INVOCATION OF ARBITRATION CLAUSES IN SHAREHOLDER AGREEMENTS FOR DISPUTES UNDER ARTICLES OF ASSOCIATION

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Indian company law has seen much debate on the enforceability of shareholder covenants not incorporated in the articles of association of a company, including covenants on matters of internal governance. This dissonance has carried over to the specific context of arbitration clauses, as it appears to be quite common (from the sheer amount of case law on this particular point) for parties to leave out the SHA’s arbitration clause while incorporating its other provisions verbatim in the articles of the subject company. Expectedly, this substantial body of case law is also divided into two irreconcilable views on whether such an arbitration clause will govern the violations of a Company’s articles without being incorporated into the same. Of the two predominant views – the contractual view and the incorporation view – this paper argues that the contractual view is preferable, being consistent with the principle of party autonomy as well as settled law in arbitration-friendly jurisdictions such as Singapore and Hong Kong.

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I. INTRODUCTION

Mergers, acquisitions and joint ventures across jurisdictions are brought into effect by shareholders’ agreements (‘SHAs’) which regulate the internal management and affairs of the resultant or target company (‘Company’). Apart from share-transfer restrictions, which may be based on different considerations, SHAs may provide for managements rights, nominee directors, affirmative votes, etc. Such SHAs ordinarily state that the Articles of association (‘AoA’ or ‘Articles’) of the Company will be suitably amended to reflect the terms of the SHAs. Such SHAs also frequently contain arbitration clauses.

However, while incorporating these terms, the parties to an SHA, which may or may not include the Company itself, may fail to incorporate the SHA’s arbitration clause into the Articles of the Company. Judging by the sheer number of cases on this fairly specific point (discussed in Part II of this paper), it appears that this situation arises frequently in industries

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in India. Though reasons for this are not clear, it may include perceived difficulties in enforcing arbitration clauses in the Articles of a Company, and the perceived status of the Articles of a Company as pseudo-statutory instruments distinct from ordinary contracts, etc. In this situation, it is pertinent to consider whether the arbitration clause in an SHA can be invoked for disputes arising out of the Articles of the Company. This question may assume immense importance in the event of a shareholder dispute, as a claimant shareholder could potentially avoid arbitration unilaterally by simply framing its claim as a breach of the Articles rather than the SHA. Given that the other terms of the Articles and the SHA will often overlap, a claimant shareholder could potentially disregard the SHA and restrict its statement of claim / petition to violations of the Articles. This was seen, for example, before the Hon’ble High Court of Singapore in BTY v. BUA (‘BTY’) as discussed in Part III of this paper.

To retain focus on the crux of the debate, we will be making a few factual assumptions for the rest of this paper. First, the subject company is assumed to be a party to the SHA in question. We attempt to answer whether incorporation of the arbitration clause into the Articles is necessary despite the Company being party to the SHA. We shall not be discussing the related but distinct question of whether covenants between shareholders can bind a non-party company. In the context of arbitration clauses, where the subject company is not a party to the arbitration clause but is a necessary party to the arbitration, reference to arbitration may safely be refused. Second, a term in an SHA which is contradictory to the Articles would have to yield to the Articles. We are concerned with the enforceability of supplementary and additional terms, i.e. terms not incorporated in the Articles but also not contradictory to it. The distinction between an additional term and an impliedly contradictory one is unclear at times. In the context of an arbitration agreement in an SHA, for example, the same may be viewed as being contradictory to a simple jurisdiction clause in favour of a particular court in the Articles. However, for this piece, let us assume that such a situation either does not exist or does not amount to a ‘contradiction’ in view of the specific nature of arbitration clauses.

This Article will first set out, in Part II, the basic ambiguity in Indian company law regarding the enforceability of shareholder covenants not incorporated in the Articles of a company, demonstrating the dichotomy between the ‘incorporation view’ and the ‘contractual view’. Part III will examine how this dichotomy extends to the specific context of arbitration clauses. Part IV examines how arbitration-friendly jurisdictions in the region, such as Singapore and Hong Kong, have treated this issue. In Part V, this Article will take a position on this dichotomy and argue in favour of the ‘contractual view.’ Concluding remarks have been offered in Part VI.

