Multiplicity of Arbitration Proceedings - A Study

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Abstract

The notion that every arbitration is subject to the permission of the parties is well-established and widely accepted. Generally, in any given arbitration proceeding, the process involves two parties to a dispute who have agreed on pen and paper to resort to arbitration in case of any dispute. However, due to globalization and increasingly complex contracts, there exist situations where numerous parties or numerous contracts are in a dispute arising from the same issue.

In such situations, a series of arbitrations relating to the same dispute may be the result, with the risk of conflicting decisions. The paper shall examine the various elements surrounding the multiplicity in proceedings to give the readers a clear understanding of the issues that arise and how to tackle the same. The implementation of court-ordered consolidation is one approach that several jurisdictions have attempted to address this problem. This paper will attempt to examine the inadequacies of arbitration in multi-party contractual disputes, as well as the effectiveness of various possible methods that can be used for resolving such disputes as a solution by examining various judicial pronouncements.

Keywords: *Multiple Agreements, Arbitration, Arbitral Tribunal, Disputes*

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Introduction

"Differences we shall always have but we must settle them all, whether religious or other, by arbitration."

– Mahatma Gandhi

Arbitration has clearly evolved through time as the optimum tool for resolving disputes that saves the time of the court and is mainly essential in supporting the parties in resorting to speedy corrective actions. Every arbitration is founded on a careful application of the law, and its progression demonstrates its importance in the real procedures. As a result, arbitration has become the most popular forum for quickly resolving conflicts, particularly in the industrial and corporate realms.

Parties routinely refer disputes arising from the same contract to arbitration at intervals to avoid problems being time-barred. Multiple arbitration processes between the same parties' make the process more difficult, especially when the parties fail to inform the existence of multiple arbitration proceedings to their respective tribunals. As a result, not only do the parties' efforts increase but so do the sums spent and the time spent. The result comes out to be multiple enforceable awards as well.

When the parties have approached the court seeking the appointment of an arbitrator but fail to inform the court of any existing pending arbitration between the parties, it is only natural for the court to appoint a sole arbitrator/tribunal based on the parties' suggestions or from the panel list of arbitrators. As a result, disputes between the same parties stemming from the same contract are sent to different tribunals.

Furthermore, this prolongs the time it takes for the second tribunal to grasp the facts and underlying technicalities which further causes delay and defeats the purpose entirely.

When different tribunals are construed for deciding the same issues over different time periods, the awards may contradict each other depending on the circumstance of every arbitration proceeding. Hence this in its entirety makes the procedure even more complicated. It happens in both institutional as well as *ad hoc* arbitration proceedings, but it is more applicable in *ad hoc* proceedings. Institutions have time and again been trying to put a stop to the multiplicity and to ensure that it doesn't defeat the purpose by becoming a time-consuming and expensive procedure.

Arbitration generally exists between two signatories to a contract who have agreed upon a common ground of dispute resolution by means of arbitration mechanism arising out of a contractual relationship. However, more than often various international transactions (business) involve a chain of contracts ranging between the same parties to being between distinct parties. Hence, every contract amounts to it having a distinct way of dispute resolution which varies from contract to contract. This further amounts to a string of simultaneous arbitration and/or cases concerning similar issues or issues that can be consolidated because it arises from a single transaction. This creates a lot of confusion because the awards or the resolutions may be contradicting in nature. It would be effective if all these multiple proceedings could be tagged together into a single proceeding to avoid unnecessary delays and costs.[1] A variety of ways have been employed to achieve these multi-party/multi-contract arbitrations. String arbitrations, concurrent hearings (with the same arbiter for all of the arbitrations), court-ordered consolidation, consolidation by consent, and various mechanisms employed by some arbitral institutions are examples of these solutions.

This study aims to outline some of the issues with arbitration in multi-party/multi-contractual conflicts, as well as various ways for overcoming these flaws and determining how effective these approaches are by also discussing judicial precedents on the same issues.

Multiple Arbitration Proceeding

Parallel or simultaneous procedures arise when conflicts arise from the same/overlapping parties or contractual agreement or the issues are discussed in different forums arising out of the same main issue. They emerge as a result of one or more of the following factors: a large number of actors, multiple legal sources for the same claims, or multiple forums for conflict resolution. When many interrelated agreements are given to subcontractors on a project, multiple processes are typical, and they are exacerbated when the parties are unable to include a third party in the arbitration. The challenge of parallel or multiple proceedings is even more pronounced and frequently encountered in the energy industry due to the frequency of multi-party and multi-contract transactions – particularly in complex construction projects and joint venture agreements – and the potential for overlapping claims arising under state contracts and investment treaties. Multiple dispute resolution actions involving the same or similar facts, problems, and legislation under the numerous contracts or

[1] KLUWER ARBITRATION -HOME, https://www-kluwerarbitration-com.eu1.proxy.openathens.net/document/kli-ka-hanotiau-2020-ch04?q=multiple%20arbitration (last visited Nov 26, 2021).

treaties applicable to the project are not uncommon in these types of projects. A dispute between a project owner and numerous contractors and subcontractors in a chain of contracts, some or all of which include distinct dispute resolution terms, for example, could result in concurrent proceedings. While the facts, causes, and laws that give rise to conflicts are often the same, dispute resolution methods are usually incompatible, making it impossible for several parties' issues to be considered in the same forum.

Parallel proceedings may arise when an international investor has commercial claims against a state entity under a commercial agreement, such as an exploration or concession agreement, and an investor-state claim against that same state under an investment treaty, both arising from the same state conduct. Contracting parties frequently send their issues to arbitration at different dates to avoid their disputes becoming time-barred. In *SGS v. Pakistan*[2], an ICSID tribunal was faced with competing arbitrations involving the same parties: an international arbitration seated in Pakistan arising out of the parties' commercial agreement, and an investor-state claim brought before the ICSID tribunal under the Switzerland–Pakistan bilateral investment treaty (BIT) (among other related court cases).

The tribunal was requested to evaluate whether it would be acceptable to suspend one of the arbitrations in order to address difficulties produced by parallel arbitrations, among other things. Finally, parallel proceedings may arise when multiple international investors of various nationalities participate in the same foreign investment, either directly or indirectly, or when multiple international investors have made separate foreign investments in the same sector that are affected by the same host-state measure. Each investor may submit a separate claim for protection under their respective BIT in this situation. This 'diversity' of processes has proven to be a roadblock to providing proper justice to the parties in a timely and efficient manner. As a result, the system for resolving disputes is usually rendered ineffective.

