IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.02.2024
Pronounced On	14.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.504 of 2023

Cred Venue Private Limited,
represented by its Authorized Signatory,
Sanjutha Dhansekar
A company within the menaing of
Companies Act, 2013, having its
Registered Office at 12th Floor,
A-Wing, Prestige Polygon,
No.471, Anna Salai, Nandanam,
Chennai 600 035. ... Petitioner

vs.

1.Abhinandan Singh
2.Rajat Nanchahal
3.Ramadasu Bandaru
4.Sannil Surendra Pai Kakode
5.UMI Capital Services Pvt.Ltd.,
Unit 301, 3rd Floor, Workafella
High Street New No.431,
Anna Salai (Mount Road)
Chennai 600 018. ... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondents.

For Petitioner	:	Mr.Sathish Parasaran Senior Counsel for M/S.Vivrti Law
For R1	:	Mr.Adith Narayan Vijayaraghavan
For R2 & R4	:	Mr.Aishwarya Vijayaraghavan
For R3	:	Mr.K.Harishankar for Mr.G.Chandrasekhar
For R5	:	Mr.P.V.Balasubramaniam Senior Counsel for M/S.Ashwin Shanbhag

ORDER

The above Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to resolve the dispute between the petitioner and the respondents herein.

2. The respondents 1 to 4 were the employees of the petitioner who were transferred from the Cred Avenue Private Limited Company of the petitioner. The respondents 1 to 4 were serving with the petitioner from

October 2020 / September 2021 in various capacities. They had tendered resignation during the month of November / December 2022

3. The details of their employment with the petitioner and their eventual resignation from the roles in the petitioner company are as under:-

Name	Date of Agreement	Date of Joining	Date of Resignation	Position
Mr.Abhinandan Singh / R1	19.10.2021	01.10.2020	09.12.2022	Deputy Vice President
Mr.Rajat Nanchahal / R2	01.10.2021	01.10.2020	08.12.2022	Associate Vice President
Mr.Ramadasu Bandaru / R3	01.10.2021	01.10.2020	15.12.2022	Senior Vice President
Mr.Sanil Surendra Pai Kakode / R4	24.09.2021	20.05.2021	24.11.2022	Associate

4. Sensing something was amiss with en masse resignation of the respondents 1 to 4 herein and other respondents, the petitioner had appointed M/s.Deloitte Touche Tohmatsu India LLP (in short "Deloitte"), to carry on a fact finding review into suspected data infiltration by the respondents. The said company viz., M/s.Deloitte has given a Forensic Report dated 09.03.2023.

5. After the respondents 1 to 4 resigned from the roles of the petitioner, the records reveal that the 5th respondent was incorporated on 20.01.2023. It was promoted by one Mr.Vinod Vamsy Gunnam, Ms.Vaddi Satya Saye Lakshmi and Mr.Vivek Kumar. One Mr.Gaurav Kumar was appointed as i/c Managing Director along with Mr.Vinod Vamsy Gunnam as the Director of the fifth respondent Company.

6. It is the admitted position that Mr.Vinod Vamsy Gunnam is the brother in law of the third respondent herein namely Mr.Ramadasu Bandaru and Ms.Vaddi Satya Saye Lakshmi is the sister of Mr.Vinod Vamsy Gunnam. There is no dispute on the same.

7. Under these circumstances, the petitioner herein had filed separate applications under Section 9 of the Arbitration and Conciliation Act, 1996 for various interim measures and secured interim orders on 20.04.2023.

8. By the aforesaid order dated 20.04.2023, Mr.Adarsh

Subramanian, Advocate was appointed as an Advocate Commissioner along with Ms.Shanmathi. A Report was submitted by the Advocate Commissioner enclosing the report of experts from PricewaterhouseCoopers (PwC) before this Court in Arb.Appl.No.145, 151 & 154 of 2023.

9. Pursuant to the Report filed by the Advocate Commissioners enclosing the Report of the expert viz., PricewaterhouseCoopers (PwC), the application was closed with the following observations:-

> *"After recording the endorsement made by the learned counsel for the applicant, as stated supra, these applications are disposed of and liberty is granted as prayed for. The hard disc, which was seized by the Advocate Commissioner, pursuant to the directions given by this Court, shall continue to remain in the Registry until further orders of this Court."*

10. Pursuant to the aforesaid order dated 11.08.2023, petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 to all the respondents.

