



## **CASE COMMENT: ASF BUILDTECH PVT. LTD. V. SHAPOORJI PALLONJI AND CO. PVT. LTD**

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### **INTRODUCTION**

In a significant ruling delivered on May 2, 2025, the Supreme Court of India in ASF Buildtech Private Limited V. Shapoorji Pallonji and Company Private Limited has decisively affirmed and expanded the power of arbitral tribunals to implead non-signatories to arbitration proceedings. This judgment was given by Justice J.B. Pardiwala and Justice R. Mahadevan, which was a paradigm shift in Indian arbitration law. This judgment has resolved a complex issue that had previously resulted in contradictory decisions across various High Courts.

### **HISTORICAL BACKGROUND AND FACTS**

Under a Settlement Agreement dated July 24, 2020, Black Canyon SEZ Pvt. Ltd. (BCSPL), a company in the ASF Group, filed for arbitration against Shapoorji Pallonji & Co. Pvt. Ltd. (SPCPL). SPCPL filed a counterclaim against BCSPL, ASF Buildtech Pvt. Ltd. (ABPL), and ASF Insignia SEZ Pvt. Ltd. (AISPL) during these proceedings, claiming that all three companies were a part of the same ASF corporate group and that AISPL and ABPL were also liable under the terms of the contract. However, ABPL strongly disagreed, claiming that it had no involvement in the contract's negotiation, execution, or performance and was not a signatory. ABPL proved before the Arbitral Tribunal and the Delhi High Court that there was no email, document, or Comfort Letter that connected it to the contract or settlement. The Arbitral Tribunal turned down ABPL's Section 16 application anyway, saying that a full factual examination was needed to determine whether ABPL was a proper party. ABPL challenged this under Section 37 before the Delhi High Court, but the High Court upheld the Arbitral Tribunal's order. It was assumed that since the ASF companies were related, and

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since some Comfort Letters and emails existed (mostly connected to AISPL or BCSPL), the Group of Companies Doctrine could be applied to include ABPL as well. Even though no such evidence directly implicated ABPL. Additionally, the High Court decided that all claims and counterclaims should be tried together and that there was no need to split the proceedings. Disappointed by this decision, ABPL challenged its wrongful inclusion as a party to the arbitration in the current appeal, which was filed with the Supreme Court

## ISSUES

- Can non-signatory entities be impleaded in arbitral proceedings under the Group of Companies Doctrine (GoCD)?
- Was the Arbitral Tribunal justified in rejecting the objections raised under Section 16 of the Arbitration and Conciliation Act, 1996, by ABPL and AISPL?
- Did the Delhi High Court rightly uphold the impleadment of ABPL and AISPL based on their involvement in the negotiation, execution, and performance of the contract?

## RULES AND LEGAL PRINCIPLES APPLIED

In the case of *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd.*, the Supreme Court of India ruled that companies such as AISPL and ABPL that have not signed the arbitration agreement can still be included in the arbitration if their business dealings, actions, and involvement in the project as a whole demonstrate that they intended to be bound by the agreement. This is allowed under the Group of Companies Doctrine, which means let related companies should be included in arbitration when their conduct clearly shows they were closely connected to the contract. The Court clarified that such power of impleadment is not restricted to Sections 8 and 45, but is fundamentally rooted in Section 2(1)(h) and Section 7 of the Arbitration and Conciliation Act, 1996, as rightly explained in *Cox and Kings (India) Ltd. v. SAP India Pvt. Ltd.*<sup>1</sup>.

The Supreme Court corrected a long-standing misconception that came from *SBP & Co. v. Patel Engineering Ltd.*<sup>2</sup> and made courts think that they must decide whether non-signatories were bound at the Section 11 referral stage. The Supreme Court instead stated that courts should only look into the existence of an arbitration agreement on a prima facie basis. All

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<sup>1</sup> *Cox and Kings (India) Ltd. v. SAP India Pvt. Ltd.*, (2023) SCC OnLine SC 1634 (SC)

<sup>2</sup> *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618; [2005] 5 SCR 1022

other questions, such as whether non-signatories should be joined, should be decided by an arbitral tribunal, as further clarified in *In SBI General Insurance Co. Ltd. v. Krish Spinning Mills Pvt. Ltd.*<sup>3</sup>. Concerning the rejection of jurisdictional objections raised by ABPL and AISPL under Section 16, the Court held that the arbitral tribunal was empowered to rule on its jurisdiction based on the doctrine of kompetenz-kompetenz, recognising the tribunal's authority to determine the applicability of the arbitration agreement to non-signatories. It further clarified that a notice under Section 21 merely serves as a procedural step to determine when arbitration is deemed to commence for limitation purposes, and its non-issuance cannot defeat the jurisdiction of the tribunal if the agreement otherwise binds the non-signatory. The Supreme Court also applied the Doctrine of Implied Powers, which was pointed out in *Gayatri Balasamy v. M/s ISG Novasoft Technologies Ltd.*<sup>4</sup>, concluding that arbitral tribunals should have the power to implead non-signatories even in the absence of a specific clause that gives them that power. The Delhi High Court had previously decided that ABPL and AISPL could be included in the arbitration due to their significant involvement in contract negotiations, execution, and performance, as well as their financial and commercial connection with BCSPL as a part of the ASF Group. This decision was later upheld by the Supreme Court. This ruling significantly changed the Indian arbitration law and enhanced the procedure by allowing arbitral tribunals to hear cases by involving all relevant parties.