When parties to a dispute approach the court to request the appointment of an arbitrator but fail to inform the court of any pending arbitration proceedings between the parties, the court will appoint a sole arbitrator or arbitral tribunal for the parties based on their suggestions or from a panel of arbitrators already in place. This not only results in several processes resulting from the same contract, but it also extends the time that is taken by the second

[2] SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan, ICSID Case No. ARB/01/13.

tribunal to examine and analyse the facts of the dispute, as well as the associated technicalities. It is possible for decisions made by different tribunals to contradict one another, leading to further challenges by the parties to such awards, resulting in multiple processes and distinct petitions against separate awards.

Concepts Involving Multiple Arbitration Proceedings

Several Parties to Several Contracts

The practice, especially in the construction and investment sectors, is to conduct complicated and multi-layered transactions involving multiple parties. In this case, arbitration is generally regarded as the best option for resolving conflicts. However, problems with the initial contract frequently produce ripples in future subcontracts, resulting in multiple parties engaging in concurrent arbitration proceedings to resolve their claims relating to the main contract. This occurs when numerous entities have entered into a series of interconnected contracts. It's a typical occurrence, especially in huge building projects. In most cases, the employer enters into a construction contract with the general contractor, who then engages in many more contracts with suppliers and subcontractors.

Because they are all tied to the same project, these contracts will have a back-to-back effect in terms of obligations. However, it is highly likely that they would each, have their own set of provisions in terms of dispute resolution, choice of law, and so on. Apart from the parties listed above, international contracts are likely to involve even more parties and contracts. In such a scenario, there's a good chance that different arbitrations will be held between different parties, all involving the same or comparable issues and yielding conflicting conclusions that would be difficult to enforce. If at all possible, all of these issues should be resolved in a single proceeding to ensure uniformity and save time and money.

As a result, a single party may be a party to many proceedings involving the same legal link and facts. This not only poses a difficulty with several processes, but it also raises the risk of conflicting decisions on the same topic. When the matter came before the English Court of Appeal for the appointment of an arbitrator, Lord Denning remarked that the two arbitrations should have been combined and heard as one to save time and money and avoid conflicting decisions. In the case of *Abu Dhabi Gas Liquefaction Co. Ltd. V. Eastern Bechtel Corp.*[3], the above scenario was witnessed. The owner of an LNG-producing plant in the Arabian Gulf

[3] Abu Dhabi Gas Liquefaction Company Ltd v Eastern Bechtel Corporation, [1982] EWCA Civ J0623-1 (England & Wales, Court of Appeals, Civil Division).

was the plaintiff in this lawsuit. In England, the plaintiff filed an arbitration claim against the principal contractor under an international construction contract for the building of a faulty tank. The main contractor rejected responsibility, claiming that any tank flaws were the fault of the subcontractor, a Japanese company. As a result, multiple proceedings were initiated when the principal contractor initiated separate arbitration proceeding against the subcontractor.

Several Parties to a Single Contract

It is possible that circumstances involving the sharing of risks between multiple parties will have an impact on select third parties in the simultaneous procedures. As a result, in addition to the parties to the arbitration agreement, there may be two or more associated parties with their own agreements.

The situation of several parties to a single contract is particularly frequent in the commercial world, where numerous companies may band together to help finance a project or share the risks involved. Joint ventures, partnerships, and consortia are all examples of situations like this. In each of these cases, a number of entities form a business partnership governed by a single contract. The nomination of an arbitral tribunal is one of the practical issues that emerge in this scenario. This question would not arise in a case where there is no issue of party autonomy and the parties to the case have no say in the judge who will preside over their case. In a three-person arbitration panel, each party should ideally pick its own arbitrator, leaving the third to the two arbitrators or an arbitral institution to choose. The ability to select an arbitrator provides a party with the confidence that the arbitral panel will be fair in its deliberations. However, when there are several parties to the arbitration, it would prove to be absurd to enable each side to select its own arbitrator. Even if the arbitration is to be presided over by a single arbitrator, getting all of the parties to agree on one arbitrator would be challenging.

However, there may be circumstances in which a third party with a significant interest in the outcome of the arbitration proceeding wishes to be impleaded as a necessary party to the proceeding due to the fact that the tribunal's or arbitrator's awards or directions will have a significant impact on the third party.[4]

Issues in Multiple Arbitration Proceeding

Non-Signatory Parties to Arbitration Proceedings

Francis Russell in his book "Russell on Arbitration"[5] has explained this principle as "*Arbitration is usually limited to parties who have consented to the process, either by*

[4] Purple Medical solutions Private Limited vs MIV Therapeutics INC. and Another, (2015) 15 SCC 622.
[5] Francis Russell, "Russell on Arbitration" [24th Edn, 3-025, pp. 110-11].

agreeing in their contract to refer any disputes arising in the future between them to arbitration or by submitting to arbitration when a dispute arises. A party who has not so consented, often referred to as a third party or a non-signatory to the arbitration agreement, is usually excluded from the arbitration There are however some occasions when such a third party may be bound by the agreement to arbitrate. For example, ..., assignees and representatives may become a party to the arbitration agreement in place of the original signatory on the basis that they are successors to that party's interest and claim the original party. The third party can then be compelled to arbitrate any dispute that arises."

Arbitration is based on the parties' Agreement. To become a party to an arbitration agreement, the parties must express their affirmative assent by signing the contract. It is, however, possible to become a contracting party without signing the contract. Third parties who are not included in the contract may become involved in the contract's performance. It's also feasible that they gave their implied agreement to the contract.

While courts and arbitral tribunals use a variety of approaches to determine whether the parties have consented to the contract or not, there are some ideas that can aid in this determination. These are the doctrines of Representation, Transfers, Conduct, and Groups of Companies.

Representation

When a representative signs a contract on behalf of a company, the company is obligated by the arbitration agreement. A mandate has been given to B by A if B formally represents A during the signing of a contract, resulting in A being legally obliged to the deal. B has now become a non-signatory to the contract, despite the fact that he did not sign it on his own behalf.

