

Supreme Court Holds Non-Signatory Shareholder a 'Veritable Party' Where Share Transfer Was Integral to Composite Transaction

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Introduction

In *KKH Finvest Pvt. Ltd. & Anr. v. Ashiesh Shukla & Ors.*¹, the Supreme Court considered whether a shareholder who had not signed a Memorandum of Settlement containing an arbitration agreement could nevertheless be treated as a "veritable party" to that agreement and be referred to arbitration. The Court held that the absence of a signature was not determinative where the surrounding contractual framework and the non-signatory's performance demonstrated an intention to participate in, and be bound by, the composite transaction. On the facts, the Respondent's transfer of his shares under a contemporaneously executed Share Purchase Agreement was fundamental to completion of the settlement contemplated by the Memorandum of Settlement. He was therefore held to be a veritable party and amenable to arbitration.

Facts

KKH Finvest Private Limited ("**KKH**") intended to acquire Sensorise Digital Services Private Limited ("**Sensorise**") and its sister concern. For this purpose, a Memorandum of Settlement dated 9 May 2022 ("**MoS**") was executed between KKH, Sensorise, its sister concern and their promoters. The MoS contemplated a comprehensive settlement under which KKH would acquire the entire shareholding and assume complete control of Sensorise and its sister concern.

The MoS identified several categories of persons as forming part of the seller group, including the promoters, members of the management team, consultant and employee shareholders, former management-team members and certain family and associate shareholders. The Respondent was not a signatory to the MoS, but was expressly identified in Schedule 2 as a consultant and shareholder of Sensorise holding 1,480 equity shares, constituting approximately 0.05% of its shareholding.

The MoS recorded that KKH would acquire the complete shareholding of the seller group for an aggregate settlement amount of INR 8 crore. It expressly contemplated the transfer of the shareholding held by persons identified in the relevant schedules, including Schedule 2. Upon completion of these transfers, KKH was to hold 100% of the issued and paid-up share capital of Sensorise with 100% voting rights, while the sellers' shareholding would stand reduced to nil.

The MoS further contemplated the simultaneous execution of separate Share Purchase Agreements ("**SPAs**") with, among others, the persons identified in Schedule 2. These agreements were to contain provisions relating to indemnity, non-disclosure, non-compete and non-solicitation obligations. The

MoS also contemplated the execution of intellectual property assignments and other documents required to give effect to the transfer and transition contemplated by the settlement.

Pursuant to this arrangement, the Respondent executed an SPA on 9 May 2022. The SPA identified him as a consultant and shareholder of Sensorise and recorded that KKH was acquiring the shares of the promoters, management team, including the seller, and other shareholders as part of the overall settlement. It further specified the proportionate consideration payable to the Respondent for transfer of his shares.

The MoS itself imposed additional obligations upon persons identified in Schedule 2. These included obligations concerning assignment of intellectual property and restrictions relating to non-solicitation and non-compete. The contractual framework therefore did not treat the scheduled shareholders merely as passive sellers of isolated blocks of shares, but contemplated their participation in the wider settlement and transition arrangement.

The dispute resolution provisions of the MoS required disputes or differences arising out of or concerning the MoS to first be subjected to good-faith negotiations. If unresolved within the stipulated period, the disputes were to be referred to arbitration under the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") before a sole arbitrator.

Arbitral Proceedings and the Delhi High Court's Decision

Disputes subsequently arose and KKH invoked arbitration against the promoters. Upon an application under Section 11 of the Arbitration Act, the Delhi High Court constituted the arbitral tribunal. In its Statement of Claims, however, KKH also arrayed certain persons who had not been parties to the original Section 11 proceedings, including the Respondent and four members of the management team identified in Schedule 1A of the MoS.

These non-signatories questioned the tribunal's jurisdiction by filing applications under Section 16 of the Arbitration Act. KKH and Sensorise thereafter instituted a further petition under Section 11 seeking reference of the disputes involving these persons to the same arbitral tribunal.

