IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1244 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO.612 OF 2019

Sunil Annasaheb Borade and Another ...Applicants
vs.
M/s. Sai Sadguru Developers and Others ...Respondents
And
Mandar Shivram Dalvi ...Proposed Respondent

WITH
INTERIM APPLICATION NO.1245 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO.1232 OF 2018

Ganesh Nagvekar and Another ..Applicants
vs.
M/s. Sai Sadguru Developers and Others ...Respondents
And
Mandar Shivram Dalvi ...Proposed Respondent

Mr. Saiyed Sahil, for the Applicants.
Mr. Zain Mookhi a/w. Mr. Yazad Udwadia i/b. M/s.D M Legal Associates, for Respondent No. 1.
Mr. Amrut Joshi a/w. Ms. Sneha Marjadi i/b. Ms. Sneha Marjadi, for the proposed Respondent.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 23, 2022

ORAL ORDER :

1. These applications are taken out in commercial arbitration petitions which were disposed by an order dated 2nd November, 2018 whereunder, by consent of the parties, a sole arbitrator was appointed to decide the dispute between the parties arising out of

two agreements for sale dated 29th March, 2012, with the following prayers:-

> (a) The Court be pleased to implead the proposed respondent as a party respondent to the present petition by permitting amendment of the petition in terms of Schedule A.
>
> (b) This Court be pleased to issue appropriate orders and directions for impleading the proposed respondent as a party respondent to the ongoing arbitration proceedings before the learned Sole Arbitrator Mr. Rohan Kelkar arising out of registered agreement for sale deed dated 29th March, 2012 bearing Sr. no. 2746 of 2012 executed by and between the applicant/petitioners and the respondent No. 1

2. The background facts leading to these applications can be stated as under:-

a] The respondent No. 1 firm had executed agreements for sale on 29th March, 2012 to sale 3 BHK Flat No. 1501 admeasuring 1400 sq.ft carpet area on the 15th floor alongwith 2 car parking spaces and flat No. 1503 admeasuring 725 sq.fts. on 15th floor along with 2 car parking spaces in the building known as Kamla Celestial with ground plus 17 upper floors then being constructed on the land bearing plot No. 201, TPS-IV admeasuring 903.29 sq.yards equivalent to at or about 755.25 sq. mtrs., now registered under New Survey No. 1435 (pt), Cadastral Survey No. 1582, Mahim Division, Mumbai in favour of applicants in Commercial Arbitration Petition No. 612 of 2019 and 1232 of 2018, respectively. The said agreements contained a clause for resolution of the dispute through arbitration.

b] As dispute arose between the petitioner /applicants and the respondent Nos. 1 to 5, the petitioners preferred an application under section 9 of the Arbitration and Conciliation Act, 1996 ("the Act"). In the said application, by consent of the parties, this Court, was persuaded to appoint Mr. Rohan Kelkar, as the sole arbitrator to decide the dispute between the parties arising out of the agreements for sale dated 29th March, 2012 with a further direction that the petition under section 9 of the Act shall be treated as petition under section 17 of the Act and the same may also be decided by the learned arbitrator.

3. The applicants have again approached the Court with a case that Mr. Mandar S. Dalvi, the proposed respondent herein, was also a partner of the respondent No. 1 firm at the time of the filing of the said petition. However, the applicants were unaware of the same. Nor the respondents No. 2 to 5 who were impleaded as the partners of the respondent No. 1 firm brought to the notice of the Court that the proposed respondent Mr. Mandar Dalvi (Mandar) was inducted as a partner in the respondent No. 1 firm with effect from 17th December, 2015 pursuant to the deed of reconstitution of partnership firm (Exhibit B annexed to the application). The

applicants became aware of the said fact while pursuing arbitration proceedings.

4. It is the case of the applicants that Mandar has taken over the assets and liabilities of the respondent No. 1 firm along with the continuing partners of the respondent No. 1 firm. Mandar is therefore also liable to specifically perform the obligations incurred by respondent No. 1 and also personally liable to pay the damages and compensation claimed by the applicants in arbitration proceeding.

