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Composite Transactions and Impleadment of Non-Signatories

Part II – Single Project & Multiple Parties

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Chapter I – Introduction

1. In today's complex world of EPC contracts, simplicity has vanished. No longer is there just a single contract or just two signatories. Instead, a single project often unravels into a web of multiple agreements. Each agreement may be executed by different parties. Some of these parties never even sign the main contract. Some may have granted the entire project to a Project Management Consultant to execute on their behalf and some may have been sub-contracted the entire construction by the Principal Contractor and may have no privity with the Employer. Yet, all such parties become deeply entangled in the execution of the project. Every contract for the project may have its own arbitration clause (or no arbitration clause at all) but any dispute which arises, may be overarching and may cut across contracts as it pertains to the entire project. In such a scenario the dispute most likely does not restrict itself to just the named parties and may spill over to the non-signatories, who, may or may not be intrinsically involved in the negotiation, performance, or termination of the contract. An arbitration only between the direct parties may not truly resolve the dispute. A more efficient resolution of the dispute may be through a common arbitration with all the parties that form part of the project, in a bid to avoid multiplicity of proceedings.

2. Consider a central government university being setup. It deputes the responsibility for the construction of the university campus to a public sector works department. The public sector works department in turn initiates a tender process and awards the tender to a private construction company. Accordingly, a contract is entered into only between the works department and the construction company. Certain disputes arise between the private construction company, and the works department and the matter reaches the court for appointment of an arbitrator. In the said process the central government university attempts to implead itself as a party, however, the Court rejects the impleadment of the Central Government University. The ground for the rejection being that the ultimate beneficiary of a project does not get the right to an automatic impleadment. The Court based its decision on the principles consolidated in ***Cox & Kings Ltd. v. SAP India (P) Ltd.***,[3] ("***Cox Kings II***") and it states that every non-signatory has to fall within the implied consent principles, to be eligible for an impleadment, and the central government university, does not fulfil the said criteria. The above is a real scenario which occurred in the case of the ***IIT Mandi Project***[4] and the ***IIM Jammu Project***.[5] The law on this issue is very nascent and not fully settled. The authors, therefore, shall attempt to perform a deep dive and understand the principles and practical considerations involved in the impleadment of the non-signatories in such single project – multiple contract cases. This is Part II of the series and will build on Part I

[3] Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1.
[4] Indian Institute of Technology v. Central Public Works Department, 2025 SCC OnLine HP 7878; Indian Institute of Technology Mandi (Kamand) Vs. Central Public Works Department (CPWD) and anr. LPA 121 of 2026.
[5] M/S Ramacivil India Construction Pvt Ltd v. Central Public Works Department ARB.P. 1787/2025, Order Dated 29.05.2026.

of which dealt with the evolution of the law of impleadment with a focus on composite transactions.

3. The purpose of this article is to deep dive into the principles of multi-contract projects and the principles of impleadment in cases of composite transactions. The authors shall discuss and dismantle the law starting from ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*** ("***Chloro Controls***")[6] and make its way to the consolidation by the Constitution Bench judgment in ***Cox & Kings II*** and also discuss certain cases that followed thereafter. The article shall demonstrate the evolution of the principles of composite transactions for impleadment of non-signatories.

4. We shall thereafter critique whether the consent requirement is necessary to be demonstrated during the execution, performance or termination of the principal contract only or can it be given at the time when the dispute arises. We shall also propose two exceptions for the consent principles in cases of multi-party multi contract commercial projects and base our arguments on the principles of avoiding multiplicity of proceedings. During the process we shall also be referring to the principles of proper party, which finds support in the Code of Civil Procedure, to demonstrate that impleading parties such as IIT Mandi and IIM Jammu in a composite / consolidated arbitration, would be justified, as it would enable the Arbitral Tribunal to completely, effectively and adequately adjudicate upon all matters in dispute in the arbitration, though such awards need not necessarily be in favour of or against such a proper party who has been impleaded.

