

Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641

Arbitration

Arbitration and Conciliation Act, 1996

S. 45 - Composite reference - Invocation of S. 45 by non-signatory or third-party to arbitration agreement - Reference to arbitration of disputes between signatory and non-signatories or third parties to arbitration agreement - Joinder of non-signatory/third parties to arbitration - Permissibility - Principles discussed extensively and laid down in detail - Doctrines of "composite reference", "composite performance" and "group of companies", elucidated - Exceptional conditions when composite reference can be made without prior consent of non-signatories/third parties, enumerated and explained in detail - Concepts of *ratione personae* and implied consent - Invocability - Prerequisites for invocation of principles of "group of companies" or "composite performance" for accepting pleas of non-signatory parties for reference to arbitration, laid down - Held, a non-signatory or third party can be subjected to arbitration without his consent, but only in exceptional circumstances - Expression "any person claiming through or under" in S. 45 takes within its ambit persons who are in legal relationships via multiple and multi-party agreements, though they may not all be signatories to any one agreement or arbitration clause - Hence, even non-signatory parties can pray for and be referred to arbitration provided they satisfy prerequisites under Ss. 44 and 45 r/w Sch. I - Where various agreements constitute a composite transaction, held, court can refer disputes to arbitration existing between signatory or non-signatory parties if: (1) all ancillary agreements between them are relatable to principal agreement, and (2) performance of one agreement is so intrinsically interlinked with other agreements that they are incapable of being beneficially performed without performance of others or severed from the rest i.e. it is possible to invoke principle of "composite performance" - In instant case, corporate structure of respondent companies as well as that of appellant companies demonstrates a definite legal relationship between parties to the lis or persons claiming under them - Contractual relationships between them spell out terms, obligations and roles of respective parties for attaining object of successful completion of joint venture agreement (principal agreement) - Principal agreement referred either specifically or by necessary implication to all other agreements - All subsequent agreements are either ancillary or incidental agreements to the principal agreement - All agreements as well as mother/principal agreement were part of a composite transaction to facilitate implementation of principal agreement and that was the true intention of parties - Hence, held, all parties to lis are covered under expression "any person claiming through or under" the principal (mother) agreement - Further, arbitration clause in principal agreement was comprehensive enough to include all disputes arising "under and in connection with" principal agreement - Also, all agreements were executed simultaneously on same day supporting the view that parties intended to have all agreements as a composite transaction - This was also a case where "group of companies" doctrine could be applied - Conduct of parties and even subsequent events left no doubt that the parties had executed, intended and actually implemented composite transaction contained in principal/mother agreement - Hence, held, disputes arising from instant multi-party agreements are capable of being referred to Arbitral Tribunal in accordance with principal agreement between parties - Thus, reference of said disputes to arbitration by High Court on such basis, upheld, (2013) 1 SCC 641-A

Arbitration

Arbitration and Conciliation Act, 1996

Ss. 45, 8 and 11 - Reference to arbitration - Dual/Multiple fora to resolve disputes - Composite transaction - Mother/principal agreement with a number of ancillary or incidental agreements - Forum in given agreement part of said composite transaction, whether ousted, if another forum is also specified in another agreement also part of said composite transaction - Certain agreements as part of composite transaction providing for resolution of disputes by arbitration before specific forum, while principal/mother agreement providing for alternative forum - In instant case, said specific forum being courts in State of Pennsylvania, USA - Held, agreement being composite transaction, parties can opt for either remedy - Where different agreements between the parties provide for alternative remedies, it does not necessarily mean that the other remedy or jurisdiction stands ousted - Principle explained in detail, (2013) 1 SCC 641-B

Arbitration

Arbitration and Conciliation Act, 1996

Ss. 45 & 44, Pt. II Ch. I & Sch. I and Ss. 8 and 2(h) - Reference to arbitration under S. 45 - Persons who may seek - Expressions "any person claiming through or under party to arbitration agreement in question", and "shall refer parties to arbitration" in S. 45 - Scope and implication of - Substantial variance between S. 45 and S. 8, highlighted - Liberal interpretation warranted of S. 45, especially of phrase "any person claiming through or under" - Held, language of S. 45

read with Sch. I is worded in favour of making reference to arbitration when a party or person claiming through him approaches court and court is satisfied that agreement is valid, enforceable and operative - Mandate and purpose of S. 45 being in favour of arbitration, it has to be construed liberally to achieve that object - Expression "any person" in S. 45 clearly refers to legislative intent of enlarging scope of the words beyond "the parties" to arbitration agreement - Such applicant must establish that it claims through or under a signatory to arbitration agreement - Once it does so and other prerequisites of Ss. 45 & 44 are satisfied, court must necessarily make reference to arbitration, (2013) 1 SCC 641-C