Supreme Court highlighted the following, *"it becomes abundantly clear that reference of even non-signatory parties to an arbitration agreement can be made. It may be the result of implied or specific consent or judicial determination. Normally, the parties to the arbitration agreement calling for arbitral reference should be the same as those to the action. But this general concept is subject to exceptions which are that when a third party, i.e. non-signatory party, is claiming or is sued as being directly affected through a party to the arbitration agreement and there are principal and subsidiary agreements, and such third party is signatory to a subsidiary agreement and not to the mother or principal agreement which*

contains the arbitration clause, then depending upon the facts and circumstances of the given case, it may be possible to say that even such third party can be referred to arbitration."[6]

It is imperative for such representation to be established in court, as the absenteeism of evidence might result in the dismissal of the claim.

Transfers

Individual or universal transfers, such as mergers, subrogation, and succession, frequently result in a change in the arbitration agreement's final parties, resulting in multi-party arbitration.

When A transfers a contract to B that was initially entered into between A and C, B would be deemed to have the authority to initiate arbitration proceedings against C, and not A. However, depending on the type of disagreement that emerges between the parties subsequently, A may continue to operate as a non-signatory to the agreement.[7]

Conduct

It can be assumed that a party has consented to the arbitration agreement if it conducts its business as if it had expressed its consent to the arbitration agreement. Conduct is frequently substituted for consent.

If A and B engage in an arbitration agreement and then have a disagreement, A can sue B and C (a non-signatory) in court together. B and C challenge the court's jurisdiction by invoking the arbitration agreement. The case is eventually referred to an arbitral tribunal. Now, it is justified for the arbitral tribunal to assume jurisdiction over C, noting that C, by conduct, has implied that it has provided its consent to the arbitration agreement in front of the court.[8] It is vital to remember that behaviour is only considered consent if the party has a significant role in the negotiation or performance of the agreement. The behaviour of a party cannot be used as a substitute for consent if that party has not played a significant role.

[6] *Supra* at 2

[7] Bernard Hanotiau, "Problems Raised by Complex Arbitrations Involving Multiple Contracts—Parties—Issues An Analysis" ,(2001),18, Journal of International Arbitration, Issue 3, pp. 251-360, https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/18.3/354644

[8] *Id.*

Group of Companies Doctrine

This theory permits a non-signatory to an arbitration agreement to be included in the agreement if the non-signatory is a member of the same group of companies as one of the agreement's signatories.

This doctrine emerged in France in the 1970s and was first thoroughly explored in the case of *Dow Chemicals Company & Ors. v. Isover Saint Gobain*[9] at the International Chamber of Commerce (ICC). It was well-established in this instance that a non-signatory could be bound by an arbitration agreement.

This idea, however, is not explicitly acknowledged in India. The idea has, however, been emphasized by the Supreme Court in a number of cases. The court acknowledged that this approach has been widely embraced by various foreign jurisdictions in the case of *Chloro Controls v. Severn Trent Water Purification Inc. & Ors*. (Chloro Controls case).[10] The court has stated that "*A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The Court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute...*"

The Delhi High Court in the particular case of *Magic Eye Developers v. Green Edge*[11], stated that, "*Considering the fact that there are valid agreements between the plaintiff and defendant No.1 containing clauses for reference of disputes to arbitration and defendant Nos.2 and 3 being group companies of defendant No.1, from the intent of the parties as noticed from the agreements as also the averments in the plaint it is evident that not only would defendant No.1 but also the defendant Nos. 2 and 3 companies be amenable to the jurisdiction of the arbitrator as per the arbitration clauses is the SHA, SPA and MOU.*"

It's worth noting that, while non-construction arbitrations can include non-signatories through these means, it's exceedingly rare that an arbitration agreement will be extended

[9] Dow Chemical France, The Dow Chemical Company and others v. Isover Saint Gobain, Zwischenschiedsspruchv. 23.09.1982, ICC Case No. 4131, Y. Comm. Arb. 1984, 131 et seq

[10] Chloro Controls v. Severn Trent Water Purification Inc. & Ors. (2013) 1 SCC 641.

[11] Magic Eye Developers Pvt. Ltd. v. Green Edge Infra Pvt. Ltd., 2020 SCC Onlne Del 597

further to bind non-signatory subcontractors under any of these regulations. While unique factual scenarios may emerge, it is unusual for arbitral tribunals to find a subcontractor acting as the principal contractor's agent, or for the conduct, transfer, or a group of firms to be involved.[12]

Main Contract and Subcontract

The majority of business transactions today are complicated multi-faceted transactions in which numerous parties enter into separate but interconnected agreements to achieve the same economic aim. However, in most cases, one of these interconnected agreements lacks an arbitration clause, although other identical agreements do consist of the same. Multiple simultaneous litigations and arbitration hearings end up running concurrently in such circumstances.

Almost certainly, one of the disputing factions will ask the court to consolidate all related disputes into a single tribunal. However, there always exists a possibility that the opposing side of the dispute opposes such a request, claiming that it is a non-party to the primary arbitration agreement and that their agreement does not contain an arbitration clause, or that because separate agreements exist, there is no reason to lump them together.

In the case of *Duro Felguera v. Gangavaram Port*,[13] the Supreme Court was appealed to by compound arbitral reference, in relation to multiple disputes which arose from six different, but inter-related, agreements. However, all these agreements had identical arbitration clauses in this case.

The Supreme Court heard a case that was identical to this one. Four parties entered into four agreements for the commissioning of a photovoltaic solar plant in Utter Pradesh in the matter of *Ameet Lalchand Shah & Ors. v. Rishabh Enterprises and Others*.[14] Only three of the four agreements included an arbitration clause. As a result, when disagreements occurred, the opposing party filed a complaint in the Delhi High Court alleging deception and fraud in connection with all four agreements. The defendant then requested that the case be referred to arbitration, which was denied by the Delhi High Court's Single Judge Bench.

[12] Cheran Properties Limited v. Kasturi & Sons Limited & Ors. (2018) 16 SCC 413
[13] Duro Felguera v. Gangavaram Port, 2017 SCC OnLine SC 1233.
[14] Ameet Lalchand Shah & Ors. v. Rishabh Enterprises and Others, (2018) 15 SCC 678.

When the case went to the Supreme Court on appeal, the court noted that, because all four agreements were interconnected and aimed at accomplishing a common economic goal, which was to build the Solar Plant in Uttar Pradesh, all parties might be covered under the primary agreement's arbitration clause.

