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The Supreme Court of India holds that non-service of an arbitration notice under Section 21 of the Arbitration and Conciliation Act, 1996 does not limit the arbitral tribunal's jurisdiction to implead a person as a party to the arbitration proceedings

The Supreme Court of India (“**Supreme Court**”) has in *Adavya Projects Private Limited vs. M/s. Vishal Structurals Private Limited and Ors.*¹ *inter alia* clarified that issuing a notice under Section 21² of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) is mandatory as it fixes the date of commencement of arbitration, determines limitation, and is a pre-requisite for a petition seeking appointment of an arbitrator³. However, mere non-service of the arbitration notice upon a person does not deprive the jurisdiction of the arbitral tribunal under Section 16⁴ of the Arbitration Act to determine whether they are a party to the arbitration agreement and to implead them.

Brief facts

Adavya Projects Private Limited (“**APPL**”) and Vishal Structurals Private Limited (“**VSPL**”) executed a limited liability partnership agreement (“**LLP Agreement**”) to form a limited liability partnership namely Vishal Capricorn Energy Services LLP (“**LLP**”) to carry out oil and gas sector projects. The LLP Agreement envisaged that the director of VSPL, Mr. Kishore Krishnamoorthy (“**Kishore**”), would be the chief executive officer of the LLP. Clause 40 of the LLP Agreement provided for dispute resolution through arbitration.

In 2013, APPL and VSPL executed a supplementary agreement and a memorandum of understanding for undertaking a project through the LLP (“**Project**”).

In 2018, disputes arose when APPL sought information from VSPL to audit the accounts of the LLP in relation to the Project. APPL issued demand notices calling VSPL to pay monies towards reconciliation of the accounts of the LLP.

Eventually, APPL invoked the arbitration clause of the LLP Agreement by issuing a notice of arbitration to VSPL. APPL then filed an application under Section 11 of the Arbitration Act before the Delhi High Court (“**Delhi HC**”) seeking appointment of an arbitrator to adjudicate the disputes between the parties. VSPL was named as the only respondent in the petition. The Delhi HC appointed an arbitrator to adjudicate the disputes between APPL and VSPL arising out of the LLP Agreement.

¹ 2025 SCC OnLine SC 806

² Section 21 of the Arbitration Act provides that arbitral proceedings commence on the date a party (respondent) receives a claimant's request seeking reference of a dispute to arbitration. The request for reference is commonly known as notice of arbitration.

³ Section 11 of the Arbitration Act.

⁴ Section 16 of the Arbitration Act provides that the arbitral tribunal may rule upon its own jurisdiction.

APPL filed its statement of claim before the arbitrator and named VSPL, the LLP and Kishore as parties to the arbitration. The LLP and Kishore filed an application under Section 16 of the Arbitration Act challenging the jurisdiction of the arbitral tribunal contending that the arbitration agreement contained in Clause 40 of the LLP Agreement does not bind the LLP, which is a creature of the LLP Agreement, and Kishore, as he was not a party to the LLP Agreement in his individual capacity.

The arbitral tribunal allowed the Section 16 application (“**Section 16 Order**”) and held that arbitration proceedings against the LLP and Kishore were not maintainable since – (a) the notice of arbitration under Section 21 of the Arbitration Act was not served upon the LLP and Kishore; and (b) the Delhi HC did not refer the LLP and Kishore to arbitration while allowing APPL’s Section 11 application. The arbitral tribunal also rejected APPL’s prayer in its application under Section 23(3)⁵ of the Arbitration Act seeking to bring on record a detailed memo of parties which named the LLP and Kishore as parties and also seeking to amend its prayer in its statement of claim to include the LLP and Kishore.

APPL filed an appeal under Section 37(2)(a) of the Arbitration Act assailing the Section 16 Order before the Delhi HC.

By an order dated July 8, 2024, the Delhi HC dismissed this appeal and upheld the Section 16 Order (“**Impugned Order**”).

Being aggrieved by the Impugned Order, APPL filed the present proceedings before the Supreme Court.

Issues

1. Whether service of a notice under Section 21 of the Arbitration Act and joinder in a Section 11 application are pre-requisites to implead a person/entity as a party to the arbitration proceedings?
2. What is the relevant inquiry that the arbitral tribunal must undertake when determining its own jurisdiction under Section 16 of the Arbitration Act?

Findings and analysis

The Supreme Court allowed the appeal and *inter alia* held the following:

1. A notice invoking arbitration under Section 21 of the Arbitration Act is mandatory for determining the limitation period and for filing a Section 11 application. Mere failure to issue an arbitration notice or implead certain persons who are parties to an arbitration agreement in a Section 11 application, would not denude the arbitral tribunal’s jurisdiction to implead them as parties during the arbitral proceedings.
2. The decision of the Delhi HC in *Alupro Building Systems Private Limited vs. Ozone Overseas Private Limited*⁶ is overruled to the extent that it provides that non-service of a notice on a party nullifies the jurisdiction of the arbitral tribunal.
3. In an application under Section 16 of the Arbitration Act, the arbitral tribunal must determine whether a non-signatory is a party to an arbitration agreement in line with the provisions of Section 7⁷ of the Arbitration Act. For this exercise, the arbitral tribunal has to consider the ratio in the Constitution Bench judgment in *Cox and Kings Ltd. vs. SAP India Private Limited*.⁸, wherein it was held that non-signatories can be impleaded to an arbitration if their conduct shows that they are veritable parties to the arbitration agreement.

⁵ Section 23(3) of the Arbitration Act provides that if the arbitral tribunal considers it appropriate, it may allow any party to supplement or amend their claim, during the course of the arbitral proceedings.

⁶ 2017 SCC OnLine Del 7228

⁷ Section 7 of the Arbitration Act specifies what constitutes an arbitration agreement.

⁸ (2024) 4 SCC 1

In the facts of the present case, the LLP and Kishore, despite being non-signatories, had through their conduct, consented to perform contractual obligations under the LLP Agreement and thus, the Supreme Court found them to be parties to the arbitral proceeding.

Conclusion

By the present decision, the Supreme Court has held that the arbitral tribunal is the master of its own jurisdiction under Section 16 of the Arbitration Act and its jurisdiction to implead parties to an arbitration proceeding is based solely on determining whether such person/persons is/are a party to the arbitration agreement. Even the issuance of the mandatory arbitration notice under Section 21 of the Arbitration Act is not a prerequisite for the arbitral tribunal to exercise its jurisdiction to determine the parties to an arbitral proceeding. This decision shows the continuous effort of the judiciary in reposing faith in arbitral tribunals and recognising arbitration as an effective means of dispute resolution.

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This Prism is prepared by:



Farhad Sorabjee
Partner



Dhirendra Negi
Partner



Shanaya Cyrus Irani
Partner



Tanya Tiwari
Principal Associate



Siddhesh Pradhan
Principal Associate



Isha Singhal
Associate



Meher Mistri
Associate



Jatin Asrani
Junior Associate



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