The Delhi High Court examined whether the non-signatories could, on a prima facie assessment, be treated as veritable parties to the arbitration agreement contained in the MoS. Applying the principles recognised in *Cox and Kings Limited v. SAP India Private Limited & Anr.*², it considered factors including mutual intention, the relationship between the signatories and non-signatories, commonality of subject matter, the composite nature of the transaction and participation in the performance of the underlying contractual arrangement.

The High Court held that the four management-team members were veritable parties to the MoS. Their individual SPAs contained obligations interconnected with the MoS and their performance was considered necessary to achieve the common commercial objective of transferring complete control and ownership of Sensorise and its sister concern to KKH.

The High Court, however, reached a different conclusion in relation to the Respondent. It relied upon a clause in his SPA providing that the transfer and sale of the shares would be conclusive, independent, mutually exclusive and unconnected with the remaining clauses of the SPA and the MoS. The High Court treated this provision as demonstrating an intention to segregate the Respondent's share transfer from the wider obligations under the MoS and declined to refer the disputes concerning him to arbitration.

Issue Before the Supreme Court

The appeal before the Supreme Court was confined to the Respondent's position. The question was whether, notwithstanding his status as a non-signatory to the MoS and the segregating language in his SPA, he was nevertheless bound by the MoS and qualified as a veritable party for the purposes of the arbitration initiated thereunder.

Findings of the Supreme Court

The Contractual Provision Relied Upon to Exclude the Respondent Did Not Distinguish His Position

The Supreme Court first identified a material difficulty with the distinction drawn by the High Court. The SPAs executed by the four management-team members contained provisions materially identical to the clause in the Respondent's SPA which had been relied upon to exclude him from arbitration. Those agreements likewise characterised the share transfer as conclusive, independent and mutually exclusive, yet the management-team members had been held to be veritable parties to the MoS.

The Court therefore held that the clause could not, by itself, furnish a valid basis for treating the Respondent differently. The logic applied to the other non-signatories, whose SPAs contained substantially the same language, was equally relevant when considering the Respondent's position. The distinction drawn by the High Court was consequently found to lack a factual foundation.

The Respondent's SPA Was Expressly Embedded in the Settlement Contemplated by the MoS

The Supreme Court next examined the Respondent's SPA as a whole. Its recitals expressly referred to the disputes that had resulted in the MoS and recorded that KKH was acquiring the shares of the promoters, management team, including the seller, and other shareholders for the common settlement amount. The SPA was executed for transfer of the Respondent's identified shareholding against his proportionate share of that settlement consideration.

These provisions were treated as significant because they connected the SPA directly to the settlement structure created by the MoS. The Respondent's transfer was not an independent transaction arising from a separate commercial bargain. It was one of the transfers contemplated by the MoS and

formed part of the mechanism by which KKH was to acquire the complete shareholding of Sensorise.

The Court accordingly concluded that the Respondent had committed himself to the sale of his shares as part of the transaction contemplated by the MoS and was bound by its terms. The SPA could not be read selectively by isolating one provision while disregarding the recitals and the wider contractual arrangement which gave rise to its execution.

Participation in Performance Is Central to the "Veritable Party" Enquiry

The Supreme Court reiterated the principles stated in *Cox and Kings* concerning non-signatories. The concept of a veritable party recognises that a person or entity may not have formally signed an arbitration agreement and may nevertheless manifest an intention to be bound through its legal relationship with the signatories and involvement in performance of the underlying contract.

The Court emphasised participation in the performance of the underlying contract as a particularly important factor because the conduct of the non-signatory may indicate whether it intended to be bound by the contractual arrangement containing the arbitration agreement. That intention may be gathered from the circumstances surrounding the non-signatory's participation in the negotiation, performance and termination of the underlying transaction.

Referring also to *Oil and Natural Gas Corporation Limited v. Discovery Enterprises Private Limited & Anr.*³, the Court reiterated that the relevant considerations must be applied holistically. In addition to conduct and performance, the composite nature of the transaction and commonality of subject matter may demonstrate that the claims involving a non-signatory are interlinked with the disputes already referred to arbitration.