5. Hence, pursuant to the liberty granted by this Court by order dated 4th February, 2020, the applicants have preferred these applications to implead Mandar as a party respondent to the petition wherein the arbitrator came to be appointed and also direct the impleadment of the proposed respondent as party respondent to ongoing arbitration proceeding before the learned sole arbitrator Mr. Rohan Kelkar.

6. Mandar has resisted the applications by filing an affidavit in reply. The substance of the resistance put forth by Mandar is that the proposed respondent is not at all a necessary party to the

arbitration proceeding. The instant application has been preferred with a *malafide*, oblique and ulterior motive and as a part of arm-twisting mechanism to exert pressure upon the respondent No. 1 firm. Since Mandar came to be inducted into the partnership firm on 17th December, 2015, neither Mandar is aware of the transactions entered into by the respondent No. 1 firm prior to his induction, nor can he be fastened with the liabilities which those transactions gave rise to.

7. It is further contended that Mandar does not have and shall not be having any separate and independent stand as far as the claims and contentions of the applicants. Since the respondent No. 1 firm is duly represented by respondent Nos. 4 and 5 and has already filed its statements of defence in the arbitration proceedings and the pleadings are also complete, Mandar professes to confirm the stand taken by respondent No. 1 firm in the said proceedings. Mandar has nothing further to add to the defences that have already been taken in the said arbitration proceedings. The application is stated to have been preferred with intent to implead Mandar in the arbitration proceeding so as to cause collateral damage to Mandar.

8. I have heard Mr. Saiyed Sahil, learned counsel for the applicants, Mr. Mr. Zain Mookhi, learned counsel for Respondent No. 1 firm and Mr. Amrut Joshi, the learned counsel for Mandar, the proposed Respondent. With the assistance of the learned counsels for the parties, I have also perused the material on record including the pleadings in these applications.

9. The learned counsel for the applicant would urge that Mandar is a necessary party to the arbitration proceedings as with the re-constitution of the firm, under the deed of reconstitution of partnership dated 17th December, 2015, Mandar has the major (67%) share in the profits of the firm. Inviting the attention of the Court to the recitals in the deed of reconstitution of partnership, especially the liabilities of the continuing partners, including Mandar, Mr. Saiyed would urge that the proposed respondent cannot be absolved from the liability of the firm.

10. It was further submitted that non-implement of Mandar in the petitions filed under section 9 of the Act, was *bonfafide*.

11. The facts that the respondents in the said petitions did not apprise the Court about the change in the constitution of the firm

and consented to the appointment of an arbitrator to arbitrate in the disputes which arose between the applicants and the respondent No. 1 firm were pressed into service to bolster up the submission that the respondents cannot be permitted to take benefit of their own wrong.

12. Mr. Mookhi, learned counsel for the respondent No. 1 would urge that the impleadment of the proposed respondent is not at all warranted. Adverting to the provisions contained in Order 30 of the Code of Civil Procedure, 1908 (the Code) which regulates the proceeding for and against the partnership firm, Mr. Mookhi would urge that since the respondent No. 1 is a party to the arbitration proceedings, the application to implead Mandar, the proposed respondent, as a party respondent, at this stage, is misconceived.

13. Mr. Joshi, learned counsel for Mandar, the proposed respondent, mounted a multi-pronged challenge to the tenability of the application. First and foremost, since, the arbitration was not invoked against Mandar he cannot be made a party to the arbitration proceeding. Secondly, a direction for impleadment of Mandar to the arbitration proceedings, by this Court, would amount to a review of the order passed by this Court on 4th February, 2020

which is legally impermissible. Thirdly, the learned arbitrator has all the powers, including power to implead a party. For this purpose, Mr. Joshi submitted, Mandar would not question the jurisdiction of the arbitrator to entertain the application, to implead the proposed respondent, though Mandar reserves the right to contest the prayer on merits, urged Mr. Joshi.

14. Mr. Saiyed, learned counsel for the applicants joined the issue by canvassing a submission that the said course of action, suggested on behalf of the proposed respondent, is fraught with multiplicity of proceedings, and, in view of the clear liability incurred by the proposed respondent, this court would be justified in directing the impleadment of Mandar as a party respondent to the proceedings before the learned arbitrator.

