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UNDERSTANDING CONSOLIDATION AGREEMENTS IN ARBITRATION

INTRODUCTION:

Arbitration serves as an alternative to traditional litigation, offering parties a way to resolve disputes outside of the courtroom. It involves presenting arguments and evidence to a neutral third party, known as the arbitrator, who then makes a binding decision. This approach provides flexibility, confidentiality, and the opportunity to choose arbitrators with expertise in the relevant field. Consolidation in arbitration, on the other hand, refers to combining multiple arbitration proceedings into one. Whether initiated by the parties or decided by the arbitral tribunal, consolidation aims to streamline the resolution process, prevent conflicting decisions, and enhance efficiency when dealing with complex disputes involving multiple parties or interconnected contracts.

WHAT IS CONSOLIDATION AGREEMENT:

The term consolidation in an arbitration proceeding is defined as “a procedural device which, denotes the process whereby two or more claims are united into one single procedure. concerning all parties and all disputes¹ therefore consolidation agreements in arbitration refer to the mechanism through which two or more separate arbitral proceedings are combined into a single proceeding². This consolidation can occur at the request of the parties or upon the discretion of the arbitral tribunal. The primary objective of consolidation is to streamline the resolution process, avoid conflicting decisions, and promote efficiency in resolving complex disputes.

LEGAL FRAMEWORK:

The Arbitration and Conciliation Act of 1996, serving as the cornerstone of arbitration proceedings in India, has undergone iterative amendments to adapt to the evolving demands of

¹ OECD “International Investment Perspectives Consolidation of Claims A Promising Avenue for Investment Arbitration?” (2006).

² Gammon India Ltd. & Anr. vs. National Highways Authority of India, 2020 SCC OnLine Del 659

the business landscape and international norms. However, a notable lacuna persists within the Act concerning the consolidation of arbitral proceedings. Despite widespread recognition and

acceptance of the principle of consolidation by courts worldwide, statutory acknowledgment of this practice remains absent within the Indian legal framework. This absence underscores a pertinent area wherein alignment with international best practices is yet to be fully realized within the realm of Indian arbitration law. International arbitration laws, such as the UNCITRAL Model Law and the New York Convention, also provide guidance on consolidation in cross-border disputes.

CIRCUMSTANCES FOR CONSOLIDATION:

Several factors may trigger the need for consolidation, including common questions of law or fact, overlapping issues, or interconnected contracts among the parties. Consolidation may also be warranted when disputes arise from related transactions or involve common witnesses or evidence. However, consolidation is not automatic and requires a careful assessment of the specific circumstances of each case. The Hon'ble Supreme Court of India, in its landmark decision in *Chloro Controls India Pvt. Ltd. vs. Severn Trent Water Purification Inc*³, elucidated the principle of multi-party arbitration/consolidated arbitration within the purview of Section 11 of the Arbitration and Conciliation Act, 1996. The Court articulated that consolidated arbitration proceedings may be permitted upon the request of parties under certain circumstances, including:

- **Involvement of a Single Economic Transaction:** Consolidated arbitration may be allowed when multiple disputes arise from a single economic transaction, streamlining the resolution process and ensuring coherence in adjudication.
- **Existence of Main and Ancillary Contracts:** Where contracts involve a principal agreement along with ancillary contracts, consolidation may be warranted to address interconnected disputes comprehensively⁴.
- **Application of the "Group of Companies" Doctrine:** The doctrine of "group of companies" may justify consolidated arbitration when disputes involve entities within

³ *Chloro Controls India Pvt. Ltd. vs. Severn Trent Water Purification Inc.*, (2013)1SCC 641 ⁴ *Zonal General Manager, IRCON Int Ltd. vs. Vinay Heavy Equipments*, (2015) 13 SCC 680.

the same corporate group or affiliated entities, recognising their interconnectedness and the practical need for consolidated resolution.

However, the Court also recognised an exception to the aforementioned principles in the case of

*Duro Felguera, S.A. vs. Gangavaram Port Ltd*⁵. In this instance, despite the interrelatedness of multiple parties and contracts, the Court held that a single Arbitrator/Arbitral Tribunal cannot adjudicate the disputes collectively. This exception arose due to the distinct nature of the disputes, wherein one matter pertained to domestic arbitration while the other involved international commercial arbitration. Accordingly, the Court underscored the importance of delineating between different types of arbitrations and adjudicating them separately to uphold the integrity and efficacy of the arbitration process.

CONSIDERATIONS FOR PROCEDURAL EFFICIENCY IN CONSOLIDATION:

Consolidation should be ordered in the interest of a fair and efficient resolution of the claim, maintaining objectivity and factual analysis while preserving balance between the parties. Relevant factors include:

- Time: Assessing potential delays from evaluating claims in the original proceeding. •
- Costs: Evaluating costs for all parties involved.
- Risk of conflicting decisions.

The presence of applicable confidentiality provisions or competitive dynamics among the parties may influence the efficiency assessment of proposed consolidation by arbitral tribunals under specific circumstances.

CONCLUSION:

Consolidation agreements play a vital role in resolving complex disputes efficiently and effectively in arbitration. By streamlining the resolution process, avoiding conflicting decisions, and promoting fairness and efficiency, consolidation agreements offer parties a valuable mechanism for navigating multi-party disputes. However, parties should approach consolidation with caution, considering the specific circumstances of each case and ensuring clear and unambiguous arbitration agreements. With a thorough understanding of consolidation

⁵ *Duro Felguera, S.A. vs. Gangavaram Port Ltd.*, (2017) 9 SCC 729
agreements and their practical implications, parties can navigate complex disputes with confidence and achieve optimal outcomes in arbitration proceedings.