Public Realm Issues

There have been instances where an arbitration dispute has included a matter of public concern. In such a case, the arbitral award or decision must have a significant impact on the wider public good. "*An arbitral award may be set aside by the Court if the arbitral award is in conflict with the public policy of India*," says Section 34(ii)(b). However, things become complicated in such cases because the arbitration and conciliation legislation make no mention of public policy. If this issue is interpreted broadly enough, the doctrine of public policy could be considered equivalent to legal policy. This simply states that anything that obstructs justice, violates a statute, or violates morals is considered against public policy in the country and hence cannot be enforced. As a result, there may be judicial intervention permitting alternatives against an arbitral award based on the nature of its irregularity owing to it being against the public policy at large.

In the particular case of *Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd.*[15], the scope of interpreting public policy had been widened. The Court held that "*in case of an application under Section 34 to set an award aside, the role of the Court was deemed to be that of an appellate/revision court, thereby rendering it wide powers."*

"Therefore, in our view, the phrase 'Public Policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice." However, this gave rise to a multiplicity of litigations enforced under Section 34. Further, the Hon'ble Supreme court in the case of *Phulchand Exports Ltd. v. OOO Patriot*[16] discussed the doctrine of public policy which is enumerated under Section 48 of the act. It was of the

[15]Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd., (2005) 5SCC 705.
[16]Phulchand Exports Ltd. v. OOO Patriot, (2011) 10 SCC 300.

opinion that the test that was implemented in the saw pipes case must be followed in situations where a foreign award is involved too on grounds of *"patent illegality"* against enforcement of a foreign award.

Further in 2015, there were major amendments enforced in the Arbitration and Conciliation Act of 1996, especially to Section 34. These changes rooted from the 246th Law Commission Report. The amendments involved imposing restrictions on the courts from interfering in arbitral awards on grounds of public policy.

The amendment was added stating, "Explanation 2" to Section 34(2) as well as the addition of Section 2A. Explanation 2 of Section 34(2) stated – *"For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute."*

In the case of *Associate Builders v. Delhi Development Authority*[17], the Hon'ble Supreme Court was of the opinion that "*an award could be set aside on the ground of justice when the "award" would be such that it would shock the conscience of the Court*."

Since the said amendment, the Courts have circumvented giving a wide interpretation of "public policy" or interfering with merits of the case. In 2017, the Hon'ble Supreme Court in *Venture Global Engineering LLC and Ors. v. Tech Mahindra Ltd. and Ors*[18] said the following –

> *"The Award of an arbitral Tribunal can be set aside only on the grounds specified in Section 34 of the AAC Act and on no other ground. The Court cannot act as an Appellate Court to examine the legality of Award, nor it can examine the merits of claim by entering in factual arena like an Appellate Court."*

Challenges

With the increase in the number of parties involved in complex projects and the globalisation of investment, there is an increasing number of instances in which disputes with overlapping legal and factual elements result in parallel proceedings. In certain circumstances,

[17]Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[18]Venture Global Engineering LLC and Ors. v. Tech Mahindra Ltd. and Ors. (2018) 1 SCC 656.

consolidation of these parallel proceedings into a single arbitration proceeding may be possible. However, consolidation typically requires the consent of all the parties to all the related arbitrations, which can be difficult to obtain in multi-party, multi-contract transactions associated with large capital projects. Failure to obtain the consent of all parties may result in an inability to consolidate parallel proceedings.

The most frequently encountered examples of parallel proceedings in commercial arbitration practice arise from complex construction projects in the energy sector. In such projects, owners will often negotiate multiple contracts with contractors, who in turn negotiate subcontracts with various subcontractors to carry out discrete aspects of the work. Each of the agreements in these chains of contracts may have different arbitration clauses, or some may have arbitration clauses while others do not. If the arbitration clauses in chains of contracts are not coordinated, those clauses may contain different rules, tribunal appointment processes, languages, and seats. In other words, the parties' consent to arbitration may have been based on significantly different arbitral procedures. In other contracts for the same project, the parties may not have consented to refer their disputes to arbitration at all, but rather to litigate their disputes in domestic courts. And even when the parallel proceedings would otherwise be technically capable, all parties still may not consent to consolidation, which could make consolidation difficult or impossible.

As a result, it is not uncommon for the prospect of consolidating parallel arbitration or court proceedings with an existing arbitration to be but a faint hope. When attempts to consolidate fail – or consolidation is not attempted for other reasons – parties and their legal counsel have to navigate and mitigate the challenges of parallel proceedings that may involve the same facts, issues, and law.

The risks associated with parallel proceedings are numerous. First, as occurred in *CME v. Czech Republic* (*CME*) and *Ronald Lauder v. Czech Republic*,[19] (*Lauder*) parallel arbitral proceedings may result in inconsistent findings of fact or law, and thus inconsistent findings on liability and damages. The challenging nature of these circumstances should be obvious. For instance, a situation could emerge in which two arbitral tribunals are interpreting the

[19] CME Czech Republic BV v. Czech Republic, UNCITRAL, Partial Award (13 Sep. 2001); CME Czech Republic BV v. Czech Republic, UNCITRAL, Final Award (14 Mar. 2003); Ronald Lauder v. Czech Republic, UNCITRAL, Final Award (3 Sep. 2001).

same provisions of the same agreement and arrive at divergent interpretations. On an ongoing project, this could give rise to considerable difficulties. Likewise, a situation could emerge in which one arbitral tribunal awards damages to a party for claims that another tribunal determines do not have merit. In those circumstances, it may be unclear which award is enforceable.

Second, parallel proceedings create the need for the same parties – or at least a party involved in more than one dispute – to expend time and resources to arbitrate or litigate the same or related disputes in different forums. While this may seem like a minor inconvenience, the reality is that the party involved in multiple related disputes is likely to spend significantly more time and incur significantly higher legal fees to resolve these disputes, particularly in construction projects with voluminous document production and complex and technical factual issues.

Third, inconsistent findings on damages in parallel proceedings create the risk of windfalls and double (if not triple or quadruple) recovery by one party. For instance, consider a case involving a construction project, in which the owner has engaged a contractor under one agreement to engineer, procure and construct the project, and the contractor has engaged a subcontractor under a subcontract agreement to undertake a discrete scope of the contractor's work. In the event that the owner was to delay the project, the subcontractor might commence an arbitration against the contractor for the damage it incurs, and the contractor in turn might commence an arbitration against the owner for the damage asserted against it by its subcontractor. It is entirely possible in these circumstances that the contractor would succeed in its claims against the owner, thereby recovering damages for the delays, but that the subcontractor would be unsuccessful, leading to a windfall for the contractor.