11. The learned Senior Counsel for the petitioner has submitted that despite a notice under Section 21 of the Arbitration and Conciliation Act,

1996, the respondents have not come forward to consent of appointment of the Arbitrator.

12. It is submitted that the fifth respondent is an alter ego as there is an organic connection between the third respondent and the promoters of the fifth respondent Company as mentioned above.

13. It is therefore submitted that this is a fit case for appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

14. The learned Senior Counsel for the petitioner has drawn attention to the decision of the Hon'ble Supreme Court in the following cases:-

i. ***Chloro Controls India Private Limited*** *vs.* ***Severn Trent Water Purification Inc. and others,*** *(2013) 1 SCC 641;*
ii. ***Cox and Kings Limited*** *vs.* ***SAP India Private Limited and Another****, 2023 SCC OnLine SC 1634.*

15. It is submitted that as per the decision of the Honble Supreme Court in **Chloro Controls India Private Limited** vs. **Severn Trent**

Water Purification Inc. and others, (2013) 1 SCC 641, the fifth respondent has to be construed to be the alter ego of the respective respondents in as much as the fifth respondent was incorporated after they quit/resign from the roles of the petitioner company.

16. A specific reference was made to Paragraph 103.1 and 103.2 of **Chloro Controls India Private Limited** vs. **Severn Trent Water Purification Inc. and others,** (2013) 1 SCC 641, which reads as under:-

> *"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."*

17. The learned Senior Counsel for the petitioner would further submit that the decision of the Hon'ble Supreme Court in **Chloro Controls India Private Limited** vs. **Severn Trent Water Purification Inc. and others,** (2013) 1 SCC 641 has been now affirmed by the Hon'ble

Supreme Court in **Cox and Kings Limited** vs. **SAP India Private Limited**, 2023 SCC OnLine SC 1634.

18. In this connection, a specific reference was made to Paragraph 86, 120 and the conclusion in Paragraph 172 f, i & m of **Cox and Kings Limited** vs. **SAP India Private Limited**, which reads as under:-

> *"86. Courts and tribunals across the world have been applying traditional contractual and commercial doctrines to determine the consent of the non signatory parties to be bound by the arbitration agreement. Generally, consent based theories such as agency, novation, assignment, operation of law, merger and succession, and third party beneficiaries have been applied in different jurisdictions. In exceptional circumstances, non-consensual theories such as piercing the corporate veil or alter ego and estoppel have also been applied to bind to bind a non-signatory party to an arbitration agreement. The group of companies doctrine is one such consent-based doctrine which has been applied, albeit controversially, for identifying the real intention of the parties to bind a non-signatory to an arbitration agreement."*

> *"120. In case of multiple parties, the necessity of a common subject matter and composite transaction is an important factual indicator. An arbitration agreement arises out of a defined legal relationship between the parties with respect to a particular subject matter. Commonality of the subject matter indicates that the conduct of the non-signatory party must be related to the subject matter of the arbitration agreement. For instance, if the subject matter of the contract underlying the*

arbitration agreement pertains to distribution of health care goods, the conduct of the non-signatory party should also be connected or in pursuance of the contractual duties and obligations, that is, pertaining to the distribution of health care goods. The determination of this factor is important to demonstrate that the non-signatory party consented to arbitrate with respect to the particular subject matter.

172. In view of the discussion above, we arrive at the following conclusions:-

f. The principle of alter ego or piercing the coporate veil canot be the basis for the application of the group of companies doctrine.

i. At the referral stage, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement; and

m. In the course of this Judgment, any authoritative determination given by this Court pertaining to the group of companies doctrine should not be interpreted to exclude the application of other doctrines and principles for binding the directions of the Chief Justice of India on the administrative side."