Arbitration

Arbitration and Conciliation Act, 1996

S. 45 - Reference to arbitration under - Scope of - Invocation of S. 45 by non-signatory or third-party to arbitration agreement - Reference to arbitration of disputes between signatory and non-signatories or third parties to arbitration agreement - Joinder of non-signatory/third parties to arbitration - Permissibility - Discussed - Expression "legal relationship" in Art. II of New York Convention vis--vis "any person claiming through or under him" in S. 45 - Relative scope, examined - A person may not be signatory to arbitration agreement, but his cause of action may be directly related to that contract and thus, he may be "claiming through or under" one of the signatory parties: said issue is to be determined on the facts of each case - Further held, heavy onus lies on a party to show that, in fact and in law, it is claiming through or under the signatory party as contemplated under S. 45, (2013) 1 SCC 641-D

Arbitration

Arbitration and Conciliation Act, 1996

S. 45 - Arbitration between strangers to agreement - Non-signatory or third party to agreement - "Group of companies" doctrine - What is - Explained in detail - Reference to arbitration when may be made based thereupon, (2013) 1 SCC 641-E

Arbitration

Arbitration and Conciliation Act, 1996

Pt. II Ch. I, S. 45 and Sch. I - Interpretation of Pt. II Ch. I - Needs to be read in conjunction with Sch. I, (2013) 1 SCC 641-F

Arbitration

Arbitration and Conciliation Act, 1996

Ss. 45 & 44 and Art. II of New York Convention, 1958 - "Arbitration agreement" for purposes of - Requirement that "arbitration agreement be in writing" - Liberal construction of - Incorporation of arbitration agreement by reference - Permissibility of - Held, expression "arbitration agreement be in writing" is incapable of strict construction and is required to be construed liberally - Furthermore, in given circumstances it may be possible and permissible to construe arbitration agreement with aid of principle of incorporation by reference - Relevant considerations therefor, instantiated - Further held, in India the law has been construed liberally towards accepting incorporation of arbitration agreement by reference, (2013) 1 SCC 641-G

Arbitration

Arbitration and Conciliation Act, 1996

Ss. 44 & 45, 50(1)(a), 8, 11 and 16 - Reference to arbitration under S. 45 - Preliminary issues to be determined before making of reference - Challenge to validity and/or efficacy of arbitration agreement - Threshold review/adjudication by court under S. 45 - Requirement and advisability of - Rationales for, discussed in detail - Applicability of S. 11(6) jurisprudence to S. 45 - Classification of preliminary issues into three categories in paras 22.1 to 22.3 in *Boghara Polyfab*, (2005) 8 SCC 618 in respect of application under S. 11(6) - Applicability of said classification to Reference Court acting under S. 45 - Finality of preliminary issues determined by referring court - Absence in Pt. II Ch. I of kompetenz kompetenz provision like S. 16 in Pt. I - Effect of, on duty of court to determine preliminary questions before making reference under S. 45 - Position of law in various countries vis--vis India - Considered and explained - Held, it is incumbent on court to determine preliminary issues prior to referring parties to arbitration - S. 45 imposes greater

obligation upon court to determine whether agreement is valid, operative and capable of being performed at the threshold itself - Furthermore, decision of court on preliminary issues whenever it decides them, is final and unreviewable by Arbitral Tribunal unless otherwise directed to be decided by Arbitral Tribunal - Only remedy against such determination by referring court, would be under S. 50(1)(a), (2013) 1 SCC 641-H

Arbitration

Arbitration and Conciliation Act, 1996

S. 16 - Principle of "kompetenz kompetenz" - What is - Positive and negative effects - Discussed, (2013) 1 SCC 641-I

Arbitration

Arbitration and Conciliation Act, 1996

S. 45 - Reference to arbitration - Held, provisions of S. 45 prevail over provisions of CPC, 1908 - Hence, jurisdiction of civil court can be excluded - When court is satisfied that an agreement is enforceable, operative and is not null and void, it is obligatory upon court to make a reference to arbitration under S. 45, (2013) 1 SCC 641-J

Constitution of India

Art. 141 - Interpretation of judgments - Construction in support of ratio decidendi and in manner which avoids direct conflict with binding pronouncements of larger Benches - Held, observations made by a court have to be construed and read to support ratio decidendi of judgment, (2013) 1 SCC 641-K