Chapter II – Understanding Consent in Composite Transactions and Multi Party projects

5. In multi-party agreements, a recurring issue that arises is the determination of who constitutes a "veritable party" to the arbitration agreement. As arbitration is a consent-based mechanism only those parties who have consented can be bound by an arbitration agreement. However, in cases of multiple contracts with multiple parties carrying out various parts of a single project, a consolidated arbitration may not be available by applying only the aforesaid consent principles. ***Cox & Kings II*** itself indicated an answer to this issue. The Court held that where a non-signatory is involved in activities directly related to that subject matter, it suggests the non-signatory consented to arbitrate with respect to the particular subject-matter.[7] With reference to previous judgments, ***Cox & Kings II*** also discussed and consolidated the law on the factors to be considered while impleading the non-signatory on grounds of common subject matter and composite transaction.

The Composite Transaction Angle

6. In ***MTNL v. Canara Bank***, the Supreme Court clarified that '*composite transaction refers to a situation where the transaction is interlinked in nature or where the performance of the*

[6] Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641.
[7] Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1, ¶120.

principal agreement may not be feasible without the aid, execution, and performance of the supplementary or ancillary agreements.'[8] ***Cox & Kings II*** therefore re-iterated that the courts or tribunals have to assess '*whether the agreements are consequential or in the nature of a follow-up to the principal agreement.*'[9]

7. Lastly, common participation of signatory and non-signatory parties in the performance of a single commercial project may be considered as a factor. In ***Chloro Controls*** it was clarified that the principle of composite performance would have to be gathered through a conjoint reading of the principal and supplementary agreements. Along with this, the explicit intention of the parties and the attendant circumstances should be taken into account. Hence, where both signatory and non-signatory entities participate in the execution of a commercial venture aimed at achieving a common purpose, such participation may indicate that the parties intended the non-signatory to be bound by the arbitration agreement. This is essentially the approach adopted by the Court in ***Ameet Lalchand*** and received tacit approval in ***Cox & Kings II*** as well. [10]

8. Additionally, in the context of multi-party transactions forming part of a single commercial project, ***Cox Kings II*** emphasized that the determination of consent or intent of a non-signatory must be understood by examining the commonality of the subject-matter and the composite nature of the transaction. The Court understood modern commercial realities and explained as follows:

> ***132.*** *We are of the opinion that there is a need to seek a balance between the consensual nature of arbitration and the modern commercial reality where a non-signatory becomes implicated in a commercial transaction in a number of different ways. Such a balance can be adequately achieved if the factors laid down under Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] are applied holistically. <u>For instance, the involvement of the non-signatory in the performance of the underlying contract in a manner that suggests that it intended to be bound by the contract containing the arbitration agreement is an important aspect. Other factors such as the composite nature of transaction and commonality of subject-matter would suggest that the claims against the non-signatory were strongly interlinked with the subject-matter of the tribunal's jurisdiction.</u> Looking at the factors holistically, it could be inferred that the non-signatories, by virtue of their relationship with the signatory parties and active involvement in the performance of commercial obligations which are intricately linked to the subject-matter, are not actually strangers to the dispute between the signatory parties.*

[8] MTNL v. Canara Bank, (2020) 12 SCC 767, ¶10.6
[9] Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1, ¶121.
[10] *Id.* ¶122.

> ***133.*** *We hold that all the cumulative factors laid down in Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] must be considered while determining the applicability of the Group of Companies doctrine. However, the application of the above factors has to be fact-specific, and this Court cannot tie the hands of the Courts or tribunals by laying down how much weightage they ought to give to the above factors. This approach ensures that a dogmatic emphasis on express consent is eschewed in favour of a modern approach to consent which focuses on the factual analysis, complexity of commercial projects, and thereby increases the relevance of arbitration in multi-party disputes. Moreover, it is also keeping in line with the objectives of the Arbitration Act which aims to make the Indian arbitration law more responsive to the contemporary requirements.*[11]
>
> *(Emphasis Supplied)*

9. Now, consider, for instance, a power infrastructure project where B undertakes the overall responsibility of constructing a power transmission system. For the execution of the project, B enters into separate agreements with two different contractors. Under the first contract, B engages A for the installation of transmission lines, while B undertakes that the transformer will be ready by a certain deadline. Under the second contract, however, B enters into an agreement with C for the supply of transformers itself, while B undertakes the responsibility for the transmission lines being in place by a particular date, basis its agreement with A. In effect, the performance of both agreements becomes interdependent, as the completion of the project requires both the transformer and the transmission lines to be installed.