19. It is further submitted that although each of the first four respondents were employed under separate agreements there can be no impediment for a common arbitration in terms of the decision of the Hon'ble Supreme Court in **P.R.Shah.Shares and Stock Brokers Private Limited** vs. **B.H.H.Securities Private Limited and others**, (2012) 1

SCC 594, wherein it has been held as under:-

> *" If A had a claim against B and C and there was an arbitration agreement between A and B but there was no arbitration agreement between A and C, it might not be possible to have a joint arbitration against B and C. A cannot make a claim against C in an arbitration against B, on the ground that the claim was being made jointly against B and C, as C was not a party to the arbitration agreement.* ***But if A had a claim against B and C and if A had an arbitration agreement with B and A also had a separate arbitration agreement with C, there is no reason why A cannot have a joint arbitration against B and C****. Obviously, having an arbitration between A and B and another arbitration between A and C in regard to the same claim would lead to conflicting decisions. In such a case, to deny the benefit of a single arbitration against B and C on the ground that the arbitration agreements against B and C are different, would lead to multiplicity of proceedings, conflicting decisions and cause injustice. It would be proper and just to say that when A has a claim jointly against B and C, and when there are provisions for arbitration in respect of both B and C, there can be a single arbitration."*

20. Arguing further, the learned counsel for the third respondent whose arguments were reiterated by the learned counsel for the first, second and fourth respondents would submit that notice under Section 21 of the Arbitration and Conciliation Act, 1996 itself was a defective notice and therefore, on this Count itself, there is no scope for appointing an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act,

1996.

21. That apart, it is submitted that a composite petition has been filed for appointing an Arbitrator which is contrary to the law settled by the Hon'ble Supreme Court in **Duro Felguera, S.A.** Vs. **Gangavaram Port Limited**, (2017) 9 SCC 729 and in **Deutsche Post Bank Home Finance Limited** Vs. **Taduri Sridhar and others**, (2011) 11 SCC 375.

22. It is therefore submitted that this Original Petition is liable to be dismissed.

23. That apart, it is submitted that having decided to make serious allegations against the respondents which tantamount to serious allegations of fraud, the dispute is arbitrable in the light of the decision of the Hon'ble Supreme Court in **A.Ayyasamy** Vs. **A.Paramasivam and others**, (2016) 10 SCC 386, wherein, the Hon'ble Supreme Court has categorically held that the allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence, they are also complex in nature and the decision on

these issues demands extensive evidence for which the civil court should appear to be more appropriate forum than the Arbitral Tribunal.

24. It is submitted that FIR filed against the respondents before the Jurisdictional Police Station namely Saint Thomas Mount Police Station, Chennai indicates that serious allegations of fraud have been made and therefore the respondents need not even plead fraud as the petitioner itself has pleaded fraud and therefore this is not a fit case for appointing an Arbitrator.

25. It is further submitted that first to fourth respondents have a separate contract and therefore there is no scope for common arbitration proceedings. It is submitted that separate proceedings ought to have been initiated under Section 11 of the Arbitration and Conciliation Act, 1996.

26. The learned senior counsel for the fifth respondent on the other hand would submit that the question of invoking Group of Companies doctrine not applicable as admittedly the first to fourth respondents are not companies, they are the former employees of the petitioner Company. It is submitted that only if non-signatory intended to resolve the dispute

between the parties to the Agreement through Alternate Dispute Resolution, the question of making non-signatory to the Agreement or party to the arbitration proceedings does not arise.

27. It is submitted that when the respective Agreements were signed between the petitioner and the first to fourth respondents, the fifth respondent would not even be a part of the Group of Companies incorporated in the month of February 2023 in the light of the decision of the Hon'ble Supreme Court in **M/s.Cox and Kings Limited** Vs. **SAP India Private Limited and another**, (2023) SCC Online SC 1634.

28. It is submitted that the question of making the fifth respondent party to the proceedings does not arise. It is further submitted that the first threshold of existence of an arbitration clause itself has not been satisfied and therefore the question of binding the fifth respondent to the arbitration proceedings in respect of the alleged dispute between the petitioner and the first to fourth respondents cannot be countenanced. Hence, prays for dismissal of the present original petition.

