

A Non-Signatory Cannot Be Impleaded In Arbitral Proceedings Merely Because It Has A Substantial Financial Interest In The Outcome: Himachal Pradesh High Court

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Introduction

In *Indian Institute of Technology, Mandi v. Central Public Works Department* (CWP No. 9200 of 2025, decided on 29 December 2025), the High Court of Himachal Pradesh examined whether a non-signatory to a construction contract can be impleaded as a respondent in arbitral proceedings between the contracting parties, solely on the ground that the financial consequences of any award would ultimately fall upon it.

The High Court upheld the order of the Sole Arbitrator dismissing the impleadment application filed by IIT Mandi. The Court held that a mere financial or downstream interest in the subject-matter of the arbitration is insufficient to satisfy the requirements laid down by the Supreme Court of India for binding a non-signatory to an arbitration agreement. Applying the principles set out in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* [(2024) 4 SCC 1] and *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.* [(2025) 9 SCC 176], the Court found that IIT Mandi had no participation in the negotiation, execution, or performance of the underlying contract and, therefore, could not claim to be a party to the arbitration agreement contained therein.

Facts

On 25 August 2011, IIT Mandi and the Central Public Works Department ("**CPWD**") entered into a Memorandum of Understanding ("**MOU**"), under which CPWD agreed to undertake the execution of construction work for IIT Mandi's academic and residential complex at Kamand, Himachal Pradesh, as a deposit work. The MOU set out detailed responsibilities for CPWD (Clause 6), including tendering, project management, quality assurance, and contesting contractor claims in arbitration or court proceedings. IIT Mandi's obligations under Clause 7 included making funds available, supplying approved designs, and paying any claims upheld by an arbitrator or court of law relating to the work. Clause 8 of the MOU contained an arbitration clause for disputes between IIT Mandi and CPWD.

Pursuant to the MOU, CPWD invited bids for construction of various buildings under Phase-1 North for IIT Mandi at Kamand. The estimated cost put to bid was approximately INR 188.42 crores, with a completion period of 730 days. CPWD accepted the bid of M/s Supreme Infrastructure India Limited ("**the Contractor**") and a formal agreement was executed on 27 November 2013, incorporating bid documents, general conditions of contract, CPWD Form-8, and

CPWD specifications. The arbitration clause in the construction contract (Clause 25) was between CPWD and the Contractor alone.

Disputes arose between the Contractor and CPWD, and the Contractor filed an arbitration petition. This led to the filing of a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act**") before the Himachal Pradesh High Court, resulting in the appointment of Hon'ble Mr. Justice Madan B. Lokur (Retd.) as the sole Arbitrator. The Contractor's claim was for approximately INR 689 crores.

During the pendency of the arbitral proceedings, IIT Mandi filed an application seeking its impleadment as a respondent. IIT Mandi contended that it was a necessary party in light of the MOU with CPWD, that it had a substantial interest in the project from which the arbitral proceedings had arisen, and that the financial liability arising from any adverse award against CPWD would ultimately fall upon it. IIT Mandi also asserted that it was in the best position to present facts before the Tribunal and that untrue facts were being presented by the Contractor.

The Contractor opposed the impleadment application, contending that the arbitration agreement was strictly between the Contractor and CPWD, that IIT Mandi had neither executed nor was privy to the construction contract, and that the "Group of Companies" doctrine or any other basis for binding a non-signatory did not apply, as IIT Mandi was a separate legal entity with no direct role in the negotiation, performance, or termination of the contract.

The Impugned Order of the Arbitrator

By order dated 18 April 2025, the Arbitrator dismissed IIT Mandi's impleadment application. The Arbitrator acknowledged that IIT Mandi had a substantial interest in the dispute and that the financial liability, if proved, could be substantial (given the claim of approximately INR 689 crores). However, the Arbitrator held that the principles governing impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908, are not applicable to proceedings under the Act. Applying the test laid down in ***Cox and Kings (supra)***, the Arbitrator found that IIT Mandi had not demonstrated any participation in the negotiation, performance, or termination of the construction contract, nor had it shown any consent or intention to be bound by the arbitration agreement. The Arbitrator further noted that IIT Mandi's *post facto* desire to participate was insufficient, as the consent and intention must exist at the inception or at least at the initial stages of execution of the contract. The Arbitrator also observed that there was no reason to assume that CPWD would not adequately protect IIT Mandi's interests in the proceedings.

