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# THE EVOLUTION OF NON-SIGNATORY JURISPRUDENCE IN INDIAN ARBITRATION: A DOCTRINAL ANALYSIS OF THE GROUP OF COMPANIES PRINCIPLE

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## ABSTRACT

This paper examines the contours of the Group of Companies Doctrine in Indian arbitration law following the five-judge ruling in *Cox & Kings Ltd v. SAP India Pvt Ltd* (2023), which reaffirmed and refined when non-signatory affiliates may be bound to arbitrate. It traces the doctrine's emergence from *Chloro Controls* (2012/2013) through *Cheran Properties* (2018) and *ONGC v. Discovery* (2022), and maps how *Cox & Kings* consolidates the "intention to be bound" test while emphasizing factors such as composite transactions, direct participation in negotiation/ performance, and economic unity. The paper contrasts India's position with jurisdictions that reject or circumscribe GOCD (notably England in *Peterson Farms* and the UK Supreme Court's approach in *Dallah*), and surveys selective Swiss decisions that test extension under the New York Convention framework. It also sets out statutory touch points under the Arbitration and Conciliation Act, 1996, and the New York Convention, and distills practitioner guidance on drafting, evidence collection, and tribunal case management post-*Cox & Kings*. The analysis concludes that Indian courts have settled the availability of Group of Companies Doctrine in principle, while ongoing High Court decisions indicate guardrails especially against roping in directors or individuals suggesting a maturing, fact-intensive inquiry aligned with consent, corporate separateness, and arbitral efficiency.

## INTRODUCTION

The protracted debate surrounding the doctrine of *Group of Companies*—a judicially evolved principle that sits at the intersection of arbitration law and company law—has been a contentious one, engaging courts, practitioners, and academics alike. The controversy arises because this doctrine seemingly dilutes some of the most fundamental principles of arbitration, namely **party autonomy, privity of contract, and the doctrine of consensus ad idem**, while simultaneously challenging core doctrines of company law such as **separate legal personality and the sanctity of the corporate veil**.

This debate has now reached a defining juncture with the recent **landmark pronouncement of the Hon'ble Supreme Court of India**, wherein the Apex Court has conclusively settled the contours of the doctrine. By according judicial recognition to the *Group of Companies* doctrine, the Court has formally validated its application in Indian arbitration jurisprudence, thereby aligning domestic practice with certain comparative international approaches.

At its core, the doctrine permits the inclusion of **non-signatory affiliates of a corporate group** within the scope of an arbitration agreement entered into by a signatory company, provided the facts and circumstances indicate a **clear and mutual intention of the parties** to bind both signatories and non-signatories alike. The jurisprudential foundation of this doctrine, therefore, rests on an implied consent theory and a holistic reading of the parties' conduct, negotiations, and performance of the underlying commercial arrangement.

The recent **five-judge Constitution Bench ruling in *Cox & Kings Ltd. v. SAP India Pvt. Ltd. (2023)*** has crystallized and refined the legal principles governing this doctrine. Through a unanimous judgment, the Court clarified the tests and circumstances under which non-signatories may be roped into arbitration proceedings, while simultaneously reiterating the need to safeguard the doctrinal purity of party autonomy in arbitration. This judgment has been widely hailed as a forward-looking development, striking a delicate balance between **commercial realities of modern corporate structures** and the **classical principles of arbitration law**.

However, despite this authoritative ruling, the doctrine continues to remain dynamic and evolving. Its future application will largely depend on the manner in which arbitral tribunals and Indian courts navigate the tension between contractual freedom and the practical necessity of binding non-signatories in complex, multi-party, and cross-border disputes.

The objective of this article is to trace the evolution of the *Group of Companies* doctrine across different legal systems, critically examine its transplantation into Indian jurisprudence, and assess the broader implications of this principle for the development of arbitration law in India.

## WHAT IS THE GROUP OF COMPANIES DOCTRINE?

The *Group of Companies* doctrine is a judicially crafted principle in arbitration and corporate law that acknowledges the **functional and economic unity** of companies operating within the same corporate group. While traditional corporate jurisprudence treats each company as a distinct legal entity enjoying a **separate legal personality**, this doctrine carves out a carefully circumscribed exception by recognising that, in practice, entities within a group often function as a **single economic unit**, with common ownership, management, and strategic direction.

In essence, the doctrine creates a **legal fiction** whereby non-signatory companies of a corporate group may, under certain circumstances, be bound by or derive benefits from an arbitration agreement executed by an affiliated company within that group. This principle is not rooted in mechanical extension but rather in the demonstration of the **mutual intention of the parties** to bind the corporate group as a whole. Thus, the doctrine allows arbitral tribunals and courts to look beyond the mere formality of separate legal existence and examine the substance of interrelated corporate conduct, negotiations, and contractual performance.

This doctrine assumes particular significance in the context of **multi-party commercial transactions**, complex joint ventures, or transnational corporate arrangements, where several group entities play interconnected roles. By permitting the inclusion of non-signatories, it ensures that disputes are adjudicated comprehensively, preventing fragmented proceedings and inconsistent outcomes. Jurisdictions such as **France, the United States, and Singapore** have, in varying degrees, recognised and applied the doctrine, thereby underscoring its growing relevance in international arbitration practice.

However, the doctrine is not without controversy. Critics argue that it risks undermining foundational principles of arbitration, such as **party autonomy and privity of contract**, by binding entities that never expressly consented to arbitrate. From a company law perspective, it raises concerns about the erosion of the principle of **separate legal personality** and potential overreach in piercing the **corporate veil**. Nevertheless, its underlying rationale is compelling: without such a doctrine, corporate groups could exploit their separate legal identities as a shield to evade obligations, defeat legitimate claims, and frustrate the enforcement of arbitral awards, thereby jeopardising the efficacy of arbitration as a dispute resolution mechanism.

Ultimately, the *Group of Companies* doctrine strikes a pragmatic balance between the **rigid formalism of separate corporate identity** and the **commercial reality of group enterprises**. By doing so, it seeks to uphold the integrity of arbitration proceedings, prevent abuse of corporate structures, and ensure that justice is not sacrificed at the altar of technicality.

## WHAT IS AN ARBITRATION AGREEMENT?

An arbitration agreement is a contractual arrangement through which parties agree to resolve their disputes by reference to a private arbitral tribunal, rather than through traditional court proceedings. Such an agreement is often incorporated as an arbitration clause within a broader commercial contract, though it may also be executed as a standalone contract. Under this agreement, disputes arising out of a defined legal relationship, whether contractual or otherwise, are referred to arbitration.

The Arbitration and Conciliation Act, 1996 (the “Arbitration Act”) mandates that arbitration agreements must be in writing (Section 7). This requirement is satisfied not only by signed contracts but also by exchanges of letters, emails, or other written communications evidencing consent to arbitrate. Thus, while formality in documentation is necessary, the law recognises both express and implied consent captured in a written form.

### **WHETHER THE DEFINITION OF “PARTIES” IN THE ARBITRATION AND CONCILIATION ACT ENCOMPASSES BOTH SIGNATORIES AND NON-SIGNATORIES?**

Yes. Section 2(1)(h) of the Arbitration Act defines “party” broadly. The Supreme Court in *Cox and Kings* clarified that this definition includes both signatories and non-signatories, provided the latter have, by their actions or conduct, demonstrated consent to arbitrate.

While Section 7 requires a written arbitration agreement, it does not necessarily require the non-signatory’s signature. Internationally, this approach aligns with Article 7 of the UNCITRAL Model Law, which recognises that arbitration agreements may be concluded without formal signatures, so long as the agreement is recorded in writing. Thus, the Act accommodates situations where non-signatories may be bound by demonstrating express or implied consent.

### **CIRCUMSTANCES IN WHICH THE DOCTRINE OF GROUP OF COMPANIES CAN BE APPLIED**

The Group of Companies Doctrine finds application in scenarios where corporate entities are used in a manner that intertwines their rights and obligations. Some common circumstances include:

- Irregular Share Transfers – Where companies within a group transfer shares among themselves to defeat creditors or avoid contractual obligations.
- Sham Transactions – When agreements are structured as facades to defraud third parties or evade liability.
- Parent-Subsidiary Manipulation – When a parent company uses its subsidiaries, affiliates, or sister companies as instruments to perform contractual obligations, thereby indicating implied consent to arbitration.
- Composite Contracts – In multi-contract projects where performance by non-signatories is essential to the execution of the overall transaction.

## ***FUNCTIONAL DIMENSIONS OF THE GROUP OF COMPANIES DOCTRINE IN ARBITRATION LAW?***

The doctrine recognises that corporate groups, despite having separate legal personalities, often function as an integrated economic entity. In such cases, the rigid application of corporate separateness could defeat the commercial expectations of parties.

Key functions of the doctrine include:

- **Recognition of Economic Reality** – It acknowledges that companies within a group operate with interlinked decision-making and shared resources.
- **Attribution of Liability** – It permits extending arbitral obligations to non-signatories within the group where their conduct shows active participation in the contractual matrix.
- **Interpretation of Contracts** – The doctrine allows tribunals to interpret agreements holistically, preventing misuse of corporate structures to evade arbitral commitments.