The Respondent's Performance Was Fundamental to Completion of the MoS

Applying these principles, the Supreme Court found that performance of the Respondent's obligations under his SPA was fundamental to completion of the MoS. The object of the settlement was not merely the acquisition of some of the shares of Sensorise. It contemplated acquisition of the complete shareholding so that KKH would obtain 100% ownership and voting control.

The Respondent held shares in his own right. Unless those shares were also transferred, the transaction contemplated by the MoS would remain incomplete. His performance therefore contributed directly to fulfilment of the central commercial objective of the MoS and could not be regarded as collateral or unrelated to it.

The Court also observed that the MoS contemplated several acts by persons falling within the relevant schedules which applied to the Respondent in the same manner as they applied to the management-team members. Although

the latter may have had additional managerial functions which did not apply to the Respondent as a consultant shareholder, that difference did not alter the integrated character of the share transfer and related obligations. There was consequently no material basis for treating him differently from the other non-signatories who had already been referred to arbitration.

Conclusion

The Supreme Court allowed the appeal and set aside the Delhi High Court's judgment to the extent that it had declined to refer the disputes involving the Respondent to arbitration. The Respondent was held to be a veritable party to the MoS and therefore amenable to arbitration in respect of his disputes with KKH and Sensorise.

Since an arbitral tribunal was already seized of the disputes arising under the MoS and the SPAs executed by the other non-signatories, the disputes involving the Respondent were referred to the same tribunal. All issues were expressly left open for determination in arbitration on facts and in accordance with law.

Comment

The judgment reinforces that the question whether a non-signatory is bound by an arbitration agreement cannot be answered merely by asking whether that person physically signed the document containing the arbitration clause. The enquiry remains rooted in consent, but consent may be inferred from the contractual architecture, the relationship between the relevant agreements and the non-signatory's conduct in performing the composite transaction.

At the same time, the decision does not establish that every shareholder whose shares are transferred as part of a wider acquisition automatically becomes bound by an arbitration agreement contained in another document. The conclusion was anchored in the particular contractual structure before the Court. The Respondent was expressly identified in the MoS; the MoS itself contemplated transfer of his shares; his SPA was executed contemporaneously pursuant to that arrangement; the SPA expressly linked the transfer to the common settlement; and completion of his transfer was necessary to achieve the contemplated acquisition of the entire shareholding.

The judgment is also instructive on the interpretation of ostensibly segregating contractual language. A clause describing one component of a transaction as independent or mutually exclusive cannot necessarily be read in isolation from the contractual arrangement of which it forms part. Where contemporaneous agreements demonstrate that separate instruments were executed to implement a single commercial settlement, the enquiry into the existence of consent to arbitrate must account for the transaction as a whole.

Equally significant is the Court's insistence upon consistent treatment of similarly situated non-signatories. Where multiple participants execute substantially similar agreements in implementation of the same composite transaction, a distinction between them must rest upon a genuine difference in their contractual position or conduct. Identical drafting cannot

simultaneously establish integration for one participant and disconnection for another without an adequate factual basis.

The ruling therefore provides a useful illustration of the post-*Cox and Kings* approach to non-signatories in multi-document commercial transactions. It preserves the consensual foundation of arbitration while recognising that consent is not always evidenced by a signature on a single instrument and may instead emerge from the interdependence of the agreements and the role performed by the non-signatory in giving effect to the underlying bargain.

Endnotes

1. *KKH Finvest Pvt. Ltd. & Anr. v. Ashiesh Shukla & Ors.*, 2026 INSC 803, Supreme Court of India, judgment dated 5 August 2026.
2. *Cox and Kings Limited v. SAP India Private Limited & Anr.*, (2024) 4 SCC 1.
3. *Oil and Natural Gas Corporation Limited v. Discovery Enterprises Private Limited & Anr.*, (2022) 8 SCC 42.

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