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

Date of Decision: 11th November, 2021

+ **C.R.P. 23/2020**

VIBHOR JAIN

..... Petitioner

Through: Mr. Vikas Dutta, Mr. Siddharth Silwal
and Mr. Rajesh Jha, Advocate.

versus

EKIBOM TECHNOLOGY INDIA PVT LTD
& ORS

..... Respondents

Through: Mr. Tanmaya Mehta, Ms. Aayushi
Sharma, Ms. Niyati Kohli, Mr.
Pradyuman Kaistha & Mr. Subham
Jain, Advocates for R-1.

9 And

+ **C.R.P. 27/2020**

SUJITH KRISHNAN NAIR

..... Petitioner

Through: Mr. Vikas Dutta, Mr. Siddharth Silwal
and Mr. Rajesh Jha, Advocate.

versus

EKIBOM TECHNOLOGY INDIA PVT LTD
& ORS.

.... Respondents

Through: Mr. Tanmaya Mehta, Ms. Aayushi
Sharma, Ms. Niyati Kohli, Mr.
Pradyuman Kaistha & Mr. Subham
Jain, Advocates for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present revision petitions arise out of the impugned order dated 25th November, 2019 passed by the Ld. ADJ, South West District, Dwarka

Courts, Delhi (*hereinafter* “*Trial Court*”) in ***Civil Suit No. CS (Comm) 22/2019*** titled ***Vibhor Jain v. Beijing Mobike Technology Co. Ltd. & Ors.*** By the impugned order, the application filed by the Respondent No.1/Defendant No.3 under Section 45 of the Arbitration and Conciliation Act, 1996 (*hereinafter* “*Act*”) has been allowed by the Trial Court, and accordingly, the commercial suit for declaration and damages as consequential relief has been disposed of.

3. The dispute in the present case arose out of a suit instituted by the Petitioners against three companies, namely Beijing Mobike Technology Co. Ltd., Ekibom Technology India Pvt. Ltd. and Mobike B.V., Netherlands. The Indian entity, Respondent No.1, is a company incorporated under the Companies Act, 2013. Respondent No.2 is a company incorporated under the laws of China. Respondent No.3 is a company incorporated under the laws of Netherlands and is a subsidiary of Respondent No.2. The Respondent No.2 & 3 along with its various group entities, including Respondent No.1, are engaged in the business of rendering bike-sharing services worldwide. Respondent No.1 was incorporated for the purposes of setting up and running the business of the Respondents in India. It was for this purpose that the services of the Petitioners were engaged.

4. It is the case of both the Petitioners that they have entered into a Service Contract dated 25th September, 2017 under which certain amounts were payable to the Petitioners for rendering consultancy services to the Respondents. The said Service Contract envisaged the payment of approximately USD 10,000 per month to the Petitioners. The suit of the Petitioners arose out of the Termination Letter dated 20th September, 2018, which was issued by the Indian entity, i.e., Respondent No.1 herein, thereby

terminating the services of the Petitioners as Chief Executive Officer (*hereinafter* “CEO”) and Chief Business Officer (*hereinafter* “CBO”) of the Respondent No.1. According to the plaint, the initial Service Contract dated 25th September, 2021 was continuing and the termination of the said contract could not have taken place in the manner, in which it was done by the Respondent No.1. Hence, the Petitioners were constrained to file a suit seeking declaration of the Termination Letter dated 20th September, 2018 as null and void as also for damages against the Respondents.