15. To begin with, it may be necessary to note un-controverted facts. Indisputably, the agreement for sale contained an arbitration clause pursuant to which this Court passed an order referring the parties to arbitration. Secondly, the fact that Mandar came to be inducted in M/s. Sai Sadguru Developers, the respondent No. 1 firm, under the deed of reconstitution of partnership dated 17th December, 2015, is indisputable. By virtue of the said

reconstitution, Mr. Gopal Dalvi, respondent No. 3 retired from the partnership firm and Mandar came to be inducted as an incoming partner. Thirdly, the jural relationship between respondent No. 1 firm, Mandar and rest of the respondents *interse* is not in dispute.

16. In order to appreciate the nature of the obligation incurred by Mandar, it may be appropriate to extract few clauses of the deed of reconstitution.

> B-8. The continuing partners undertake that the Retiring partner will not be held liable for any dues and liabilities arising out of the transactions entered into by the partnership firm during the period before his retirement as well as during the period after their retirement. <u>The continuing partners further undertake to retiring partner against any liabilities, losses and damages which retiring partner will have to bear arising out of the transactions entered into by the firm.</u>
>
> ……… …………
>
> 2. The retiring partner hereby assign and release to the continuing partners of their share and interest in the business of the said partnership and property, assets, capital, stocks, funds, credits, quotas, rights, outstanding of the said partnership firm and of the other tangible and intangible, present and future rights, benefits, connections, and privileges relating to the said partnership business. <u>The continuing partners also agree to pay the liabilities of the said partnership and release the retiring partner from the liabilities whatsoever in this respect.</u>
>
> 3. <u>The continuing partners shall take over all the Assets and Liabilities of the business and carry on and continue the said business in the firm name and style of M/s. Sai Sadguru Developers, therein after from times as may be mutually agreed by the partners of said partnership.</u>

8] Profit/Loss Sharing :-

The net profit and loss of the partnership business after the payment of all expenses, interest and remuneration to the partners and another outgoings, including capital losses if any shall be shared by and between the parties hereto in the following proportion :-

No	Name of the partners	Share in the profit/loss
1	Vijay Appasaheb Kerlekar	16.50%
2	Ruchira Vijay Kerlekar	16.50%
3	Mandar Shivram Dalvi	67.00%
	Total :	100.00%

(emphasis supplied)

17. In the backdrop of the aforesaid stipulations in the deed of reconstitution, the question that primarily arises for consideration is whether Mandar can be impleaded as a party respondent to the arbitration proceedings. Indisputably, the notice invoking the arbitration was not given to Mandar nay it is the case of the applicants that they were totally unaware that Mandar came to be inducted as a partner of respondent No. 1 firm. The moot question which wrenches to the fore is, whether despite the notice of invocation of arbitration having not been given to Mandar can he now be impleaded as a party to the arbitration proceedings.

18. Mr. Joshi, learned counsel for the proposed respondent,

would urge that exercise of discretion by this Court, to implead Mandar as party respondent to the arbitration proceedings, would amount to review of the orders passed by this Court. It was submitted that the orders having been passed, in exercise of the power under section 11 of the Act, it is not open to the Court to review the said orders.

19. To bolster up this submission, Mr. Joshi placed a strong reliance on the Constitution Bench judgment of the Supreme Court in the case of **SBP & CO. vs. Patel Engineering Ltd. And Another**[1]**,** especially on the proposition (vi), culled out in paragraph No. 47 of the said judgment, which reads as under:-

> 47..........(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

20. Amplifying the aforesaid submission, Mr. Joshi would urge that the court, having referred the matter to Arbitral Tribunal, now cannot interfere in the proceedings before the learned Arbitrator and direct the impleadment of a party thereto. Mr. Joshi, relied upon a Division Bench judgment of this Court in the case of

1 (2005) 8 Supreme Court Cases 618.

