Supreme Court is in line with the requirements of modern corporate transactions and upgrades the Indian arbitration law to meet their requirements.

Charanya Lakshmikumaran, Partner at Lakshmikumaran and Sridharan Attorneys, said, “The Supreme Court’s decision recognises the complex nature of modern multiple layered commercial transactions, which often involve one company acting for the benefit of another group company. This doctrine comes to the aid of claimants who fear that a signatory to the arbitration agreement may not satisfy an award and impleading (making a party) a financially stronger company from the same group.”

Prior to the judgment, an arbitration agreement would be binding only on the parties who signed it. However, with the Group of Companies Doctrine, the scope of the arbitration agreement has been widened.

Alpana Srivastava, Partner at Desai and Diwanji, said, “The crucial impact of this judgment lies in the expanded scope of arbitration agreements. By applying the Group of Companies Doctrine, the Supreme Court broadens the inclusion of non-signatory parties within the same corporate group.” Srivastava noted that the judgment adapts arbitration practices to contemporary business structures, fostering a more comprehensive and inclusive approach that aligns with the complex dynamics of corporate India.

Autonomy of arbitral tribunal

In many cases, large commercial arbitrations are adjudicated by a panel of three arbitrators, called arbitral tribunals. In the Supreme Court judgment, the decision on whether or not the Group of Companies Doctrine must be applied has been vested with the arbitrator and not the courts. Experts have noted that this is a pro-arbitration move.

Shiva Krishnamurthy, advocate at the Supreme Court who appeared in the case, remarked that the authority to determine whether a non-signatory should be included in an arbitral proceeding has been given to the arbitrators and not to the court.

Karia said, "The greater authority given to the Arbitral Tribunal to decide the status of non-signatory parties is a pro-arbitration step. The narrowed contours for invoking the Group of Companies' will reduce the scope and possibility of abuse of the doctrine."

Lakshmikumaran, however, cautioned that the arbitral tribunal must apply the doctrine sparsely and stringently. She said "Unnecessary impleadment of non-signatories can also be a ground for courts to refuse recognition and enforcement of the award."

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