It is important to note that unlike doctrines such as piercing the corporate veil, the Group of Companies Doctrine is consensual in nature—it is premised on the inference of shared intention rather than coercively disregarding separate corporate personality.

### **SIGNIFICANCE OF THE DOCTRINE**

The *Group of Companies* doctrine is of immense importance in arbitration jurisprudence as it recognises that, despite their separate legal identities, entities within a corporate group often operate as a **single economic unit**. This recognition is particularly vital in modern commercial practice, where the actions or obligations of one entity may directly influence or bind other members of the group. By acknowledging this unity, the doctrine provides a legal basis for **piercing the corporate veil** in appropriate circumstances, thereby holding the entire group collectively responsible for the actions or liabilities of its constituent entities.

In the contractual sphere, the doctrine plays a crucial role in the **interpretation and enforcement of arbitration agreements**. Instead of mechanically limiting the scope of such agreements to signatory companies, courts and arbitral tribunals assess the group's conduct, responsibilities, and participation in the underlying transaction. This approach ensures that the arbitral process reflects **commercial reality** rather than being constrained by the rigid formality of corporate separateness.

The doctrine's practical significance lies in enhancing the **fairness, efficiency, and economy of dispute resolution**. By enabling disputes involving multiple group companies to be consolidated into a single arbitral proceeding, it reduces the risk of **multiplicity of litigation**

and **conflicting awards** across different fora. This not only saves time and resources but also provides a coherent and comprehensive resolution of disputes, thereby preserving the integrity of arbitral proceedings.

Moreover, the doctrine assumes even greater relevance in the context of **cross-border transactions**, where multinational corporations operate through subsidiaries incorporated under diverse legal systems. In such scenarios, differences in domestic laws may otherwise create loopholes, allowing corporations to evade liability by relying on jurisdictional and structural fragmentation. The doctrine mitigates this risk by recognising the **transnational interconnectedness of group entities**, ensuring that obligations are enforced consistently across borders. This contributes to promoting **legal certainty, predictability, and fairness** in international commercial arbitration.

Importantly, the doctrine also serves a **preventive function**—it discourages corporations from misusing the principle of separate legal personality as a shield to defeat legitimate claims, exploit creditors, or frustrate the enforcement of arbitral awards. By holding group companies collectively accountable where warranted, the doctrine upholds the foundational principles of **equity and good faith** in commercial dealings.

Thus, the significance of the *Group of Companies* doctrine lies not merely in its procedural utility, but in its broader contribution to the **development of arbitration law**. It reflects a pragmatic balance between respecting the autonomy of corporate entities and recognising the practical reality of integrated business operations, thereby reinforcing arbitration as a robust and reliable mechanism for resolving complex, multi-party disputes.

The *Group of Companies* doctrine occupies a **pivotal position in arbitration law**, as it responds to the practical complexities of modern corporate structures and the realities of multi-party transactions. Its necessity is most clearly felt in cases where the **corporate architecture itself**—comprising holding companies, subsidiaries, affiliates, and sister concerns—plays a defining role in establishing the **common intent of the parties**. When a non-signatory company within such a group has been substantially involved in the **negotiation, performance, or execution** of contractual obligations, its participation is a strong indicator of an implied consent to be bound by the arbitration agreement, even if it did not formally sign it. The doctrine is essential because it empowers courts and arbitral tribunals to go beyond the **formalistic confines of signature requirements** and instead focus on the **objective intention of the parties**, discernible from both pre-contractual negotiations and post-contractual conduct. By bringing non-signatory entities within the fold of arbitration agreements, the doctrine prevents corporations from resorting to **subsidiary litigation or jurisdictional manoeuvring**

as a tactic to sidestep arbitration. In doing so, it strengthens the **efficacy and enforceability** of arbitration agreements, ensuring that arbitration remains the primary and comprehensive mode of dispute resolution.

However, the necessity of this doctrine also gives rise to significant debate. Critics often highlight that arbitration is founded on the principles of **party autonomy, privity of contract, and explicit consent**. They argue that compelling non-signatories to arbitrate risks diluting these foundational principles, since a valid arbitration proceeding must emanate from a **legitimate and enforceable arbitration agreement**. The concern, therefore, is that binding parties who never expressly consented to arbitrate could create undue hardships, particularly when only some group entities have executed the arbitration agreement, while others have merely participated in its performance.

Yet, it is precisely this concern that led to the **evolution and judicial acceptance** of the *Group of Companies* doctrine. Courts and arbitral tribunals recognised that corporate groups should not be allowed to misuse the doctrine of **separate legal personality** to defeat arbitration, nor should they exploit their internal structures to fragment disputes across different forums. By widening the scope of arbitration agreements to include non-signatory affiliates, the doctrine promotes **commercial fairness, procedural efficiency, and consistency of adjudication**.

Furthermore, the doctrine reflects an understanding of the **economic and technical realities of contemporary corporate practice**, where subsidiaries and affiliates rarely function in isolation but instead act as integral components of a unified enterprise. It is also significant in cross-border contexts, where multi-jurisdictional subsidiaries may otherwise exploit variations in domestic law to avoid accountability. By applying the doctrine on a **case-by-case basis**, courts strike a pragmatic balance—upholding the sanctity of consent in arbitration while preventing the misuse of corporate separateness to frustrate justice.

In essence, the necessity of the *Group of Companies* doctrine lies in its ability to reconcile **legal formalism with commercial realism**. It ensures that all entities materially involved in a transaction are subjected to the same dispute resolution framework, thereby reinforcing arbitration's role as an effective, efficient, and fair mechanism for resolving complex corporate disputes.

## **ESSENTIAL CRITERIA AND CONDITIONS FOR INVOKING THE GROUP OF COMPANIES DOCTRINE AGAINST NON-SIGNATORIES**

The application of the Group of Companies Doctrine to bind non-signatories is neither automatic nor universal; it is invoked only under specific and carefully scrutinised

circumstances. Courts and arbitral tribunals emphasise that the doctrine must be applied sparingly and with caution, ensuring that it is both legally justified and consistent with the commercial intent of the parties. Its core objective is to strike a balance between the principle of separate legal personality and the need to prevent misuse of corporate structures as a shield against legitimate claims.

At its heart, the doctrine rests on the existence of a common intention—express or implied—between signatory and non-signatory entities to arbitrate. This intent may be inferred not only from the text of the agreement but also from the conduct of the parties, their participation in performance, and the surrounding circumstances of the transaction.

Broadly, the following determinative criteria and conditions govern whether a non-signatory can be bound by or benefit from an arbitration agreement entered into by an affiliated entity within the same corporate group:

1. **Mutual or Common Intention of the Parties** - The most fundamental requirement is proof of a shared intention among the parties to be bound by the arbitration agreement. This intention may be explicit (through contractual terms) or implicit (through conduct, negotiations, or involvement in execution). For instance, when a non-signatory plays an active role in the negotiation, execution, or performance of the contract, tribunals may infer its willingness to be bound by the arbitration clause.
2. **Existence of a Legal or Commercial Relationship** - A demonstrable nexus must exist between the signatory and non-signatory entities. Such a relationship could arise out of agency, financial integration, or functional interdependence within the corporate group. The doctrine cannot be invoked in a vacuum; it requires a substantial connection that ties the entities to the same contractual or commercial framework.
3. **Commonality of Subject Matter and Composite Transactions** - Where disputes arise out of a common contractual matrix or a series of interdependent agreements, arbitration may extend to non-signatories to avoid fragmented proceedings and conflicting decisions. The doctrine becomes particularly relevant in composite transactions, where performance of one agreement is contingent upon the execution of another, thereby necessitating a unified adjudication.
4. **Participation in Performance and Equitable Estoppel** - If a non-signatory has actively participated in the contract's execution, derived benefits from its performance, or directly influenced its implementation, equitable principles prevent it from disclaiming the arbitration clause. The doctrine of equitable estoppel ensures that parties cannot

selectively accept benefits under a contract while rejecting the mechanism of dispute resolution contained therein.

5. Third-Party Beneficiaries - Non-signatories who are direct beneficiaries of a contract may be compelled to arbitrate. When such parties invoke rights or claim benefits expressly conferred by the agreement, they must also accept the obligation to arbitrate disputes under the same instrument. This ensures symmetry of rights and obligations and prevents opportunistic conduct.
6. Agency and Alter Ego Situations - Where a non-signatory functions as an agent of a signatory, or where the relationship between them is so intertwined that the non-signatory is essentially the alter ego of the signatory, tribunals may disregard the corporate veil. In such cases, the arbitration agreement can extend to both entities, preventing the use of corporate separateness as a façade for evading arbitral obligations.

