A Non-Signatory Cannot Invoke Arbitration Without Prima Facie Establishing It Is a Veritable Party: Supreme Court of India

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Introduction

In ***Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises Pvt. Ltd.***, the Supreme Court has reiterated the limits of a referral Court's jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act**"), particularly when a non-signatory seeks to invoke an arbitration agreement. Setting aside the Bombay High Court's order appointing an arbitrator, the Apex Court held that a non-signatory must, at the very least, *prima facie* establish that it is a "*veritable party*" to the arbitration agreement. In the absence of such a showing, the matter cannot be referred to arbitration, nor can the issue be deferred to the arbitral tribunal under Section 16 of the Act.

Facts

HPCL floated a tender for the design, supply, installation, commissioning, and support of a Tank Truck Locking System. The tender conditions expressly prohibited sub-letting, sub-contracting, or assignment of the contract or any interest therein without HPCL's prior written consent. An arbitration clause governed disputes between HPCL and the successful bidder.

The contract was awarded to AGC Networks Ltd. AGC, in turn, entered into a back-to-back arrangement with BCL Secure Premises Pvt. Ltd. for execution of substantial portions of the work. HPCL was not a party to this arrangement and maintained that it had no contractual relationship with BCL.

Disputes subsequently arose between AGC and BCL, leading to multiple proceedings, including civil suits, MSME Facilitation Council claims, and arbitrations, all confined to those two entities. Eventually, AGC and BCL entered into a settlement-cum-assignment agreement, under which AGC purported to assign its receivables against HPCL to BCL.

Relying on this assignment, BCL issued a notice invoking arbitration against HPCL and filed a petition under Section 11(4) before the Bombay High Court. The High Court allowed the petition, appointing an arbitrator while directing that the issue of arbitrability and BCL's status be decided as a preliminary issue by the arbitral tribunal. HPCL challenged this order before the Supreme Court.

Arguments

HPCL contended that there was no privity of contract between it and BCL, and that the tender conditions expressly barred assignment or sub-letting without

HPCL's consent, which had never been granted. It was argued that the settlement-cum-assignment agreement between AGC and BCL could not create an arbitration agreement where none existed, and that BCL was neither a signatory nor a "*veritable party*" to the contract containing the arbitration clause. HPCL further submitted that the High Court erred in mechanically referring the matter to arbitration without satisfying itself, even *prima facie*, of the existence of an arbitration agreement with BCL.

BCL argued that its extensive involvement in performance, the back-to-back nature of its arrangement with AGC, and the subsequent assignment of receivables entitled it to invoke the arbitration clause. It relied on recent Supreme Court jurisprudence on non-signatories and the "*veritable party*" doctrine, contending that such questions were fact-intensive and ought to be left to the arbitral tribunal under Section 16 of the Act.

Decision of the Supreme Court

The Supreme Court allowed HPCL's appeal and set aside the High Court's order. It reaffirmed that, at the Section 11 stage, the referral Court must conduct a *prima facie* examination of the existence of an arbitration agreement and whether the applicant, if a non-signatory, can be regarded as a *veritable party* to such agreement. While this examination is not to be a detailed or contested inquiry, it cannot be reduced to a purely mechanical exercise.

Applying this standard, the Supreme Court held that BCL had failed to establish even *prima facie* that it was a *veritable party* to the contract between HPCL and AGC. The Apex Court emphasised that HPCL and BCL "operated on separate orbits", and that HPCL was not a party to, nor had it consented to, the back-to-back arrangement or the subsequent assignment. Mere commercial involvement, knowledge of performance, or downstream arrangements could not substitute for consent.

The Supreme Court also rejected the argument that the matter should nonetheless be left to the arbitral tribunal. It clarified that while tribunals have competence to rule on jurisdiction under Section 16, this presupposes a *prima facie* finding by the referral Court that an arbitration agreement exists and binds the parties before it. Where such a finding cannot be made, reference to arbitration itself is impermissible.

Accordingly, the Section 11 petition filed by BCL was dismissed, with liberty reserved to pursue any other remedy available in law.

Comment

The decision reinforces an important boundary in post-***Cox and Kings*** [(2024) 4 SCC 1] jurisprudence. While Courts have adopted a more flexible approach

towards non-signatories, ***HPCL v. BCL Secure Premises*** makes clear that flexibility does not dispense with consent. Assignment of receivables, sub-vendor arrangements, or commercial proximity cannot, without more, bind an unwilling party to arbitration.

For referral Courts, the judgment holds that a meaningful *prima facie* scrutiny remains mandatory at the Section 11 stage, and that *competence-competence* cannot be invoked to sail over the absence of any arbitration agreement at all.

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