Antikeros Shipping Corporation vs. Adani Enterprises Ltd., Mumbai[2]. In the said case, a learned single judge of this Court, after finding that the arbitrator could not have been appointed by the Court as the matter pertained to the international arbitration, had recalled the order appointing the arbitrator, in exercise of review jurisdiction. The Division Bench disagreed with the view of the learned single judge and held that the learned single judge could not have exercised the power of review as a Constitutional Court as the learned single judge was not exercising the power of the Court but that of a delegate of the Chief Justice.

21. Evidently, the aforesaid judgment came to be rendered in the peculiar facts of the said case. There can be no qualm over the proposition enunciated therein. However, in the case at hand, I find it rather difficult to accede to the submission of Mr. Joshi that a direction for impleadment of the Mandar as a party respondent in arbitral proceedings before the learned Arbitrator would amount to assuming review jurisdiction. The Court is not called upon to either recall the order appointing Arbitral Tribunal or vary the said orders. The applicants do not assert that arbitration proceedings be interdicted or scuttled. The applicants desire to implead Mandar who, indisputably, has 67% share in the profits of the firm.

2 2020 (3) Mh.L.J. 855.

22. In this view of the matter, the core issue that crops up for consideration where a joinder of a party, who is not a signatory to the arbitration agreement, is permissible ? The question was considered by the Gujrat High Court in the case of **I.M.C. Ltd. vs. Board of Trustees of Deendayal Port Trust and Ors.**[3], which was relied upon by Mr. Joshi, to bolster up the submission that the Arbitral Tribunal is competent to consider the question of impleadment of a party to the arbitration proceedings.

23. In the said case, the Arbitral Tribunal had directed the impleadment of a party to the arbitration proceeding, who was not a party to the proceeding before the reference Court. The Arbitral Tribunal had, directed the impleadment of non-signatory proceeding on the prima facie opinion formed by the tribunal, on the available facts and circumstances of the case, as it was found that the proposed respondent therein had incurred certain obligations while participating in the bidding process. And that, if after trial it was found that the proposed respondent cannot be held bound by the agreement entered into between the claimant and the present respondent or is otherwise entitled to be exonerated, the respondent would certainly be held not liable in the said proceedings.

3 (2019) 3 GLR 1798.

24. The learned single judge of the Gujrat High Court, found no merit in the petition preferred against the said order of impleadment. The Division Bench of the Gujrat High Court concurred with the view of the learned single judge and dismissed the petition observing, inter alia, as under:-

> 41. In light of the view expressed by the Hon'ble Supreme Court in the judgments referred to above and considering that the learned Arbitral Tribunal itself has observed that only by considering the prima-facie case, such impleadment of the appellant is ordered, keeping open the contentions which are to be raised by the appellant and further, in view of the reasons recorded by us, as referred above, in our opinion, the learned Single Judge has not committed any error in dismissing the petition filed by the appellant herein.
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> 42. For the aforesaid reasons, we do not find any merit in this Letters Patent Appeal. Same is accordingly dismissed, with no order as to cost.
>
> 43. However, it is reiterated that the observations made and findings recorded either by the learned Single Judge or by us in this judgment are only for the purpose of deciding the issue prima-facie and all the contentions that may be raised by the appellant are left open for consideration by the learned Arbitral Tribunal.

25. Banking upon the aforesaid pronouncement, Mr. Joshi submitted that the applicants be relegated to the Tribunal with liberty to make an appropriate application and the Tribunal may, thereafter, decide the question of impleadment of the parties. It is true that in the aforesaid case, the matter arose out of an order of impleadment passed by the Arbitral Tribunal. However, aforesaid pronouncement does not imply that, in all cases, the application is required to be made before Arbitral Tribunal in the first instance.

26. The judgments of the Supreme Court in the cases of **ITI Limited vs. Siemens Public Communications Network Limited**[4] and **Maharashtra State Electricity Board vs. Datar Switchgear Limited**[5]**,** on which reliance placed by the learned counsel for the proposed respondent as regards the applicability of the provisions of the Code to the proceeding before the Arbitral Tribunal simply do not govern the controversy at hand.