## JUDGMENT

On May 2, 2025, the Supreme Court of India ruled in the historic case of *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd.* that non-signatory parties may be impleaded in arbitral proceedings under the Group of Companies Doctrine (GoCD). The Court made it clear that even if a party has not signed the arbitration agreement, it can still be treated as a "party" under Section 2(1)(h) read with Section 7 of the Arbitration and Conciliation Act, 1996, if it has shown active involvement in the negotiation, execution, or performance of the relevant contract. The Court stated that the power to apply this doctrine lies not just with courts under Sections 8 and 45, but also with arbitral tribunals, which are empowered to examine such questions. In response to ABPL and AISPL's objections under Section 16 of the Arbitration Act, the Court invoked the kompetenz-kompetenz principle, which states that an arbitral tribunal has the power to determine its jurisdiction, including whether a non-signatory party is bound by the arbitration agreement. The claim that AISPL and ABPL were

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<sup>3</sup> *SBI General Insurance Co. Ltd. v. Krish Spinning Mills Pvt. Ltd.*, (2024) SCC OnLine SC 1754 (SC)

<sup>4</sup> *Gayatri Balasamy v. M/s ISG Novasoft Technologies Ltd.* [2024] SCC OnLine SC 1681 (SC)

not properly notified under Section 21 was also considered by the Supreme Court. It clarified that if the party is already bound by the arbitration agreement, the tribunal's authority is not affected by the failure to send this notice. The notice does not determine the tribunal's authority; rather, it is merely a formal step that initiates arbitration. The Delhi High Court's decision regarding the impleadment of AISPL and ABPL because of their connection with the ASF Group, the Supreme Court agreed with it. Because these entities were not operating independently, they could not be considered separate from the contracting party, BCSPL.

The Supreme Court agreed with the Delhi High Court, which had upheld the impleadment of AISPL and ABPL due to their connection with the ASF Group. It was decided that these entities could not be viewed as distinct from the contracting party, BCSPL, because they were not functioning independently. Crucially, the Supreme Court also highlighted that in order to appoint arbitrators under Section 11, According to the Supreme Court, a court only needs to determine whether an arbitration agreement initially exists or not. The arbitral tribunal has the power to make all other decisions during the case, such as whether to include a non-signatory. The Court also discussed the Doctrine of Implied Powers, which states that tribunals may include non-signatories if it is appropriate and consistent with the goals and framework of the Arbitration Act, particularly Sections 2(1)(h) and 7. So, this judgment confirms that arbitral tribunals can include non-signatory parties if the facts show shared control, intention to be bound, and closely connected actions, especially within corporate groups. This helps to make arbitration more complete and reduces the involvement of courts.

## ANALYSIS

The Supreme Court ruled that the Group of Companies Doctrine (GoCD) gives power to the tribunal to admit non-signatory parties, such as AISPL and ABPL, in arbitration proceedings. The Court ruled that the parties can still be bound by an arbitration agreement even if it hasn't signed it if they are involved in the contract's negotiation, execution, or performance. The Court clarified that arbitral tribunals have full jurisdiction to decide cases of this nature under Section 16 of the Arbitration Act. Furthermore, the Court said that the tribunal's authority does not get violated by the failure to send a notice under Section 21, as it is only meant to formally start the arbitration. Since the ASF companies were acting as a single entity, the Supreme Court agreed with the Delhi High Court that they could all be included in the arbitration. This decision is important because it gives arbitral tribunals more power, reduces

the role of the courts, and makes dispute resolution easier, especially in complex corporate structures where multiple companies operate as one.

### **AFTERMATH OF THE JUDGMENT**

The Supreme Court's ruling in *ASF Buildtech v. Shapoorji Pallonji* has brought major clarity in Indian arbitration law. The Supreme Court has officially recognised the power of arbitral tribunals to implead non-signatories, especially under the Group of Companies Doctrine. This means companies that did not sign an arbitration agreement can still be made part of the arbitration proceeding. As a result, this judgment promotes faster and complete resolution of disputes, avoids multiple court proceedings, and strengthens the authority of arbitral tribunals. It also reduces early court interference and aligns Indian law with international arbitration standards. Lastly, the Court asked the government to bring legal reforms in the Arbitration and Conciliation Bill, 2024, to include proper provisions on this issue, so that there is no confusion in the future.

### **CONCLUSION**

In this case, the Supreme Court cleared some aspects in its decision that Arbitral tribunals can implead non-signatories if factual circumstances show they are bound by the arbitration agreement. This ruling also corrected the belief that only courts could apply the Group of the Companies doctrine, affirming that tribunals have equal authority under Sections 2 (1) (h) and 7. The Supreme Court focused on the Kompetenz-Kompetenz principle. The court made it clear that tribunals can rule on their jurisdiction, including deciding whether a non-signatory is a party to the arbitration, as per section 16 of the Arbitration and Conciliation Act. This ruling also recognised the Doctrine of implied powers, in which the court held that the power to implead must be read into the act to fulfil its objective and scheme. It has reduced parallel proceedings by allowing all relevant parties to be heard in one arbitration, which ensures comprehensive and time-effective dispute resolution. India's arbitration law is now more aligned with international standards, encouraging cross-border business confidence and dispute resolution within Indian jurisdiction. At the end, the Supreme Court urged lawmakers to include express provisions on tribunal-led impleadment in the upcoming

Arbitration Bill to enhance clarity and consistency. Overall, this ruling clarified the complex provisions of the Arbitration and Conciliation Act.<sup>5</sup>

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<sup>5</sup> Reddy & Reddy Law Offices, 'Supreme Court Empowers Arbitral Tribunals to Implead Non-Signatories' (LinkedIn, 20 June 2025) <https://lnkd.in/daSx7YR6> accessed 6 July 2025