29. In this connection, the learned Senior Counsel has relied on the following decisions of the Hon'ble Supreme Court:

i. **Cox and Kings Limited** Vs. **SAP India Private Limited and another**, (2023) SCC Online SC 1634.
ii. **Chloro Controls India Private Limited** Vs. **Severn Trent Water Purification Inc. and others**, (2013) 1 SCC 641.
iii. **Avitel Post Studioz Limited and others** Vs. **HSBC PI Holdings (Mauritius) Limited**, (2021) 4 SCC 713.
iv. **P.R.Shah, Shares and Stock Brokers Private Limited** Vs.**B.H.H.Securities Private Limited and others**, (2012) 1 SCC 594.
v. **Cred Avenue Private Limited** Vs. **Rahul Agarwal and another** in Arb.O.P.(Com.Div.) No.510 of 2023 dated 19.12.2023.

30. The learned counsel for the fifth respondent would submit that the decision of the Hon'ble Supreme Court in **Chloro Controls India Private Limited** vs. **Severn Trent Water Purification Inc. and others,** (2013) 1 SCC 641 cannot be applied to the facts and circumstances of the case in as much as at the time when the respondents 1 to 4 were employed with the petitioner, the fifth respondent was not even in existence.

31. It is submitted that only if the fifth respondent was in existence at the time of their employment, the application of the ratio in **Chloro Controls India Private Limited** vs. **Severn Trent Water Purification**

Inc. and others, (2013) 1 SCC 641 and **Cox and Kings Limited** vs. **SAP India Private Limited**, 2023 SCC OnLine SC 1634 as submitted by the learned Senior Counsel for the petitioner will apply.

32. In this connection, the learned Counsel for the fifth respondent would draw attention to Paragraph 166, 171 & 172 of **Cox and Kings Limited** vs. **SAP India Private Limited**, 2023 SCC OnLine SC 1634, which are reproduced below:-

> *"116. Since the group of companies doctrine is a consent based theory, its application depends upon the consideration of a variety of factual elements to establish the mutual intention of all the parties involved. In other words, the group of companies doctrine is a means to infre the mutual intentions of both the signatory and non-signatory parties to be bound by the arbitration agreement. The relationship between and among the legal entities within the corporate group structure and the involvement of the parties in the performance of the underlying contractual obligations are indicators to determine the mutual intentions of the parties. The other factors such as the commonality of the subject matter, composite nature of the transactions, and the performance of the contract ought to be cumulatively considered and analysed by courts and tribunals to identify the intention of the parties to bind the non-signatory party to the arbitration agreement. The party seeking joinder of a non-signatory bears the burden of proof of satisfying the above factors to the satisfaction of the court or tribunal, as the case may be.*

171. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the arbitral tribunal to decide whether the nonsignatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the arbitral tribunal. This interpretation also gives true effect to the doctrine of competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by arbitral tribunal under Section 16.

172. In view of the discussion above, we arrive at the following conclusions:

a) The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;
b) Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;

c) The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;

d) Under the Arbitration Act, the concept of a "party" is distinct and different from the concept of "persons claiming through or under" a party to the arbitration agreement;

e) The underlying basis for the application of the group of companies doctrine rests on maintaining the corporate separateness of the group companies while determining the common intention of the parties to bind the nonsignatory party to the arbitration agreement;

f) The principle of alter ego or piercing the corporate veil cannot be the basis for the application of the group of companies doctrine;

g) The group of companies doctrine has an independent existence as a principle of law which stems from a harmonious reading of Section 2(1)(h) along with Section 7 of the Arbitration Act;

h) To apply the group of companies doctrine, the courts or tribunals, as the case may be, have to consider all the cumulative factors laid down in Discovery Enterprises (supra). Resultantly, the principle of single economic unit cannot be the sole basis for the invoking the group of companies doctrine;

i) The persons "claiming through or under" can only assert a right in a derivative capacity;

j) The approach of this Court in Chloro Controls (supra) to the extent that it traced the group of companies doctrine to the phrase "claiming through or under" is erroneous and against the well established principles of contract law and corporate law;

k) The group of companies doctrine should be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements;

l) At the referral stage, the referral Court shall leave it for the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement; and

m) In the course of this judgment, any authoritative determination given by this Court pertaining to the group of companies doctrine should not be interpreted to exclude the application of other doctrines and principles for binding non-signatories to the arbitration agreement.

33. It is further submitted that the fifth respondent has no privity of contract with the petitioner so as to come within the purview of the Arbitral Clauses under the respective respondents 1 to 4.

