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S.K. SINGHI
Founder & Managing
Partner

Message from Managing Partner

Dear All

HAPPY NEW YEAR 2024

As we embark upon another year of shared success, let us embrace the spirit of growth and innovation. New challenges await us as we gradually unfold the new verticals and practice areas in the coming months. We aspire to reach our valued clients in unrepresented territories nationally and internationally to boost our growing practice, and with this comes exciting opportunities for learning and success.

Consistency in excellence is our key to success, so let us collectively gear up to face these challenges, knowing that each obstacle is a chance to showcase our capabilities. Together, we will navigate the path to greater heights to the satisfaction of every client and stakeholder.

The Mantra for Success is 'Hard Work' with defined and focused Actions to achieve results in a time-bound manner. To recognise your hard work, excellence in result-oriented actions, responsiveness and more will be celebrated and rewarded, and a range of incentives and rewards will be unveiled over time as tokens of appreciation for your dedication.

Cheers to the year 2024 of unparalleled success

"The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom."

The diversity of regulators needs the involvement of lawyers for proper interpretation and to guide the entrepreneurs against disobedience, default and non-compliance

Law Firms and ESG Compliance in India

Due to the vast number of affected segments, no comprehensive law has governed ESG compliance in India so far. But as a major economy, India is reorienting its strategies to mitigate its finer ESG risks, utilising multiple statutory bodies to implement the climate risk mitigation rules. The ESG compliance regulations continue to be shaped by SEBI, RBI, GOI, IRDA, Bombay Stock Exchange, National Stock Exchange and Local Industry Regulators. The development has pronounced the need for ESG-aware law firms in India. India initiated the launch of a Global Biofuel Alliance in September 2023 with the leaders of Singapore, Argentina, Mauritius, UAE and the USA to harness Biofuels. In the recent 28th session of the Conference of Parties (COP28) under the UN Framework Convention on Climate Change (UNFCCC) in Dubai, the Indian Prime Minister offered to host COP33 in India in 2028. The paradigm shift allows Indian law firms to incorporate ESG advisory as a valuable business proposition of the decade after NCLT laws. Companies increasingly recognise the importance of ESG factors in their decision-making processes as investors and stakeholders evaluate a company's impact on the environment, its treatment of employees, and governance practices for sustainability.

ESG compliance aspects in India needing legal assistance:

- Many jurisdictions insist on mandatory ESG reporting requirements. The regulations stipulate that companies disclose information about environmental impact, social practices, and governance structures. The step enhances transparency.
- Legal frameworks establish standards companies must adhere to regarding environmental protection, labour practices, and corporate governance. Violating them now results in legal consequences, including penalties.
- Company directors have fiduciary duties to act in their best interests. Legal frameworks can clarify that this duty includes considering long-term sustainability, environmental impact, and social responsibility. The step encourages directors to integrate ESG factors into their decision-making processes.
- Companies failing to meet ESG standards may face legal liability. Violations can lead to fines and legal action. Companies with poor social practices may face labour rights and discrimination lawsuits.



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The firm advises on Intellectual Property Law, Natural Resources, Environment, Technology, Media & Telecom and undertakes Transaction Advisory, Cross-border Transactions, Corporate Taxation & Accounting, Restructuring, Joint Venture agreements.

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Akshay Singhi
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The bottom line!

In India, the law overseeing ESG norms is multifaceted, encompassing regulatory frameworks, fiduciary duties, liability mechanisms, incentives, and international standards involving multiple regulators and state players. As governments increasingly recognise the importance of sustainable and responsible business practices, the legal system in prosperous India assumes a crucial role in shaping and enforcing ESG norms.

internal and external Rating Rationales. The borrower's score in the internal rating decides the interest rate.

- Many industries have industry-specific guidelines and codes of conduct that incorporate ESG considerations. For example, the Sustainable Development Framework for the Indian Power Sector includes ESG guidelines for the power industry. The local watchdogs of the industry enforce these guidelines.

Experience and expertise

S. K. Singhi & Partners LLP's core area of practice includes Corporate Law, Banking Law, Domestic and International Arbitration, International Police (Interpol), Red Corner Notice (RCN), Legal Vetting, Title Search Verification, and Legal Drafting of documents relating to Commercial Contracts, banking, financing and security documents, ESG Compliances on Moderating Carbon Footprints.

The firm provide services, including complex Corporate Litigations, Real Estate, Energy Law, Hospitality, Telecom, Infrastructure and Mining Laws, Securities Law, Private Equity and FDI, Direct and Indirect Taxation, and Labor and Industrial Laws. SKS are one of the few law firms with expertise in handling International Criminal Matters through the instrumentality of Interpol, Extradition Treaties, Bilateral treaties, and matters relating to the International Court of Justice, The Hague, Netherlands. The firm promises less and endeavours to deliver more. They avoid giving false hopes to the clients.

