

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

% *Reserved on: 10th November, 2022*

Pronounced on: 27th January, 2023

+ **ARB.P. 165/2019**

1. KHUSHALI CHUGH

D/o. Late Mr. Vijay Chugh,
R/o 42, SFS Flats, Hauz Khas,
New Delhi- 110 016.

2. NAVYA CHUGH

D/o. Late Mr. Vijay Chugh,
R/o 42, SFS Flats, Hauz Khas,
New Delhi- 110 016.

..... Petitioners

Through: Mr. Raghavendra Mohan Bajaj and
Mr. Aveeb Uddin Ahmed, Advocates.

versus

1. VAYKKAKKARA SANKARA NARAYANAN

S/o. Late Mr. Krishnan Namboodiri,
A-401, MOD Apartments,
61 Vasundhra Enclave,
New Delhi- 110096.

2. VIDUR CHUGH

H No 130, 2nd Floor,
Nehru Apartments,
Kalkaji, New Delhi- 110019.

3. EVERON LIFE SCIENCES

805, Ashoka Bhawan 93,
Nehru Place,
New Delhi- 110019.

4. BHAWNA CHUGH

H No 130, 2nd Floor,
Nehru Apartments,
Kalkaji, New Delhi- 110019

..... Respondents

Through: Mr. Abhishek Malhotra and Ms. Atmaja Tripathy, Advocates for respondent No.1.

Mr. Deepak Biswas, Advocate for respondent No.2, 3 and 4.

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OMP(I)(COMM) 392/2018

1. KHUSHALI CHUGH

D/o. Late Mr. Vijay Chugh,
R/o 42, SFS Flats, Hauz Khas,
New Delhi- 110 016.

..... Petitioner

Through: Mr. Raghavendra Mohan Bajaj and
Mr. Aveeb Uddin Ahmed, Advocates.

versus

2. VAYKKAKKARA SANKARA NARAYANAN

S/o. Late Mr. Krishnan Namboodiri,
A-401, MOD Apartments,
61 Vasundhra Enclave,
New Delhi- 110 096.

3. HYSEL INDIA PRIVATE LIMITED

1405, Chiranjiv Tower
43, Nehru Place,
New Delhi- 110019

4. EVERON LIFE SCIENCES PRIVATE LIMITED

805, Ashoka Bhawan 93,
Nehru Place,
New Delhi- 110019.

5. VIDUR CHUGH

H No 130, 2nd Floor,
Nehru Apartments,
Kalkaji, New Delhi- 110019.

6. EVERON LIFE SCIENCES

805, Ashoka Bhawan 93,
Nehru Place,

New Delhi- 110019.

..... Respondents

Through: Mr. Abhishek Malhotra and Ms. Atmaja Tripathy, Advocates for respondent No.1.
Mr. Deepak Biswas, Advocate for respondent No.4 and 5.

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OMP(I)(COMM) 102/2019

VAYKKAKKARA SANKARA NARAYANAN

S/o. Late Mr. Krishnan Namboodiri,
A-401, MOD Apartments,
61 Vasundhra Enclave,
New Delhi- 110096.

..... Petitioner

Through: Mr. Abhishek Malhotra and Ms. Atmaja Tripathy, Advocates.

versus

KHUSHALI CHUGH

D/o. Late Mr. Vijay Chugh,
R/o 42, SFS Flats, Hauz Khas,
New Delhi- 110016.

..... Respondent

Through: Mr. Raghavendra Mohan Bajaj and Mr. Aveeb Uddin Ahmed, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGEMENT

NEENA BANSAL KRISHNA, J.

1. All three petitions are being decided together as they involve common facts.

ARB.P. 165/2019

2. A Petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (*hereinafter referred to as "A&C Act, 1996"*) has been filed for appointment of an Arbitrator for adjudication of the disputes between the parties.