27. Ordinarily, arbitration proceedings are between the persons who were the parties to the arbitration agreement. The essence of arbitration is the consensus between the parties that, in the event of disputes, matter will be resolved by Arbitration. Arbitral Tribunal is essentially the forum chosen by the parties to resolve the disputes. Arbitration pre- supposes prior consent to Arbitrate manifested in the firm of written contract. But, is their any prohibition in law to seek arbitration by or against a person who is not a signatory to the arbitration agreement ?

28. The aforesaid question was considered by the Supreme Court in the case of **Chloro Controls India Private Limited vs. Severn Trent Water Purification INC and Others**[6]. The case before the

4 (2002) 5 Supreme Court Cases 510.
5 2002 SCC OnLine Bom 983.
6 (2013) 1 Supreme Court Cases 641.

Supreme Court was under section 45 of the Act. The Supreme Court considered the question as to whether a non signatory or a third party would be subjected to arbitration without prior consent and the circumstances in which such exceptional course could be adopted. The observations of the Supreme Court in paragraphs 70 to 73 are instructive and, hence, extracted below:

> 70. Normally, arbitration takes place between the persons who have, from the outset, been parties to both the arbitration agreement as well as the substantive contract underlining that agreement. But, it does occasionally happen that the claim is made against or by someone who is not originally named as a party. These may create some difficult situations, but certainly, they are not absolute obstructions to law/the arbitration agreement. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Of course, heavy onus lies on that party to show that, in fact and in law, it is claiming 'through' or 'under' the signatory party as contemplated under Section 45 of the 1996 Act. Just to deal with such situations illustratively, reference can be made to the following examples in Law and Practice of Commercial Arbitration in England (Second Edn.) by Sir Michael J. Mustill:
>
>> "1. The claimant was in reality always a party to the contract, although not named in it.
>>
>> 2. The claimant has succeeded by operation of law to the rights of the named party.
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>> 3. The claimant has become a part to the contract in substitution for the named party by virtue of a statutory or consensual novation.
>>
>> 4. The original party has assigned to the claimant either the underlying contract, together with the agreement to arbitrate which it incorporates, or the benefit of a claim which has already come into existence."
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> 71. Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them, the Courts under the English Law have, in certain cases, also applied the "Group of Companies Doctrine". This doctrine has developed in the international context, whereby an arbitration agreement entered into by a

company, being one within a group of companies, can bind its non- signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates. This theory has been applied in a number of arbitration so as to justify a tribunal taking jurisdiction over a party who is not a signatory to the contract containing the arbitration agreement. ['Russell on Arbitration' (Twenty Third Edition)].

72. This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, 'intention of the parties' is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.

73. 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. Besides all this, the Court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the Court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.

(emphasis supplied)

29. The Supreme Court further exposited the juridical basis of the joinder of non signatory party to arbitration. It was, inter alia, observed that joinder of non signatory parties to arbitration is not unknown to the arbitration jurisprudence. The legal foundation was traced as under:-

> 102. Joinder of non signatory parties to arbitration is not unknown to the arbitration jurisprudence. Even the ICCA's Guide to the Interpretation of the 1958 New York Convention also provides for such situation, stating that when the question arises as to whether binding a non-signatory to an arbitration agreement could be read as being in conflict with the requirement of written agreement under Article I of the Convention, the most compelling answer is "no" and the same is supported by a number of reasons.
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> 103. Various legal basis may be applied to bind a non-signatory to an arbitration agreement.
>
> 103.1 The first theory is that of implied consent, third party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities.
>
> 103.2 The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called the "alter ego"), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.

Thereafter the Supreme Court concluded, as under:

> 107. <u>If one analyses the above cases and the authors' views, it becomes abundantly clear that reference of even non-signatory parties to arbitration agreement can be made. It may be the result of implied or specific consent or judicial determination.</u> Normally, the parties to the arbitration agreement calling for arbitral reference should be the same as those to the an action. <u>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.</u>

(emphasis supplied)

30. The aforesaid pronouncement was followed by another three

judge Bench of the Supreme Court in the case of **Cheran Properties Limited vs. Kasturi and Sons Limited and Others**[7]**.** In the said case, which arose out of Indian Arbitration, after extensively referring to and relying upon the judgment in the case of **Chloro Controls** (supra), the Supreme Court enunciated the legal position as under:-