## **GLOBAL ACCEPTANCE AND JURISDICTIONAL DIVERGENCE OF THE GROUP OF COMPANIES DOCTRINE**

The doctrine's acceptance is not uniform across jurisdictions. While India's Supreme Court has expressly recognized and refined it in *Cox and Kings* (2023), other jurisdictions adopt divergent approaches:

- Singapore has rejected the doctrine, adhering strictly to the principle of party consent and the separateness of corporate entities.
- France and certain European jurisdictions have, however, adopted broader approaches, binding non-signatories based on implied consent and economic reality.
- In international arbitration practice, its application largely depends on the governing law of the arbitration agreement and the factual matrix of the case.

Thus, while the doctrine has gained prominence in India, its acceptance worldwide remains fragmented, reflecting the continuing debate between party autonomy and commercial pragmatism.

## **EVOLUTION OF THE GROUP OF COMPANIES DOCTRINE**

The Group of Companies doctrine has undergone a significant evolution over the years, gradually developing into its present form. Its conceptual roots are often traced back to the landmark arbitral award delivered by the International Chamber of Commerce (ICC) in *Dow Chemical France v. Isover Saint Gobain* (1984). This case is widely regarded as the foundation

for the doctrine, introducing for the first time a structured judicial recognition that non-signatory entities within a corporate group could be bound by, and take the benefit of, arbitration agreements under certain conditions.

### ***FRANCE: THE BIRTHPLACE OF THE DOCTRINE***

The origin of the doctrine is closely tied to French arbitral jurisprudence. The *Dow Chemical* case, in particular, is considered the seminal authority. In this matter, two subsidiaries of the Dow Chemical Company (USA)—Dow Chemical A.G. and Dow Chemical Europe—entered into contracts with Isover Saint Gobain for the supply of thermal insulation. These contracts contained arbitration clauses and expressly permitted performance by any Dow Chemical subsidiary.

In practice, the performance of the contracts was largely undertaken by Dow Chemical France, a non-signatory subsidiary, while the parent company, Dow Chemical Company (USA), played a crucial role in negotiations, particularly by holding and controlling the trademarks essential to the transaction. When disputes arose, four entities—the two contracting subsidiaries, the parent company, and Dow Chemical France—commenced arbitration against Isover.

Isover challenged the ICC's jurisdiction, contending that Dow Chemical France and Dow Chemical Company could not be claimants as they had not signed the contracts. The ICC, however, rejected this objection in an interim award and adopted a pragmatic approach. It held that while each member of the Dow Chemical Group had a distinct corporate personality, the tribunal was required to assess the commercial context and actual participation of the parties.

The ICC concluded that the parent company and Dow Chemical France had been materially involved in the negotiation and performance of the contracts and that their participation demonstrated the mutual intention of the parties that they be considered part of the contractual framework. The tribunal further reasoned that in the absence of licensing arrangements, the parent's ownership of trademarks was indispensable to the contract's execution. Dow Chemical France, on the other hand, had assumed principal responsibility for fulfilling the obligations originally assigned to its sister subsidiaries.

The tribunal held that these circumstances revealed an implied consent by the signatory parties to extend the arbitration clause to the non-signatories. It further took into account international commercial practices recognising the existence of corporate groups as single economic **entities**. Accordingly, the ICC declared that the arbitration agreement extended to all four companies, thereby acknowledging the group's functioning as a "single economic reality."

### Tests Emerging from the Dow Chemical Case

The *Dow Chemical* ruling articulated three guiding tests for the application of the *Group of Companies* doctrine:

1. Active Involvement Test – Whether the non-signatory entity participated in the negotiation, performance, or termination of the contract containing the arbitration clause.
2. Single Economic Reality Test – Whether the entities in question formed part of an integrated corporate group functioning as a unified economic enterprise.
3. Common Intention Test – Whether the conduct of the parties demonstrated a mutual intention to extend the arbitration agreement to non-signatory affiliates.

These principles marked a decisive shift from the rigid notion of privity of contract towards a more commercially realistic approach in arbitral jurisprudence.

### Judicial Endorsement in France

The award was subsequently challenged by Isover before the Paris Court of Appeal, which dismissed the challenge and upheld the ICC's reasoning. The French judiciary, by recognising the validity of extending arbitration agreements to non-signatory entities within a group, gave judicial legitimacy to the doctrine and entrenched France's status as a jurisdiction supportive of arbitration.

The *Dow Chemical* case thus served as the jurisprudential seed for the global recognition of the *Group of Companies* doctrine. It shifted the discourse by treating corporate groups not merely as an aggregation of independent legal entities but as a functional whole, where mutual intent and economic reality could override formal separateness in the context of arbitration.

### SWITZERLAND

Under Swiss arbitration law, the binding force of arbitration agreements may arise either **expressly or impliedly**, provided that the consent of the parties can be established in a manner that satisfies the statutory requirements. This principle is codified in **Article 178(1) of the Swiss Private International Law Act, 1987 (PILA)**, which prescribes that an arbitration agreement must be made “in writing or by any other means of communication allowing it to be evidenced by text.” Thus, while formality of writing is required, Swiss jurisprudence has long acknowledged that consent can also be inferred from the **conduct of parties** in contractual performance or in their participation in arbitral proceedings.

A notable example illustrating the limits of the **Group of Companies Doctrine** in Swiss law is the case of *A., B., & C. v. D. and the State of Libya (2019)*. In this dispute, a Turkish joint venture and its shareholder companies had entered into an agreement with a Libyan state-owned entity for the construction of a major water pipeline. The contract contained an arbitration clause providing for disputes to be resolved under the **ICC Rules**, with the seat of arbitration in Geneva. Although the Libyan state-owned entity was a signatory, the **State of Libya itself was not a direct party to the agreement.**

The claimants completed approximately 70% of the work before operations were suspended due to the Libyan Civil War in 2011. Subsequently, in 2015, the claimants initiated arbitration proceedings not only against the contracting Libyan entity but also directly against the **State of Libya**, arguing that Libya should be bound by the arbitration clause. Libya objected to the tribunal's jurisdiction, contending that it had never signed nor consented to the arbitration agreement.

The arbitral tribunal awarded the claimants more than USD 40 million for the work performed but declined jurisdiction over Libya, holding that the **State was not bound by the arbitration clause.** On appeal, the **Swiss Federal Tribunal (SFT)** affirmed this position, stressing that **the burden rests on the claimant to demonstrate the consent—express or implied—of the non-signatory.** The SFT held that the claimants failed to establish any factual circumstances suggesting that Libya had manifested a **legitimate intention to be bound** by the arbitration clause through its conduct in the execution or performance of the contract.

Importantly, the SFT acknowledged the possibility that non-signatories, including parent companies, subsidiaries, or even sovereign states, may in certain instances be bound by arbitration agreements. However, such binding effect is not automatic; it arises only when the non-signatory has **interfered in the contractual performance** to such an extent that it can be inferred that they consented to the arbitration agreement, or where there is evidence of a **common intention** of the contracting parties to extend the arbitration clause beyond formal signatories.

In this respect, Swiss law adopts a cautious stance compared to the French approach in *Dow Chemical v. Isover*, which more readily recognized the concept of a “single economic reality.” Swiss jurisprudence places a heavier emphasis on **contractual interpretation and the principle of consent.** The application of the **Group of Companies Doctrine** in Switzerland thus hinges on a careful balancing act between preserving the sanctity of separate corporate identities and ensuring that the realities of corporate group operations and cross-border dealings do not frustrate arbitral justice.

Consequently, under Swiss law, **Article 178(1) PILA** operates as a threshold provision: while form requirements are flexible, the extension of arbitration agreements to non-signatories is ultimately governed by the substantive law and a fact-specific inquiry into the **parties' intent, conduct, and legitimate expectations**. This approach underscores the Swiss judiciary's commitment to upholding the principle of **consensual arbitration**, while still leaving scope for exceptional cases where non-signatories may justifiably be bound under the doctrine.

### **SINGAPORE**

In Singapore, the **Group of Companies Doctrine** has not been accepted as a principle to extend arbitration agreements to non-signatory parties. The Singaporean judiciary adopts a **strict consent-based approach**, placing paramount importance on the foundational principle that arbitration is a matter of **party autonomy**. Thus, absent clear evidence of consent, a non-signatory cannot be compelled to arbitrate, even if it belongs to the same corporate group as a signatory.

A significant ruling on this issue is *Manuchar Steel Hong Kong Limited v. Star Pacific Line Pte Ltd. (2014)*. In this case, the plaintiff, **Manuchar Steel**, sought to rely on the Group of Companies Doctrine to enforce two arbitral awards it had obtained in London against **SPL Shipping**. The plaintiff petitioned for enforcement against **Star Pacific Line Pte Ltd. (SPL Line)**, arguing that SPL Line and SPL Shipping constituted a single economic unit within a corporate group and should therefore be treated as jointly bound. To support this argument, Manuchar relied on the doctrine as developed in certain foreign jurisdictions, where separate entities within a corporate group may be regarded as operating as one.

The **Singapore High Court**, however, firmly rejected this argument. The Court dismissed the petition, holding that the **Group of Companies Doctrine is not part of Singaporean law**. The Court stressed that the doctrine is fundamentally inconsistent with the principle of **consensual arbitration**, which requires that binding arbitral obligations arise only from the express or implied agreement of the parties themselves. The Court emphasised that to extend arbitration clauses to non-signatories without clear consent would amount to imposing **“executable responsibilities”** on parties who never agreed to arbitrate in the first place, thereby undermining the very legitimacy of arbitration.