1 Karan Gandhi & Syed Ahmed, Effect Of Arbitration Agreements On The Company When Entered In Articles Of Association Of The Company, MONDAQ, November 4, 2013, available at https://www.mondaq.com/india/shareholders/272944/effect-of-arbitration-agreements-on-the-company-when-entered-in-articles-of-association-of-the-company (Last visited on November 23, 2020). (This Article does not enter into the richly debated question of the arbitrability of company (in particular, oppression and mismanagement) disputes. It is assumed for the purposes of this article that the disputes in question are arbitrable.)

2 See The Companies Act, 2013, Table F. (It is interesting to note that Table F to the Companies Act, 2013, which sets out a Model “Articles of Association of a Company limited by shares”, does not contain an arbitration clause).

3 BTY v. BUA, [2018] SGHC 213 (Hon’ble High Court of Singapore).


II. A BASIC AMBIGUITY IN INDIAN COMPANY LAW

Before the above questions can be answered in the specific context of arbitration agreements, it is important to examine the general ambiguity in Indian company law on the enforceability of SHAs that have not been incorporated into the Articles of a company. The present article will only discuss SHA clauses relating to the internal governance of a company. It will not examine the related but distinct question of the enforceability of share-transfer restrictions outside of the Articles of the Company.

Two contradictory views emerge from case law in India. As per the first view, the internal management and affairs of a Company are exhaustively regulated by its Articles, and the terms of an SHA cannot by themselves bind a Company unless incorporated into its Articles. This may be called the ‘incorporation view.’ As per the second view, while the failure to incorporate the SHA’s terms in the Articles may preclude certain types of actions and remedies under company law, the SHA is in itself an enforceable contract binding on the parties to it regardless of its incorporation into the Articles. This may be called the ‘contractual view.’

The prominent authority for the incorporation view is the decision of the Hon’ble Delhi High Court in *World Phone India Pvt. Ltd. and Ors. v. WPI Group Inc. USA* (‘World Phone’).\(^6\) In this case, a joint venture agreement between the shareholders granted an affirmative vote to one of the shareholders on certain matters. The Delhi High Court, while upholding the legality of a resolution passed without the affirmative vote of the concerned shareholder, found that the joint venture agreement would not bind the Company in question without being incorporated into its Articles. Additionally, it also held that the board meeting and resolution were valid with reference to the Company’s articles. In doing so, the Delhi High Court relied on the decision of the Supreme Court of India in *V.B. Rangaraj v. V.B. Gopalakrishnan* (‘V.B. Rangaraj’),\(^7\) wherein a right of first refusal in a share transfer agreement between the parties was held to not be enforceable against the shareholders of the company on account of the failure to incorporate such a restriction into the Articles of the company. The Supreme Court in V.B. Rangaraj had found that it was evident from the bare provisions of the Companies Act, 1956, that the transfer of shares is regulated solely by the Articles of a company and any restriction not specified in the Articles is not binding on the company or its shareholders. The Court in World Phone also relied upon the decision of the Bombay High Court in *IL&FS Trust Co. Ltd. v. Birla Perucchini Ltd.* (‘Birla Perucchini’),\(^8\) wherein it was held that the ratio of V.B. Rangaraj would also apply to clauses unconnected with share transfer restrictions. The Court carried the position in V.B. Rangaraj to its logical end and made the unqualified observation that even where the subject company is a party to the SHA, SHA provisions regarding the management of the affairs of a company cannot be enforced unless incorporated into its Articles.

In contrast, the contractual view finds support from the decision of the Supreme Court in *Vodafone International Holdings B.V. v. Union of India,*\(^9\) (‘Vodafone International’) wherein the Court expressly disagreed with its earlier decision in V.B. Rangaraj without clearly overruling it.\(^10\) It opined that freedom of contract, which includes the freedom of shareholders to define their rights and share-transfer restrictions, is not in violation of any law and must

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\(^6\) *World Phone India Pvt. Ltd. v. WPI Group Inc. USA*, 2013 SCC OnLine Del 1098.

\(^7\) *V.B. Rangaraj v. V.B. Gopalakrishnan*, (1992) 1 SCC 160.

\(^8\) *IL&FS Trust Co. Ltd. v. Birla Perucchini Ltd.*, 2002 SCC OnLine Bom 1004.