3. It is submitted in the petition that the petitioners are the daughters of Late Mr. Vijay Chugh. During his life time, Mr. Vijay Chugh along with respondent No. 1 Vaykkakkara Sankara Narayanan incorporated Hysel India Private Limited (*hereinafter referred to as "Hysel"*) in the year 1998 in which both Mr. Vijay Chugh and Respondent No.1 were directors and had 50% shareholding, each. After the demise of Mr. Vijay Chugh, petitioner No.1 Ms. Khushali Chugh was appointed as a Director in Hysel on 30th June, 2017 and became a 50% shareholder. It is asserted that Hysel until recently was engaged in the business of trading in Life Science research products.

4. Mr. Vijay Chugh during his lifetime, incorporated another Company by the name of Everon Life Sciences Private Limited (*hereinafter referred to as "Everon"*) along with his brother Mr. Vidur Chugh i.e. Respondent No.2 which was also engaged in the business of trading in Life Science research products. Mr. Vidur Chugh respondent No.2 and petitioner No.2 Navya Chugh are the current Directors and equal shareholders in Everon Life Sciences Private Limited. The flagship Company was Hysel during the lifetime of Mr. Vijay Chugh and only certain business was carried out by Everon.

5. It is stated that soon after the demise of Mr. Vijay Chugh on 1^{7th} July, 2016, respondent No.1 appointed respondent No.2 as the Director of Hysel without the consent of the legal heirs of Late Mr. Vijay Chugh.

6. Also, a new Partnership Firm Everon Life Sciences which is respondent No.3 incorporated, in which respondent No.1 and/ or respondent No.2 have an interest through which respondent No.1 and 2 are siphoning off the business of Hysel. Respondent no.4 Ms. Bhawna Chugh is the wife of Sh. Vidur Chugh respondent No.2 who is also a partner in respondent No.3 Firm.

7. It is claimed that respondent No.1 and 2 since the demise of the father of the petitioners have been indulging in the unlawful and arbitrary acts which has caused huge losses to Hysel and Everon Life Sciences Private Limited and have also prejudiced the rights and interests of the petitioners and their family members. The respondent No.1 and 2 have misled the petitioners and acted in a self serving manner. It is claimed that on 2^{5th} July, 2016 respondent No.1 and 2 without the knowledge and consent of the petitioners created Minutes of Meeting of Everon Life Sciences Private Limited wherein it was proposed that respondent No.1 be appointed as Director in place of Mr. Vijay Chugh. The Minutes were also uploaded on the MCA website. Keeping in mind the old/ family like relations the petitioners and their mother did not take any criminal action.

8. Similarly, on 2^{6th} July, 2016 another set of Minutes were created without the knowledge and consent of the petitioners, wherein respondent No.2 was proposed as a Director in place of Mr. Vijay Chugh in Hysel. An Extra Ordinary General Meeting of Hysel was held by respondent No.1 and respondent No.2 was unanimously appointed as Director of Hysel. The

same was, however, neither ratified by the petitioners or the family members nor was this fact within their knowledge. Likewise, an Extra Ordinary General Meeting was held on 0^{9th} August, 2016 by respondent No.4 in Everon Life Sciences Private Limited wherein respondent No.1 was unanimously appointed as Director of Everon.

9. It is claimed that no steps were taken for transmission of shareholding of Hysel and Everon Life Sciences Pvt. Ltd. to the petitioners or their family members after the demise of Mr. Vijay Chugh. Respondent No.1 and 2 have refused to share any information with the petitioners in relation to both Hysel and Everon Life Sciences Pvt. Ltd. Eventually after much persuasion respondent No.1 shared minimal information about the affairs of Hysel through emails.

10. With a view to settle the disputes several meetings were held between petitioner's mother and respondent No.1 and 2 but they were seldom fruitful and respondent No.1 and 2 continued to maintain secrecy about the two Companies. Eventually, believing the assertions of respondent No.1 and 2 that the business of Hysel was suffering from losses and there was no other alternative but to close the Company, petitioner No.1 and respondent No.1 entered into an Agreement and MOU dated 19th December, 2017 wherein detailed terms were agreed for transfer/ closure of the business of Hysel. However, even thereafter the respondent No.1 did not work in a transparent manner with regard to the affairs of Hysel and was reluctant to provide access to petitioner No.1 to the bank accounts of Hysel. She was also not given access to the official email of Hysel. She also came to know that despite respondent No.2 having resigned, his name continued to be reflected as a signatory to the bank account in Yes Bank Ltd. of the Company. Huge

payments were being made from the accounts of Hysel without the knowledge and permission of petitioner No.1.

