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

Date of Decision: 08.07.2024

+ **ARB. A. (COMM.) 24/2024**

ADAVYA PROJECTS PVT. LTD.

.....Petitioner

Through: Ms. Simran Brar, Ms. Kiran Devrani,
Mr. Nitish Dham, Advs.

versus

M/S VISHAL STRUCTURALS PVT. LTD & ORS.....Respondents

Through: Mr. Varun Kanwal, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an appeal filed under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 (“1996 Act”) seeking setting aside of the impugned order dated 15.02.2024 (as sent by email dated 16.02.2024) and Chamber Order dated 15.02.2024 (collectively “Impugned Orders”) passed by the Ld. Sole Arbitrator in arbitral proceedings.
2. The operative portion of the impugned order being paras 6 to 13 reads as under:

“6. Ld. Counsel for the Respondents / Applicants has vehemently argued that not only there are no Arbitrable disputes between the parties it is also manifestly clear that the Claimant had not issued any notice under Section 21 of the A&C Act, 1996 to Respondents No.2 & 3 and as such invocation of Arbitration against them is not sustainable. He also argues that in the Petition under Section 11 of the A&C Act, 1996, Respondents No.2 & 3 were not made parties even and as such the disputes if any, between the Claimant and Respondents No.2 & 3 have not been referred to this Tribunal by the High Court of Delhi while passing orders under Section



11 of the A&C Act, 1996.

7. Ld. Counsel for the Applicants has relied upon two judgments of the High Court of Delhi in “Florentine Estates of India Ltd. & Anr. Vs. Lokesh Dahiya & Anr.”, reported in “2022 (295) DLT 722” and “Alupro Building Systems Pvt. Ltd. Vs. Ozone Overseas Pvt. Ltd.”, reported in “2018 (3) R.A.J. 94 (Del)”. In these two judgments it was clearly held by the High Court of Delhi that in the absence of an Agreement to the contrary a Notice under Section 21 of the A&C Act, 1996, by the Claimant Invoking Arbitration and reference of disputes to the Arbitration it is mandatory to issue and serve a notice under Section 21 of A&C Act, 1996, on the opposite party and the Arbitration proceedings without a notice under Section 21 of the A&C Act, 1996, are invalid. In the case of Florentine Estates (Supra) it was also held that a notice under Section 21 of the A&C Act, 1996 is mandatory and without fulfilling the pre-requisite of the notice under Section 21 of the A&C Act, 1996, the Arbitral proceedings shall be unsustainable.

8. Ld. Counsel for the Claimant, however, has relied upon a judgment of Delhi High Court in “De Lage Landen Financial Services India Pvt. Ltd.” reported in “MANU/DE/1779/2021” to contend that knowledge of the proposed Arbitral Proceedings is sufficient compliance of Section 21 of the A&C Act, 1996. In this judgment the Hon’ble Court in Para 9 observed as under:-

“The Court in Alupro (supra) explained the relevance of Section 21 for filing a petition under Section 11 of the Act, by holding that the trigger for the Court’s jurisdiction under Section 11 of the Act is the failure of the receiver to respond to the sender’s communication invoking arbitration. On this basis, it was held that the requirement of notice under Section 21 of the Act is mandatory. However, the said judgment is distinguishable on facts. In the said decision, there was no notice of invoking the arbitration proceedings at all. Whereas, in the instant case, the facts demonstrate that Respondent certainly had due notice of the arbitration proceedings. These



proceedings have also afforded full opportunity to the Respondent to put forth its stand.”

In my view the above judgment relied upon by Ld. Counsel for the Claimant is not applicable to the facts of the present case as there is nothing on record to show that the Respondents No.2 & 3 had due notice of the intention of the Claimant to initiate Arbitral proceedings against them also and as such without a notice to them under Section 21 of the A&C Act, 1996 the initiation of Arbitration proceedings against them was illegal and non-maintainable.

9. Ld. Counsel for the Claimant has also relied upon various judgments and in particular the judgment in “Cox and Kings Ltd. Vs. SAP India Pvt. Ltd. & Anr.”, Arbitration Petition (Civil) No. 38/2020, dated 06.12.2023 to argue that on the principle of competence- competence this Tribunal can continue the Arbitral proceedings against Respondents No.2 and 3 as they are necessary parties to these proceedings and their presence is required for effective adjudication of the disputes being raised by the Claimant. In my view this submission is also without any merit in as much as the principle of competence – competence can be applied only when the Court or the Tribunal finds that the presence of even non-signatories of the Arbitral Agreement is required. A non-signatory of the Arbitral Agreement can be added in the Arbitral Proceedings if he has played a positive, direct and substantial role in the negotiations and performance of the Contract which contains an Arbitral Clause and as such the Court or the Tribunal may add him also in the proceedings for effectual adjudication of the disputes between the parties. This principle is like the provision of Order 1 Rule 10 of the CPC. However, in this case this Tribunal has not at all found or held that the presence of Respondents No.2 and 3 is essential in these proceedings for effective adjudication of the disputes being raised by the Claimant. At this stage the Tribunal is concerned only with the question of joining Respondents No.2 and 3 without serving upon them a notice under Section 21 of the A&C Act, 1996 which admittedly was never served upon them and as such the Arbitral proceedings



initiated by the Claimant against them are unsustainable.