\(^10\) *Id.*, ¶15.
Therefore not be subject to incorporation into the Articles of a company. The contractual view also finds support in the decisions of the Delhi High Court in *Spectrum Technologies USA Inc. v. Spectrum Power Generation* (‘Spectrum Technologies’) 11 and in *Premier Hockey Development Pvt. Ltd. v. Indian Hockey Federation* (‘Premier Hockey’).12 In the former, the subject company of a ‘Promoters’ Agreement’ had adopted the same through a board resolution and was held bound to it despite it not being incorporated in its Articles. This was because: (a) neither the Companies Act, 1956 nor the Articles of the subject company prevented it from adopting such ‘Promoters’ Agreement’; and (b) the ‘Promoters’ Agreement’ expressly required the subject company to amend its Articles in line with the promoters’ agreement (thereby purportedly distinguishing the case from V.B. Rangaraj where there was no such agreement). Similarly, in Premier Hockey, the Company being a party to the ‘Subscription and Shareholders Agreement,’ along with the SHA containing an obligation to modify the Articles to incorporate the SHA, was conclusive in binding the Company to the same, despite the absence of incorporation into its Articles.

Any attempt to resolve or reconcile these two views suffers from several complications. First, the decision of the Single Judge Bench of the Delhi High Court in World Phone, primarily relied on V.B. Rangaraj, which is a decision in the context of share-transfer restrictions and may therefore have been subject to different considerations.13 Second, the Two-Judge Bench decision in World Phone has itself been the subject of express disagreement by a larger three-Judge Bench decision of the Supreme Court in Vodafone International. However, the observation made on this issue by the bench in Vodafone International has been argued to be *obiter* and thereby incapable of creating a binding precedent.14 This is possibly why the bench in Vodafone International stops short of expressly overruling V.B. Rangaraj. Third, although the decision in World Phone comes after larger and coordinate bench decisions of the same High Court in Spectrum Technologies and Premier Hockey, it does not refer to either of these judgments. Therefore, it does not attempt to justify its deviation or distinguish the application of the same. Finally, adding further complications, a petition seeking leave to appeal against the Delhi High Court in World Phone was rejected by the Supreme Court with an unclear observation.15 The order of the Supreme Court notes that the Delhi High Court had itself clarified that any opinion expressed in its judgment was only for deciding the interim application before it and that the company tribunal would decide the final dispute uninfluenced by the observations of the High Court in interim proceedings.16 Whether these observations by the Supreme Court were meant to render without consequence the legal position enunciated by the Delhi High Court in World Phone,17 or to simply facilitate further progress of that particular litigation remains unclear to date.

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14 *Majumdar, supra* note 5.
15 Order dated May 9, 2013 in SLP (C) No. 17020/2013; This point has also been made in Aditya Swarup, *Conflicts between Shareholders Agreements and Articles of a Company*, INDIACORPLAW, June 6, 2013, available at https://indiacorplaw.in/2013/06/conflicts-between-shareholders.html (Last visited on December 27, 2020).
16 Id.
17 The Supreme Court’s order has been read to this effect in Sidharth Gupta v. Getit Infoservices Pvt. Ltd., C.A.128/C-II/2014 in CP No. 64(ND)/2014 (Company Law Board, New Delhi Bench) (Unreported), ¶25.
III. THE AMBIGUITY SPREADING TO THE INCORPORATION OF ARBITRATION CLAUSES

Unsurprisingly, this general dissonance in Indian company law between the incorporation view and the contractual view has carried over into the specific question of the need to incorporate arbitration agreements into the Articles of the Company. Once again, several irreconcilable lines of case law currently co-exist.