11. It is asserted that in April 2018 petitioner No.1 visited the warehouse of Hysel located in Sukhdev Vihar, New Delhi, but was not provided a key to the warehouse. She in order to preserve the existing stock, put her padlock on the shutter of the warehouse. However, in May, 2018 she came to know that respondent No.1 broke open the warehouse and transferred the stocks without her knowledge. In around May-June, 2018 she became aware that respondent No.1 and 2 have been operating through another premises in the name and style of Everon Life Sciences Pvt. Ltd./ respondent No.3 (a partnership firm) and were swindling the business of Hysel and Everon Life Sciences Pvt. Ltd. The petitioner No.1 also discovered that respondent No.1 and 2 had shifted the computers, telephone connection, books of accounts to the new office of respondent No.3 situated at Ashoka Estate, New Delhi. The staff which was on the payroll of Hysel till 31st March, 2018 was also found working for respondent No.1 in the respondent No.3 partnership firm. The Company vehicle was also continued to be used by respondent No.2.

12. A Local Commissioner was appointed by this Court in O.M.P.(I)(COMM.) 392 of 2018 under Section 9 of the A&C Act, 1996 filed by petitioner No.1. The Local Commissioner visited the premises of respondent No.3 on 08th October, 2018. From the Report of the Local Commissioner it is evident that business of Hysel has been siphoned off to respondent No.3. Petitioner No. 1 has discovered on 25.09.2018 that recently the Respondent No. 1 and 2 went to Anand Engineering College, Agra for conducting a recruitment drive.

13. It is claimed that despite the MOU dated 19th December, 2017 respondent No.1 failed to honour the same and continued to act adversely to the interest of the Company. Accordingly, on 06th February, 2019 the petitioner sent Arbitration Notice to the respondents nominating Sh. Bhuvan Mishra as the Sole Arbitrator. The respondent No.2 and 4 gave a reply dated 22nd February, 2019 wherein they claimed that they were not the signatory/ party to the Memorandum of Understanding dated 19th December, 2017 and could not be compelled to participate in the arbitration proceedings. Respondent No.1 sent a reply dated 24th February, 2019, asserting that other than petitioner No.1 and respondent No.1, no other party can be made to participate in the arbitration proceedings. Further, he rejected the name of suggested Sole Arbitrator and proposed the name of Justice (retired) B.D. Ahmed as the Sole Arbitrator. It is asserted that the petitioners left with no option, have sought to invoke the arbitration clause as contained in the MOU. Hence, the present petition has been filed for appointment of the Arbitrator.

14. **The respondent No.1 in its detailed reply** has asserted that the MOU dated 19th December, 2017 was executed in respect of the closure of business of Hysel between petitioner No.1 and respondent No.1. The disputes have arisen between them owing to the failure of petitioner No.1 to honour the obligation of co-operating in the closure of the business as she has failed to visit the office or to sign the requisite documents including the Balance Sheets and also to co-operate in the sale of the properties identified in the MOU. A Notice for invocation of arbitration dated 06th February, 2019 was admittedly served by petitioner No.1. The respondent No.1 also expressed its intention to initiate arbitration proceedings vide its reply dated

24th February, 2019. The MOU which contains the arbitration clause is only between petitioner No.1 and respondent No.1. The scope of arbitration cannot be expanded to include other disputes and the Sole Arbitrator may be appointed for the disputes arising out of the MOU.

15. **The respondent No.2 and 3** in their reply have asserted that the dispute essentially pertain to the MOU executed between petitioner No.1 and respondent No.2 in regard to the business of Hysel. They are neither the shareholders nor in the management or control of the affairs of Hysel and there is no question of involving the answering respondents in the disputes which have arisen out the MOU. It is therefore, stated that the respondent No.2 and 3 cannot be dragged to arbitration and the present petition vis-a-viz them is liable to be dismissed.