> 23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non- signatory bound by an arbitration agreement, the Court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfillment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non- signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.
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> 25. Does the requirement, as in Section 7, that an arbitration agreement be in writing exclude the possibility of binding third parties who may not be signatories to an agreement between two contracting entities? The evolving body of academic literature as well as adjudicatory trends indicate that in certain situations, an arbitration agreement between two or more parties may operate to bind other parties as well. Redfern and Hunter explain the theoretical foundation of this principle:
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>> "..........The requirement of a signed agreement in writing, however, does not altogether exclude the possibility of an arbitration agreement concluded in proper form between two or more parties also binding other parties. Third parties to an arbitration agreement have been held to

7 (2018) 16 Supreme Court Cases 413.

> be bound by (or entitled to rely on) such an agreement in a variety of ways: first, by operation of the 'group of companies' doctrine pursuant to which the benefits and duties arising from an arbitration agreement may in certain circumstances be extended to other members of the same group of companies; and, secondly, by operation of general rules of private law, principally on assignment, agency, and succession….."

> The group of companies doctrine has been applied to pierce the corporate veil to locate the "true" party in interest, and more significantly, to target the creditworthy member of a group of companies. Though the extension of this doctrine is met with resistance on the basis of the legal imputation of corporate personality, the application of the doctrine turns on a construction of the arbitration agreement and the circumstances relating to the entry into and performance of the underlying contract.
>
> (emphasis supplied)

31. In view of the aforesaid pronouncements of the Supreme Court, the legal position can be said to have evolved to the effect that a person who is not a party to the arbitration agreement can be referred to the arbitration if the Court, upon consideration of the material, is satisfied about the direct relationship of the non-signatory party and the party which is the signatory to the agreement, the commonality of the subject matter and that the composite nature of the transaction would render the impleadment of such non-signatory as a party to the arbitration proceeding justifiable.

32. Applying the aforesaid principles to the facts of the case the

following position emerges. First and foremost, there is no dispute over the jural relationship of Mandar with respondent No. 1 firm. Second, the reconstitution of the firm with two principal features, namely, Mandar having 67% share in the profits and the continuing partners, including Mandar, taking over the assets and liabilities of the firm and carrying on the business of the firm, is incontestible. Third, Mandar does not, at least in response to the instant application, plead a conflict of interest with the firm and its continuing partners. On the contrary, a stand is taken that, the respondent No. 1 has taken all the grounds of defence which are required to be taken and Mandar does not intend to add anything to the stand taken by the respondent No. 1 firm. Fourth, since the arbitration was invoked against respondent No. 1 firm and its then partners, known to the applicants, after Mandar came to be inducted as a partner holding a major share in the profits, for an effectual and complete resolution of all the disputes, the presence of Mandar before the Arbitral Tribunal is absolutely warranted. Thus the tests of direct relationship of the proposed respondent and the respondent before the Arbitral Tribunal and commonality of the subject matter stand fulfilled.

33. In this view of the matter relegating the applicants to the arbitral Tribunal for deciding the said issue does not seem

warranted. On the contrary, an order of impleadment by this Court would obviate multiplicity of proceedings. Hence, I am inclined to allow the application.

Thus, the following order.

ORDER

1] The applications stand allowed in terms of prayer clause (a) and (b).

2] Proposed amendment, in terms of Schedule A, be carried out within two weeks from today.

3] Mandar, the proposed respondent, shall stand impleaded as a party respondent to the ongoing arbitration proceedings before the learned Arbitrator.

4] The parties to the arbitration and the newly impleaded respondent shall appear before the Arbitral Tribunal on a day in the week commencing from 18th April, 2022 to be determined as per the convenience of the learned Arbitrator.

5] The learned Arbitrator shall proceed with the arbitration proceedings in accordance with law.

6] It is clarified that the newly impleaded respondent shall have the liberty to file the statement of defence and raise all the grounds which are available in law, including those available under Indian Partnership Act,1932.

7] Applications disposed.

8] All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)