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COX & KINGS LTD. V. SAP INDIA PVT. LTD.
(2023 SCC OnLine SC 1634)

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INTRODUCTION

Arbitration has emerged as one of the most efficient mechanisms for resolving commercial disputes due to its confidentiality, flexibility and respect for party autonomy. The doctrine of party autonomy lies at the heart of arbitration. The general rule is that only those who sign the arbitration agreement can be referred to arbitration under it. However, this becomes complicated in commercial transactions. In modern commercial transactions, most contracts are executed through multiple interconnected entities working within the same corporate group. Contracts are signed by one entity or some of the entities, while others perform the substantive work.

The *Group of Companies* doctrine seeks to bridge this gap. It binds non-signatory members of a corporate group to an arbitration agreement signed by another entity of the same group, provided there is a mutual intent to do so. For more than a decade, the doctrine remained unsettled and unevenly applied in Indian law. In *Cox & Kings Ltd. v. SAP India Pvt. Ltd.,*[1] a five-judge constitution bench of the Supreme Court addressed these uncertainties by anchoring the doctrine to Sections 2(1)(h)[2] and 7[3] of the Arbitration and Conciliation Act, 1996, while overruling the doctrinal reasoning adopted in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*[4]

EVOLUTION OF THE GROUP OF COMPANIES DOCTRINE IN INDIA

[1] Cox and Kings Ltd. vs SAP India Pvt. Ltd. (2023) SCC OnLine SC 1634 (India).
[2] Arbitration and Conciliation Act, 1996, § 2(1)(h), No. 26, Acts of Parliament, 1996 (India).
[3] Arbitration and Conciliation Act, 1996, § 7, No. 26, Acts of Parliament, 1996 (India).
[4] Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 (India).

The doctrine of Group of Companies has its roots in the 1982 ICC Award in *Dow Chemical France v. Isover Saint Gobain,*[5] in which the arbitral tribunal stated that a parent company that is not a signatory to an arbitration agreement entered into between the subsidiaries will be bound by the said agreement if it actively participated in the negotiations and the performance of the contract. Although the Indian judiciary was reluctant to accept the doctrine in the past, the Supreme Court of India recognized this doctrine in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc*. The doctrine subsequently expanded through a series of cases, finally culminating in *Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd,*[6] where governing tests were finally crystallized.

Despite the doctrine's growing popularity and judicial developments, its conceptual foundation remained fragile. The phrase "claiming through or under", traditionally used to cover assignees or successors, was considered unsuitable for treating non-signatories as independent parties in the arbitration. Issues were raised regarding the possibility of the doctrine having an impact on party autonomy and even undermining the concept of separate personality of corporations by making an indirect foray into the field of veil piercing.[7] A three-judge bench led by then Chief Justice N.V. Ramana in *Cox and Kings (2022)*[8] raised these concerns and referred the matter to a larger bench.

FACTUAL BACKGROUND OF THE CASE

Cox and Kings Ltd., a travel and tourism company, entered into a software licensing agreement with SAP India Pvt. Ltd. in December 2010 to create a e-commerce platform called Hybris Solution. The two companies signed three more agreements as they worked on the project. The terms and conditions of the agreements included a clause stating that if there were any problems it would be solved by a group of arbitrators in Mumbai following the rules of the Arbitration and Conciliation Act of 1996. The project's implementation faced certain difficulties. Cox and Kings Ltd. approached SAP SE, the German parent company of SAP India, which deployed a team of experts to take over the project. Despite this, the project did not work out. So Cox and Kings Ltd. terminated the contract in November 2016 and requested a refund

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[5] Dow Chemical France v. Isover Saint Gobain, ICC Case No. 4131, Interim Award (Sept. 23, 1982), 9 Y.B. Comm. Arb. 131 (1984).
[6] Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd., (2022) 8 SCC 42 (India).
[7] Nicholas Peacock et al., *Indian Supreme Court Clarifies Applicability of the 'Group of Companies' Doctrine in Cox and Kings Ltd. v. SAP India Private Ltd.*, HERBERT SMITH FREEHILLS KRAMER (May 15, 2026, 5:00 PM), https://www.hsfkramer.com/notes/arbitration/2023-12/indian-supreme-court-clarifies-applicability-of-the-group-of-companies-doctrine-in-cox-and-kings-ltd-v-sap-india-private-ltd.
[8] Cox and Kings Ltd. v. SAP India Pvt. Ltd., (2022) 8 SCC 1 (India).