10. Suppose both A and C default in the performance of their respective obligations. A fails to install the transmission lines in time, while C delays the supply and installation of the transformer. In such a scenario, B suffers losses arising from delays in the completion of the project. However, if B initiates arbitration separately against A and C under their respective contracts, each respondent may argue that even if some delay was caused at their end, even B was not ready with the partial responsibility in both contracts. Separate arbitral proceedings would therefore make it difficult to determine the true cause of delay and may result in inconsistent findings.

11. In such circumstances, even though there is no direct contractual relationship between A and C, the disputes arise from a single commercial project involving interdependent obligations. Allowing B to pursue claims against A and C through a composite reference in a single arbitration, even if there's no arbitration clause in one of the contracts, may become necessary. A & C may never have consented to be in the same arbitration but have consented to being in an arbitration regarding a particular subject matter and thereby will be amenable to an arbitration

[11] *Id.* ¶132-133.

for a common subject matter / single commercial project which has found judicial approval in ***Cox & Kings II.*** This solution may enable the arbitral tribunal to examine the entire factual matrix and determine the respective liabilities of all parties involved. Such an approach better reflects commercial reality and ensures that disputes arising from a single commercial project are resolved in an efficient manner.

CHAPTER III: Reconciling Consent principles with Commercial Reality in IIT Mandi and IIM Jammu Case

12. The discussion in the preceding chapters and Part I of this series demonstrates that modern arbitration has expanded the scope for impleading non-signatories. A pre-requisite for the same is the intent of the non-signatory to be bound by the arbitration agreement. Various doctrines and modes such as composite transactions, group companies have enabled the courts and tribunals to look beyond the formal structure of contracts and examine the commercial reality of the underlying transaction. These developments assume particular significance in the context of large commercial projects involving multiple interconnected agreements. In these cases, if the disputes are fragmented across several arbitral proceedings, it may defeat the very objective of arbitration as an efficient dispute resolution mechanism.

Consent as the Primary Basis for Impleadment and Its Limitations in Composite Transactions

13. It is relevant to note that the initial version of this article, was to focus on the development of the law of Group Companies and Composite Transactions after the judgments in Cox & Kings II, Ajay Madhusudan and ASF Buildtech. However, when the initial news and orders relating to the IIT Mandi and IIM Jammu case were pronounced / reported, the article found its focus on multi-party single project arbitrations with the concept of Composite Transaction and Consolidated Arbitrations. The single project cases of IIT Mandi and IIM Jammu tremendous flip flot and uncertainty perhaps because the law on this aspect is fairly new having been formulated for the first time in ***Cox & Kings II***. The above legal discussion has brought us to now focus on the curious case of IIM Jammu and IIT Mandi.

IIT Mandi Case

14. IIT Mandi entered into a Memorandum of Understanding with Central Public Works Department ("**CPWD**") for construction of the campus, pursuant to which CPWD entered a contract with a private contractor. When disputes arose between CPWD and the Contractor, arbitration was invoked in the contract specific to those two parties only. IIT Mandi, however, sought impleadment before the Arbitral Tribunal based on its substantial financial interest in the project. The Arbitral Tribunal declined the impleadment on the ground that the reasons mentioned in the application do not fulfil the criteria for impleadment of non-signatories as outlined in ***Cox & Kings II***. The Arbitral tribunal was also not convinced by the submissions that if any award is issued by the Tribunal in favour of the Claimant, the effect of which will

have to be borne by IIT Mandi.[12] The Arbitral Tribunal also made an observation that the principles of Order I Rule 10 are not applicable to Arbitration proceedings, thereby disregarding any arguments on behalf of IIT Mandi that it is a necessary or proper party as per the Code of Civil Procedure.[13]

15. The order of the Arbitral Tribunal, rejecting impleadment of IIT Mandi, was appealed before the High Court of Himachal Pradesh. The Hon'ble Single Judge of the High Court in its decision on 29th December 2025 also concurred with the decision of the Arbitral Tribunal. [14] The Single Judge heavily relied on the case of ***Cox & Kings II*** and ***ASF Buildtech*** to hold that since IIT Mandi was not involved in the "*negotiation, performance and termination of the underlying contract containing such Agreement*" it has therefore failed to satisfy the consent-based threshold for impleadment as a non-signatory.[15]