In its reasoning, the Court observed that the “single economic entity” concept, although sometimes useful in corporate law to pierce the corporate veil or assess liability, has no footing in the arbitration framework of Singapore. Arbitration law in Singapore is guided both by the **International Arbitration Act (IAA)** and by the jurisprudence that consistently affirms that

arbitration agreements are to be strictly construed. The Court underscored that Singapore has chosen to align itself with the **New York Convention’s emphasis on consent** and does not subscribe to expansive doctrines that dilute corporate separateness without a contractual basis. It is worth noting that Singapore’s rejection of the Group of Companies Doctrine represents a **deliberate policy choice** to safeguard predictability and legal certainty in arbitration. While other jurisdictions—such as France in *Dow Chemical v. Isover-Saint-Gobain*—have adopted a more flexible approach, allowing the extension of arbitration agreements to non-signatories within a corporate group, Singapore has explicitly distanced itself from this trajectory. The rationale is that blurring the boundaries between entities within a corporate group could create uncertainty for commercial parties who rely on corporate separateness as a structuring principle of international business transactions.

Therefore, under Singaporean law, the doctrine is seen as **antithetical to the consensual nature of arbitration**. Non-signatories cannot be compelled to arbitrate merely because they are part of the same corporate group as a signatory. The only recognised exceptions arise under established principles such as **agency, assignment, assumption, novation, or estoppel**, where genuine consent can be inferred. Thus, Singapore maintains a **narrow, consent-centric framework** that prioritises contractual clarity over economic reality in matters of arbitration.

### **UNITED KINGDOM**

The **English Arbitration Act, 1996**, provides the statutory foundation for arbitration in the United Kingdom and expressly defines the scope of parties who may be bound by an arbitration agreement. Under **Section 82(2)**, the term “*party to an arbitration agreement*” includes not only the direct signatories but also **any person claiming under or through a party**. This provision allows some leeway for successors, assignees, or agents, but it does not automatically extend to all entities within a corporate group. Furthermore, **Section 5** mandates that arbitration agreements must be in writing, but under **Section 5(2)(a)**, it is expressly stated that the agreement need not be signed, provided there is written evidence of consent. Thus, the English courts have been cautious in evaluating whether a **non-signatory** may legitimately be bound by an arbitration agreement, with the emphasis consistently placed on **intention and consent**. The leading case that tested the applicability of the **Group of Companies Doctrine** under English law is *Peterson Farms Inc. v. C&M Farming Limited (2004)*. In that dispute, C&M Farming sought damages not only for itself but also on behalf of its wider group entities, some of which were **non-signatories** to the arbitration agreement with Peterson Farms. The arbitral tribunal, adopting reasoning akin to the French jurisprudence in *Dow Chemical v. Isover-*

*Saint-Gobain*, invoked the **Group of Companies Doctrine**, holding that C&M had contracted on behalf of the entire corporate group and could therefore claim damages sustained by its affiliates.

However, upon challenge, the **Commercial Court** unequivocally rejected this reasoning. The Court found that the governing law of the contract, being aligned with **English law**, did not recognise the Group of Companies Doctrine. Instead, English arbitration law rests firmly on the principle that **consent is paramount** and must be established clearly and unequivocally. Thus, English law does not permit the extension of arbitration agreements to non-signatory parties merely on the basis of their belonging to the same corporate group. The decision in *Peterson Farms* stands as a landmark authority for the proposition that **the doctrine is excluded under English jurisprudence**.

The principle was further reinforced in *Dallah Real Estate and Tourism Holding Company v. The Ministry of Religious Affairs, Government of Pakistan (2010)*. In that case, Dallah entered into an agreement with the **Awami Hajj Trust**, a body created by the Government of Pakistan under an Ordinance. When the Ordinance lapsed without being renewed, the Trust ceased to exist. Dallah, nevertheless, sought to initiate arbitral proceedings against the **Government of Pakistan** itself, arguing that the government was effectively the real party in interest. The dispute eventually reached the **UK Supreme Court**, which held that there was **no evidence of common intention or consent** on the part of the Government of Pakistan to be bound by the arbitration clause. The Court emphasised that even where there may be a close relationship between entities (such as a state and a statutory corporation), the absence of **mutual intention** precludes the binding effect of an arbitration agreement.

The jurisprudence emerging from these cases reflects the **United Kingdom's restrictive approach** towards the Group of Companies Doctrine. Unlike jurisdictions such as France, where the doctrine has been used expansively to bind affiliated entities, English law maintains a **contractual orthodoxy**, recognising only those non-signatories who can demonstrate consent through established doctrines such as **agency, assumption, assignment, novation, or estoppel**. The emphasis is consistently on **upholding party autonomy and legal certainty** rather than expanding arbitral jurisdiction by reference to broader notions of corporate unity or economic reality.

Thus, the **English stance** may be summarised as one that affirms the **separateness of corporate entities** and rejects the automatic extension of arbitration agreements across group companies. In doing so, it reflects a deliberate policy choice to privilege **predictability**,

**consent, and the sanctity of the arbitration agreement**, even at the cost of efficiency or the convenience of consolidated proceedings.

## **INDIA**

The legal framework in India is often described as a complex mosaic of statutory provisions, judicial pronouncements, and regulatory principles, rather than a uniform or monochromatic legal system. Within this landscape, the Group of Companies Doctrine has gradually evolved as a critical interpretative tool, enabling courts and arbitral tribunals to pierce through the rigid form of corporate separateness and ascertain the true nature of corporate relationships and responsibilities. It serves as a compass to ensure that arbitration law does not become a mere technical exercise but remains responsive to the commercial realities of modern business structures, where group companies often operate as a single economic unit.

At the global level, the doctrine has witnessed divergent judicial receptions. While jurisdictions such as England and Singapore have exhibited a marked reluctance in embracing the doctrine, maintaining a rigid contractualist approach, courts in France have taken a more liberal stance, readily extending arbitration agreements to non-signatory group entities where commercial intention is apparent. Against this international backdrop, India's journey represents a middle path, shaped by both statutory interpretation and progressive judicial reasoning.

Importantly, the doctrine's legitimacy in India lies not merely in abstract theory but in its ability to deliver substantive justice, particularly by balancing the interests of shareholders, employees, creditors, and consumers, all of whom are deeply connected with the success or failure of a corporate group. The real test of the doctrine in India is whether it can produce outcomes that are fair, equitable, and consistent with both party autonomy and the commercial purpose of arbitration.

### **Statutory Framework**

Unlike in France, the Arbitration and Conciliation Act, 1996 does not explicitly codify the Group of Companies Doctrine. Nevertheless, certain provisions in the Act provide fertile ground for its implicit recognition and application.

- Section 2(1)(h): This section defines a “party” to an arbitration agreement. At first glance, the definition appears restrictive, limited to persons or entities who have expressly signed an arbitration agreement. However, Indian courts have read this definition purposively, recognising that in cases where non-signatories are closely connected to the contract or are direct beneficiaries, they may still fall within the sweep

of the expression “party”. This interpretation reflects an acknowledgement that strict privity of contract cannot always serve the ends of justice, especially in the context of complex corporate arrangements.

- Section 35: This provision declares that an arbitral award is binding not only on the parties to the arbitration but also on “persons claiming under them.” The phrase has been judicially interpreted to include those who, though not direct signatories, are so closely linked legally or commercially to the contracting parties that they derive rights or obligations through them. In effect, this expands the reach of arbitral awards beyond the immediate signatories, lending statutory support to the underlying rationale of the Group of Companies Doctrine—namely, that corporate entities cannot always evade arbitral jurisdiction by relying on technical separateness when they are functionally integrated.

Together, these provisions illustrate that while the 1996 Act may not expressly enshrine the doctrine, its spirit and intent provide sufficient flexibility for judicial incorporation. The emphasis remains on consent—express or implied—and the objective intention of the parties as discerned from the facts and circumstances of each case.