10. The objection raised by Respondents No.2 and 3 / Applicants in the present proceedings against them is also on the ground that they were never made a party to Section 11 A&C Act, 1996 proceedings and the High Court while making a reference and appointing the undersigned as an Arbitrator had only Respondent No.1 before it. It is argued that there is no reference qua Respondents No.2 and 3 by the High Court of Delhi and as such the present proceedings against them are void and illegal. As already discussed above the principle of competence – competence is not applicable to the Respondents No.2 and 3 at this stage. The absence of any reference qua them by the High Court under Section 11 of the A&C Act, 1996 renders these proceedings against them void-ab-initio and as such they cannot be proceeded against by this Tribunal.

11. The Respondents No.2 and 3 have raised several other issues also against the invocation of the Arbitration against them but those are based on mixed questions of Law and Facts which cannot be dealt with or determined at this stage while dealing with an application under Section 16 of the A&C Act, 1996.

12. In view of the foregoing I have no hesitation in holding that the present proceedings against Respondents No.2 and 3 are not maintainable. The Respondents No.2 and 3 are therefore dropped and the proceedings against them are terminated.

13. Nothing stated in this order shall be taken as an expression of opinion on the merits of the Arbitral Proceedings as the merits of the disputes and controversies between the Claimant and Respondent No. 1 await trial.”

- 3.** The facts in the present case are that the appellant, Adavya Projects Pvt. Ltd., is engaged in engineering, procurement, construction etc. contracts/services for oil and gas sectors directly and through partnerships/joint ventures.



4. Respondent No.1, M/s Vishal Structurals Pvt. Ltd., specializes in engineering and construction of cryogenic tanks, pipelines, structural projects, and supplies shop fabricated process equipment for petrochemical industries.
5. Respondent No.2, Vishal Capricorn Energy Services LLP (VCES LLP) is a Limited Liability Partnership consisting of Appellant and Respondent No.1, created as special purpose vehicle, under LLP Agreement dated 01.06.2012 read with Supplementary LLP Agreements and MoU dated 29.01.2013 to execute projects and other Engineering, Procurement & Construction (EPC) Contracts in oil and gas sectors.
6. Respondent No. 3 is the Chief Executive Officer (“CEO”) of respondent No. 2 and the Director of respondent No. 1.
7. On 31.12.2012, a Letter of Award (“LoA”) was awarded by Oil India Limited (“OIL”), pursuant to the bids invited by OIL, to a consortium consisting of M/s Hindustan Dorr-Oliver Limited as the lead partner along with respondent No. 1 and Ganesh Benzoplast being the successful bidders.
8. The work was for carrying out the augmentation of Storage capacity of ITF by 400 cum for creation of additional ullage for crude oil at ITF, Tenughat, Assam which was to be complete within 20 months from the date of issuance of LOA.
9. The parties had agreed to carry on business in the name of respondent No. 2 as per the terms and conditions of the LLP agreement dated 01.06.2012.
10. It is stated that respondent No. 1 did not pay the amount which was



payable to the petitioner on account of profits accrued to respondent No. 2.

11. Hence, the petitioner served legal notice under section 21 of the Arbitration and Conciliation Act, 1996 dated 27.11.2020 to Mr. Kishore Krishnamoorthy as Director of Vishal Structural Pvt. Ltd. (respondent No. 1). Clause 7, 8 and 9 of the abovementioned notice dated 27.11.2020 reads as under:

“7. That on account of the failure to make the payments due to us, solely attributable to you, we provided you with an additional period of 15 days to rectify the breach and honor the terms of the Agreement under both the notices. However, even after the total additional period of 30days, you failed to discharge your obligation towards accomplishment of the purpose envisaged in the LLP Agreements and the MoU.

