

Provisions

Section 45 in the Arbitration And Conciliation Act, 1996

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

Section 3 of Foreign Awards (Recognition And Enforcement) Act, 1961

“Stay of proceedings in respect of matters to be referred to arbitration- anything contained in the Arbitration Act, 1940 (10 of 1940), or in the Code of Civil Procedure, 1908 (5 of 1908), if any party to an agreement to which Article II of the Convention set forth in the Schedule applies, or any person claiming through or under him commences any legal proceedings in any court against any other party to the agreement or any person claiming through or under him in respect of any matter agreed to be referred to arbitration in such agreement, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other step in the proceedings, apply to the Court to stay the proceedings and the Court, unless satisfied that the agreement is null and void, inoperative or. incapable of being performed or that there is not, in fact, any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings”

Judicial Interpretation

In the case of ***Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya***¹, - whereby if a dispute involved non-signatories or included subject matter which was not strictly within the arbitration agreement, the matter could not be referred to arbitration.

However, the case of ***Chloro Controls (I) P. Ltd. (Appellant) v. Severn Trent Water Purification Inc. & Ors***². has clearly distinguished between the Sukanya case. Further, in relation to composite transactions, the dispute resolution clauses would now have to be looked at more holistically. In a number of transactions such as in case of joint ventures, lending agreements involving security creation, acquisitions where a number of agreements are executed, particular care needs to be taken while incorporating the dispute resolution clauses. In an attempt to broaden the scope of the dispute resolution clause by use of terms such as 'disputes arising out of or in connection with', care would have to be taken that in such scenarios disputes, which do not solely relate to the said agreement may also be covered leading to non-parties being subject to arbitration which may include group entities and directors.

¹ (2003) 5 SCC 531

² (2013) 1 SCC 641

In Chloro Controls (I) P. Ltd. (Appellant) v. Severn Trent Water Purification Inc. & Ors. (Respondent), the Hon'ble Supreme Court has held that 'the expression 'person claiming through or under' as provided under section 45 of the Arbitration and Conciliation Act, 1996 would mean and take within its ambit multiple and multi-party agreements and hence even non-signatory parties to some of the agreements can pray and be referred to arbitration. In certain exceptional cases involving composite transactions and interlinked agreements, even non-parties such as the parent company, subsidiary, group companies or directors can be referred to and made parties to an international commercial arbitration.

Conclusion

The words (*any person claiming through or under him*) that have been inserted by the Arbitration and Conciliation (Amendment) Ordinance, 2015 dated 23rd October, 2015 in Section 8 of The Arbitration And Conciliation Act, 1996 are similar to the words existing under Section 45 of the said Act. Therefore, same interpretation of the words is to follow as made in the above judgment. It further appears that in domestic arbitrations, situations like legal heirs, Power of Attorney Holders, Sub-Contractors etc now will be able to invoke arbitration though may not be party to the arbitration agreement. However, each case has to be looked into as per the facts of that particular case.