of about forty-five crore rupees. SAP India invoked arbitration and claimed they were owed around seventeen crore rupees for wrongful termination of the contract.[9]

However, in November 2019, when Cox and Kings Ltd was about to go insolvent, the NCLT adjourned the arbitral proceedings. After this, Cox and Kings Ltd filed for arbitration again and impleaded SAP SE, despite neither being a party to any agreement with them nor a signatory to any of the contracts between the parties. Upon SAP failing to nominate an arbitrator, C&K approached the Supreme Court under Section 11(6) of the Act[10] to request the appointment of an arbitrator, and also impleaded SAP SE in this process because it was substantially involved in the project even though it did not sign the contract. The three-judge bench expressed concerns about the reasoning adopted in *Chloro Controls*, and thus referred the matter to a larger bench.

ISSUES BEFORE THE COURT

The two primary questions before the bench for adjudication were: first, whether the phrase "claiming through or under" appearing in Sections 8[11] and 45[12] of the Arbitration and Conciliation Act, 1996, could be interpreted to include the Group of Companies doctrine. Second, whether the doctrine expounded in *Chloro Controls* had a valid statutory and conceptual basis in Indian law.[13] There was a related concern about whether the doctrine can conform to the foundational principles of party autonomy, privity of contract and separate legal personality.

SUPREME COURT'S INTERVENTION

The five-judge bench delivered a verdict on 6 December 2023, along with a concurring opinion given by Justice P.S. Narasimha. On the first issue regarding the textual hook of "claiming through or under" the Court overruled *Chloro Controls* reasoning.[14] It held that the phrase "claiming through or under" appearing in Sections 8 and 45, rigidly refers to parties acting in derivative or successor capacity, who step into the shoes of signatory. A non-signatory company claims rights independently and not derivatively.

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[9] SUPREME COURT OBSERVER, https://www.scobserver.in/cases/group-of-companies-doctrine-in-arbitration-proceedings/ (last visited May. 16, 2026).
[10] Arbitration and Conciliation Act, 1996, § 11, No. 26, Acts of Parliament, 1996 (India).
[11] Arbitration and Conciliation Act, 1996, § 8, No. 26, Acts of Parliament, 1996 (India).
[12] Arbitration and Conciliation Act, 1996, § 45, No. 26, Acts of Parliament, 1996 (India).
[13] Vijay Purohit., *Group of Companies Doctrine: An Analysis in View of Cox and Kings*, BAR AND BENCH (May 16, 2026, 10:00 AM), https://www.barandbench.com/columns/group-companies-doctrine-analysis-view-cox-and-kings.
[14] Cox and Kings, *supra* note 1, at ¶ 127.

On second issue the court affirmed that the Group of Companies doctrine does have a valid statutory[15] and conceptual basis in Indian law but its anchor lies in Sections 2(1)(h) and 7 of the Act, not in Sections 8 and 45. The Court held that the definition of "parties" under section 2(1), read with 7(1), does not require the parties' signatures on the arbitration agreement. Though Section 7 mandates that the agreement be in writing, it does not insist that it has to be signed by every party sought to be bound. Court stated that consent must be inferred from conduct. The court observed that the doctrine does preserve party autonomy and also laid down clearer doctrinal framework.

