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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 607/2023 & I.A. 11128/2023

SHEKHAR SUNDER GUNDIL

..... Petitioner

Through: Mr. Abhay Gupta and Ms. Shalini
Singhal, Advocates.

versus

**M/S PRANAV MEDIATECH SOLUTIONS (INDIA) PVT. LTD
AND ANR.**

..... Respondents

Through: Mr. Prateek Jain, Advocate for R-1.
Mr. Kamal Kumar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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22.05.2024

I.A. 108/2024

By way of the present application filed on the principles of section 151 of the Code of Civil Procedure 1908, the applicant/Mrs. Radha Joshi, who claims to be one of the shareholders of respondent No.1/M/s Pranav Mediatech Solutions (India) Pvt. Ltd, seeks 'intervention' in the present arbitration petition premised essentially on the submission that she holds 33% equity shares in the company; that she was a Director of the company at the relevant time; and that her rights would be adversely affected if the company is made party to the arbitral proceedings.

2. No notice has been issued on this application as of date.
3. Mr. Abhay Gupta, learned counsel appearing for the petitioner however submits, that though respondent No.1 company must be a



party to the arbitral proceedings, since according to the petitioner, the company has also signed the settlement agreement, each individual shareholder cannot be permitted to become a party to the arbitral proceedings. It is submitted that as matter of law, that would have serious consequences if in a given case, a company has hundreds or thousands of shareholders.

4. Counsel further submits that the dispute in the present matter arises from a settlement agreement, which according to the petitioner, has been signed by the company and by one of its Directors, who are therefore liable and bound by the arbitration clause.
5. This court is persuaded to accept the submission made.
6. The application is dismissed and disposed-of accordingly.

ARB.P. 607/2023

7. By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Agreement of Settlement dated 31.03.2022 ('Agreement').
8. Notice on this petition was issued on 01.06.2023; consequent upon which replies dated 07.08.2023 have been filed by respondents Nos. 1 and 2.
9. The petitioner is a former Director of respondent No. 1 company; and respondent No.2 is one of the current Directors of respondent No. 1 company.
10. Mr. Abhay Gupta, learned counsel for the petitioner has drawn the attention of this court to clause 10 of the Agreement which comprises



the arbitration agreement; and contemplates reference of disputes between the parties to arbitration.

11. For completeness, it may be recorded that a territorial jurisdiction provision is also contained in clause 11 of the Agreement, which subjects the contract between the parties to the jurisdiction of competent courts at Delhi.
12. As per the record, the petitioner invoked arbitration *vide* Notice dated 21.03.2023; and it transpires that respondent No.1 sent a reply to the said notice *vide* reply dated 20.04.2023.
13. The principal objection raised on behalf of respondent No.1 company, is that the company is not a signatory to the Agreement of Settlement dated 31.03.2022, which they claim has been signed between the petitioner and respondent No.2, and the rubber stamp of respondent No.1 has been affixed thereon fraudulently.
14. Mr. Prateek Jain, learned counsel appearing for respondent No.1 contends, that a perusal of the Agreement would show that the settlement contained therein was executed only between the petitioner and respondent No.2; and respondent No.1 had nothing to do with it. Mr. Jain further submits, that respondent No.1, who has purportedly signed the Agreement, was not authorised by any Board Resolution or any other similar authorisation by the company to sign on their behalf.
15. On the other hand, Mr. Gupta, learned counsel appearing for the petitioner submits, that the settlement comprised in the Agreement is in relation to a loan of Rs. 25 lacs that was extended by the petitioner to respondent No.1 company; and that therefore any adjudication in respect of such loan by way of the arbitral proceedings cannot go



forward without the participation of the company.

16. Mr. Gupta further points-out, that in reply dated 20.04.2023 sent by respondent No.1 to the invocation notice, respondent No.1 has merely issued a bald denial to the allegations contained in that notice; and have said that they “... .. *do not agree with the names suggested by you as arbitrator(s)*” in the matter, without however taking the stand that the company was not a signatory to the arbitration agreement.
17. In the present case there seems to be no cavil that the money allegedly loaned by the petitioner to respondent No.1 company is the subject matter of the dispute between the parties; and was also the subject matter of Agreement of Settlement dated 31.03.2022. This is so recorded in clause 4 of that Agreement.
18. Moreover, in the present proceedings, this court is guided by the mandate of the Supreme Court in ***Cox and Kings Ltd. vs. SAP India Pvt. Ltd. & Anr.***,^I where, upon a detailed consideration of the matter, the Supreme Court has *inter-alia* directed that at the referral stage, the referral court should leave it to the arbitral tribunal to decide whether a non-signatory party is bound by the arbitration agreement.
19. In view of the above and upon a conspectus of the averments contained in the petition, the stand taken by the respondents, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the

^I 2023 INSC 1051, para 165(l)



parties, as set-out *inter-alia* in invocation notice dated 21.03.2023, do not appear *ex-facie* to be non-arbitrable.

20. At this stage, learned counsel for the parties jointly request that this court may refer the matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), keeping all their respective factual and legal contentions open.
21. Accordingly, the present petition is allowed and **Mr. Chritarth Palli, Advocate (Cellphone No. : +91 9888277971)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
22. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
23. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
24. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
25. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
26. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
27. The petition stands disposed-of in the above terms.



28. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 22, 2024

V.Rawat