One line of case law, flowing from the incorporation view, holds categorically that a failure to incorporate an arbitration agreement into the Articles of the Company would preclude reference to arbitration for disputes regarding its internal management and affairs. For instance, in Umesh Kumar Baveja v. IL&FS Transportation Network,\textsuperscript{18} despite the subject company itself being party to the SHA, the Delhi High Court found that “it is the Articles that govern the relationship between the parties and that since they did not contain any arbitration provision,” the parties could not be referred to arbitration. In arriving at this finding, the Court expressly relied on the judgments as mentioned earlier in V.B. Rangaraj, Birla Perlucchi, and World Phone. Similarly, in Ishwardas Rasiwasa Agarwal v. Akshay Ispat Udyog Pvt. Ltd.,\textsuperscript{19} the Company Law Board (‘CLB’), Mumbai was considering an MOU between an aggrieved shareholder and the subject company, which recorded the terms of investment by the former into the latter. Despite finding that the disputes raised were contractual in nature and capable of arbitration and that the subject company itself was a party to the MOU, the non-incorporation of the arbitration clause into the Articles of the subject company was fatal to the request for reference to arbitration. The incorporation view as applied to arbitration clauses was also adopted by the Company Law Board in Japna Buildcon LLP v. Brys Resorts Pvt. Ltd. (‘Japna Buildcon’),\textsuperscript{20} and Rahul Narang v. Danone Narang Beverages Ltd. & Ors. (‘Danone Narang’),\textsuperscript{21} with specific reference to the aforesaid judgments in V.B. Rangaraj and Birla Perucchi. In both these cases, the justification for rejecting a reference to arbitration focused on the non-incorporation of the arbitration clause into the Articles of the Company. The fact that the subject company was not party to the shareholder agreement in question, could perhaps have constituted a justifiable reason to deny reference to arbitration.\textsuperscript{22} However, this aspect does not form a part of the CLB’s reasoning in Japna Buildcon and is referred to only in passing in Danone Narang.

The next section of this article will demonstrate how this line of case law, with its emphasis on the incorporation of an arbitration agreement into the Articles without reference to whether the Company is party to the SHA, is incongruous with the approach adopted by arbitration friendly jurisdictions such as Hong Kong and Singapore.

A second line of case law, flowing from the contractual view, has sought to uphold the contractual bargain reflected in the shareholders agreement entered into between the shareholders and the subject company. For instance, the Company Law Board, Delhi in Sidharth Gupta v. Getit Infoservices Pvt. Ltd.,\textsuperscript{23} was faced with an SHA which, except for the

\textsuperscript{18} Umesh Kumar Baveja v. IL&FS Transportation Network, 2013 SCC OnLine Del 6436.
arbitration clause, had been incorporated verbatim into the Articles of the subject company, the breach of which was alleged. The Hon’ble Company Law Board relied on the subject company being party to the SHA and the provisions of the Articles being a replication of the clauses of the SHA, to make the reference to arbitration. In doing so, the Tribunal expressly rejected the argument from the incorporation view, and instead remarked on the importance of holding shareholders to their bargain when significant money had been invested on the basis of the understanding between the parties as recorded in the SHA. Interestingly, the Tribunal took express note of the Delhi High Court’s decision in World Phone but did not consider it binding on account of the Supreme Court having directed the CLB to dispose of that case without being influenced by the observations of the Delhi High Court.24

Apart from the above, a third and somewhat unusual basis for deciding a reference to arbitration in similar circumstances was adopted by the Hon’ble Himachal Pradesh High Court in EIH Ltd. v. State of Himachal Pradesh & Ors.25 In this case, disputes regarding the breach of Articles of a company were referred to arbitration under the arbitration clause of the constitutive joint venture agreement, to which the resultant Company was not a party. The rationale developed by the Court was that the joint venture agreement and the Articles of the resultant Company were part of the same transaction, wherein the primary contractual relationship between the parties was embodied in the joint venture agreement and the Articles of the resultant Company merely acted as one of the facilitative ‘sister agreements’ to the same. It is submitted that this approach, while arbitration-friendly in its outcome, may not be legally sustainable in light of the Articles of a company being a creature of company law and a constitutive document that may not be readily relegated to the status of a ‘sister agreement’.

IV. COMPARISON WITH FOREIGN JURISDICTIONS

This unresolved contest in Indian case law is in stark contrast to arbitration-friendly jurisdictions such as Hong Kong and Singapore, which appear to have clearly adopted the contractual view, at least in the specific context of arbitration clauses.

For instance, the Hon’ble High Court of Singapore in BTY26 was faced with a joint venture agreement between a company and its shareholders, which had been adopted verbatim into the Articles of the subject company except for the arbitration clause therein. The plaint was drafted such that it was based on a breach of the Articles, without reference to the identical provisions in the joint venture agreement. While the High Court of Singapore rejected the contention that the arbitration clause in the joint venture agreement would automatically cover the breach of the identical Articles, the Court still considered the argument and the possibility that the arbitration clause in the joint venture agreement manifested an “objectively-ascertainable intent” to cover not only the disputes arising from the agreement, but also disputes arising under the Articles of the Company.27 In other words, the Court undertook the separate inquiry of whether the arbitration clause in the joint venture agreement was worded widely enough to extend to the Articles. The Court undertook an extensive analysis and interpretation of the precise wording of the arbitration clause and only thereafter concluded that the intent of the parties was to restrict the same to disputes arising out of the joint venture agreement.