16. In the humble opinion of the Authors, the Single Judge bench has erred by not applying the other factors which have been clearly referred to in ***Cox & Kings II***[16] itself, regarding the commonality of the subject matter in complex multi-party commercial projects (as discussed in the preceding sections of this article). Also as indicated above, the Judgment of the Hon'ble Single Judge has been appealed before the Division Bench of the Hon'ble High Court of Himachal Pradesh. The primary argument again taken by IIT Mandi is that IIT Mandi is a beneficiary of the project and would have to bear the burden of the award, if any, and that it has to raise valid defence pleas against the contractor's claims.[17] Taking into account the prima facie arguments on behalf of IIT Mandi, the Division Bench has stayed further proceedings before the arbitral, till the appeal, regarding the impleadment of IIT Mandi in the arbitration, is decided.[18] There is no progress in the case as on 22.06.2026, being the last date of the hearing before the Article was published.

IIM Jammu Case

17. Similarly, in IIM Jammu case, the Jt. Registrar (Judicial) of the Delhi High Court, in an application for impleadment preferred by IIM Jammu (interestingly preferred under Order I Rule 10), accepted the application and allowed the impleadment.[19] In its analysis, the Jt. Registrar held, *inter alia*, that IIM Jammu is the ultimate beneficiary of the project, is responsible for all

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[12] Indian Institute of Technology v. Central Public Works Department, 2025 SCC OnLine HP 7878, ¶10.
[13] *Id.* ¶10.
[14] *Id.* ¶22.
[15] *Id.* ¶19-20.
[16] Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1, ¶132.
[17] Indian Institute of Technology Mandi (Kamand) v. Central Public Works Department (CPWD) and Anr. LPA 121 of 2026, Order dated 16.03.2026, ¶7.
[18] Indian Institute of Technology Mandi (Kamand) v. Central Public Works Department (CPWD) and Anr. LPA 121 of 2026, Order dated 16.03.2026, ¶10; PS Shivani, *Himachal Pradesh High Court Stays Further Arbitration Over Construction Project At IIT Mandi*, LiveLaw Biz (Mar. 18, 2026), https://www.livelawbiz.com/arbitration/himachal-pradesh-high-court-stays-further-arbitration-over-construction-project-at-iit-mandi-526979
[19] Ramacivil India Construction Pvt. Ltd. v. CPWD ARB.P. 1787/2025, Order dated 23.01.2026.

payments, and is involved in the day-to-day planning and supervision of the project.[20] The Order of the Jt. Registrar was appealed before the Single Judge of the Hon'ble High Court of Delhi. The Single Judge, however, overturned the decision of the Jt. Registrar in a detailed analysis taking an opposite view on the facts of the case.[21] The Single Bench of the Delhi High Court held that arbitration agreement existed solely between CPWD and the Contractor and that absence of privity of contract precluded impleadment. The Court further held that mere status as an ultimate beneficiary could not justify joinder in arbitration proceedings.[22] This Single Bench Decision of the Court was appealed before the Division Bench.

18. The Division Bench noted that the petition before the single judge was filed with a delay and the Single Judge adjudicated the same without an application for condonation of delay. Therefore, the Division Bench restored the chambers appeal before the Single Judge bench due to this procedural error. The Single Judge bench disposed of the restored appeal on 29th May, 2026 and reiterated that mere status as the ultimate beneficiary of the project doesn't warrant impleadment.[23] It was noted that the reasoning of the Jt. Registrar while allowing IIM Jammu to be impleaded overlooked the well settled principle that arbitration is founded upon consent and that a party can be subjected to arbitral proceedings only where it is bound by the arbitration agreement.[24] The contractual clauses on which reliance was placed to prove involvement of IIM Jammu in the project clearly distinguished it as a supervisory authority rather than an executing authority.[25]

19. The Single Judge Bench raised a concern that impleadment of necessary parties would undermine the consensual nature of arbitration, dilute the principle of party autonomy, and convert arbitral proceedings into sprawling multi-party disputes lacking any contractual foundation.[26] Additionally, such impleadments would compel the impleadment of multiple governmental authorities and principal institutions in arbitrations involving layered contractual arrangements, despite the absence of contractual privity or consent to arbitrate.[27] While these concerns are well-founded, they also expose a broader unresolved question: should the principle of consent invariably prevail even in complex, multi-contract commercial projects where the absence of parties may frustrate effective adjudication and lead to fragmented proceedings?