Their USP for driving people to come to them flows from being contrarian, holistic, value proposition, personalised attention and balanced advice. At SKS, the pro bono activities include emergency service enhancement, advisory roles, speaking assignments and representing home buyers before NCLT and the Kolkata High Court. Their strength lies in punctuality, prompt communication, customer-centricity, and cost-effective delivery within timelines.



It's essential to stay updated with the regulatory landscape of the ever-evolving ESG compliance. The role of law in implementing ESG norms is crucial, as it operates at various levels. The legal connotations of ESG norms are vast and varied. Further, several regulators simultaneously monitor the observance of norms.

- Governments provide tax incentives for companies that adopt sustainable practices. The provision encourages businesses to invest in environmentally friendly technologies and socially responsible initiatives.
- Laws empower shareholders to engage with companies on ESG issues. Shareholders may have the right to propose resolutions related to ESG matters, ensuring that these topics are discussed and voted upon at shareholder meetings.
- Directors and KMPs are personally liable for breach of duty if they fail to address ESG risks and opportunities adequately. This liability creates a strong incentive for corporate leaders to prioritise ESG considerations.
- Legal frameworks include government programs that support companies to improve ESG performance. The aid involves grants, subsidies, and financial assistance.
- Some ESG issues are global, such as climate change. International agreements and treaties establish frameworks encouraging countries and companies to address these issues collectively.

Law guidance is essential to track and follow the ESG guidelines of these regulations and regulators:

- The Companies Act of 2013 is a legislation that governs the functioning of companies. It includes corporate social responsibility (CSR) provisions under Section 135. Companies meeting the criteria must spend a specific percentage of their profits on CSR activities. ESG and CSR both monitor the observance of the social responsibilities of Corporations.
- Securities and Exchange Board of India (SEBI) promotes ESG

- disclosures in the Indian capital markets. SEBI issued a circular in 2020 requiring the leading 1,000 listed entities by market capitalisation to disclose their business responsibility reports (BRRs), including information on environmental, social, and governance aspects.
- The Ministry of Corporate Affairs introduced the National Voluntary Guidelines on Social, Environmental & Economic Responsibilities (NVGs) to adopt responsible business practices. These voluntary guidelines provide a framework for companies to observe the social, environmental, and ethical concerns in their business operations.
- Stock exchanges in India, such as BSE and NSE, have Listing Regulations that now include requirements related to ESG disclosures. For example, listed entities may need to provide information on their environmental impact, social initiatives, and governance practices.
- Insurance Regulatory & Development Authority of India (IRDAI) has also emphasised the importance of ESG factors in the insurance sector. Insurance companies must consider ESG risks and opportunities and disclose related information. The premium charged on their policies depends on the ESG score of the insured entities.
- Reserve Bank of India (RBI) has issued guidelines related to ESG factors for banks and financial institutions. Individual bank boards devise the ESG norms to be observed by borrowers for





Arbitration clauses in unstamped or insufficiently stamped agreements are enforceable - By Sindhuja Rastogi (Senior Associate)

On December 13, a seven-judge bench of the Supreme Court unanimously held that unstamped, insufficiently stamped arbitration agreements are legally enforceable.

Case history

The issue started precipitating in 2011 when the Supreme Court held that unstamped arbitration agreements could not be enforced. In 2020, the matter was again brought to the Supreme Court by NN Global Mercantile Pvt. Ltd., which disputed with Indo Unique Flame Ltd. over a bank guarantee. N.N. Global claimed the agreement was unstamped and thus unenforceable. In January 2021, a three-judge bench disagreed with previous rulings and referred the case to a five-judge Constitution Bench.

On April 25, 2023, the Constitution Bench ruled with a 3:2 majority that unstamped arbitration agreements were void and unenforceable.

On September 26, the Supreme Court, in response to a curative petition challenging the previous judgement, agreed to reconsider the matter due to its "larger ramifications and consequences." The court formed a seven-judge constitutional bench comprising Chief Justice DY Chandrachud, Justice Sanjay Kishan Kaul, Justice Sanjiv Khanna, Justice B R Gavai, Justice Surya Kant, Justice JB Pardiwala, and Justice Manoj Misra.

The petitioners argued that an improperly stamped agreement should not automatically invalidate an arbitration agreement. The court decided to hear the case, citing the importance of the legal question involved. This Supreme Court decision holding that unstamped arbitration agreements are enforceable has more significant ramifications and may reduce the pendency of cases at a pre-arbitration stage.

"That action alone is just, which does not harm either party to a dispute."

Stamp or no stamp?

According to the Arbitration and Conciliation Act 1996, when parties disagree on who they want to make an arbitrator for the dispute, they can move the High Court and Supreme Court to get them appointed. However, the courts in India could not come to a consistent view on whether they should also check the adequacy of the stamp duty paid for agreements featuring an arbitration clause.