Likewise, consider a case in which the owner procures a piece of equipment to upgrade its facility pursuant to an agreement containing an International Chamber of Commerce (ICC) arbitration clause. The owner then engages a contractor to install and commission the equipment pursuant to a separate agreement containing an arbitration clause under the London Court of International Arbitration (LCIA). A month after the equipment is installed and commissioned, a fire originating in or around the newly installed equipment destroys the entire facility. The owner commences an ICC arbitration against the equipment manufacturer, alleging the fire was caused by faulty equipment, and a parallel LCIA arbitration against the

installer alleging that the fire was caused by improper installation. In both cases, it seeks the cost to rebuild its facility and lost profits. In these circumstances, one can see how conflicting findings of fact with respect to the cause of the fire in the parallel arbitrations could result in the potential for double recovery or overlapping recovery.

The foregoing risk is further exacerbated by the fact that most commercial arbitral proceedings are confidential, and therefore a tribunal in one dispute may not be aware of the findings of fact, law, liability, or quantum of damages that may have been awarded by another tribunal. This can give rise to the related risk that aversion to issuing an award that will potentially result in a windfall or double recovery will incentivise tribunals to be cautious as to an award of damages that are otherwise recoverable and meritorious, potentially discounting the successful party's damages to offset the real or perceived risk of double recovery in another forum

Perspectives of Various Jurisdictions

India

In many cases the court was of the opinion that parties should not be submitted to arbitration because non-signatory parties are involved in the dispute. The Indian counterpart filed a suit and sought an injunction against two non-signatories in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc. Sukanya Holdings*[20] was cited in the same. The Supreme Court ruled that the shareholders' agreement is the mother agreement, and that all other agreements were made to help the mother agreement be implemented, and that multiple agreements are part of a single composite transaction. Furthermore, the Supreme Court noted that the signatories to these many agreements are all linked firms, and their interests do not conflict with those of the joint venture company. The Court concluded that a non-signatory party can be sent to arbitration if it can show that it is claiming through or under the arbitration's signatory party. Chloro case has dealt with the group of companies' doctrine, according to which non-signatories to an arbitration agreement who were members of the same group of firms as the agreement's parties might be brought liable to arbitration.

Since all three were underlying distribution agreements made up a single economic transaction, the Delhi High Court's rules can be used as a guide for future arbitration cases where there was effective merging of three arbitration (ADR) procedures into one single

[20]*Supra* at 8.

arbitration in *Global Infonet v. Lenovo & Ors*.[21] While the High Court's decision cannot be faulted, the court should have offered a stronger doctrinal foundation for its decision.[22]

The case of *Cheran Properties v. Kasturi and Sons*[23] *("Cheran Properties")* was a better choice for the Court. Cheran Properties, on the other hand, dealt with the concept of a single economic transaction in the context of persons bound by an arbitral ruling under Section 35 of the 1996 Act. The Court based its decision on Section 35's wording, which said that an arbitral award was binding not only on the parties, but also on those who sought to enforce it. In reality, the Supreme Court stated at para 21 of the ruling that it was not dealing with a situation under Sections 8/45 of the 1996 Act, which was the context in which Global Infonet was decided.

In a few situations, issues of arbitration consolidation have been addressed. In *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya*[24], the Supreme Court addressed the issue of dispute consolidation and a shared reference to arbitration in the situation of several domestic parties (Sukanya Holdings). The Supreme Court concluded in Sukanya Holdings that when a dispute can be resolved through arbitration as well as a lawsuit, and there are non-signatory parties on the list, the Court cannot divide the cause of action and, as a result, cannot issue a partial reference to arbitration. Prior to the 2015 modifications to the 1996 Act, the Supreme Court had decided that a civil court exercising such jurisdiction could not submit a case to arbitration unless all of the parties to the case agreed.[25]

The Supreme Court in the case of *Ameer Lal Chand Shah v. Rishabh Enterprises*[26] *("Ameer Lal Chand Shah")* had referred parties to arbitration under different but connected agreements, notwithstanding the fact that one of the agreements did not even have an arbitration clause. All of the agreements in this instance were tied to a single economic undertaking, namely the commissioning of a solar power plant. Although it was rendered in the framework of institutional arbitration, *P.R. Shah v. B.H.H. Securities*[27] *("P.R. Shah")* is more explicit. According to the Supreme Court in P.R. Shah, if A had a claim against B and

[21] Global Infonet v. Lenovo and Ors., C.S. (Comm.) No. 658 of 2017 (Jayant Nath, J.).
[22] Vijayendra Paratap Singh & Abhijnan Jha, Consolidation of Arbitration Proceedings – Global Infonet v. Lenovo & Ors
[23] Cheran Properties v. Kasturi and Sons, (2018) 16 SCC 413.
[24] Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2013) 1 SCC 641
[25] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd, (2010) 8 SCC 24.
[26] Ameer Lal Chand Shah v. Rishabh Enterprises, AIR 2018 SC 3041.
[27] P.R. Shah v. B.H.H. Securities (2012), 1 SCC 594.

C and had separate arbitration agreements with B and C, there was no reason why A couldn't have a joint arbitration against both B and C. Otherwise, the Court reasoned, there would be a plethora of processes, with the potential of contradicting conclusions.[28]

Ameer Lal Chand Shah and P.R. Shah are two Supreme Court decisions on which the High Court could have relied:

The essential concepts of arbitration consolidation are laid forth in Ameer Lal Chand Shah and P.R. Shah, and the High Court's reasoning would have been stronger if these two decisions had been cited. Despite the problems raised above, the High Court's decision in Global Infonet is notable because it shows that, even in the context of ad hoc arbitration proceedings, Indian courts can consolidate arbitration proceedings in suitable situations.[29]

The Court's reliance on Chloro Controls for the concept that non-signatories are bound by arbitration could be erroneous. Chloro has dealt with the group of companies' doctrines, according to which non-signatories to an arbitration agreement who were members of the same group of firms as the agreement's parties might be brought liable to arbitration. Cheran Properties was a better choice for the Court. Cheran Properties, on the other hand, dealt with the concept of a single economic transaction in the context of persons bound by an arbitral ruling under Section 35 of the 1996 Act. The Court based its decision on wordings used in Section 35 of the Act, which said that an arbitral award was binding not only on the parties, but also on those who sought to enforce it.