Jurisdiction	Recognition of Doctrine	Legal Basis / Test Applied	Leading Case(s)	Approach to Consent vs. Economic Reality	Practical Consequences
France	Yes – Broad Acceptance	Developed through arbitral practice; <i>Dow Chemical</i> principle. Tests include active involvement, single economic reality, and common	<i>Dow Chemical v. Isover Saint Gobain</i> (ICC, upheld by Paris Court of Appeal).	Emphasis on economic reality and participation; implied consent often inferred from conduct and integration of companies.	Non-signatories within an integrated group frequently bound to arbitration if they participated in negotiation, performance, or derived

		intention.			benefits.
<b>Switzerland</b>	Yes – Qualified, Cautious	Swiss PILA Art. 178(1) requires arbitration agreement in writing. Non-signatories can be bound where express or implied consent is shown.	<i>A., B., &amp; C. v. D. &amp; State of Libya</i> (Swiss Federal Tribunal, 1988).	Strong focus on consent; economic unity alone insufficient. Burden lies on claimant to prove intent of non-signatory.	Courts accept extension in exceptional cases but demand clear evidence of participation or assumption of obligations.
<b>Singapore</b>	No – Rejected	Strict party autonomy; arbitration is consent-driven. No recognition of group doctrine in general.	<i>Manuchar Steel Hong Kong Ltd. v. Star Pacific Line Pte Ltd.</i> (2014, High Court).	Absolute priority to consent; rejects “single economic entity” as a ground.	Non-signatories cannot be compelled to arbitrate on the basis of group affiliation. Only traditional doctrines (agency, estoppel, assignment) apply.
<b>United Kingdom (England &amp; Wales)</b>	No General Recognition – Restrictive	Arbitration Act 1996, s.82(2) (covers “persons claiming through or under” a	<i>Peterson Farms Inc. v. C&amp;M Farming Ltd.</i> (2004); <i>Dallah Real Estate v. Pakistan</i> (2010, UKSC).	Emphasis firmly on consent. Courts reject group doctrine as inconsistent with English	Non-signatories rarely bound unless traditional legal doctrines justify it. Preserves

		party). Courts rely on traditional doctrines such as agency, assignment, estoppel.		contract law.	predictability and separateness of corporate personality.
<b>India</b>	Yes – Evolving Recognition	Arbitration Act, 1996: Sections 2(1)(h), 7, 8, 16, 35. Tests: mutual intention, legal relationship, commonality of subject matter, participation, composite transactions.	<i>Chloro Controls v. Severn Trent</i> (2012) – expansion; <i>Cheran Properties v. Kasturi &amp; Sons</i> (2018) – enforcement stage; <i>Reckitt Benckiser v. Reynders</i> (2019) – consent reaffirmed; <i>ONGC v. Discovery</i> (2022) – participation test; <i>Cox &amp; Kings v. SAP India</i> (2023, Constitution Bench) – consent-based restructuring.	Balanced approach: consent is the cornerstone, but courts recognise commercial realities in composite, multi-party contracts. Rejects doctrine based solely on “single economic entity.”	Post- <i>Cox &amp; Kings</i> , the doctrine applies narrowly and fact-specifically, requiring proof of intention and participation. Tribunals (s.16) empowered to decide joinder of non-signatories.

## INDIAN JUDICIAL APPROACH

The judicial adoption of the ‘Group of Companies’ doctrine in India has been primarily motivated by the objective of preventing multiplicity of proceedings in complex commercial arrangements involving multiple parties and interconnected contracts. Indian courts have progressively grappled with the doctrine, moving from initial resistance to a more nuanced acceptance, albeit with continuing debate on its scope and limits. The trajectory of this doctrine can be traced through several landmark judgments, beginning with *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya* (2003), the watershed ruling in *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.* (2012), its reinforcement in *Cheran Properties Ltd. v. Kasturi & Sons Ltd.* (2018), and finally, its detailed consideration in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* (2022).

### ***SUKANYA HOLDINGS PVT. LTD. V. JAYESH H. PANDYA (2003)***

**Facts:** A partnership agreement was executed in 1992 between Sukanya Holdings and Respondents Nos. 1 and 2 for the development of land owned by Ms. Jaykirti Mehta. Disputes arose following Ms. Mehta’s retirement, allegations of financial mismanagement, and subsequent agreements. Sukanya Holdings sought dissolution of the partnership and attempted to refer the disputes to arbitration. The High Court, however, refused, noting that the dispute involved multiple parties who were not signatories to the arbitration agreement.

**Issue:** Whether disputes forming the subject matter of a civil suit can be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, even if such disputes extend beyond the arbitration agreement and involve non-signatory parties?

**Judgment:** The Supreme Court held that Section 8 requires the *entire subject matter* of the dispute to fall within the arbitration agreement. Where a dispute involves issues outside the arbitration clause or parties who are not signatories, the Court cannot compel reference to arbitration. Thus, the Court adopted a restrictive interpretation, ruling out the application of the group of companies principle. This case marked the judiciary’s initial reluctance to dilute the doctrine of separate legal personality.

### ***CHLORO CONTROLS INDIA PVT. LTD. V. SEVERN TRENT WATER PURIFICATION INC. (2012)***

**Facts:** The case arose out of a joint venture between Chloro Controls and Severn Trent Water Purification Inc., involving multiple associated companies and several interlinked agreements, including a shareholders’ agreement with an arbitration clause. Not all entities were signatories

to every agreement. When disputes arose, Severn Trent sought termination of the venture, leading Chloro Controls to file proceedings to restrain termination. The foreign parties invoked arbitration, claiming that the arbitration clause bound even non-signatories due to the composite nature of the transaction.

**Issue:** Whether arbitration clauses in certain interrelated agreements could extend to non-signatories within a corporate group, given the composite nature of the transaction?

**Judgment:** The Supreme Court significantly broadened the interpretive scope of Section 45 of the 1996 Act. It held that the term “any person” in Section 45 evidences legislative intent to include non-signatories claiming “through or under” a signatory. Consequently, arbitration could extend to group companies or affiliates provided there was a common intention of the parties and a composite transaction. The Court expressly recognized the Group of Companies doctrine, aligning Indian jurisprudence with international arbitration practice, particularly in France and the U.S.

This judgment marked a doctrinal shift by recognising that in modern commercial realities, companies within a corporate group often function as a single economic entity, and that enforcing arbitration solely against formal signatories could defeat the parties’ true intention.

***CHERAN PROPERTIES LTD. V. KASTURI & SONS LTD. (2018)***

**Facts:** A subsidiary of Kasturi & Sons Ltd., Sporting Pastime India Ltd., entered into a share transfer agreement involving multiple parties. Although Cheran Properties Ltd. was not a signatory, it later acquired shares under the arrangement. Arbitration was initiated, resulting in an award against Kasturi & Sons Ltd. and other entities. Enforcement proceedings were brought against Cheran Properties, which contended that it was not bound as a non-signatory.

**Issue:** Whether an arbitral award can bind a non-signatory entity such as Cheran Properties Ltd., which was not a direct party to the arbitration agreement?

**Judgment:** The Supreme Court held that under Section 35 of the Arbitration Act, arbitral awards are binding not only on parties to the arbitration but also on those “claiming under them.” The Court clarified that this phrase extends to non-signatories in situations such as assignment, succession, agency, or nomineehip, where the party derives rights or obligations through a signatory.

The Court further elaborated that the Group of Companies doctrine could apply where there is functional and structural integration within a corporate group and evidence of a common intention to be bound by the arbitration agreement. Importantly, the Court held that even if a non-signatory does not participate in the arbitral proceedings, it may still be bound by the award

if it has derived benefit from the underlying contract.

***AMEET LALCHAND SHAH V. RISHABH ENTERPRISES (2018)***

**Facts:** In this matter, the dispute revolved around a solar power project that was structured through four interdependent agreements executed between different parties. While the primary agreement and two ancillary agreements contained explicit arbitration clauses, the fourth agreement—dealing specifically with the construction of the solar power plant—did not provide for arbitration. Despite this, the nature of the contractual matrix revealed that all four agreements were intrinsically interwoven, forming part of a single commercial transaction aimed at achieving a common objective.

The Single Judge as well as the Division Bench of the Delhi High Court recognised the composite character of these agreements and observed that though not every document contained an arbitration clause, the agreements could not be viewed in isolation, as they collectively constituted one overarching business arrangement.

**Issue:** Whether disputes arising out of a set of interlinked agreements, of which only some contain arbitration clauses, could be referred to arbitration under the group of companies doctrine, notwithstanding the absence of an arbitration clause in one of the agreements.

**Judgment:** The Supreme Court held that this was a classic instance of a composite transaction, where multiple parties were engaged in the execution of a single commercial project through a series of interconnected agreements. The Court ruled that the existence of arbitration clauses in the principal and ancillary agreements was sufficient to bind all parties, including those under the agreement without such a clause, since the contracts were not independent but part of a unified contractual framework.

The Court further emphasised that where several agreements are so intrinsically linked that the performance of one cannot be achieved without reliance on the others, disputes must be resolved in a harmonised manner through arbitration. This prevents the fragmentation of proceedings, avoids the risk of conflicting decisions, and upholds the principle of party autonomy within a unified commercial arrangement.

By extending the arbitration clause to all the interlinked agreements, the Court reinforced the application of the group of companies doctrine. It underscored that when entities operate as a single economic reality, with functional, financial, and structural integration, non-signatories or agreements lacking arbitration provisions may still be subjected to arbitration to give effect to the true intention of the parties.

### **Additional Observations:**

- This judgment solidified the Indian judiciary's willingness to pierce the formalistic boundaries of privity of contract where the commercial purpose of the agreements would otherwise be defeated.
- The Court's approach was consistent with its earlier reasoning in *Chloro Controls v. Severn Trent Water Purification Inc. (2012)*, where the doctrine was expanded under Section 45 of the Arbitration and Conciliation Act, 1996, to include non-signatories claiming through or under a signatory party.
- The ruling also aligns with international arbitral jurisprudence, where arbitral tribunals have recognized that in complex, multi-party transactions, arbitration cannot be compartmentalised simply because one document is silent on the dispute resolution mechanism.

