

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-174-2014 (O&M)

Date of decision:- 15.05.2015

Surinder Pal Singh

...Applicant

Versus

M/s Mekaster Ecosystems Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Puneet Sharma, Advocate,
for the applicant.

Mr. Ashish Verma, Advocate,
for the respondents.

* * * *

S.J. VAZIFDAR, A.C.J. (ORAL)

This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator.

2. The applicant is not a party to the agreement which contains the arbitration clause that he seeks to enforce. The arbitration agreement is contained in a Memorandum of Understanding (in short MoU) dated 17.06.2013 entered into between one Virender Mohan Trehan and one Amanpreet Singh Sodhi. Clause 16 of the MoU reads as under:-

“16. In case of any dispute inter se the parties relating to present Memorandum and/or its interpretation etc, the jurisdiction for the same shall vest solely with the Court of the competent jurisdiction at Chandigarh, India.”

The arbitration clause operates only between the parties to the agreement. The applicant is not a party to the agreement.

3. The applicant, however, relies upon clause 10 of the agreement which reads as under:-

“10. In order to maintain due diligence, as well as the intent that the operation of the

company is done in its true letter and spirit and also to ensure that the capital infused into the company in the mode and manner mutually agreed upon, the following personnel shall have the requisite authority for and on behalf of the parties hereto:-

(a) Mr. Surinder Pal Singh shall be authorized and competent to hold weekly meetings with the company, maintain and supervise the books of accounts and also to report to the second party on regular basis.

(b) Similar powers would also vest with Mrs. Tina Yashdeep Grewal. It is further clarified that both Mr. Surinder Pal Singh and Mrs. Tina Yashdeep Grewal shall have joint meetings/consultations regularly appraising the respective parties enabling smooth execution of the projects.

(c) All accounts and books shall be reviewed on weekly and monthly basis and there will be diligence done by Mr. Surinder Pal Singh & Mrs. Tina Yashdeep Grewal for the reports submitted.

(d) In order to maintain the financial discipline any cheques issued by the company shall be pre-approved by Mr. Surinder Pal Singh and Mrs. Tina Yashdeep Grewal to facilitate the same, the budget/approval meeting shall be held every Saturday.

(e) After the infusion of the funds by the transfer of shares to complete business plan shall be formulated by both the parties in consultation with Mr. Surinder Pal Singh and Mrs. Tina Yashdeep Grewal which shall have to be strictly followed in future.

(f) Banking accounts of Mekaster Ecosystems Private Limited shall be jointly operated by any of two directors from each part i.e. first party & second party and Mr. Surinder Pal Singh.

(g) A separate bank account of Mekaster Engineering Limited will be opened for inward remittance from HPCL etc. which will be operated by one of the directors appointed by second party and Mr. Surinder Pal Singh

only. This arrangement will be for initial two tenders and in future this account will be operated as decided mutually.”

4. A plain reading of clause 10 indicates that the applicant is to act only for and on behalf of the parties to the MoU. The expression ‘parties hereto’ obviously refers to the parties to the MoU. The applicant has only been authorized by the parties to discharge certain functions mentioned in clause 10.

5. The applicant also relies upon clause 9 of the agreement which reads as under:-

“9. That it is agreed that 140000 shares of the company (10% shares of the company) shall be transferred from the shareholding of Mrs. Purnangini Trehan to Mr. Surinder Pal Singh and Mrs. Teena Yashdeep Grewal in equal numbers at a price of Rs. 10/- per share. This 10% of total share capital shall always be maintained even after the fresh issuance of shares during the tenure of this MoU. These shares shall always be offered to the parties of the 1st and 2nd part in equal proportion and can’t be sold or diluted to anybody else.”

6. This clause also operates between the persons who are not parties to the MoU. Even assuming that they have been conferred certain rights thereunder, they cannot invoke the arbitration clause. The shares are to be transferred by Mrs. Purnangini Trehan to the applicant. Neither of whom is a party to the MoU. Even the other party, namely, Mrs. Teena Yashdeep Grewal is not a party to the MoU. If they have any independent rights pursuant to clause 9 or otherwise, they must adopt independent proceedings.

7. The application is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

15.05.2015

Amodh