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[20] *Id.* ¶28.
[21] Ramacivil India Construction Pvt. Ltd. v. CPWD, Chamber Appeals O.A 40,41,42/2026, Order dated 19.02.2026.
[22] *Id.* ¶15
[23] M/S Ramacivil India Construction Pvt Ltd v. Central Public Works Department ARB.P. 1787/2025, Order Dated 29.05.2026.
[24] *Id.* ¶102.
[25] *Id.* ¶97.
[26] *Id.* ¶95.
[27] *Id.* ¶84.

20. In the humble opinion of the authors, the clear dicta of the Hon'ble Supreme Court in ***Cox & Kings II***,[28] ***Ajay Madhusudan***[29] and ***ASF Buildtech***[30] has not been followed. The Jt. Registrar undertook a factual and legal analysis and held that **IIM Jammu** was a veritable party.[31] The Single Judge of the High Court, in appeal, undertook the same enquiry and reversed the decision.[32] Both the Jt. Registrar and the Single Judge Bench of the High Court should have refrained from deciding the issue of whether the non-signatory, i.e. IIM Jammu, is a veritable party or not. The said determination is to only be made by the Arbitral Tribunal under Section 16, on the facts and circumstances of the case, and by applying the relevant principles as have been outlined in the Supreme Court Judgments referred above. A similar approach was taken by the Supreme Court in ***DLF Home Developers Ltd. v. Rajapura Homes***, while addressing whether there shall be a single arbitral tribunal or separate arbitrations for two interlinked contracts. The Supreme Court held that the *"sole arbitrator shall decide whether the dispute should be adjudicated as one composite award or otherwise."*[33]

CHAPTER IV : Expanding principles for impleadment in Single Project – Multiple Party Cases

Proposal for 'Single Project exception' to the Consent based Approach for impleadment of non-signatories

21. The authors are of the considered opinion that in large infrastructure and EPC projects, the ultimate beneficiary may not be directly involved in negotiating or executing the contract but is still closely connected to the project's economic framework. Therefore, lack of direct involvement does not mean there is no broader commercial connection. Accordingly, while consent should remain the primary rule and be applied first, the Authors are of the considered opinion that in multi-party single commercial projects, courts may need to go beyond the consent-based approach for impleading non-signatories.

22. The jurisprudence post ***Chloro Controls*** has progressively recognized that modern commercial transactions are rarely confined to bilateral relationships. In ***Ameet Lalchand***, the Supreme Court referred disputes arising out of multiple agreements to a single arbitration, on the ground that all agreements formed part of a single commercial project.[34] Similarly, in *KGPS Mechanical Pvt. Ltd. v. Cinda Engineering (**"KGPS Mechanical"**)*, even contracts lacking arbitration clauses were brought within a composite reference. These decisions indicate that the principle of consent is not to be applied in a narrow or formalistic manner but must be interpreted in light of commercial reality, especially in such single commercial projects.

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[28] Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1.
[29] Ajay Madhusudan Patel v. Jyotrindra S. Patel, (2025) 2 SCC 147.
[30] ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd., 2025 SCC OnLine SC 1016.
[31] Ramacivil India Construction Pvt. Ltd. v. CPWD ARB.P. 1787/2025, Order dated 23.01.2026.
[32] Ramacivil India Construction Pvt. Ltd. v. CPWD ARB.P. 1787/2025, Order dated 19.02.2026.
[33] DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd., (2021) 16 SCC 743, ¶41.
[34] Ameet Lalchand Shah v. Rishabh Enterprises, (2018) 15 SCC 678, ¶25.

23. In Ganapati Technology Services (P) Ltd. v. State Fisheries Development Corpn. Ltd.,[35] ***("Ganpati Technology")*** while dealing with the issue of composite references, the Calcutta High Court expressly recognised that disputes arising from multiple agreements executed for the implementation of a single commercial project need not be fragmented into separate arbitral proceedings. Notably, even in ***Cox & Kings II***, the Supreme Court employed the expression "*single commercial project*" repeatedly while justifying a composite reference.[36] The authors therefore seek to build upon and expand this framework recognised by the Court through the proposed "*Single Project Exception*". The relevant paragraph from ***Ganpati Technology*** is extracted hereunder:

> *21. Under Section 7 of the Act of 1996 an arbitration agreement has to be in writing between identifiable parties referring specified disputes in respect of a defined legal relationship whether contractual or not. A composite reference is permissible under the Act of 1996. In order to make a composite reference, various factors have to amalgamate so as to make a composite reference possible. There has to be a mother agreement and ancillary agreements governing the parties. The concerned arbitration agreement or the mother agreement should be comprehensive enough to bring within its fold agreements ancillary to the mother agreement so that, the disputes arising out of or in connection with the mother agreement or the ancillary agreement can be settled by a composite reference. If the parties have entered into several agreements in respect of a single commercial project, then also, the disputes and differences arising out of the various agreements could be resolved by referring the parties to a composite arbitration. Essentially, there has to be a single commercial project under which, there may or may not be several contracts or agreements involving various parties. The arbitration agreement of the single commercial project should be wide enough to encompass the parties to the subsequent agreements. Again if there are two or more contracts and they are so intertwined with each other so as to prejudice the parties should separate arbitrations are held, then a composite reference can be made.*

24. Even in ***Cox and Kings II***, the Supreme Court recognised that there is a 'need for balance between the consensual nature of arbitration and the modern commercial reality where a non-signatory becomes implicated in a commercial transaction in a number of different ways.' Stretching the said principle, the authors propose that a single project exception should be carved out. The said exception would allow parties from a single project to get impleaded in an arbitration being fought between other actors in a single project, irrespective of whether the consent-based principles have been fulfilled or not. Looked from another perspective, ***Cox & Kings II*** itself hints at a following a nuanced approach to commercial projects and multi-party

[35] Ganapati Technology Services (P) Ltd. v. State Fisheries Development Corpn. Ltd., 2021 SCC OnLine Cal 4320
[36] Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1, ¶223.2.

disputes by being more responsive to contemporary requirements. The Authors believe that the suggested exception would fall under the above guidelines of ***Cox & Kings II.***

25. Another exception being proposed by the Authors is supported by a long-standing principle of the Code of Civil Procedure and the suggestion is more on the lines of bringing those well-established principles into arbitration jurisprudence.

Importing the "Proper Party" Doctrine into principles of impleadment in arbitration

26. A proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings.[37] In *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre*[38] Hon'ble Supreme Court held that:

> *"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made."*

27. The incorporation of these principles in arbitration has been resisted on the premise that the cornerstone of arbitration is consent. In *Indraprastha Power Generation Co. Ltd. v. S.P. Engineering,* a solar project contract existed between IPGCL and the contractor.[39] The Contractor claimed unpaid 30% subsidy. IPGCL argued that the Subsidy comes from MNRE and therefore MNRE should be impleaded as a party. Reliance was placed on ***Cox & Kings II*** to argue that there should be some kind of connection or positive act by the conduct of the non-signatory indicating a connection to the contractual duties of the parties. Although the principles of necessary and proper parties are inapplicable to arbitration, the court still proceeded to examine whether MNRE could be considered a proper party. In this case the test to be a proper party wasn't satisfied, but it raised a pertinent question. If, in a given case, the facts do satisfy the test of a "proper party," should such a non-signatory be impleaded in arbitration despite the absence of consent?

28. In the IIT Mandi case, the Ld. arbitrator specifically held that if it were a civil suit then IIT Mandi would have been a proper party.[40] Even in the IIM Jammu case, the application preferred before the Jt. Registrar for impleadment was filed under Order I Rule 10. Although the same might not amount to a judicial dictum, it demonstrates there is specific need for transposing

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[37] Globe Ground (India) Employees Union v. Lufthansa German Airlines, (2019) 15 SCC 273, ¶10.

[38] Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd & Ors. (2010) 7 SCC 417.

[39] Indraprastha Power Generation Co. Ltd. v. Hero Solar Energy (P) Ltd., 2024 SCC OnLine Del 6080, ¶36.

[40] Indian Institute of Technology v. Central Public Works Department, 2025 SCC OnLine HP 7878, ¶10 (41).

or rather borrowing the principles of impleadment under Order I Rule 10 into arbitrations as well. It is in this context that the authors propose another limited but necessary exception to the consent principle in cases involving multi-party, multi-contract single commercial projects.