Thus, *Ameet Lalchand Shah* stands as a significant authority for the proposition that in composite commercial transactions, the arbitration agreement in one or more contracts can extend to all related contracts and parties, thereby reaffirming the functional application of the group of companies doctrine in Indian arbitration law.

### ***RECKITT BENCKISER (INDIA) PVT. LTD. V. REYNDERS LABEL PRINTING INDIA PVT. LTD. (2019)***

**Facts:** The dispute arose when Reckitt Benckiser (India) Pvt. Ltd. ("Reckitt India") sought to invoke arbitration against Reynders Label Printing India Pvt. Ltd. ("Reynders India") under an agreement executed in May 2014 for the supply of packaging materials. Reckitt India attempted to extend the scope of the arbitration to include Reynders Etiketten NV, Belgium ("Reynders Belgium"), the parent company of Reynders India, by filing an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the Supreme Court.

During pre-negotiations, Reckitt India had circulated a draft agreement along with its code of conduct and anti-bribery policy to Reynders India. The communication was responded to by Mr. Frederik Reynders, who was affiliated with the Reynders Group. Reckitt India argued that since Mr. Frederik Reynders was part of Reynders Belgium (the parent entity), and given the overall group structure, Reynders Belgium should also be held bound by the arbitration clause, even though it was not a signatory to the agreement.

**Issue:** Whether a non-signatory parent company, namely Reynders Belgium, could be implicated as a party to arbitration proceedings merely because it formed part of the same "group of companies" as its Indian subsidiary, despite not signing or expressly consenting to

the arbitration agreement.

**Judgment:** The Supreme Court unequivocally rejected Reckitt India's attempt to bind Reynders Belgium to the arbitration proceedings. The Court clarified that the threshold requirement for invoking the group of companies doctrine is the demonstration of intent by the non-signatory to be bound by the arbitration agreement. Merely being part of the same corporate group does not, in itself, create such binding intent.

The Court highlighted that the burden of proof lay squarely on Reckitt India to establish that Reynders Belgium was not only aware of but had also actively participated in the negotiation or performance of the contract in a manner that showed a clear intention to be governed by the arbitration agreement. However, Reckitt India failed to demonstrate such intent.

The Court further observed that Mr. Frederik Reynders, who was involved in certain preliminary communications, was in fact an employee of Reynders India and bore no official or causal connection to Reynders Belgium in the context of the contract. Accordingly, Reynders Belgium had no role in the negotiation or execution of the agreement and could not be fastened with obligations flowing from it.

#### **Key Observations**

- The Court reiterated that the group of companies doctrine is not automatically applicable. It requires careful judicial scrutiny to determine whether a non-signatory had:
  - A direct role in the negotiation or performance of the agreement;
  - Demonstrated intention to be bound by the arbitration clause; and
  - Derived direct benefits under the contract that incorporated the arbitration agreement.
- The Court emphasised the principle of consent in arbitration. The doctrine cannot be used to dilute the foundational principle that arbitration is a voluntary dispute resolution mechanism, and no party can be compelled to arbitrate without its express or implied consent.
- The judgment aligns with the position taken in *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. (2012)*, where the Supreme Court had cautiously recognised that the doctrine may be applied only when the facts disclose an undeniable **unity of intent and participation** across the group entities.

***OIL AND NATURAL GAS CORPORATION LIMITED V. M/S DISCOVERY ENTERPRISES PVT. LTD. & ANOTHER (2022)***

**Facts:** In 2016, Discovery Enterprises Pvt. Ltd. entered into a contract with ONGC, which expressly contained an arbitration clause for the settlement of disputes. Under the terms of this contract, Discovery Enterprises became liable to pay a default amount of Rs.63.88 crore to ONGC. Pursuant to the arbitration clause, ONGC initiated arbitral proceedings not only against Discovery Enterprises but also against Jindal Drilling and Industries Ltd., a related group company, to recover the outstanding dues.

ONGC justified the impleadment of Jindal Drilling—despite its being a non-signatory to the contract—on the grounds that Discovery Enterprises and Jindal Drilling were part of a single economic unit, functioning in corporate and functional unity. ONGC further contended that Discovery Enterprises had acted as an agent of Jindal Drilling, and hence, both should be held jointly accountable for the contractual obligations.

Aggrieved, Jindal Drilling contested its inclusion, asserting that it was a complete non-party to the arbitration agreement and could not, in law, be bound by obligations under a contract it had not signed. During the course of proceedings, ONGC filed an application for production and inspection of documents to demonstrate that Discovery Enterprises was acting as an extension or agent of Jindal Drilling.

The arbitral tribunal, however, passed an interim award holding that Jindal Drilling was indeed a non-signatory to the arbitration agreement and could not be impleaded in the proceedings. This decision was upheld by the Bombay High Court. Dissatisfied, ONGC approached the Supreme Court.

**Issues :**

- Whether Jindal Drilling and Industries Ltd., as a group company of Discovery Enterprises, shared such economic and functional unity that it could be made a party to arbitration proceedings despite being a non-signatory?
- Whether the arbitral tribunal had erred in overlooking the applicability of the doctrine of group of companies?

**Judgment :** The Supreme Court of India adopted and elaborated upon the doctrine of group of companies, reaffirming that in certain circumstances, a non-signatory entity can indeed be bound by an arbitration agreement. The Court held that such binding is justified where there is evidence of:

- Mutual intent of the parties to bind both signatories and non-signatories;
- Legal and functional relationship between the signatory and non-signatory entities;

- Commonality of subject matter between the two entities in the execution or performance of the contract;
- A composite transaction that demonstrates interdependence; and
- Most crucially, that the non-signatory has performed or substantially participated in the execution of the underlying contract.

The Supreme Court ruled that the arbitral tribunal had failed to properly apply and examine these principles in the present case. By mechanically excluding Jindal Drilling on the ground of non-signature, the tribunal overlooked whether the doctrine of group of companies was in fact applicable given the alleged corporate and functional integration between Discovery Enterprises and Jindal Drilling.

Consequently, the Court set aside the interim award, holding that the arbitral tribunal ought to have considered whether Jindal Drilling's conduct and relationship with Discovery Enterprises made it a necessary party to the arbitration.

This judgment is significant as it reinforces the judicial recognition of the group of companies doctrine within Indian arbitration jurisprudence, a principle earlier acknowledged in cases such as *Chloro Controls v. Severn Trent Water Purification Inc. (2013)* and *MTNL v. Canara Bank (2019)*. The Court has clarified that the doctrine is not to be invoked in a casual manner merely on the basis of corporate affiliation but requires a fact-specific enquiry into the extent of participation, agency, and unity of economic interests.

The ruling also emphasizes the balance between party autonomy and commercial realities. While arbitration is fundamentally consensual, the Court has acknowledged that in complex corporate structures involving integrated group operations, insisting strictly on the "signatory requirement" may defeat the underlying intent of arbitration and obstruct the resolution of disputes.

This case thus fortifies the position that mere corporate separateness cannot be used as a shield where there is demonstrable evidence of group unity and intent to be bound.

### ***COX AND KINGS LIMITED V. SAP INDIA PRIVATE LIMITED & ANOTHER (2023): A LANDMARK ON THE GROUP OF COMPANIES DOCTRINE***

**Facts:** The dispute arose when Cox and Kings Ltd., a prominent travel company, entered into a software licensing agreement with SAP India Pvt. Ltd. in December 2010. Subsequently, in 2015, as Cox and Kings began developing its e-commerce platform, SAP India proposed the installation of its upgraded Hybris Solution software. The parties executed three fresh agreements incorporating this solution. SAP India assured that the software was already 90%

compatible with Cox and Kings' existing system, requiring only an additional ten months for complete integration. One of these agreements contained an arbitration clause, stipulating that disputes would be resolved under the Arbitration and Conciliation Act, 1996 in Mumbai.

Implementation difficulties soon arose. Cox and Kings sought assistance from SAP SE (Germany), the parent entity, which deputed international experts and actively participated in the project. Despite repeated extensions, the project failed to meet its objectives. Consequently, Cox and Kings terminated the contract in November 2016 and demanded a refund of Rs.45 crores. In retaliation, SAP India initiated arbitration proceedings, counter-claiming Rs.17 crores for wrongful termination.

The proceedings were stalled in 2019 by the National Company Law Tribunal due to insolvency proceedings against Cox and Kings. Undeterred, Cox and Kings issued a fresh arbitration notice, seeking to implead SAP SE, Germany, as a co-party, despite the latter being a non-signatory to the agreements. SAP declined to appoint an arbitrator. Hence, Cox and Kings invoked Section 11 of the Act before the Supreme Court, arguing that SAP SE, by its conduct, had consented to the arbitration agreement.

Recognising the doctrinal importance, in May 2022, a three-judge Bench led by CJI N.V. Ramana referred the matter to a five-judge Constitution Bench to authoritatively settle the scope and applicability of the Group of Companies Doctrine in Indian arbitration law.