34. The learned counsel for the respondents 1 to 4 would submit that the dispute between the petitioner and the private respondents 1 to 4 is not arbitrable.

35. It is further submitted that the petitioner is in the habit of harassing of the ex-employees, who leave the company of the petitioner

and are forced to defend themselves in criminal prosecution/proceedings.

36. It is submitted that a complaint has been lodged against the respondents 1 to 4 and serious allegations have been levelled against them.

37. It is submitted that therefore the respondents 1 to 4 were forced to approach this Court under Section 482 of CRPC to quash Crl.O.P.Nos.1124 to 1126 of 2023. Pursuant to which, criminal proceedings has been stayed by an order dated 14.07.2023 in Crl.M.P.Nos.7061 to 7063 of 2023.

38. It is submitted that if the petitioners want arbitration of the dispute, they to necessarily withdraw the criminal complaint filed against the respondents 1 to 4.

39. In this connection, learned counsel for the respondents 1 to 4 Mr.Harishankar has placed reliance on the decision of the Hon'ble Supreme Court in **A.Ayyasamy** vs. **A.Paramasivam and Others**, (2016) 10 SCC 386. A specific reference was made to Paragraph 18, which reads

as under:-

> *"18. When the case involves serious allegations of fraud, the dicta contained in the aforesaid judgments would be understandable. However, at the same time, mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court. The allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence, they are also complex in nature and the decision on these issues demands extensive evidence for which the civil court should appear to be more appropriate forum than the Arbitral Tribunal. Otherwise, it may become a convenient mode of avoiding the process of arbitration by simply using the device of making allegations of fraud and pleading that issue of fraud needs to be decided by the civil court. The judgment in N.Radhakrishnan does not touch upon this aspect and the said decision is rendered after finding that allegations of fraud were of serious nature."*

40. It is submitted that this view has been affirmed by the Hon'ble Supreme Court in the case of **Vidya Drolia**, (2021) 2 SCC 1.

41. It is submitted that the decision of the Hon'ble Supreme Court by a Bench of Two Judges in the case of **Avitel Post Studioz Limited and Others** vs. **HSBC PI Holdings (Mauritius) Limited**, (2021) 4 SCC 713 held that the same set of facts may lead to Civil and Criminal

Proceedings. However, it is clear a civil dispute involves question of fraud, misrepresentation etc., which can be the subject matter of such proceedings under Section 17 of the Contract Act, and/or the tort of deceit, the mere fact that criminal proceedings can or have been instituted in respect of the same subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so.

42. That apart, learned counsel for the respondents 1 to 4 would submit that for the purpose of Section 9 of the Arbitration and Conciliation Act, 1996 separate applications were filed against the respective respondents. However, common notice was issued under Section 21 of the Arbitration and Conciliation Act, 1996 for equipping the case against of the respondents including fifth respondent on 22.08.2023.

43. It is submitted that the parties have entered into separate agreements and therefore, question of the cases for Section 21 and Section 11(6) of Arbitration and Conciliation Act, 1996 is impermissible.

44. In this connection, learned counsel for the respondents 1 to 4 has placed reliance on the following decision of the Hon'ble Supreme

Court:-

i. ***Duro Felguera S.A.*** *vs.* ***Gangavaram Port Limited****, (2017) 9 SCC 729;*
ii. ***Deutsche Post Bank Home Finance Limited*** *vs.* ***Taduri Sridhar and Others****, MANU/SC/0262/2011.*

45. In respect of the plea that composite notice under Section 21 of the Arbitration and Conciliation Act, 1996 is impermissible where independent Arbitration Agreement is subsists, decisions of the Court in the following cases were invited:-

i. ***A*** *vs.* ***B****, EWHC 3417 (Comm);*
ii. ***South Coast British Columbia Transportation Authority*** *vs.* ***BMT Fleet Technology Limited****, 2018 BCCA 468;*
iii. ***Alupro Building Systems Private Limited*** *vs.* ***Ozone Overseas Private Limited****, 2017 (162) DRJ 412;*
iv. ***Shriram Transport Finance Company Limited*** *vs.* ***Narender Singh****, 2022 SCC Online Del 3412;*
v. ***Extramarks Education India Private Limited*** *vs.* ***Shri Ram School****, 2022 SCC Online Del 3123;*
vi. ***Bharat Sanchar Nigam Limited*** *vs.* ***Nortel Networks India Private Limited****, (2021) 5 SCC 738.*