29. In the humble opinion of the Authors, where consent-based principles are not sufficient to include all parties involved and fails to capture the full spectrum of the transaction, the ultimate beneficiary should be impleaded on the basis of the concept of a 'proper party' as propounded under Order I Rule 10 of the Code of Civil Procedure. By definition, a proper party need not be permitted to file full pleadings but may be relevant for an effective adjudication of the issue between the parties and would ably assist the Tribunal in reaching a meaningful resolution to the dispute. The integration of proper party principles into arbitration is therefore necessary and there is a need for clear judicial recognition, or for the law to evolve accordingly.

30. The incorporation of the proper party doctrine as an exception does not negate the principle of consent but recalibrates it in light of commercial realities. The evolution of arbitration law from *Chloro Controls* to the 2015 amendments and most recently *Cox & Kings* illustrates that the doctrine is not static but responsive to changing commercial needs. The next logical step is enabling arbitration to function as a truly effective and comprehensive dispute resolution mechanism in complex, multi-party commercial disputes.

Basis for the proposed exceptions: avoiding multiplicity of proceedings

31. The justification for carving out the exceptions, suggested above, to the consent principle in cases of single commercial projects, lies in the twin objectives of ensuring effective arbitration and avoiding multiplicity of proceedings. Multiplicity of prooceedings may occur in cases where arbitral proceedings are between the same parties under the same contract, the same parties arising from a set of contracts constituting one series, which bind them in a single legal relationship or arising out of identical or similar contracts between one set of entities, wherein the other entity is common.[41]

32. The doctrine of composite transaction, as laid down in ***Chloro Controls***, was specifically developed to address the problem of fragmented adjudication and the proposed exceptions above are a step in the same direction. The courts in *P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.*[42]demonstrated that having a consolidated single arbitration is preferable. The relevant paragraph is extracted hereunder:

> ***"19.*** *If A had a claim against B and C, and there was an arbitration agreement between A and B but there was no arbitration agreement between A and C, it might not be possible to have a joint arbitration against B and C. A cannot make a claim against C in an arbitration against B, on the ground that the claim was being made jointly against B and C, as C was not a party to the arbitration agreement. But*

[41] Gammon India Ltd. v. National Highways Authority, 2020 SCC OnLine Del 659, ¶30.
[42] P.R. Shah, Shares & Stockbrokers (P) Ltd. v. B.H.H. Securities (P) Ltd., (2012) 1 SCC 594, ¶19.

> *if A had a claim against B and C and if A had an arbitration agreement with B and A also had a separate arbitration agreement with C, there is no reason why A cannot have a joint arbitration against B and C. Obviously, having an arbitration between A and B and another arbitration between A and C in regard to the same claim would lead to conflicting decisions. In such a case, to deny the benefit of a single arbitration against B and C on the ground that the arbitration agreements against B and C are different, would lead to multiplicity of proceedings, conflicting decisions and cause injustice. It would be proper and just to say that when A has a claim jointly against B and C, and when there are provisions for arbitration in respect of both B and C, there can be a single arbitration."*

33. In ***KGPS Mechanical*** as well, the Court favoured the appointment of a sole arbitrator to avoid multiplicity of proceedings. It observed that, since all the contracts related to the same project and formed part of a single series of works, the appointment of a sole arbitrator would facilitate the efficient dispute resolution. In multi-contract projects, disputes are rarely confined to a single agreement. The obligations undertaken by different parties are often interdependent, and the determination of liability becomes difficult. Fragmentation of such disputes across multiple arbitral proceedings poses a risk of inconsistent decisions andallocation of liability.[43]

34. The Delhi High Court's observations in *Gammon India Ltd. v. National Highways Authority,**(Gammon India)*** provide further support. While recognising that filing different claims at different stages of a contract or project is legally permissible, particularly in long-duration commercial contracts, the Court unequivocally cautioned that multiplicity ought to be avoided.[44] It observed that multiple arbitrations before different Arbitral Tribunals would lead to confusion. Since the purpose of arbitration is the speedy resolution of disputes, the constitution of multiple tribunals was held to be inherently counter-productive."[45] Consequently, the Court held that, in respect of a particular contract or a series of contracts that bind the parties in a legal relationship, the endeavour should always be to make one reference to one Arbitral Tribunal.[46] The Court held that once an arbitral tribunal has been constituted in relation to a particular contract or a series of related contracts, any subsequent disputes arising therefrom should ordinarily be referred to the same tribunal. While the tribunal may issue separate awards for different references, retaining the same tribunal helps prevent conflicting or inconsistent findings.