There has been a divergence of views on stamping in the courts. Even though the legislature tried to limit the scope of interference by the court at the initial arbitration stage by introducing amendments to the law, the courts nevertheless decided to investigate stamping. This was not arbitration friendly.

The issue ultimately reached the Supreme Court. In 2021, a bench led by Justice Chandrachud said an arbitration agreement would not be rendered invalid, unenforceable, or non-existent on account of non-payment of stamp duty. However, there were judgements contrary to this stand. Thus, the case was transferred to the five-judge bench.

The five-judge bench believed that stamp duty is a law; we cannot disregard the law, so we must decide on stamp duty before referring the case to an arbitrator.

The five-judge bench's judgement was criticised heavily for not being arbitration-friendly. In September 2023, a seven-judge bench led by CJI DY Chandrachud reconsidered

Pro-arbitration judgement

From a commercial point of view, it is a pro-arbitration judgment because the parties' autonomy is preserved, and arbitration gets off the ground quickly.

It's a noted fact that while the courts have a role to play in arbitration, the arbitrator's say shall prevail, or else the entire purpose of the Arbitration Act gets vitiated.

Minimising the court's interference in arbitrations is very important for India's aspirations for ease of doing business and becoming an arbitration hub. We should look at this carefully because we are attempting to be an arbitration hub. If the court, at the very beginning, enters the field and tries to regulate it, it will not only increase its burden but also make arbitration a nudum pactum.

**A fissure in fairness: Critically Examining The
Supreme Court's "Cox And Kings" Verdict-
By Nitin Jain (Associate)**



A FISSURE IN FAIRNESS: CRITICALLY EXAMINING THE SUPREME COURT'S "COX AND KINGS" VERDICT

On December 6th, 2023, the Supreme Court of India delivered a much-awaited verdict in the case of Cox and Kings Ltd. vs. SAP India Pvt. Ltd., drawing a definitive line on the contentious "Group of Companies Doctrine" in arbitration proceedings. This article aims to critically examine the landmark judgment, highlighting its potential fissures and raising vital questions about its implications for commercial disputes and corporate autonomy.

At the heart of the case lay a failed software implementation project between Cox and Kings, a travel company, and SAP India, the technology giant. The dispute escalated, leading to both sides invoking arbitration clauses embedded within their agreements. However, a crucial wrinkle emerged – Cox and Kings argued that a subsidiary, not a signatory to the arbitration clause, should also be included within the arbitration proceedings. This ignited the debate surrounding the Group of Companies Doctrine, which means that non-signatory group companies can be bound by arbitration agreements under specific circumstances.

The Supreme Court, in a 5-2 majority judgment, upheld the Doctrine's applicability but set specific thresholds. These include:

Intertwined interests and single economic entity: The non-signatory company must share demonstrably intertwined interests with the signatory and function as a single economic unit.

Active participation and knowledge: The non-signatory must have actively participated in the agreement's negotiation or performance, demonstrating awareness of its potential binding obligations.

Fairness and due process: The application of the Doctrine must not prejudice the non-signatory's right to a fair and impartial arbitration process.

“ No man is above the law, and no man is below it.”

While the judgment offers clarity on the Doctrine's scope, several concerns linger:

1. **Uncertainty and subjectivity:** The established thresholds, particularly "intertwined interests" and "single economic entity," remain inherently subjective. Determining their fulfillment in individual cases, especially within complex corporate structures, invites potential litigation and delays.

2. **Erosion of contractual freedom:** Binding non-signatories to arbitration agreements weakens their freedom to choose dispute resolution mechanisms. This is particularly worrisome for smaller companies within groups, potentially leaving them vulnerable to pressure from larger affiliates.

3. **Potential for abuse:** The Doctrine's application could be susceptible to misuse by dominant entities within groups, forcing unwilling subsidiaries into unwanted arbitrations for strategic advantage.

4. **Impact on investor confidence:** The uncertainty surrounding the Doctrine's application could deter foreign investors, wary of unpredictable and potentially unfair dispute resolution mechanisms in India.

In conclusion, while the Supreme Court's judgment in Cox and Kings provides needed clarity on the Group of Companies Doctrine, it simultaneously raises certain concerns. Balancing the goals of efficient dispute resolution with fundamental principles of fairness and contractual freedom will remain a critical challenge. Moving forward, the courts must tread carefully, applying the Doctrine judiciously and ensuring that it empowers, rather than undermines, businesses operating within complex corporate structures. The road ahead demands further refinement and careful implementation to ensure that the Doctrine serves as a bridge, not a hurdle, in navigating commercial disputes in India.

Social Events



Recognition of accreditation as a member of the International Trade Council.



Birthday Celebration at Mumbai Office



Christmas Celebration at New Delhi Office



Birthday Celebration at Kolkata Office

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