Arguments before the High Court

IIT Mandi contended that the Arbitrator's order was unsustainable. It argued that the work was assigned to CPWD by IIT Mandi, that IIT Mandi was responsible for overseeing its development funds, and that whatever liability was affixed upon CPWD would have to be borne by IIT Mandi under the MOU. IIT Mandi further relied upon ***ASF Buildtech (supra)*** to argue that all necessary tests for impleadment of a non-signatory were satisfied. It also highlighted an alleged perversity in the Arbitrator's order: while the Arbitrator acknowledged that IIT Mandi would be affected by the outcome, he simultaneously rejected the application by observing that its interests were being looked after by CPWD.

CPWD, through the Deputy Solicitor General of India, stated that it had no objection to IIT Mandi's impleadment, but also suggested that even without impleadment, IIT Mandi could assist CPWD by engaging a lawyer of its choice to argue on behalf of CPWD, at IIT Mandi's expense.

The Contractor defended the Arbitrator's order, contending that there was no privity of contract between the Contractor and IIT Mandi, that the parameters laid down by the Supreme Court for impleadment of a non-signatory were not met, and that the Arbitrator had comprehensively addressed all aspects of the matter.

Decision of the High Court

The High Court dismissed the writ petition, finding no perversity in the Arbitrator's order.

First, the High Court identified the existence of two completely distinct and independent contracts: (i) the MOU between IIT Mandi and CPWD, and (ii) the construction contract between CPWD and the Contractor. The Court noted that the Contractor was not a signatory to the MOU, and IIT Mandi was neither a party nor a signatory to the construction contract. Although the construction contract was for work that CPWD was to execute under the MOU, the two contracts remained legally independent of each other.

Secondly, the High Court applied the principles laid down by the Supreme Court in ***Cox and Kings (supra)*** and ***ASF Buildtech (supra)***. The Court reiterated that the intention of a non-signatory to be bound by an arbitration agreement must be gauged from its participation in the negotiation, performance, and termination of the underlying contract. The Court found that IIT Mandi had no participation whatsoever in the execution of the construction contract. The contract was entered into between CPWD and the Contractor independent of IIT Mandi, and IIT Mandi was neither consulted nor associated with its execution. IIT Mandi played no role in the course of the negotiation of the terms, nor in the performance or determination of the contract.

Thirdly, the High Court addressed IIT Mandi's apprehension that any award against CPWD would ultimately be thrust upon it. The Court observed that it failed to understand how an award passed against CPWD could be enforced against IIT Mandi, as the terms of the construction contract did not envisage any such consequence. The Court held that this mere apprehension was not a ground for impleadment in the arbitral proceedings. The provisions of the MOU between IIT Mandi and CPWD would come into play only if a dispute arose between CPWD and IIT Mandi under that separate contract.

Finally, the High Court held that the Arbitrator had rightly concluded that while IIT Mandi had an interest in the dispute, it had not pleaded any of the requirements postulated by the Supreme Court for binding a non-signatory. A substantial financial interest in the subject-matter of the contract, standing alone, was not a ground to implead a non-signatory in arbitral proceedings. The Contractor had also not claimed any relief against IIT Mandi.

Accordingly, the High Court dismissed the petition, finding no perversity in the Arbitrator's order and no merit in IIT Mandi's challenge.

Key Takeaways

The decision of the Himachal Pradesh High Court in *IIT Mandi (supra)* is particularly instructive for non-signatories seeking impleadment in arbitral proceedings and reinforces the following principles:

- (i) A non-signatory cannot be impleaded in arbitral proceedings merely because it has a substantial financial interest in the outcome or because the consequences of an award may indirectly affect it. The test for impleadment requires demonstrated participation in the negotiation, performance, or termination of the underlying contract, in accordance with the principles laid down in *Cox and Kings (supra)* and *ASF Buildtech (supra)*.
- (ii) Where two independent contracts exist in a multi-party project arrangement – one between the project owner and the executing agency, and another between the executing agency and the contractor – the project owner's non-involvement in the latter contract precludes its impleadment in arbitral proceedings arising out of that contract, notwithstanding that the project was undertaken for the owner's benefit.
- (iii) The principles governing impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908, are not applicable to proceedings under the Arbitration and Conciliation Act, 1996. An arbitral tribunal is governed by the arbitration agreement and cannot travel beyond its terms, except in

circumstances recognised by the Supreme Court for binding non-signatories.

- (iv) *Post facto* consent or a belated desire to participate in arbitral proceedings is not sufficient. The consent and intention, as well as participation, must exist at the inception or at least at the initial stages of execution of the underlying contract.

An apprehension that an award against the signatory party may have downstream financial consequences for the non-signatory under a separate contractual arrangement does not, by itself, establish the non-signatory's right to be heard in the arbitral proceedings. The remedy, if any, for such consequences lies in the separate contractual relationship between the non-signatory and the signatory party.

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