8. In view of the aforestated inaction on your part and failure to comply with the notices dated 11.10.2019 and 20.12.2019, we are hereby constrained to serve upon you this notice, in terms of Arbitration Clause 40 of the LLP Agreement dated 01.06.2012, which is reproduced herein below-

“40. Disputes or differences, if any that may arise between partners inter se and/ or between the partner(.s) and LLP hereto or their affiliates, assigns, Successors, attorneys, administrators and all those claiming through it touching these presents or the construction thereof or any clause or thing herein contained or otherwise or in any way relating to or concerning these presents or the rights, duties or liabilities of any of the partners hereto in connection therewith the matters in such dispute or difference shall be referred to the arbitration in accordance with and subject to the provisions of Arbitration and Conciliation Act 1996 or to any statutory modification or re-enactment thereof for the time being in force. The



venue of the Arbitration shall be decided by the Arbitrator so appointed by mutual consent of both partners."

9. In view of the above, we propose the following three (3) names for appointment as Sole Arbitrator to be appointed for the proper adjudication of the matter, of which 3 names you are requested to choose one (1) name and respond within 15 days of receipt of this email

- (i) Jus. (Ms. Rekha Sharma (Retd.) Hon 'ble High Court of Delhi*
- (ii) Mr. Pravin H. Parekh, Senior Advocate*
- (iii) Mr. Padam Kant Saxena, Additional District Judge (Retd.)"*

- 12.** Thereafter, the petitioner filed a petition under section 11 of 1996 Act against respondent No. 1 seeking appointment of an Arbitrator. This Court *vide* order dated 24.11.2021 was pleased to allow the petition and appointed a retired High Court Judge as the Sole Arbitrator. Thereupon, the petitioner filed its statement of claim,
- 13.** Ms. Brar has drawn my attention to an order dated 01.08.2023 wherein an application for amendment was filed seeking impleadment of respondent Nos. 2 and 3 as parties. The same was allowed. Thereafter, the respondent Nos. 2 and 3 appeared and filed an application under section 16 of 1996 Act.
- 14.** Learned Sole Arbitrator *vide* Order 15.02.2024, allowed the application of the respondent Nos. 2 and 3 and deleted them from the array of parties.
- 15.** Ms. Brar, learned counsel for the appellant states that the impugned order dated 15.02.2024 has not considered the submissions made by the petitioner with respect to the parties being interconnected and all of



them having their registered office at the same address.

16. She further relies upon the judgment of the Coordinate Bench of this Court in *De Lage Landen Financial Services India Pvt. Ltd. vs. Parhit Diagnostic Private Limited & Ors.*, 2021 SCC OnLine Del 4160 and more particularly para 9 and 15 which reads as under:-

“9. The Court in Alupro (supra) explained the relevance of Section 21 for filing a petition under Section 11 of the Act, by holding that the trigger for the Court's jurisdiction under Section 11 of the Act is the failure of the receiver to respond to the sender's communication invoking arbitration. On this basis, it was held that the requirement of notice under Section 21 of the Act is mandatory. However, the said judgment is distinguishable on facts. In the said decision, there was no notice of invoking the arbitration proceedings at all. Whereas, in the instant case, the facts demonstrate that Respondent certainly had due notice of the arbitration proceedings. These proceedings have also afforded full opportunity to the Respondent to put forth it's stand.

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15. Subsequently, Guarantee Invocation Notices were sent by Petitioner on 17th July, 2019, however, no response was received from the Respondents to either the Notices dated 17th July, 2019 or 13th May, 2019, thereafter, the Petitioner appointed an Arbitrator vide notice of invocation dated 29th August, 2019. This notice, coupled with the fact that the Respondents joined and participated in the ensuing arbitration proceedings, clearly shows that Respondents became aware of the Petitioner's intent to arbitrate, choice of Arbitrator, and identification of claims; and thus, could have formed an opinion as to whether the disputes were time barred. Hence, for all intents and purposes, the rationale for giving notice, stood fulfilled. In the opinion of the Court, the entire argument of the Respondents is hinged on a hyper-technical plea. No prejudice whatsoever has been pleaded nor shown to have occurred on



any of the above counts. Mr. Savla, however, states that the thirty-days' notice is mandatory for the parties to come to an agreement on the name of the Arbitrator. The present petition has been pending since May, 2019. The parties, till date, have not been able to agree on any name. Therefore, this objection of Mr. Savla is also completely implausible. Dismissing the petition on the ground of non-compliance of Section 21 of the Act is not warranted.

- 17.** She further relied upon the judgement passed by the Bombay High Court in *Cardinal Energy and Infra Structure Private Ltd. vs. Subramanya Construction and Development Co. Ltd., 2024 SCC OnLine Bom 964* and more particularly paras 13, 41 to 43 which reads as under:-

“13. Mr. Rustomjee has submitted that in the present case, the order of reference by the Section 11 Court dated 23rd November, 2022 did not cover the Petitioners. In fact, the Petitioners were not even made parties to the Section 11 proceedings. The impugned award has the effect of expanding the scope of the reference made by the Section 11 Court, which is impermissible in law.

.....