THE NEW DOCTRINAL FRAMEWORK

1. ***The Five-Factor Discovery Enterprises Test***

   The court reaffirmed the five factors laid down in *Discovery Enterprises.* These are mutual intent of parties, the commonality of subject matter, the relationship between signatory and non-signatory, performance of contract and the nature of transactions. Performance being the most significant factor requires direct and substantial involvement of a non-signatory in negotiation, performance and termination of the contract.[16]

2. ***Distinguishing Alter Ego from Group of Companies Doctrine***

   The court distinguished between the Group of Companies Doctrine and the doctrine of alter ego. It stated that former preserves separate legal personality of group companies and operates to ascertain mutual intent, while later focuses on dissolving those layers and rests on concerns of fraud or sham.[17]

3. ***The Referral Court's Role***

   The court directed that at referral stage under section 11, court should leave the decision of whether a non-signatory is bound by the arbitration agreement or not, to the arbitration tribunal.[18]

4. ***Rejected "Single Economic Unit" as standalone ground***

   The court clarified that principle of single economic unit, taken alone, cannot ground the doctrine.

ANALYSIS

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[15] Vijayendra Pratap Singh & Abhijnan Jha, *A Person Is Known Not Only by the Company They Keep, but Also the Acts They Do: The Indian Supreme Court Affirms the 'Group of Companies' Doctrine in the Cox and Kings Judgment*, AZB & PARTNERS (May 16, 2026, 4:30 PM), https://www.azbpartners.com/bank/a-person-is-known-not-only-by-the-company-they-keep-but-also-the-acts-they-do-the-indian-supreme-court-affirms-the-group-of-companies-doctrine-in-the-cox-and-kings-judgment/.

[16] Discovery Enterprises, *supra* note 8.

[17] Rohan Batra & Sonali Malik, *A New Reign of Cox and Kings: Reshaping Group Companies Doctrine*, BAR AND BENCH (May 17, 2026, 10:00 AM), https://www.barandbench.com/view-point/a-new-reign-of-cox-and-kings-reshaping-group-companies-doctrine.

[18] Cox and Kings, *supra* note 1, at ¶ 165.

The case marks a significant development in Indian arbitration law. The court corrected the doctrinal error by severing the Group of Companies doctrine from the textual hook of "claiming through or under". The concepts of Section 2(1)(h) and Section 7 became clearer with a focus on consent rather than on succession.[19] Modern transactions involve multi-party and multi-contract arrangements where both signatories and non- signatories work together to execute a single commercial purpose. The court tried to balance this reality without diluting the importance of consent.[20]

Although *Cox and Kings* corrects a doctrinal error and welcomes clarity, it does not eliminate every difficulty. The threshold question about how much involvement would be direct, positive and substantial remains open. Parent companies often provide routine support to its subsidiaries which includes assurances, operational support and technical assistance. The problem in distinguishing such routine support from conduct signalling consent to arbitrate would require careful examination.

CONCLUSION

The case of Cox and Kings is one of the important cases in Indian arbitration jurisprudence. The Constitution Bench has not only affirmed the doctrine of Group of Companies but has also made radical changes to the said doctrine by basing it on consent and not on a wrong interpretation of an important phrase in a statute. In addition to being in sync with the practical reality of group-based transactions in corporations, the decision places the principle of party autonomy at the center stage. While formulating the five-factor test and leaving the final discretion with the arbitral tribunal, the Court has framed a doctrine that is both pliable and rigorous. Those involved in drafting commercial agreements within corporate groups will do well to make it clear which parties they intend to bind. The parent companies should also exercise caution before getting into dispute resolution involving the participation in the subsidiaries' projects.

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[19] Steven P. Finizio, *Cox and Kings v. SAP India Pvt. Ltd. & Anr.: The Indian Supreme Court Revisits and Retains the Group of Companies Doctrine*, WILMERHALE (May 17, 2026, 12:30 PM), https://www.wilmerhale.com/-/media/files/shared_content/editorial/publications/wh_publications/client_alert_pdfs/20240108coxandkingsvsapindiapvtltdanrtheindiansupremecourtrevisitsandretainsthegroupofcompaniesdoctrine.pdf .

[20] Rohin Pujari, *India – Indian Supreme Court Clarifies Applicability Of The 'Group Of Companies' Doctrine In Cox And Kings Ltd. V. SAP India Private Ltd.*, CONVENTUS LAW (May 16, 2026, 4:30 PM), https://conventuslaw.com/report/india-indian-supreme-court-clarifies-applicability-of-the-group-of-companies-doctrine-in-cox-and-kings-ltd-v-sap-india-private-ltd/.