24 Supra note 15.
26 BTY v. BUA, [2018] SGHC 213 (Hon’ble High Court of Singapore).
27 Id., ¶112-134.
It is submitted that this approach is a direct reflection of the contractual view on the enforceability of shareholder covenants without incorporation into Articles. The High Court’s observations that the SHA and the Articles of a Company exist on different legal planes were apparently only to the extent of finding that two separate causes of action existed under these two documents. This did not exclude the possibility that the parties objectively intended for the arbitration clause in the joint venture agreement to extend to disputes arising under the Articles as well. In other words, had the arbitration clause in the joint venture agreement reflected an intention to cover both these causes of action, the Singapore High Court may well have referred the parties to arbitration on that basis.

The extent to which this is in contrast with the incorporation view in Indian case law is best illustrated by the abovementioned judgment of the Hon’ble Company Law Board, Mumbai in Ishwardas Rasiwasia Agarwal v. Akshay Ispat Udyog Pvt. Ltd. C.A. In this case, the Memorandum of Understanding to which the subject company was also party contained an extremely widely-worded arbitration clause - “In case of any disputes between the parties, the matter will be referred to an arbitrator to be appointed by the consent of both the parties...” (emphasis added). The CLB also found that this arbitration clause was valid and enforceable, and that an arbitrator would be capable of adjudicating the controversies raised in the petition. Yet, the CLB considered itself bound by the seemingly unqualified proposition that “where the AOA of the company does not contain the Arbitration Clause, the Respondents are not entitled to seek the resolution of their dispute through arbitration in respect of the affairs of the Company”, and rejected the reference to arbitration solely on this basis.

The High Court of Hong Kong has adopted an approach similar to that of the Singapore High Court, in its recent decision in Dickson Holdings v. Moravia CV & Ors. In this case, the question of whether the arbitration clause in an SHA would cover alleged breaches of the Articles and of arbitrable statutory law was determined primarily with reference to the intention of the contracting parties as reflected in the wording of the arbitration clause. The High Court of Hong Kong also considered arguments regarding the general presumption that parties intend disputes arising out of the same relationship to be decided by the same tribunal / forum. The following observation from the Court is especially instructive:

“It has to be borne in mind that the arbitration clause in this case applies to disputes arising out of or relating to the Shareholders Agreement or the breach, termination or invalidity thereof, not arising out of or relating to any affairs of the Company. If the parties had intended otherwise, they could have easily devised an arbitration clause that expressly applied to any dispute between them relating to any affair of the Company.” (Emphasis added)

V. PARTY AUTONOMY AS THE BEDROCK OF ARBITRATION

The jurisprudence of minutely dissecting the wording of an arbitration clause, undertaken by Courts in Singapore and Hong Kong in the abovementioned cases, is not without criticism. Concerns have been raised that this approach side-steps the true commercial intent.

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28 Id., ¶79.
30 Dickson Holdings v. Moravia CV, [2019] HKCFI 1424 (Hon’ble High Court of Hong Kong).
31 Id., ¶40.
of contracting parties in favour of a legalistic approach to construing the scope of such clauses.\textsuperscript{32}

It is not the intent of this Article to take away from the importance of these concerns. It is also not contended that every arbitration clause in an SHA necessarily covers all disputes regarding the Company (including disputes under its Articles). The argument is simply that, whatever the interpretational approach, the endeavour must constantly be to ascertain the true intent of the parties as to the scope and subject of the arbitration clause. Ignoring party intent in favour of a formalistic insistence on incorporation into the Articles is not in line with the established importance of party autonomy in international arbitration.

One may argue that this insistence on incorporation is not formalistic, and that prejudice is caused to third parties dealing with the Company by the presence of covenants outside the publicly accessible Articles. However, at least in the context of arbitration clauses, the covenant in question is an agreement on a specific dispute resolution mechanism for internal disputes between the shareholders and/or the Company regarding its internal management. It is therefore difficult to imagine how an arbitration clause between the shareholders and/or the Company for \textit{inter se} disputes would be of relevance to a third party proposing to deal with the Company. This is especially where this unclear interest of a third party is to be weighed against the clear and unequivocal intention of the Company and its shareholders to refer disputes regarding its internal management and affairs to arbitration.