#### **Issues Before the Court:**

- Whether the expression "*claiming through or under*" in Sections 8 and 11 of the Arbitration Act can be interpreted to encompass the Group of Companies Doctrine.
- Whether the doctrine should be understood as a mechanism to infer implied consent or intent to arbitrate.
- Whether the doctrine can be justified on the principle of "single economic reality" alone.
- Whether doctrines such as alter ego or piercing the corporate veil can independently justify its application, even absent implied consent.

#### **Petitioner's Arguments (Cox and Kings):**

- The definition of "*party*" under Section 2(1)(h) should not be narrowly confined to signatories but interpreted broadly to include non-signatories, depending on facts.
- Section 7 recognises that arbitration agreements may arise even in non-contractual legal relationships. Further, Section 7(4)(b) allows binding non-signatories if their consent is evidenced through written communication, conduct, or participation.

- The 2015 amendment to Section 8, inserting the phrase “*any person claiming through or under*”, was specifically intended to accommodate genuine cases where non-signatories act through or on behalf of signatory parties.
- Since SAP SE exercised substantial control, provided experts, and directly participated in the performance of the agreement, it had implicitly consented to arbitration.

**Respondent’s Arguments (SAP India & SAP SE):**

- Arbitration is rooted in party autonomy and mutual consent. Binding non-signatories without express or implied consent would undermine this fundamental principle.
- The term “*claiming through or under*” contemplates derivative rights—where a non-signatory steps into the shoes of a signatory (e.g., assignees, successors), not independent participation.
- Mere existence of a tight group structure, single economic reality, or parent-subsidary relationship cannot be sufficient to bind a non-signatory.
- Extending arbitration agreements to non-signatories without their explicit assent would erode the sanctity of contractual obligations.

**Judgment & Reasoning:** The Supreme Court, in its detailed ruling, clarified the following:

- **Interpretation of “claiming through or under”:**
  - The Court rejected reliance on the expression to justify the doctrine (distinguishing *Chloro Controls*). The phrase applies only where non-signatories assert rights derivative of a signatory, not in their independent capacity.
- **Party Autonomy & Consent:**
  - Arbitration is fundamentally contractual. Consent—whether express or implied—remains the touchstone. A written arbitration agreement (Section 7) is essential, but signatures are not mandatory; intent can be inferred through conduct, correspondence, or performance.
  - The Court invoked Article 7(3) of the UNCITRAL Model Law, affirming that arbitration agreements may exist even without signatures, provided they are recorded in writing.
- **Scope of Non-Signatories:**
  - Non-signatories may be bound where they demonstrate explicit or implicit consent through participation, conduct, or assumption of obligations under the contract.

- However, mere corporate affiliation, ownership, or financial control does not suffice. The doctrine cannot be invoked solely on “single economic entity” theory.
- **Distinction from Alter Ego & Corporate Veil Piercing:**
  - The Court underscored that the Group of Companies Doctrine is consensual in nature, unlike doctrines such as alter ego or corporate veil piercing, which are coercive and non-consensual.
- **Consequences for Non-Signatories:**
  - Once a non-signatory is held bound, it enjoys full rights and obligations under the Act, including seeking interim reliefs under Section 9. However, the arbitral tribunal—not the courts—must determine whether such joinder is justified.

**Significance of the Ruling:** The decision harmonises Indian arbitration jurisprudence with international best practices, particularly in complex multi-party, multi-contract transactions. By affirming that the doctrine rests on consent inferred from conduct and not merely on corporate group structures, the Court preserves the sanctity of party autonomy while providing flexibility to address the realities of modern commerce.

It also underscores a cautious approach—while Indian law recognises the possibility of binding non-signatories, it does so only where intent and participation are demonstrably clear. This ruling narrows earlier expansive readings, preventing misuse of the doctrine to arbitrarily rope in parent or affiliate companies.

Aspect	Details
<b>Facts</b>	<ul style="list-style-type: none"> <li>● 2010: Cox &amp; Kings entered into a software licensing agreement with SAP India.</li> <li>● 2015: New agreements for Hybris Solution signed (one with arbitration clause).</li> <li>● SAP SE (Germany, parent co.) actively participated in implementation.</li> <li>● Project failed → Cox &amp; Kings terminated in 2016, demanded Rs.45 Cr.</li> <li>● SAP India counterclaimed Rs.17 Cr.</li> <li>● Arbitration stalled due to insolvency; Cox &amp; Kings sought to implead SAP SE as co-party.</li> </ul>
<b>Issues Before</b>	<ul style="list-style-type: none"> <li>● Scope of “claiming through or under” in Sections 8 &amp; 11.</li> <li>● Whether Group of Companies Doctrine infers implied consent.</li> </ul>

<b>Court</b>	<ul style="list-style-type: none"> <li>• Whether “single economic reality” is sufficient basis.</li> <li>• Whether doctrines like alter ego/veil piercing can independently justify.</li> </ul>
<b>Petitioner (Cox &amp; Kings) Arguments</b>	<ul style="list-style-type: none"> <li>• “Party” (Sec. 2(1)(h)) should include non-signatories.</li> <li>• Sec. 7 allows binding through consent by conduct/written communication.</li> <li>• 2015 amendment (“claiming through or under”) supports joinder of non-signatories.</li> <li>• SAP SE directly participated → implied consent to arbitrate.</li> </ul>
<b>Respondents (SAP India &amp; SAP SE) Arguments</b>	<ul style="list-style-type: none"> <li>• Arbitration needs mutual consent; cannot bind without it.</li> <li>• “Claiming through or under” = derivative rights (assignees, successors), not independent parties.</li> <li>• Mere group structure or single economic reality is not enough.</li> <li>• Extending clause without assent undermines party autonomy.</li> </ul>
<b>Judgment &amp; Reasoning</b>	<ul style="list-style-type: none"> <li>• “Claiming through or under” → applies only to derivative rights, not independent claims.</li> <li>• Consent is key (express or implied through conduct). Signatures not mandatory, but written record is essential.</li> <li>• Non-signatories may be bound only if participation/obligations show intent.</li> <li>• Corporate affiliation/single economic entity theory not sufficient.</li> <li>• Distinction: GoC = consensual; Alter ego/veil piercing = coercive.</li> <li>• If bound, non-signatories get full rights/obligations under Arbitration Act.</li> </ul>
<b>Significance</b>	<ul style="list-style-type: none"> <li>• Aligns Indian arbitration law with international practice.</li> <li>• Preserves party autonomy while allowing flexibility for multi-party transactions.</li> <li>• Narrows earlier broad use of GoC Doctrine → prevents misuse against parent/affiliate companies.</li> <li>• Confirms that tribunal, not courts, decides joinder of non-signatories.</li> </ul>

**VINGRO DEVELOPERS PVT. LTD. V. NITYA SHREE DEVELOPERS PVT. LTD. (2024)**

In this case, Vingro Developers Pvt. Ltd. entered into a Builder-Buyer Agreement with Nitya Shree Developers Pvt. Ltd. for the construction of a residential township. The agreement

contained an arbitration clause, and was executed by the directors of Nitya Shree Developers in their capacity as authorised representatives of the company.

Disputes soon emerged when Nitya Shree Developers failed to deliver possession, leading Vingro Developers to seek reimbursement and initiate proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, against both Nitya Shree Developers and its directors. The Delhi High Court, while adjudicating, examined the principles laid down in *Cox and Kings Ltd. v. SAP India Pvt. Ltd. (2023)* regarding the Group of Companies Doctrine, particularly the requirement of joint intention and consent for binding non-signatories. The Court observed that there was no indication, either express or implied, of the directors' intention to be personally bound by the arbitration agreement. Merely signing the contract on behalf of the company in a representative capacity could not, by itself, extend the scope of arbitration to directors individually.

Referring to the Indian Contract Act, 1872, the Court emphasised that under Section 182, the relationship between a company and its directors, when acting on its behalf, is akin to that of principal and agent. Furthermore, under Section 230, an agent cannot be personally bound by contracts entered into on behalf of a principal unless there is a clear contractual stipulation to the contrary.

Accordingly, the Delhi High Court declined to apply the Group of Companies Doctrine, reiterating that directors cannot be impleaded as parties to arbitration merely by virtue of signing an agreement in a representative capacity. The judgment reinforces the principle that consent and intention—and not corporate position—form the cornerstone of binding a non-signatory in arbitration.

***CARDINAL ENERGY AND INFRASTRUCTURE PVT. LTD. V. SUBRAMANYA CONSTRUCTION AND DEVELOPMENT CO. LTD. (2024)***

In this matter, the parties executed a Memorandum of Understanding (MoU) containing an arbitration clause. Subramanya Construction and Development Co. Ltd. invoked arbitration, pursuant to which the Bombay High Court appointed a sole arbitrator. Subsequently, Subramanya Construction, along with another respondent, moved an application under Order I Rule 10 of the Code of Civil Procedure, 1908, seeking inclusion of Cardinal Energy and Infrastructure Pvt. Ltd. in the arbitral proceedings.