The Supreme Court was asked to rule in *M/s Duro Felguera S.A. v. M/s Gangavaram Port Limited (GPL)*[30], a multi-contract, multi-party case involving contracts between a foreign party and a domestic party, as well as contracts between two domestic parties, bringing the disputes under the jurisdiction of both international and domestic arbitration. Each deal, according to Duro, is a separate agreement with its own arbitration clause, and the parties had no intention of consolidating arbitrations. It argued that if a holistic reference is made, it will result in the clubbing of international and domestic arbitration, and that in that case, FGI,

[28](2012) 1 SCC 594
[29]M/s Duro Felguera S.A. v. M/s Gangavaram Port Limited (GPL), AIR 2018 SC 3041
[30] *Id.*

Duro's Indian subsidiary, will lose the right to challenge the award under Section 34(2A) of the 1996 Act, arguably a broader provision available only in domestic arbitration. [31]

The Supreme Court held in *P.R. Shah* that in a multi-party arbitration, where a few parties are not signatories to the arbitration clause, complexity and multiplicity result. Parties must be united into a single process to avoid this. This is in accordance with Article 28.1(c) of the Hong Kong International Arbitration Rules, 2018, which says that pending arbitration actions involving a common point of law or fact arising out of the same contract must be consolidated with the parties' consent.[32]

The Supreme Court overturned Chloro Controls' decision on the grounds that the wording "under and in connection with" in the arbitration clause in the principal agreement were broad enough to cover third parties under the mother agreement's arbitration agreement. In the Duro case, the Supreme Court made no mention of PR Shah.

A 'composite reference' of conflicts will not be appropriate, according to the SC, because there is a mix of local and international arbitrations. Six independent arbitral tribunals with common arbitrators were established by the SC. Two of the six tribunals will be international arbitral tribunals, while the other four will be domestic arbitral tribunals.

The 2015 Amendments to the 1996 Act removed the court impediment created by the Sukanya Judgement in referring non-signatories to arbitration. Following the 2015 Amendments, even a non-signatory party claiming through or under a signatory party can request that disputes be referred to arbitration in a domestic arbitration. However, the scenario in which a non-signatory petitions the court/arbitral tribunal to be impleaded as a party based on the 2015 Amendments has yet to be tested. Such a non-signatory might argue that if a non-party can refer a matter to arbitration, it can also be a necessary party in the arbitration if it meets the "through and beneath" requirement.

The opposite proposition, namely, compelling a non-signatory in a domestic arbitration to participate in arbitration and its influence on the enforcement of the resulting award, has yet to be proven following the 2015 revisions. Furthermore, if a Court decides that admitting or

[31] 2017 SCC Online SC 1233.

[32] P.R. Shah v. M/s B.H.H. Securities Pvt. Ltd, (2012) 1 SCC 594. See also Amar Lal Chand Shah v. Rishabh Enterprises, AIR 2018 SC 3041

refusing a non-signatory party to participate in an arbitration is *res judicata*, the ensuing judgement may not be enforced. If such a determination is made by an arbitral award, the Court deciding the enforcement or objection to the resulting award is likely to take a different perspective from the arbitral panel.

International

The court held that concurrent arbitral proceedings could lead to inconsistencies in fact or law, and consequently inconsistencies in culpability and damages in the case of *CME v. Czech Republic (CME) and Ronald Lauder v. Czech Republic*[33]. For example, a situation could arise in which two arbitral courts read the identical articles of the same agreement and reach opposing conclusions. On an ongoing project, this could cause significant problems. Similarly, a situation could arise in which one arbitral tribunal awards damages to a party for claims that another arbitral tribunal finds to be unfounded. It may be unclear which award is enforceable in particular situations.

In *Guidant LLC v. Swiss Re International SE and Others*[34], the court was faced with a case in which two arbitrations were filed under the same insurance policy with the same arbitration provision, and the court addressed the issue of consolidation without the parties' consent. The court acknowledged the need of efficiency and consistency in results, but noted that in arbitration, "party choice, privacy, and confidentiality are essential and vital." Finally, the court determined that under the UK Arbitration Act, neither the courts nor an arbitral tribunal have the authority to combine two arbitral cases without the parties' assent.

While it is conceivable in some jurisdictions to conduct arbitration procedures without the approval of all parties to the arbitrations being consolidated, the general tendency appears to be that consent of all parties to all arbitrations is essential. As a result, if parties believe that consolidating their issues is a good way to avoid parallel arbitration processes, the safest method is to include consolidation in the dispute resolution provisions of their agreements from the start.

If a stay of a parallel arbitration pending the conclusion of the investor statement dispute arbitration is not possible, the tribunals in parallel procedures may need to be notified and

[33] Kauffman-Kohler (footnote 3, above), at 6; CME (Final Award dated 14 March 2003); Lauder (Final Award dated 3 September 2001)".
[34] Guidant LLC v. Swiss Re International SE and Others [2016] EWHC 1201 (Comm).

asked to follow the award from the other processes.[35] The tribunal in *AmbienteUfficioSpa and others v. Argentine Republic*[36] acknowledged the value of considering the conclusions of the parallel procedures. The relevant tribunals in Lauder and CME indicated that the amount of damages awarded by the second deciding court or arbitral tribunal could take into account the damages awarded by the first arbitral tribunal to avoid a double recovery or windfall.

It would be impractical to divide parallel procedures involving local and international proceedings into separate court processes, when it may be better to have the dispute heard in a body with broader jurisdiction. A local case may not meet the investor's expectations in terms of pace and conclusion, making it necessary for international processes to finally resolve the dispute. Against this backdrop, some argue that state court final judgements should have res judicata effect. While rejecting the res judicata effect of a previous arbitration between the parties due to the lack of the same parties, causes of action, or requested relief (i.e., failure to satisfy the 'triple identity' test), the ICSID tribunal deemed the local award to have such effect on the matters submitted to the local tribunal on contractual claims in *Desert Line Projects v. Yemen*[37]. The claimant's claims on substantive criteria of the bilateral investment treaty (deprivation of procedural rights by respondent's interference with the proper conduct of the local arbitration) were not recognised as having the same res judicata effect.