16. It has been explained that respondent No. 2 resigned from Tata Tele Services on 01st May, 2013 and was inducted in Hysel India Pvt. Ltd. as an employee with the designation of Director (Marketing & Sale) till 24th July, 2017 on which date the respondent No.2 tendered his resignation. The understanding between Late Mr. Vijay Chugh, respondent No.1 and 2 with regard to the engagement of respondent No. 2 was that from the revenue of the Companies, each of the three persons would draw identical salary and remuneration. Though the salary of respondent No.2 would be in the capacity of an employee in addition to the remuneration in the form of a “Consultant Fee”. Respondent No.2 was not to have any share in the immovable properties or reserves and surplus of Hysel Pvt. Ltd. that were acquired or created prior to his appointment. He was accorded a Senior Management position, though was represented as a Director to the clients and principals. It was further agreed that a new Company would be

incorporated which would operate from the same premises as Hysel and the two Companies would work together and share the business with a view to gate a larger share in the market. Accordingly, Everon Life Sciences Pvt. Ltd. was incorporated with a common line of business and objective of Hysel with the same intent and similar arrangement and strategy was followed in the incorporation of respondent No. 3. It is further asserted that since respondent No. 2 resigned from Hysel on 24th July, 2017, he has nothing to do with the business and affairs of Hysel.

17. **The petitioner in her respective rejoinder to the reply of** respondent No.1, 2 and 3 has reaffirmed the assertions as made in the petition.

18. **Written submissions have been filed on behalf of the respondents** essentially reiterating the stand which has been taken in their respective reply.

19. Learned counsel for the respondents have also placed reliance on Reckitt Benckiser (India) Private Limited vs. Reynders Label Printing India Priave Limited & Anr. (2019) 7 SCC 62 and Cox And Kings Limited vs. SAP India Private Limited & Anr. (2022) 8 SCC 1 to argue that non-signatories to an Arbitration Agreement cannot be referred for arbitration.

20. **Learned counsel on behalf of the petitioner has submitted written submissions and has also argued** that since the respondent other than respondent No. 1, have expressed their intention to participate in the arbitration, they are also liable to be referred to arbitration. In so far as respondent No. 1 is concerned, he has admitted the arbitration clause in the MOU dated 19th December, 2017 executed between them. It is further submitted that in the reply to petition under Section 9 of the A&C Act, 1996

bearing OMP (I) (COMM) 102/2019, the respondent No.1 has admitted that it has set up respondent No.3 a partnership concern on account of the differences with the petitioner. It is further evident from the bank statements that the wife of respondent No.1 and counsel for respondent No.1 were both receiving payments from respondent No.3 Firm. The employees, entire business and all customers have been shifted to respondent No.3.

21. It is asserted that even otherwise, respondent No.1 and 2 had expressed and proposed their intention to arbitrate in the email dated 29th May, 2017 in the OMP (I) (COMM) 102/2019 for disputes pertaining to this very subject i.e. the business being conducted jointly through Hysel and Everon Life Sciences Pvt. Ltd. which now stands transferred to Everon Life Sciences the partnership firm. The parties claiming through and under may be joined in arbitration proceeding after the amendment of Section 8 of the A&C Act, 1996 in 2015.

22. Reliance has been placed on the decisions in RV Solutions Pvt. Ltd. vs. Ajay Kumar Dixit 2019 SCC OnLine Del 6531, Cherian Properties Limited vs. Kasturi & Sons Limited 2018 SCC OnLine SC 431, ONGC Ltd. vs. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 and Shapoorji Pallonji and Co. Pvt. Ltd. vs. Rattan India Power Ltd. and Anr. 2021 SCC OnLine Del 3688.

23. The Supreme Court in Cox And Kings (*supra*) has doubted *the Group of Companies doctrine* which has been referred to Larger Bench, but the applicability of the same have not been stayed. The Doctrine of Group of Companies therefore continues to hold the ground and therefore, the non-signatories to an arbitration agreement can also be referred to arbitration.