Although Respondent No. 3 objected on the ground that only the High Court, and not the arbitral tribunal, could order such inclusion, the tribunal nevertheless issued notices to Cardinal Energy. Following a hearing on January 2, 2024, the tribunal passed an interim award on

January 5, 2024, which was challenged before the Bombay High Court by the petitioners on the ground that the arbitral tribunal lacked authority to bind non-signatories.

The Bombay High Court, while dismissing the objection, relied on *Cox and Kings* (2023) and clarified that the arbitral tribunal's jurisdiction to invoke the Group of Companies Doctrine does not depend on whether a specific request for impleading non-signatories was made at the stage of a Section 11 application. The Court held that the absence of such a request does not preclude the arbitral tribunal from examining and applying the doctrine during arbitral proceedings.

Crucially, the Court underscored that under Section 16 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal possesses the competence to rule on its own jurisdiction (*kompetenz-kompetenz* principle), including the power to determine whether non-signatory parties can be brought within the scope of an arbitration agreement.

Thus, the Bombay High Court upheld the tribunal's authority to examine questions of jurisdiction involving non-signatories and clarified that challenges to such determinations cannot be sustained merely because impleadment was not sought under Section 11.

#### ***Analytical Note***

Taken together, *Vingro Developers and Cardinal Energy* highlight two critical dimensions of the Group of Companies Doctrine in Indian arbitration law post-*Cox and Kings*:

1. **Consent as the Touchstone:** The Delhi High Court in *Vingro Developers* reaffirmed that implied or express consent remains indispensable. Directors, acting as agents, cannot be presumed to have personally undertaken arbitral obligations merely by executing documents on behalf of the principal company.
2. **Tribunal's Jurisdictional Authority:** The Bombay High Court in *Cardinal Energy* clarified that arbitral tribunals themselves, by virtue of Section 16, retain full authority to assess and apply the doctrine. The doctrine's applicability is not confined to the preliminary stage under Section 11, thereby enhancing the tribunal's autonomy and reducing judicial interference.

Together, these cases ensure a balanced approach: they safeguard party autonomy and protect individuals from unwarranted inclusion while also reinforcing the tribunal's jurisdiction to resolve complex questions of consent and non-signatory participation.

## COMPARATIVE ANALYSIS OF JUDICIAL APPROACH IN INDIA

Case	Facts	Issues	Judgment/Reasoning	Approach to Doctrine	Significance
<b>Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya (2003)</b>	Partnership dispute with multiple non-signatories. Plaintiff sought arbitration.	Whether disputes involving non-signatories can be referred to arbitration under Section 8.	SC held that if disputes extend beyond the arbitration clause and involve non-signatories, arbitration cannot be compelled.	Rejected extension to non-signatories; restrictive interpretation of “party.”	Early judicial reluctance to dilute corporate separateness; no recognition of group doctrine.
<b>Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. (2012)</b>	JV with multiple interlinked agreements, not all containing arbitration clauses.	Whether non-signatories in composite transactions can be bound.	SC broadened scope under Section 45: “any person claiming through or under” can include non-signatories in composite transactions.	First recognition of doctrine; emphasised composite nature & common intention.	Landmark expansion aligning Indian law with international arbitral practice.
<b>Cheran Properties Ltd. v. Kasturi &amp; Sons Ltd. (2018)</b>	Non-signatory acquired shares under a group arrangement; arbitral award sought to bind it.	Whether arbitral awards can bind non-signatories under Section 35.	SC held awards bind parties “claiming under” signatories; extended to assignment, succession, nominee ship.	Applied doctrine where non-signatory derived rights/benefits; reinforced “functional and structural integration.”	Strengthened recognition of doctrine at enforcement stage.
<b>Ameet Lalchand</b>	Solar project with 4	Whether arbitration	SC held this was a composite	Reaffirmed doctrine:	Prevented multiplicity of

<b>Shah v. Rishabh Enterprises (2018)</b>	interdependent agreements; one lacked arbitration clause.	can cover all agreements despite absence of clause in one.	transaction; arbitration clauses in principal agreements extended to all.	interlinked contracts cannot be fragmented; focus on commercial reality.	proceedings; confirmed doctrine's role in composite transactions.
<b>Reckitt Benckiser (India) Pvt. Ltd. v. Reynders Label Printing India Pvt. Ltd. (2019)</b>	Attempt to bind non-signatory parent (Belgium) of Indian subsidiary to arbitration.	Whether mere group affiliation is sufficient to bind non-signatory parent.	SC rejected extension; mere group structure insufficient without proof of intent/participation.	Limited application: consent is essential; corporate affiliation alone is not enough.	Cautioned against misuse; reinforced consent as cornerstone.
<b>ONGC Ltd. v. Discovery Enterprises Pvt. Ltd. &amp; Anr. (2022)</b>	ONGC implicated non-signatory group company (Jindal Drilling) in arbitral proceedings.	Whether corporate/functional unity sufficed to bind Jindal Drilling.	SC set aside interim award excluding Jindal Drilling; held tribunal must consider unity, participation, and intent.	Reaffirmed doctrine but stressed fact-specific inquiry; not mechanical.	Strengthened doctrine; emphasised balance between party autonomy and commercial realities.
<b>Cox and Kings Ltd. v. SAP India Pvt. Ltd. &amp; Anr. (2023)</b>	Cox & Kings implicated SAP SE (Germany, parent) despite being non-signatory.	Whether "claiming through or under" includes doctrine; whether implied consent suffices.	Constitution Bench clarified: doctrine is consensual, not derivative; consent (express/implied) is key. Rejected "single economic reality" alone.	Narrowed and restructured doctrine; aligned with UNCITRAL Model Law.	Landmark precedent; ensures cautious, consent-based application in India.

<p><b>Vingro Developers Pvt. Ltd. v. Nitya Shree Developers Pvt. Ltd. (2024)</b></p>	<p>Builder-Buyer Agreement signed by directors; dispute arose.</p>	<p>Whether directors (signatories in representative capacity) can be bound individually.</p>	<p>Delhi HC: directors signed as agents; no joint intention to bind them. Doctrine not applicable.</p>	<p>Rejected doctrine in absence of clear consent/intention; invoked Contract Act §§182 &amp; 230.</p>	<p>Reinforces that corporate agents cannot be automatically bound; preserves principle of consent.</p>
<p><b>Cardinal Energy v. Subramanya a Constructi on (2024)</b></p>	<p>MoU with arbitration clause; tribunal issued notices to non-signatory Cardinal Energy.</p>	<p>Whether tribunal could extend arbitration to non-signatories.</p>	<p>Bombay HC: tribunal competent under Section 16 to decide joinder of non-signatories.</p>	<p>Affirmed tribunal’s jurisdiction to apply doctrine during proceedings, not limited to Section 11 stage.</p>	<p>Enhances tribunal autonomy (<i>kompetenz-kompetenz</i>); reduces judicial interference.</p>

### CONCLUSION

The Supreme Court’s landmark ruling in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* (2023) has fundamentally reshaped the contours of the Group of Companies Doctrine in Indian arbitration law. The judgment provides much-needed clarity by narrowing the doctrine’s application to instances where the common intention of the parties—both signatories and non-signatories—to be bound by the arbitration agreement can be clearly established.

By reiterating that consent remains the cornerstone of arbitration, the Court reinforced the principle of party autonomy, which lies at the heart of the Arbitration and Conciliation Act, 1996. At the same time, the Court acknowledged the realities of complex, multi-party and multi-contract corporate transactions, where non-signatories may actively participate in negotiation, performance, or termination of the underlying contract, thereby manifesting implied consent to arbitrate.

The judgment carefully balances two competing imperatives: (i) safeguarding the sanctity of

consent, ensuring that no party is forced into arbitration absent a demonstrable intention to arbitrate, and (ii) providing flexibility to address the intricacies of modern commercial arrangements where corporate structures often blur the lines between signatory and non-signatory entities.

Importantly, the Court drew a sharp distinction between consensual doctrines such as the Group of Companies Doctrine and coercive doctrines like alter ego or piercing the corporate veil, thereby preventing misuse of the former to indiscriminately rope in non-signatories based solely on corporate affiliation.

In doing so, the Court has aligned Indian arbitration jurisprudence with international best practices, particularly the UNCITRAL Model Law, while carving out an India-specific approach that is both principled and pragmatic. The precedent ensures that the doctrine will be applied sparingly, with a focus on factual matrices that demonstrate explicit or implicit intention.

This decision not only settles long-standing uncertainty in India but also strengthens the credibility of Indian arbitration on the global stage. By providing a calibrated framework for the inclusion of non-signatories, the Supreme Court has struck a delicate equilibrium—protecting the contractual nature of arbitration while simultaneously accommodating the commercial realities of corporate groups.

Going forward, the *Cox and Kings* ruling is expected to guide arbitral tribunals and courts in India, while also serving as a persuasive authority for other jurisdictions grappling with the same issue. It represents a decisive step towards a mature, consent-based arbitration regime, capable of addressing the complexities of cross-border and multi-party disputes.

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