



ARBITRATION AND CONCILIATION

Financial Interest Is Not Consent: Limits on Impleading Non-Signatories in Arbitration

AUTHOR Ayush Shukla

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Introduction

The jurisprudence on impleadment of non-signatories in arbitration has evolved significantly, particularly after the Constitution Bench decision of the Supreme Court in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* While Indian courts have moved away from a rigid signatory-only approach, they have simultaneously cautioned against indiscriminate expansion of arbitral jurisdiction. The decision of the Himachal Pradesh High Court in *Indian Institute of Technology, Mandi v. Central Public Works Department & Anr.* ¹ is a clear reaffirmation of this balance. The judgment highlights that mere financial interest or project ownership does not amount to consent to arbitrate.

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Factual Background

IIT Mandi entered into a Memorandum of Understanding (MoU) with the Central Public Works Department (CPWD) for execution of extensive construction works for its campus at Kamand, Himachal Pradesh. Under the MoU, CPWD was entrusted with tendering, execution, supervision, and project management responsibilities, while IIT Mandi was obligated to provide funds and bear costs arising out of the project. Pursuant to this MoU, CPWD entered into an independent construction contract with a private contractor for execution of Phase-I works. The contractor and CPWD were the sole signatories to this contract, which contained an arbitration clause.

Disputes subsequently arose between the contractor and CPWD, leading to arbitration. During the pendency of these proceedings, IIT Mandi sought to be impleaded as a respondent, contending that any adverse arbitral award against CPWD would ultimately be recoverable from IIT Mandi under the MoU.

Issue for Consideration

Whether a non-signatory to a construction contract and its arbitration clause though financially interested in the project can be impleaded as a party to arbitral proceedings between the contracting parties.

Arguments Advanced

IIT Mandi argued that it had a substantial and direct interest in the arbitral outcome since CPWD would pass on any financial liability to it. It was contended that denial of impleadment would violate principles of natural justice, as IIT Mandi would be prejudicially affected without being heard. Reliance was placed on recent Supreme Court jurisprudence, particularly *Cox and Kings* and *ASF Buildtech*, to assert that non-signatories can be bound by arbitration agreements. The contractor, on the other hand, opposed impleadment on the ground that IIT Mandi was neither a signatory nor involved in negotiation, performance, or termination of the contract. It was argued that financial consequences alone cannot bind a non-signatory to arbitration.

Findings of the Arbitrator

The sole arbitrator rejected IIT Mandi's impleadment application, holding that:

- Arbitration is founded on consent, not on financial consequence.
- Principles under Order I Rule 10 of the CPC are inapplicable to arbitral proceedings.

- IIT Mandi failed to demonstrate conduct or intention indicative of consent to arbitrate.
- Post-facto willingness to participate in arbitration does not cure absence of consent at the inception of the contract.

High Court's Observations

The Himachal Pradesh High Court upheld the arbitrator's order, finding no perversity or legal infirmity. The Court made several important observations:

1. Distinct and Independent Contracts

The MoU between IIT Mandi and CPWD and the construction contract between CPWD and the contractor were independent agreements. The contractor was not a party to the MoU, and IIT Mandi was not a party to the construction contract.

2. Arbitration Is Contract-Specific

The arbitration arose exclusively out of the CPWD–contractor agreement. The existence of a separate contractual arrangement with CPWD could not automatically bind IIT Mandi to the arbitration.

3. Financial Exposure Is Insufficient

The Court categorically held that financial liability or ultimate reimbursement obligations do not constitute consent to arbitrate. In arbitration, unlike civil suits, the concept of “necessary party” has limited application.

4. Application of *Cox and Kings*

Reiterating the principles laid down by the Constitution Bench, the Court emphasised that impleadment of a non-signatory requires demonstrable intention, conduct, or participation in negotiation, performance, or termination of the contract. IIT Mandi failed to satisfy these criteria.

5. Protection of Party Autonomy

Allowing impleadment solely on the basis of financial interest would dilute the consensual foundation of arbitration and undermine party autonomy.

Judgment

The writ petition was dismissed. The High Court affirmed that IIT Mandi could not be impleaded as a respondent in the arbitration proceedings between CPWD and the contractor. It was held that the arbitrator had correctly applied settled principles of arbitration law.

Legal Significance

This decision reinforces a crucial post–*Cox and Kings* principle: expansion of arbitration to non-signatories is an exception, not the rule. Courts remain vigilant against attempts to transform arbitration into a multi-party civil proceeding merely because of indirect financial consequences. The ruling also serves as a caution for project owners and government bodies that downstream financial liability does not automatically translate into procedural rights within arbitral proceedings, unless contractual intent and conduct support such inclusion.

Conclusion

The IIT Mandi judgment draws a clear boundary between commercial exposure and arbitral consent. While modern arbitration law recognises that non-signatories may, in appropriate cases, be bound by arbitration agreements, this case confirms that financial interest alone is legally insufficient. Consent express or implied through conduct remains the cornerstone of arbitral jurisdiction.

For further details write to contact@indialaw.in

1. CWP No. 9200 of 2025 ??

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