24. **Submissions heard.**

25. Essentially the disputes that have been agitated in the present petition pertain to the closure of the business of Hysel India Pvt. Ltd. of which petitioner No.1 and respondent No.1 were the Directors and they both had admittedly entered into a detailed MOU dated 19th December, 2017. The petitioner No.1 has asserted that she was convinced into believing that Hysel India Pvt. Ltd. was in losses and there was no option except to close it on account of which she entered into the MOU. Various allegations have been made about the funds of Hysel having been diverted by respondent No.1 in connivance with respondent No.2 to respondent No.3 which is a partnership concern allegedly set up by respondent No.1 and 2 in which respondent No.4 Bhawna Chugh wife of respondent No.2 is also claimed to be having an interest, purely for taking over the business of Hysel India Pvt. Ltd.

26. Much has been stated about the setting up of another Company Everon Life Sciences Pvt. Ltd. of which petitioner No. 2 and respondent No.2 were the Directors. This Company had been set up by the father of the petitioners Late Mr. Vijay Chugh essentially as a sister concern for supporting and creating a larger market. There is no averment whatsoever in respect of the inter-se disputes between the petitioner No.2 and the Everon Life Sciences Pvt. Ltd. The only averments are in respect of the siphoning off the funds of the Hysel India Pvt. Ltd. which is a matter to be adjudicated only between the Directors of the said Company. There is neither any averment other than the Everon being the sister concern of Hysel, to establish any commonality either of the Director or of the business. Whether respondent No. 1 as Director of Hysel, has siphoned off money business and employees of Hysel or has failed to comply with the MOU dated 19th December, 2017 is a matter to be adjudicated between petitioner

No.1 and respondent No.1 for which the petitioner No. 2 and respondent No. 2 to 4 are neither necessary nor material for adjudication.

27. Learned counsels on behalf of the respondents have argued that even though the MOU dated 19th December, 2017 was between the petitioners and the respondent No. 1, but because of the transactions being inter-connected with the other respondents and the money/assets of Hysel India Private Limited having been siphoned off by the other respondents, they may also be referred to Arbitration.

28. In RV Solutions Pvt. Ltd. (*supra*) the amended Section 8 of the A&C Act, 1996 has been read to include the ex-employees who siphoned off the business. A reference in the said case was made to Cherian Properties Limited (*supra*) to observe that existence of a relationship between the parties, commonality of the subject matter and whether the Agreement between the parties is part of a composite transaction has to be considered and if such commonality is manifested then it would warrant that the matter may be referred to arbitration.

29. The Hon'ble Supreme Court in ONGC Ltd. (*supra*) has observed that non-signatory may be held to be bound on a consensual theory founded on agency and assignment and on a non-consensual basis such as *estoppel* or alter ego. Similar observations have been made by this Court in Shapoorji Pallonji and Co. Pvt. Ltd. (*supra*).

30. In the light of these judgements, in appropriate cases where it is *prima facie* found that the dispute so interlinked on account of agencies or such other principles that dispute cannot be decided completely and absolutely in the absence of other parties who may not be a signatory to the Arbitration Agreement, may be referred for Arbitration. But in the present

circumstances as has already been held above, the Arbitration Agreement is only between the petitioner No. 1 and the respondent No. 1, and at this stage, it is not manifested from the facts that the disputes *inter se* between the petitioner No. 1 and the respondent No. 1 cannot be determined in the absence of petitioner No. 2 and the respondent Nos. 2 to 4. However, parties are at liberty to move an appropriate application, if need be, before the Arbitrator for their impleadment.

31. It may also be observed that on 02nd November, 2022 the parties had submitted that essentially the disputes have been settled and except in respect of the responsibilities of either party to make payment of GST. However, the terms of settlement have not been placed on record.

32. Considering the disputes having been raised in respect of MOU dated 19th December, 2017 which contains an Arbitration clause, the petition under Section 11(6) of the A&C Act, 1996 is allowed and petitioner No.1 and respondent No.1 are hereby referred to arbitration.