46. Arguing further, the learned counsel for the respondents 1 to 4 would submit that consultation is not permissible when dispute arise out of different agreements. In this connection, the learned counsel for the

respondents 1 to 4 has relied on the following cases:-

i. ***DLF Home Developers Limited** vs. **Rajapura Homes Private Limited**, 2021 SCC Online SC 781;*
ii. ***Libra Automatives Private Limited** vs. **BMW India Private Limited**, (2019) 176 DRJ 617.*

47. Finally, learned counsel for the respondents 1 to 4 would submit that dispute is not arbitrable since the fifth respondent is not a party to the agreement. Hence, prays for dismissal of the Original Petition.

48. I have considered the submissions made by Mr.Sathish Parasaran, learned Senior Counsel for M/S.Vivrti Law, for the petitioner, Mr.Adith Narayan Vijayaraghavan, learned counsel for the first respondent, Mr.Aishwarya Vijayaraghavan, learned counsel for the respondents 2 and 4, Mr.K.Harishankar, learned Senior Counsel for Mr.G.Chandrasekhar, learned counsel for the third respondent and Mr.P.V.Balasubramaniam, learned Senior Counsel for Mr.Ashwin Shanbhag, learned counsel for the fifth respondent.

49. The objection of the respondents for appointment of an Arbitrator to resolve their dispute, which has arisen on account of en

masse resignation by the respondents 1 to 4 appointing the fifth respondent promoted by the brother-in-law of the third respondent is arbitrable in terms of the decision cited both by the learned counsel for the petitioner and the learned counsel for the respondents.

50. In ***A.Ayyasamy vs. A.Paramasivam and Others*** reported in ***(2016) 10 SCC 386***, the Hon'ble Supreme Court has clearly held that mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court.

51. Similarly, in ***Cox and Kings Limited vs. SAP India Private Limited*** reported in ***2023 SCC OnLine SC 1634***, the Hon'ble Supreme Court has clearly held that in case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement.

52. Answering the question, the Hon'ble Supreme Court summarizes the position as follows:-

> i. In both the scenarios, the referral court will be required to *prima facie* rule on the existence of the arbitration agreement; and
> ii. Whether the non-signatory is a veritable party to the arbitration agreement;

53. The Hon'ble Supreme Court has further observed that in view of the complexity of such a determination, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party.

54. The only ceaveat/caution imposed by the Hon'ble Supreme Court is that the tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the arbitral tribunal. This interpretation also gives true effect to the doctrine of competence by leaving the issue of determination of true parties to an

arbitration agreement to be decided by arbitral tribunal under Section 16.

55. The decisions cited in ***DLF Home Developers Limited vs. Rajapura Homes Private Limited*** reported in ***2021 SCC Online SC 781***; and in ***Libra Automatives Private Limited vs. BMW India Private Limited*** reported in ***(2019) 176 DRJ 617*** are therefore no longer relevant in the list of the decisions of the Hon'ble Supreme Court in ***Cox and Kings Limited vs. SAP India Private Limited*** reported in ***2023 SCC OnLine SC 1634.***

56. Under these circumstances, I am inclined to allow this Arbitration Original Petition by appointing **Mrs.Aparna Nanda Kumar Dwaraka**, Advocate residing at 6/21, Ramakrishna Street, T.Nagar, Chennai 600017, (Mobile No.96001 78450), as the sole Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

57. The learned Arbitrator appointed herein shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the

provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

58. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

59. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator. All the issues are left open to be canvassed by the respondents before the learned Arbitrator under Section 16 of the Arbitration and

Conciliation Act, 1996.

60. In fine, this Arbitration Original Petition stands allowed. No costs.

Index : Yes/No
Neutral Citation : Yes/No
rgm/mm

14.06.2024

C.SARAVANAN, J.
rgm/mm

Pre-delivery Order made in

Arb.O.P.(Com.Div.)No.504 of 2023

14.06.2024