5. In the said suit, an application was filed by the Respondent No.1/Defendant No.3 under Section 45 of the Arbitration and Conciliation Act, 1996 on the ground that the dispute between the parties arises out of the Service Contract dated 25th September, 2017, which contains an arbitration clause as under:

“9. DISPUTE RESOLUTION

In the event of a dispute or difference, relating to, arising out of or in connection with any of the matters set out in this Contract, including any question regarding its existence, validity or termination (“Dispute”), the parties to the Dispute shall discuss in good faith to resolve the Dispute. In case the Dispute is not settled within 30 (thirty) calendar days, it shall be referred to and finally resolved by arbitration in arbitration in Singapore in English in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force. There shall be a sole arbitrator who shall be jointly appointed by the parties to the Dispute and falling agreement on such appointment, arbitrator shall be appointed by the appointing authority of the Singapore International Arbitration Centre. The venue of the arbitration may be determined by the arbitrator

from time to time having regard to the convenience of the parties to the Dispute. The award of the arbitrator shall be final and conclusive and binding upon the Parties and non-appealable to the extent permitted by Applicable Law.”

6. Accordingly, it was prayed by the Respondent No.1/Defendant No.3 that the disputes between the parties ought to be referred to arbitration in consonance with Clause 9 of the Service Contract dated 25th September, 2017. Vide the impugned order, the Respondent No.1/Defendant No.3's application under Section 45 of the Act was allowed, and accordingly, the parties were relegated to arbitration, and the commercial suit was disposed of. The operative portion of the impugned order reads:

25. Since plaintiff's suit has been filed assailing termination notice dated 20.09.2018 and seeking damages along with pendente lite and future interest on the basis of Service Contract dated 25.09.2017 whereas clause 9 of Service Contract specifically provides that dispute or difference relating to, arising out of or in connection with any of the matters set out in this contract, including any question regarding its existence, validity or termination shall be finally resolved by arbitration in Singapore in accordance with the arbitration rules of the "Singapore international Arbitration Centre (SIAC Rules)", so application under Section 45 of Arbitration and Conciliation Act filed by defendant No.3 Is allowed and parties or any person claiming through or under them may approach / refer the dispute for resolution as per clause 9 of the Service Contract dated 25.09.2017.

26. Commercial suit is disposed off accordingly.

27. File be cosigned to record room.

7. Mr. Dutta, Id. Counsel appearing for the Petitioners, submits that the

case of the Petitioners is against the Indian entity i.e., Respondent No.1, with whom there is no arbitration clause, as the Respondent No.1 is not a party to the Service Contract. He submits that, vide email dated 22nd October, 2018, the Respondents themselves have admitted that the Service Contract expired when the Petitioners were appointed as CEO and CBO of the Respondent No.1. Thus, the dispute is not covered under the Service Contract and therefore, the commercial suit was maintainable. He further relies upon the various correspondences as also the Termination Letter 20th September, 2018, which specifically has a clause to the effect that the exclusive jurisdiction in respect of termination shall be with the Courts in Delhi.

8. On the other hand, Mr. Mehta, Id. Counsel appearing for the Respondent No.1 i.e., the Indian entity, made the following submissions:

- i) Firstly, he submits that he does not represent Respondent Nos.2 & 3.
- ii) He further submits that the Respondent had invoked the Group of Companies doctrine before the Trial Court.
- iii) He relies upon the judgments in ***MTNL v. Canara Bank [(2020) 12 SCC 767]***, ***Chloro Controls India Private Ltd. v. Severn Water Purification [(2013) 1 SCC 641]*** and ***Ameet Lalchand Shah v. Rishabh Enterprises and Anr. [(2018) 15 SCC 678]***.
- iv) He submits that the arbitration clause contained in the Service Contract would be triggered, even to decide as to whether the issue raised by the Petitioners would be covered under the Service Contract or not.
- v) He relies upon the contents of the plaint to argue that the entire

plaint has been drafted with the fulcrum being the Service Contract, which clearly contains the arbitration clause. He also submits that the damages also arise out of the Service Contract, and since there is no separate remuneration or salary being paid to the Petitioners as CEO and CBO of the Respondent No.1, the disputes trace back to the Service Contract itself.