33. For the aforesaid reasons, the petition is disposed of with the following directions :

- a. Mr. Manu Beri, Advocate (Mobile No. 9811304202) is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- b. The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi.
- c. The learned Arbitrator is requested to make a declaration in terms of Section 12 of the A&C Act, 1996 prior to entering upon the reference.

- d. The remuneration of the learned Arbitrator will be computed in terms of Schedule IV of the Act, or as mutually consented by the parties and the Arbitrator.
- e. A copy of this Order be sent by the registry to the learned Arbitrator for information.

34. The petition is disposed of accordingly.

OMP (I) (COMM) 392/2018 & I.As. 17670/2018, 17671/2018, 6593/2019
OMP (I) (COMM) 102/2019 & I.As. 4923/2019, 5680/2019

35. Petition bearing OMP (I) (COMM) 392/2018 under Section 9 of the A&C Act, 1996 has been filed on behalf of the petitioner Khushali Chugh on the same facts as mentioned above seeking following interim reliefs:

- a. *Restraining Respondent Nos. 1 to 5, their servants, officers, employees and/or agents from transferring business, assets, clientele, staff etc. of Hysel to any other entity;*
- b. *Directing Respondent Nos. 1 and 4 to disclose on affidavit, all the assets/liabilities of Respondent Nos. 2, 3 and 5;*
- c. *Directing Respondent Nos. 1 and 4 to place on record of this Hon'ble Court, the servers of Hysel, Everon and Respondent No. 5;*
- d. *Directing freezing of Bank accounts and further operation of bank accounts of Respondent Nos. 2, 3 and 5 to avoid further dissipation of assets.*
- e. *Directing respondent No. 1 to produce the minute book of the company.*
- f. *Directing Respondent No 1 and 4 not to create any third party rights on the assets of Respondent No 2, 3 and 5.*
- g. *Appointing a receiver to take over the operational and financial affairs of Respondent Nos.2, 3 and 5, pending adjudication of the present Petition.*

h. Appointing a Local Commissioner to examine the list of consumers, order books, bank accounts, movable and immovable assets of Respondent Nos.2, 3 and 5 as well as duplicate the server and report the same to this Hon'ble Court;

i. Directing Respondent Nos.1 and 4 to rendition the accounts of Respondent Nos.2, 3 and 5 and report the same to this Hon'ble Court; and

j. Such other order(s) I direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case and in the interest of justice.

36. Petition bearing OMP (I) (COMM) 102/2019 under Section 9 of the A&C Act, 1996 has been filed on behalf of the petitioner Vaykkakkara Sankara Narayanan on the same facts as narrated above to seek following interim reliefs :

a. Pass an order directing the Respondent to cooperate with the Petitioner, for making statutory compliances in respect of Hysel India Pvt. Ltd., including but not limited to: (a) filing of annual returns with the Registrar of Companies, (b) income tax returns with the Income Tax Department, (c) Sales Tax Department (d) CST returns and (d) Employee Provident Funds Organisation;

b. Direct the Respondent to cooperate with the Petitioner for sale of assets of Hysel India Pvt. Ltd.;

c. In the alternative, allow the Petitioner to make the statutory compliances stated in relief (a) and (b) above, in case the Respondent fails to cooperate with the Petitioner; and/or

d. Pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

37. While disputes have been raised in these petitions and interim relief is sought by both the parties in their respective petitions, but in the petition bearing No. Arb. Pet.165/2019 under Section 11(6) of the A&C Act, 1996

the parties have stated that all the disputes have been settled between them except pertaining to payment of GST, particularly to determine the party who is liable to pay the said taxes. In these circumstances, no further directions are required in the present petitions. The parties are at liberty to seek any interim protection, if required in future, by moving application under Section 17 of the A&C Act, 1996 before the learned Arbitrator.

38. Both petitions are disposed of accordingly.

JANUARY 27, 2023

va

(NEENA BANSAL KRISHNA)
JUDGE

