DELHI HIGH COURT APPLIES THE GROUP OF COMPANIES DOCTRINE IN A REFERENCE TO ARBITRATION: *ADITYA BIRLA FINANCE LTD v SITI NETWORKS LTD*[1]

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The Delhi High Court has recently invoked the "*group of companies*" doctrine and referred the disputes between a lender and borrower (as well as the borrower's sister concerns) to arbitration.

Facts

Aditya Birla had extended a term loan of ₹150 crores to Siti Networks under a Credit Arrangement Letter and a Facility Agreement (Agreements). During the subsistence of the Agreements, correspondence was exchanged between the parties regarding an increase in the interest rate of the loan, and representatives of Zee Entertainment Enterprises Ltd and Essel Corporate LLP were also involved in these negotiations. Thereafter, Zee and Essel issued 2 letters to Aditya Birla on 26 June 2018 assuring it that Siti would repay the amounts due under the Agreements.

Following Siti's failure to repay, Aditya Birla invoked arbitration under the Agreements against Siti, Zee and Essel and subsequently filed an application under §11 of the Arbitration Act for the appointment of an arbitrator. Aditya Birla's case was that Siti, Zee and Essel were all part of the Essel Group of Companies and therefore they all ought to be referred to arbitration on the basis the "*group of companies*" doctrine. Zee and Essel resisted the reference primarily on the basis that the correctness of the "*group of companies*" doctrine was being considered by a larger Bench of the Supreme Court in *Cox & Kings Ltd v SAP India Pvt Ltd*[2]. They thus argued that the doctrine has been doubted and may not be good law.

Decision

The Group of companies doctrine

1 2023/DHC/001557

2 2022 SCC Online SC 570

The Court rejected Zee and Essel's contention and held that:

1. Until the Supreme Court's judgments upholding this doctrine[3] are overruled, the same continue to be good law[4].

2. Siti, Zee and Essel are part of the Essel Group of Companies and are a single economic entity, which had been admitted by Zee and Essel in their letters to Aditya Birla.

Letters of Comfort

Zee and Essel argued that their letters to Aditya Birla were merely letters of comfort and not letters of guarantee, and as such did not form a part of the composite transaction between Aditya Birla and Siti. This indicated that there was no mutual intent to bind either Zee or Essel to the transaction. The Court held that:

1. A document has to be read as a whole in a commercial sense and by applying the ordinary rules of construction and interpretation relating to contracts.

2. Since the letters did not contain any assurance by Zee or Essel to pay the outstanding amounts to Aditya Birla on Siti's behalf, the letters could not be considered letters of guarantee under §126 of the Indian Contract Act 1872.

3. However, Zee and Essel's statements assuring and confirming that Siti would repay the outstanding amounts were promissory in nature and thus enforceable and, therefore, Zee and Essel's conduct indicated an intention to create a legal relationship[5].

Based on the foregoing, Aditya Birla's §11 Application was allowed, and all parties were referred to arbitration.

Conclusion

This judgment reaffirms the position that, unless and until the "*group of companies*" doctrine is revised by the Supreme Court, the doctrine will be attracted when a non-signatory to the arbitration agreement is a group company and is engaged in the negotiation or performance of the contract, and also when the group companies have strong organisational and financial links constituting a single economic unit.

3 For example, *Chloro Controls India Pvt Ltd v Severn Trent Water Purifications Inc* (2013) 1 SCC 641

4 *Brinda Karat v State (NCT of Delhi)* (2022) 4 HCC (Del) 154

5 *The Godhra Electricity Co Ltd v The State of Gujarat* (1975) 1 SCC 199

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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