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

+ **ARB.P. 90/2023**

GIRIVAR GLOBAL SOLUTIONS AND LLP Petitioner

Through: Mr. Anuj Saxena, Mr. Anuj Ruchela,
Mr. Abhishek Mishra, Mr. Prince
Gupta, Advs.

versus

ANISH GUPTA & ANR. Respondent

Through: Mr. Satish Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

15.01.2024

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I.A. 15174/2023

The learned counsel for the petitioner does not wish to press the present application.

The application is dismissed as withdrawn.

I.A. 16031/2023

1. This is an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 for impleadment of Mrs. Shikha Gupta as petitioner no. 2.
2. It is stated by Mr. Saxena, learned counsel for the petitioner that the Girivar Global Solutions is a LLP of Mrs. Shikha Gupta and respondent No. 1.
3. It was on account of inadvertence that Mrs. Shikha Gupta was not impleaded as petitioner No. 2 but she has signed the petition and also affirmed the affidavit.



4. Despite notice, no reply has been filed by the respondents.
5. I am of the view that the applicant/Mrs. Shikha Gupta is a proper and necessary party and required for effective and complete adjudication of all disputes. Hence, the application is allowed and Mrs. Shikha Gupta is impleaded as petitioner No. 2.
6. Let amended memo be filed within two weeks from today.

ARB.P. 90/2023

7. Mr. Saxena, learned counsel for the petitioner seeks appointment of an Arbitrator to adjudicate the disputes between the parties.
8. The petitioner company was constituted with petitioner no. 2 as the Managing Direction vide Agreement dated 22.08.2016 and the respondent no.1 vide Addendum dated 15.06.2018 joined the petitioner company.
9. Thereafter, for dissolution of partnership and settlement of disputes, MOU/Agreement dated 18.11.2019 was executed between petitioner no. 2 and respondent no. 1.
10. The petitioners by way of notice dated 25.04.2022 invoked arbitration Clause 24(b) (v) of the Agreement dated 22.08.2016 and Addendum dated 16.06.2018 and Clause 9 of the MOU/Agreement dated 18.11.2019
11. Mr. Kumar, learned counsel for the respondent states that the Arbitration Agreement is between petitioner No. 2 and respondent No. 1 and respondent No. 2-M/s JK Axim Pvt. Ltd., who is a non-signatory to the Agreement, has been impleaded.
12. A perusal of the stamp paper of MOU/agreement dated 18.11.2019 shows that the First party is described as Girivar Global Solutions And Services LLP. The first party in the body of the agreement has been described as Shikha Gupta. The second party in the stamp paper has been



described as Anish Gupta and JK Exim Pvt. Ltd. Even though in the body of the agreement, the second party is described as Anish Gupta.

13. In addition, a consolidated reply has been filed by respondent Nos. 1 and 2 in opposition to the present section 11 petition.

14. From the aforesaid facts, it seems that respondent Anish Gupta and JK Exim Pvt. Ltd. are intrinsically linked.

15. Reliance is placed on the dicta of Hon'ble Supreme Court in *Cox and Kings Ltd vs. SAP India Pvt. Ltd.*, 2023 SCC OnLine SC 1634, the operative portion reads as under:

“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 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 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 non-signatories to the arbitration agreement.”

16. For the said reasons, as of today it would be in the interest of justice if this Court leaves it to the Arbitral Tribunal to decide whether Respondent No. 2 is bound by terms of the Arbitration Agreement. The respondent shall be at liberty to file an application u/s 16 of the Arbitration and Conciliation Act, 1996 in this regard which shall be adjudicated by the learned Arbitrator.

17. *Prima facie* and for the reasons recorded above, the petition is allowed and disposed of with the following directions:

- i) Mr. Harkirat Sawhney, Adv. (Mob. No. 9810000381) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left



open for adjudication by the learned arbitrator.

- v) The parties shall approach the learned Arbitrator within two weeks from today.
- vi) The rights and contentions of all parties including the maintainability and jurisdiction are left open.

JASMEET SINGH, J

JANUARY 15, 2024/DM

Click here to check corrigendum, if any