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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. (T) (COMM.) 96/2017 & IAs 14175-76/2017**

Date of decision: 4th December, 2017

**SYNERGY MEASUREMENT TECHNOLOGIES (P) LTD
& ANR. Petitioners**

Through: Mr.Sachin Datta, Sr. Adv. with
Mr.A.Venkateshwar Rao,
Ms.Prity Sharma, Ms.Rijata
Mohanty and Mr.P. Prabhakar,
Advs.

versus

**SRB INSTRUMENTS PRIVATE LIMITED & ANR
..... Respondents**

Through: Mr.R.Sathish and Mr.Rajesh
Kumar, Advs.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 14 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioners praying for setting aside the order dated 13.10.2017 passed by the Sole Arbitrator in Arb. No.1/2016 and Arb. No.2/2017 as also seeking termination of the mandate of the Sole Arbitrator and appointment of a new Sole Arbitrator, who is a Chartered Accountant by profession.

2. The petitioners had filed a suit for recovery of money being OS No.136/2010 against the respondent in the Court of I Additional Chief Judge, City Civil Court, Hyderabad. The respondents in return had filed a suit bearing CS(OS) No. 242/2011 before this Court. This Court vide its order dated 27.10.2014 appointed a Sole Arbitrator to adjudicate upon all the disputes and differences, claims and counter claims arising out of CS(OS) 242/2011 and suit filed by the petitioner OS No.136/2010. On an application being filed by the petitioners in CS(OS) 242/2011, the present Sole Arbitrator was appointed by this Court to adjudicate the disputes between the parties.

3. The respondents filed their Statement of Claim before the Sole Arbitrator impleading 12 respondents in the same. One of the grievance of the petitioner in the present petition is that in the suit i.e. CS(OS) 242/2011 there were only four respondents, therefore, the Statement of Claim, in so far as it seeks to implead other parties, is not maintainable. Relying upon the judgment of Supreme Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Company Private Limited*, 2010 (8) SSC 24, it is submitted that under Section 89 of the Code of Civil Procedure, 1908 only the parties to the suit are referred for arbitration and, in absence of an arbitration agreement between the respondents and the parties sought to be impleaded as respondent Nos.5 to 12 in the Statement of Claim filed before the Arbitrator, the claim against these respondents is not maintainable.

4. Learned counsel for the respondents herein submits that he shall be withdrawing his claim against respondent Nos.5 to 12 in the

statement of claim filed by him before the Sole Arbitrator and these respondents may be treated as deleted from the same.

5. In that view of the matter, as far as the first objection of learned senior counsel for the petitioners is concerned, the same stand satisfied.

6. It is further claimed by learned senior counsel for the petitioner that suit filed by the respondents before this Court being CS(OS) 242/2011 was for claiming the following reliefs:

“In the premises the humble plaintiffs respectfully request that this court may be pleased to direct the appointment of an independent Auditor to audit the accounts of defendants qua the plaintiffs.

And may be pleased to direct the defendants to provide all trading books; Invoices, Sales and Purchase, Register inwards, Register outwards, Cash Book, Ledger accounts year wise, Stock register, commission account, Directors Account, residue surplus Sundry debtors/creditors in original appertaining to business from 13.11.06 till Feb 09.

Also the court may be pleased to decree the payment of Rs five lakh (500000) or such sum as may be found due from defendants on the taking of such account with costs in favour of plaintiffs and against the defendants.”

7. It is submitted that Statement of Claim filed by the respondents goes much beyond the suit or the disputes raised in the suit and therefore, the Arbitrator cannot be conferred with jurisdiction to decide these issues or additional claims.

8. On the other hand, learned counsel for the respondents submits that these claims now being raised before the Arbitrator are within the scope of the suit that was filed before this Court and which had been referred for adjudication by the Sole Arbitrator. He submits that in the Statement of Claim only further particulars of the claim made by the respondents has been given under various heads.

9. In my opinion, whether the claim now raised by the respondents falls within the ambit of the suit that had been filed before this Court or goes beyond it, can be determined only by the Arbitrator and this Court, while exercising its power under Section 14 of the Act, cannot go into these issues at this stage.

10. Apart from the above two grievances, no further grievance has been raised by learned senior counsel for the petitioners in support of the petition.

11. In view of the above, the present petition along with pending application are disposed of recording the submission of learned counsel for the respondents that respondent Nos.5 to 12, as impleaded in their Statement of Claim before the Sole Arbitrator, may be treated as deleted. It is further clarified that the issue whether the claims that have now been raised in the statement of claim go beyond the suit i.e. CS(OS) 242/2011, would be a issue to be decided by the Arbitrator after hearing both the parties. All contentions of either party are left open in this regard. No order as to cost.

NAVIN CHAWLA, J

DECEMBER 04, 2017/vp