



ARBITRATION AND CONCILIATION

Supreme Court Clarifies Limits of Non-Signatory Arbitration Claims

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Introduction

In a significant pronouncement strengthening the principles of party autonomy and contractual consent in arbitration law, the Supreme Court of India in *Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises Pvt. Ltd.* set aside the Bombay High Court's decision to refer a non-signatory to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996 ("A&C Act"). The Court reaffirmed that mere commercial involvement or a back-to-back arrangement does not automatically confer the status of a "veritable party" capable of invoking an arbitration clause. The judgment provides crucial clarity on the scope of judicial scrutiny at the referral stage and the circumstances under which non-signatories may or may not be bound by arbitration agreements an area that has seen evolving judicial refinement after the *Cox & Kings* rulings.

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Factual Background

Hindustan Petroleum Corporation Ltd (HPCL) issued a tender for the design, installation, and commissioning of a Tank Truck Locking System (TTLS). The tender terms, specifically Clauses 3.17 and 5, categorically prohibited the contractor from subletting, subcontracting, or assigning any part of the contract without HPCL's prior written consent. AGC Networks Ltd. was awarded the contract in 2013 and accepted the purchase order. Subsequently, AGC, without HPCL's knowledge or consent, entered into an agreement dated 15.01.2014 with BCL Secure Premises Pvt. Ltd. on a back-to-back basis. Under this internal arrangement, BCL undertook performance obligations towards AGC and was contractually constrained from interacting with HPCL without AGC's written approval. Years later, disputes arose between AGC and BCL, resulting in multiple legal proceedings before civil courts, MSME Facilitation Council, and arbitral forums, none of which involved HPCL.

In 2023, AGC and BCL executed a Settlement-cum-Assignment Agreement wherein AGC agreed to transfer to BCL any receivables it might obtain from HPCL. On the strength of this assignment, BCL issued notices invoking arbitration against HPCL in 2024, claiming that it had effectively stepped into AGC's shoes. HPCL rejected the claim on grounds of absence of privity, invalidity of assignment, and limitation. However, the Bombay High Court, exercising jurisdiction under Section 11, appointed an arbitrator and directed determination of arbitrability as a preliminary issue. Aggrieved, HPCL approached the Supreme Court.

Issues

1. Whether there existed a valid arbitration agreement between HPCL and BCL.
2. Whether BCL, a non-signatory, could be considered a "veritable party" to the arbitration agreement contained in HPCL's tender.
3. Whether the High Court was justified in referring the matter to arbitration under Section 11 of the A&C Act.

Court's Observations

1. No Privity of Contract Between HPCL and BCL

The Supreme Court meticulously examined the contractual matrix and held that HPCL and BCL operated on “separate orbits” with no evidence of mutual intention to create legal relations. The tender expressly prohibited assignment or subcontracting without HPCL’s consent, and AGC never sought or obtained such consent. The agreement between AGC and BCL clearly restricted BCL’s interaction with HPCL, demonstrating that BCL was never envisaged as a contracting party by HPCL.

2. Non-Signatory Could Not Qualify as a Veritable Party

Reaffirming principles laid down in *Cox and Kings Limited vs. Sap India Private Limited and Another*, *Interplay*, *SBI General Insurance Company Limited vs. Krish Spinning*, and *Ajay Madhusudan Patel and others vs. Jyotrindra S. Patel and others*, the Court held that while non-signatories may be bound in exceptional cases, BCL failed to satisfy even the prima facie threshold for being treated as a veritable party. Mere commercial engagement, escrow account arrangements, or being copied on email communications did not demonstrate consent or intent to bind BCL to the arbitration clause between HPCL and AGC.

3. Assignment Did Not Create an Arbitration Agreement

The Court emphasized the fundamental distinction between assignment of receivables and assignment of contractual obligations. Under the well-established precedent of *Khardah Company Ltd. v. Raymon & Co.*, obligations under a contract cannot be assigned without the promisee’s consent. Since HPCL had never consented, the assignment between AGC and BCL could not create or transfer any arbitration agreement vis-à-vis HPCL.

4. Scope of Section 11 Court: Prima Facie Examination Required

The Court reiterated that Section 11(6A) requires the referral court to prima facie examine the existence of an arbitration agreement. This examination is not a detailed inquiry but does require scrutiny of whether a non-signatory is capable of being bound. Contrary to the High Court’s approach, once the referral court finds that there is not even a prima facie arbitration agreement with the non-signatory, it must decline reference and cannot mechanically defer the issue to the tribunal.

5. High Court’s Approach Not Sustainable

The Supreme Court held that the High Court erred in proceeding on the assumption of the existence of an arbitration agreement without making the required prima facie assessment. The Court observed that Section 16 of the A&C Act does not dilute the referral court’s responsibility to first ensure that an arbitration agreement exists between the parties seeking and opposing reference.

Judgment

The Supreme Court allowed the appeal, set aside the Bombay High Court’s order dated 07.04.2025, and dismissed the Section 11 application filed by BCL. The Court clarified that BCL was at liberty to pursue any other remedy available in law, but arbitration was not maintainable in the absence of a binding arbitration agreement with HPCL.

Conclusion

This decision fortifies the boundary between contractual autonomy and the expanding doctrine of non-signatory arbitration. The judgment confirms that while Indian jurisprudence recognises modern doctrines such as “claiming through or under” and “veritable party,” these doctrines cannot override express contractual safeguards or the essential requirement of party consent. It provides welcome stability in contractual structures where sub-vendors, subcontractors, or service providers may otherwise seek to invoke arbitration clauses to which they were never intended to be parties.

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