Advocacy on the principles of prohibition against abuse of process is another alternative that has yet to completely develop due to a high barrier. This principle would be particularly appropriate in a case where a claimant has previously obtained a judgement from one tribunal or forum while seeking additional relief in another. Abuse of process is a term coined by courts in the United Kingdom and defined as the use of procedural instruments or rights for reasons other than those for which they were intended. In the United States, there has been no unified, recognised abuse of process theory. In the case of *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador*[38], the court held that "*the doctrines of abuse of rights, estoppel, and waiver are subject to a high threshold... [t]he high threshold also results from the seriousness of a charge of bad faith amounting to abuse of process*."

[35]Toto Costruzioni Generali Spa v. Republic of Lebanon (ICSID Case No ARB/07/12)
[36] AmbienteUfficioSpa and others v. Argentine Republic, ICSID Case No. ARB/08/9
[37] Desert Line Projects LLC v. The Republic of Yemen, ICSID Case No. ARB/05/17, para. 136, 204-205
[38] Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador, UNCITRAL, PCA Case No. 2009-23, Interim Award (1 December 2008) paras 143–146.

If such an authority exists, it would "*only be for the purpose of maintaining the integrity of the Tribunal's proceedings or dealing with really vexatious claims*," according to the tribunal in *Waste Management, Inc. v. United Mexican States*[39]. While it is true that the notion of abuse of process may only apply in exceptional circumstances, duplication emerging from simultaneous proceedings involving similar parties in the same dispute may possibly be one of them.

Two independent notices of disagreement (with identical subject) were brought to arbitration by different firms belonging to the same vertical chain controlled by the same shareholder in *Orascom TMT Investments S.a.r.l. v. People'' Democratic Republic of Algeria*[40]. All of the firms further up in the corporate chain would have been adequately rewarded to the extent that the company at the bottom of the corporate chain would have restored its company worth through the separate arbitration. As a result, the Tribunal ruled that the claimant's pursuit of its claim was an abuse of right, and the claim was rejected.

Resolving Issues Arising out of Multiplicity of Arbitration Proceedings

Consolidation

Multiple arbitrations usually arise between the same parties under the same agreements, between the same parties arising from a series of agreements binding them in a single legal relationship, or between the same parties arising from identical or similar agreements between one set of entities, where the other entity is common.

Courts usually consider multiplicity of proceedings, conflicting decisions and a likelihood of injustice to be sufficient grounds for consolidation of arbitral proceedings and the same was held in the case of PR Shah, Shares and *Stock Brokers Private Limited v. BHH Securities Private Limited.*[41]

In scenarios like the first two described above, the goal should be to make a single referral to a single tribunal. This can be accomplished by writing arbitration clauses in such a way that all claims are grouped together and no one is prohibited by limitation. Furthermore, the Court believed that any future issues should be presented to the same panel and adjudicated at the

[39] Waste Management, Inc v. United Mexican States, ICSID Case No ARB(AF)/00/3, Decision on Mexico's Preliminary Objection concerning the Previous Proceedings, Decision of the Tribunal (26 June 2002) para 49
[40] Orascom TMT Investments S.a.r.l. v. People's Democratic Republic of Algeria, ICSID Case No. ARB/12/35, Final Award (31 May 2017).
[41]Stock Brokers Private Limited v. BHH Securities Private Limited, (2012) 1 SCC 594.

same time. To prevent inconsistent conclusions, the Court explained that in this case, the tribunal may issue separate awards for each of the several references.[42]

At various phases, the scenario can be handled where conflicts have developed under a contract and the arbitration clause is to be activated. In such a case, it is thought that the party requesting arbitration should raise all claims that have already arisen as of the date of the request for arbitration. The argument behind this was that, because the concept of res judicata applies to arbitral procedures, allowing parties to file claims for the sake of convenience would be against public order.

In instances that fall into the third category, it is suggested that an effort be made to form the same tribunal. If that is not possible, the challenges to the awards could be heard together if they are pending in the same court.

The parties should make specific disclosure of the number of arbitration references, arbitral tribunals, or court proceedings pending or adjudicated with respect to the same contract when filing petitions under Section 11 or Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"), or under any other provision of the Act.

Stay of Proceedings

If no agreement can be reached on consolidation, the next step may be to seek a stay of one of the parallel procedures on the grounds that the material risks of conflicting findings and double recovery must be avoided. For example, in *SGS v. Pakistan*, the tribunal suggested that a parallel arbitration be stayed until the panel issued its jurisdictional award and the final award was no longer vulnerable to the danger of being inconsistent under the ICSID Convention. The tribunal in case of *AmbienteUfficioSpa and others v. Argentine Republic*[43] recognised the value of considering the conclusions of the parallel procedures.

If a stay of a parallel arbitration pending the conclusion of the investor statement dispute arbitration is not possible, the tribunals in parallel procedures may need to be notified and asked to follow the award from the other processes.

[42]Gammon India Ltd. v. National Highways Authority, 2020 SCC OnLine Del 659.
[43] AmbienteUfficioSpa and others v. Argentine Republic, ICSID Case No. ARB/08/9.

Waiver Clause

In the context of investor–state dispute arbitrations, there has been an effort to draught the respective investment treaties in such a way that specific provisions aimed at reducing the risk of parallel proceedings are included, either by staying parallel proceedings or by requiring consolidation of claims by multiple investors.

Certain investment treaties, for example, have been structured to oblige potential investors or claimants to surrender their right to file parallel investment treaty claims with other tribunals and courts. Article 1121 of the North American Free Trade Agreement (NAFTA) Chapter 11 establishes a condition precedent that requires a claimant who wishes to bring a parallel process to:

"*Waive its right to initiate or continue any proceedings with respect to the measure of the disputing Party that is alleged to be a breach before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, except for proceedings for injunctive, declaratory, or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing party."*

According to the provision, the tribunal in the case of *Detroit International Bridge Company v. Government of Canada* found that in order for the claim to be adjudicated, the claimant or investor must first comply with the waiver requirement under Article 1121 of NAFTA, and that the claimant's or investor's failure to comply with the waiver requirement voids the respondent's or state's consent to arbitrate.

Res Judicata

The notion of Res judicata states that if a court has already decided or adjudicated on an issue, and you file a new suit with the same subject matter, the suit will be prohibited under this concept. Instead of encouraging many lawsuits, the major goal of this strategy is to raise all current connected concerns of the dispute in one go.

Res Judicata is also relevant to arbitration processes, according to the Supreme Court of India.[44] However, understanding whether the case before the arbitral tribunal attracts res judicata or not is something that is completely dependent on the arbitrator concerned.