Similarly, the failure of the shareholders to enter into a special resolution to amend the Articles as required by §14 of the Companies Act, 2013, should not be a ground to refuse reference to arbitration. §114(2) of the Companies Act, 2013, defines a special resolution as being one when \textit{inter alia} the votes cast in favour of the resolution are not less than three times the number of votes cast against the resolution by members entitled and voting. The absence of such a majority decision seems meaningless in cases where all shareholders of the Company and the Company itself have unanimously agreed to the terms of the SHA, including the arbitration clause. There appears to be no grave prejudice caused to the shareholders by the non-incorporation of such covenants into the Articles.

Finally, the legal basis for the incorporation view is itself under question today. Picking up from the discussion in Part I, the incorporation view stems primarily from the decision of the Supreme Court in V.B. Rangaraj, which was in the context of share-transfer restrictions. An important part of the Supreme Court’s reasoning in V.B. Rangaraj was §82 of the Companies Act, 1956, which was specific to shares and provided that a company’s shares are “transferable in the manner provided by the Articles of the company”. Without going into the debate of whether the Supreme Court’s reading of §82 in V.B. Rangaraj was correct, it is certainly clear that no similar provision existed for non-share transfer restrictions / covenants in the 1956 Act (or thereafter in the 2013 Act). Further, the position in V.B. Rangaraj has been exposed to a number of doubts and concerns by a larger bench of the Supreme Court in

\textsuperscript{32} See Fiona Trust & Holding Corp v. Privalov, [2007] UKHL 40; Larsen Oil and Gas Pte Ltd v. Petroprod Ltd. (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore), [2011] SGCA 21. On a related note, the said judgment in BTY has come under criticism for unjustifiably digressing from settled law in favour of a liberal / generous interpretation of arbitration clauses, see, Shaun Pereira (Shearman & Sterling LLP), \textit{Arbitrating Disputes under the articles of association}, SINGAPORE LAW BLOG, November 23, 2018, available at http://www.singaporelawblog.sg/blog/article/225 (Last visited on November 24, 2020).
Vodafone Internationala, as well as by academia. It is telling that the Supreme Court has not relied on V.B. Rangaraj at all from the time the doubts in Vodafone International were expressed. The position among the High Courts is more ambiguous, with recent instances of High Courts relying, as well as refusing to rely, on V.B. Rangaraj. Further, the proviso to §58(2) of the Companies Act, 2013, appears to have overruled V.B. Rangaraj at least insofar as public companies are concerned.

The decisions of the Delhi High Court in Spectrum Technologies and Premier Hockey, offer another example of V.B. Rangaraj being distinguished and disregarded on fairly slim grounds. In both these cases, the Delhi High Court refused to apply V.B.Rangaraj inter alia on the ground that there was an obligation in the respective SHAs for the Articles of the subject companies to be amended according to the terms of the SHAs. This is of course an extremely common term, found in most constitutive SHAs. These decisions would therefore restrict V.B. Rangaraj to the small class of cases where such a term does not exist.

In effect, a doubtful and increasingly attenuated proposition of law even in the share-transfer context (i.e. the context in which it was first developed), has been extended to the non-share transfer context, and to this date forms the basis for the incorporation view on arbitration clauses. On the other hand, what such a proposition asks us to disregard is a potentially clear agreement between all shareholders as well as the subject company to refer internal disputes to arbitration.

VI. CONCLUSION

In light of the above, it is submitted that a contract-centric approach to the scope and enforceability of arbitration clauses in SHAs is preferable to a doctrinal insistence on the incorporation of all covenants into the Articles of the Company. Where the arbitration clause in the SHA demonstrates an intention to refer all disputes arising from the SHA or even the Articles to arbitration, the failure to incorporate such a clause into the Articles of the Company should not prevent a court from referring such a dispute to arbitration, at least where the subject or target Company is itself party to the SHA and therefore the arbitration clause.

The insistence of the incorporation view on treating the Articles of a Company as the sole repository of covenants regarding its internal affairs precluding even additional covenants not contradictory to the Articles is neither sustainable nor based in any principle of company law.

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33 See discussion supra Part II on “A Basic Ambiguity in Indian Company Law”.
37 V.Niranjan & U. Varottil, supra note 34.
38 See discussion supra Part II on “A Basic Ambiguity in Indian Company Law”.

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