- vi) Specific reference is made to paragraphs 23 and 27 of the plaint to argue that the case of the Petitioners is itself that they were never appointed as CEO and CBO of the Respondent No.1. Therefore, the Service Contract could not have been terminated by the Respondents.
- vii) Accordingly, it is submitted that the revision petitions are liable to be dismissed, inasmuch as the Trial Court has rightly referred the parties to arbitration, in terms of the arbitration clause contained in the Service Contract.

9. On 29th September, 2021, these matters were partly-heard by this Court and the parties were directed to seek instructions on certain aspects. The relevant extract of the order dated 29th September, 2021 reads as under:

3. Arguments heard in part. Before proceeding further, let the parties seek instructions, on the following aspects:

- 1. Whether any specific appointment letter was issued by the Indian entity i.e., Respondent No.1/M/s. Ekibom Technology India Pvt. Ltd. to the Petitioners appointing them as CEO and CBO of the Respondent No.1? If so, what were the contents of the said appointment letter and what was the date of the same?*
- 2. Whether any amounts were paid either as salary*

or fee to the Petitioners by any of the Respondents?

If so, how much?

3. If any other remuneration was paid to the Petitioners after they assumed their positions of CEO and CBO of the Respondent No.1? If so, by which entity, and how much?

4. Mr. Mehta, Id. Counsel appearing for the Respondent No.1 would also seek instructions whether he would be appearing for Respondent Nos.2 & 3 as well.

5. Both the parties to file short affidavits in respect of the above aspects within one week.

10. Accordingly, the parties placed on record affidavits in compliance of order dated 29th September, 2021, wherein it was admitted by both the parties that the Petitioners were never formally appointed as CEO and CBO of the Respondent No.1. Consequently, there were no salaries or any other remuneration paid by the Respondent No.1 to the Petitioners on account of such appointment. Further, the amounts paid to the Petitioners by the Respondent No.1 were in the nature of service fees, and not salary.

11. Parties have been heard further. This Court is prima facie, of the opinion that considering that the case of the Respondents is that the Group of Companies doctrine is liable to be invoked, the Petitioners cannot be left remediless *qua* Respondent No.1, which had in fact issued the Termination Letter dated 20th September, 2018, which had been challenged in the suit. Based on the submissions made by the parties, the Court put a query to Mr. Mehta, Id. Counsel for the Respondents, as to whether Respondent No.1, which is the Indian entity would also be willing to join the arbitration proceedings, despite not being a party to the Service Contract.

12. After seeking instructions, Mr. Mehta, Id. Counsel submits that since the Group of Companies doctrine was invoked before the Trial Court as also this Court, as also the fact that the commercial suit has been disposed of, even in respect of Respondent No.1, the Petitioners may be permitted to invoke arbitration under the Service Contract against all the three Respondents i.e., the following companies:

1. **Ekibom Technology India Private Limited**

Having its registered office at L-2/110, New Mahabir Nagar, Opp. Arya Samaj Mandir, Outer Ring Road, Near Vikas Puri, New Delhi-1100018

2. **Beijing Mobike Technology Co. Ltd.**

Manning Co-working Center, No.53 Maizidian Street, Chaoyang District, Beijing.

3. **Mobike B.V.**

Jan Pietersz, Coenstraat 7, 2595 WP's -Gravenhage, Netherlands.

13. The impugned order dated 25th November, 2019, shall accordingly stand modified to the effect that the Petitioner is permitted to invoke arbitration in terms of the arbitration clause, as extracted above and contained in the Service Contract dated 25th September, 2017, against all the three aforementioned Respondents. Any award that may be rendered, as an outcome of the arbitration proceedings, would be binding and enforceable against all the three Respondents.

14. The impugned order dated 25th November, 2019 shall stand modified in the above terms. The Respondent No.1 shall file an Affidavit of a

competent and authorized signatory confirming the above position within two weeks.

15. The petitions, along with all pending applications, are disposed of in these terms.

16. List for compliance, for the purpose of perusing the affidavit to be filed by Respondent No.1, on 3rd December, 2021.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 11, 2021

Rahul/AB