Understanding whether or not the case before the arbitral tribunal is res judicata is, however, entirely reliant on the arbitrator in question.

[44] K V George v. Secretary to Government, Water and Power Department, Trivandrum and Ors., 1990 AIR 53.

Furthermore, the Supreme Court has ruled that once an award has been made, it is no longer feasible to file an action on the initial claim, which was or could have been the subject of the reference.

As a result, even if a claim existed during the pendency of the preceding suit but was not placed before the court or tribunal, the parties are barred from bringing another action for that claim. Constructive res judicata is another term for this concept.[45]

The plaintiff's appeal to agitate a claim for damages against the defendant was denied by the Calcutta high court, based on the same premise, because the claim had not been presented before the arbitrator while the proceedings were ongoing.

It is crucial to remember that res judicata does not preclude additional conflicts originating from the original suit or after the parties have filed the suit, thus the parties are able to bring a new action for them.[46]

The court realised that several types of arbitrations could occur. For example, in *Indian Oil Corporation v. SPS Engg. Co. Ltd.*[47], the Hon'ble Supreme Court advised that disputes between the same parties that arose under the same contract be resolved through arbitration. In the Indian Railway Catering & Tourism Corporation Ltd. case, the Hon'ble High Court of Delhi appointed a single arbitrator to settle the claims.

Construction contract disputes can include a variety of issues, including delays, breaches, and termination. Three independent tribunals were constituted in the current instance, and three awards were granted to parties involved in a contract dispute. The establishment of three different tribunals was unjustified and unreasonable, as it caused a significant lot of confusion. The court cited *Dolphin Drilling Ltd. v. ONGC*[48] and stated that all disputes that exist at the time the arbitration clause is invoked, all disputes that exist at the time of invocation, all disputes that exist in Multiple tribunals for the same contract is inefficient, unwise, and invalidates the entire arbitration process, as the goal of arbitration is to resolve conflicts quickly. Additional concerns may arise, necessitating a second reference; nevertheless, if a party does not raise claims that exist at the time of invocation, it should not be given another chance unless there are legally acceptable grounds. The goal should always

[45] Satish Kumar and ors v Surinder Kumar and ors, 1970 AIR 833.
[46]Talchar Coalfields Ltd v Central Coalfields Ltd, AIR 1978 Cal 449.
[47] Indian Oil Corporation v. SPS Engg. Co. Ltd. (2011) 3 SCC 507.
[48]Dolphin Drilling Ltd. v. ONGC, (2010) 3 SCC 267.

be to send a specific contract or a series of contracts that bind parties in a legal relationship to a single tribunal, according to the court. In addition, if disagreements emerge and the arbitration clause is to be used at different dates, the party using the clause should raise all claims that have arisen as of the date of invocation for arbitration. In addition, once a tribunal has been constituted to handle contract disputes, any subsequent concerns emerging from the same contract should be directed to the same tribunal.

Joinder of Third Parties

Modern corporate transactions are frequently carried out through numerous layers and agreements, due to the ongoing expansion of law.[49] Within a group of corporations, there may be transactions that demonstrate a desire to bind both signatory and non-signatory entities within the same group. In the case of *Chloro Controls(I) P. Ltd v. Severn Trent Water Purification*[50], the court held that third parties may be joined to the arbitration if they have a direct link with a party who is a signatory to the arbitration agreement, a direct commonality of subject matter, and a composite reference of such parties will serve the interests of justice.

The goal is to uncover the true nature of the business arrangement and to decipher an intent to tie someone who is not legally a signatory but has assumed the duty to be bound by the conduct of a signatory from a layered structure of commercial arrangements. This is seen as implied permission.

Conclusion

Arbitrations involving multiple contracts and parties can be intricate and time-consuming. While institutional rules are increasingly providing a remedy by allowing for the aggregation of arbitration cases, participants in ad-hoc proceedings are frequently left grasping at straws. In such cases, the role of courts in coordinating arbitration processes is critical. Because the 1996 Act does not clearly provide for arbitration processes to be consolidated, there is a lack of clarity in this area in India. The technique of ADR was introduced for the very purpose of reducing litigation and delay that is already an issue faced by the judiciary today. It provided litigants with cost-effective and speedy alternatives for disposal of their disputes. A modern method of resolving disputes amicably with the help of skilled arbitrators or mediators. The proliferation of arbitration proceedings (ADR) is incompatible with the Act's provisions. It

[49] Chloro Controls(I) P. Ltd v. Severn Trent Water Purification, 2013 (1) SCC 641
[50] *Supra* at 8.

brings the act to a halt, deciphering its intent. It invariably leads to procedural efficiencies and the duplication of efforts. The Hon'ble High Court of Delhi highlighted the dangers of such behaviour and ruled that parties to arbitration must follow a genuine discipline of using the arbitral procedure (the goal of ADR), as well as a set of guidelines to prevent it. The goal should always be to refer a single contract or a series of contracts that bind the parties in a legal relationship to a single arbitral tribunal. In theory, a party requesting arbitration under a contract shall raise all claims that have already arisen as of the arbitration invocation date. Other disputes/claims that arose but were not addressed (in the invocation letter or the terms of reference) should be barred/waived to discourage parties from presenting only a "few" issues rather than "all" of the conflicts that arose. Only if the arbitral tribunal specifically approves it for any legally justifiable/sustainable reasons will non-inclusion be accepted.

Arbitration, as part of ADR, was created to ease the burden on the courts while also resolving disagreements in a timely and cost-effective manner. Arbitration is a mutual agreement between the parties to use this technique of dispute resolution. Arbitration, on the other hand, has lost its core function as a result of the numerous cases determined by several tribunals stemming from a single parent agreement. As a result, there are a flood of contradictory outcomes and awards. Aside from that, a number of proceedings have made it a time-consuming and costly method of resolving disagreements. Any issue with the primary contract generates a deadlock in the subcontracts, resulting in several arbitration processes before different arbitral tribunals. As a result of this problem, arbitration's reputation has been tarnished. Parties that submit a dispute to arbitration should be aware that they are required to keep the court informed of the proceedings. Litigants are permitted to file multiple arbitration actions, but they cannot do so at their leisure. There are no clear resolutions to the challenges raised by parallel processes, despite the obvious dangers of inconsistent outcomes and repetition. As a result, in jurisdictions where consolidation is not possible without the permission of the parties, efforts to limit the risks of parallel processes should be foreseen and addressed as soon as practicable.