

## **Supreme Court's stance on reference to arbitration of the non-signatory parties**

On 3<sup>rd</sup> May, 2018, Supreme court of India, in the matter *Ameet Lalchand Shah and Others v. Rishabh Enterprises and Another* held that where serious questions of fraud are involved, arbitration can be refused. The court has interpreted section 8 of Arbitration and Conciliation Act 1996, as amended by the Arbitration and Conciliation (Amendment) Act 2015. The principles laid down in the case of *Chloro Controls India Private Limited V. Severn Trent Water Purification Inc and others* (2013) 1 SCC 641 were applied. It said that when the agreements are inter-connected to each other and are involved in single commercial projects and one is the principal agreement and all the other agreements are ancillary agreements, then all the parties to the agreement can refer to arbitration. In the present case, Supreme Court has set aside the order of the High Court and said that the parties can refer to arbitration. Absence of the Arbitration clause from one of the ancillary agreement will not exclude the parties to refer to arbitration. Also, in case of *A. Ayyasamy V. Paramasivam and others* (2016)10 SCC 386, the Court held that mere allegation of fraud is not a ground to nullify the effect of arbitration agreement between parties.

### **ISSUED**

Whether reference of the dispute between the parties to arbitration is to be refused on the ground of allegations of fraud in the plaint or whether the agreements between the parties ought to be taken as commercial undertaking of the parties "with a sense of business efficacy?"

In case of *Sukanya Holdings (P) Ltd. V. Jayesh H. Pandya and another* (2003), application was filed under section 8 of the Arbitration and Conciliation Act,1996 and the High Court held that, agreements between the parties are not interconnected with the principal agreement and therefore the parties cannot be referred to arbitration.

The Supreme Court relied upon the principles laid down in *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and others* in relation to domestic arbitrations. It has ruled that in cases where the agreements are inter-connected and several parties are involved in a single commercial project executed through several agreements, all the parties can be made amenable to arbitration. The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary and ancillary agreement, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court will examine whether a composite reference of such parties would serve the ends of justice.

Supreme Court referred to the facts and intention of the parties and concluded that all the parties could be covered by the arbitration clause in the main agreement i.e. Equipment Lease Agreement. where the agreements are inter-connected and several parties are involved in a single commercial project executed through several agreements. According to the law commission 246<sup>th</sup> Report, the amendment to section 8 envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void.

The High Court held that the respondents levelled allegations of fraud against the appellants which raise serious triable issues of fraud and hence, the matter cannot be referred to arbitration. In case of *A. Ayyasamy V. Paramasivam and others* (2016)10 SCC 386, court held that mere allegation of fraud is not a ground to nullify the effect of arbitration agreement between parties and the parties can be relegated to arbitration where merely simple allegations of fraud is there. It also upheld that the duty of court is to impart sense of business efficiency.

## **CONCLUSION**

The Supreme Court has preferred the principles laid down in Chloro Control's case and reflects that the Sukanya case may no longer be applied to proceedings under section 8 of the Act. It is hereby concluded that when there is an agreement of arbitration and an arbitration clause is mentioned in the principal agreement, then merely on account that the said clause is not mentioned in the ancillary agreement and also the parties are 'non-signatory' combined with a fraud agreement, would not exclude the parties to resort to arbitration.

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### **Section 8. Power to refer parties to arbitration where there is an arbitration agreement.—**

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

### **Section 45. Power of judicial authority to refer parties to arbitration. —**

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.