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[43] Deepak Jain, Sanjolli K Padhy and Muskaan Aggarwal, 'Multiplicity of Arbitration Proceedings - A Study' 1 The Indian Journal of Projects, Infrastructure, and Energy Law 37 <https://ijpiel.com/wp-content/uploads/2022/10/Multiplicity-of-Arbitration-Proceedings-A-Study.pdf>
[44] Gammon India Ltd. v. National Highways Authority, 2020 SCC OnLine Del 659, ¶26
[45] Gammon India Ltd. v. National Highways Authority, 2020 SCC OnLine Del 659, ¶28
[46] Gammon India Ltd. v. National Highways Authority, 2020 SCC OnLine Del 659, ¶35(i)

35. The ***Gammon India*** ruling underscores the problem of multiplicity of arbitral proceedings. In an attempt to address the issues of inconsistent findings and unnecessary delay due to fragmented arbitration, the Court laid down a series of recommendations aimed at minimising multiplicity. Consider a construction dispute where the employer attributes delay to the principal contractor, the principal contractor alleges that the delay arose from the acts of a subcontractor, while the subcontractor contends that the employer failed to provide site access or approvals. If these disputes are adjudicated independently, each tribunal may allocate responsibility differently, leaving the parties with multiple awards that are individually coherent but collectively irreconcilable. A single tribunal, by contrast, is capable of examining the entire chain of contractual obligations and allocating liability proportionately after considering the conduct of every participant involved in the execution of the project.

36. As noted above in ***Ganpati Technology*** composite reference is permissible when there are several agreements between various parties for a single commercial project. It is in this context that the principle of a "proper party" assumes significance. The underlying rationale of Order I Rule 10 of the Code of Civil Procedure is to ensure that all parties required for complete and effective adjudication are before the court, thereby avoiding multiplicity of proceedings and inconsistent outcomes. This rationale aligns closely with the objectives of arbitration, which seeks to provide an efficient resolution of disputes. As the law stands today, the exclusion of ultimate beneficiaries such as IIT Mandi and IIM Jammu, despite their undeniable connection to the underlying project, defeats both these objectives. Their absence from the arbitral proceedings may result in incomplete adjudication and may compel parties to initiate parallel proceedings. This in turn increases chances of contradictory decisions and delayed resolution, if any. Their inclusion would enable the arbitral tribunal to examine the entire factual matrix and determine the respective rights and liabilities of all stakeholders in a single forum. The Authors are therefore of the considered opinion that in cases like these, even in the absence of conduct indicating consent, as consolidated in ***Cox & Kings II,*** proper party principles should be applied to implead the ultimate beneficiaries.

Conclusion of Part II

37. The decisions in IIT Mandi and IIM Jammu exemplify the tension between the traditional consent-based model of arbitration and the evolving realities of multi-party commercial transactions. While consent remains the cornerstone of arbitration, its rigid application in complex project structures may lead to exclusion of parties who are integral to the dispute.

38. This paper submits that a balanced approach is required. First, referral courts must adhere to the mandate of ***Cox and Kings II, Ajay Madhusudan*** *and* ***ASF Buildtech*** and refrain from undertaking detailed enquiries into impleadment, leaving such determinations to the arbitral tribunal. Second, while consent principles should continue to guide impleadment, an exception must be recognized in cases of single project cases where strict application of consent proves inadequate; adequate observation have also been made in this regard in ***Cox & Kings II*** wherein the Court has held that the modern principles of consent being enunciated are not hard and fast

and that the Tribunals will have to determine the impleadment based on the facts and circumstances and look at other factors such as commonality of the subject matter in complex commercial disputes to reach a conclusion on the impleadment of a party. Third, the principles of proper party under the CPC should be incorporated as a limited exception to enable comprehensive adjudication and to avoid multiplicity of proceedings. Such an approach would not only align arbitration law with commercial reality but also advance its fundamental objectives of efficiency, finality, and coherence. By enabling consolidated arbitration and ensuring effective adjudication, the inclusion of ultimate beneficiaries as proper parties would represent the next logical step in the evolution of arbitration jurisprudence in India.