41. Thus from the conclusions of the Supreme Court, it is clear that the Supreme Court has held that where at a referral stage impleadment of a non-signatory to the Arbitration Agreement is raised, the Referral Court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the Arbitration Agreement. Thus, it is clear that the Arbitral Tribunal has the power to decide whether the non-signatory is bound by the Arbitration Agreement and to implead the non-signatory if answered in the affirmative.

42. I do not find from a reading of the decision of the Supreme Court in Cox and Kings Ltd. (Supra) that merely by there being no prayer for impleadment of a non-signatory in the Section 11



Application, the applicability of the doctrine of 'group of companies' by the Sole Arbitrator is excluded. The Arbitrator does have the power/authority to implead the non-signatory if such non-signatory is otherwise liable to be impleaded on the basis of the 'group of companies' doctrine. Thus, the Supreme Court has infact considered that the Arbitral Tribunal is the appropriate forum to determine the issue as to joinder of a non-signatory to an Arbitration Agreement. I thus find no merit in the submission of Mr. Rustomjee that in the event the issue of joinder of a non-signatory to an Arbitration Agreement is not raised before the Referral Court, the Arbitral Tribunal on its own accord does not have the power to determine this issue and/or allow the impleadment of a non-signatory to an Arbitration Agreement. I do not find there to be any estoppel on the Arbitral Tribunal determining this issue.

43. I further find much substance in the argument of Mr. Sarda on behalf of the Respondent Nos. 1 and 2 that the Arbitral Tribunal is obliged to follow the law laid down by the Supreme Court and/or judge made law. This would be the case despite the Arbitral Tribunal not having specific power to consider an application for impleadment and/or the power of the Civil Court under Order I Rule 10 of the CPC. The Delhi High Court in Abhibus Services India Private Ltd. (Supra), paragraph 136 has the recognized concept of judge made law. However, it has been held that in the absence of any trace of such power in the entire scheme of the Act, the power of impleadment cannot be said to be conferred upon the Tribunal on the basis of judge made law. This decision of the Delhi High Court was prior to the decision of the Supreme Court in Cox and Kings (Supra) which in my view has changed the law with regard to impleadment of non-signatories to the Arbitration Agreement on the 'group of companies' doctrine and has left it to the Arbitral Tribunal to determine this issue."

- 18.** She also relies upon the judgement of the Hon'ble Supreme Court in ***Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1*** and more particularly paras 169 and 170 which reads as under:-



“169. 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 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. 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-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

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

170.1. 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;

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;

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

170.4. 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;



170.5. 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 non-signatory party to the arbitration agreement;

170.6. The principle of alter ego or piercing the corporate veil cannot be the basis for the application of the Group of Companies doctrine;

170.7. 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;

170.8. 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 [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] . Resultantly, the principle of single economic unit cannot be the sole basis for invoking the Group of Companies doctrine;

170.9. The persons “claiming through or under” can only assert a right in a derivative capacity;

170.10. The approach of this Court in Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] 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;

170.11. 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;

170.12. 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

170.13. 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.”

19. She lastly submits that the objections raised to Section 16 application and clause 40 of LLP Agreement dated 01.06.2012 have not been considered by the learned Sole Arbitrator.
20. Mr. Kanwal, learned counsel appearing for the respondents states that the impugned order dated 15.02.2024 is well reasoned order and is squarely covered by the judgment of the Coordinate Bench of this Court in *Alupro Building Systems Pvt. Ltd. v Ozone Overseas Pvt. Ltd., 2017 SCC OnLine Del 7228*.
21. I have heard the learned counsels for the parties.
22. In the present case, the petitioner had no claims against respondent Nos. 2 and 3 when the petitioner invoked arbitration clause under section 21 of 1996 Act on 17.11.2020. That is the reason why notice was only issued to respondent No. 1 and it was brought to respondent No. 1's notice that in case the payments due and payable to the petitioner is not made in time, the same would constitute a dispute and would be referred to arbitration.
23. Admittedly, respondent No. 1 did not adhere to the demand and hence an application under section 11 of 1996 Act was made before this Court seeking to refer the disputes between the petitioner and respondent No. 1 (only) for reference to a Sole Arbitrator. Based upon the pleadings of the parties, this Court *vide* order dated 24.11.2021 appointed the Sole Arbitrator to adjudicate the disputes between the petitioner and respondent No. 1 (only).
24. In the statement of claim, the petitioner (pursuant to the liberty granted



vide order dated 01.08.2023) raised the disputes against respondent Nos. 1, 2 and 3 and sought relief against respondent Nos. 2 and 3.

25. I am of the view that once Section 21 notice dated 17.11.2020 and thereafter Section 11 petition do not raise any disputes against respondent Nos. 2 and 3, the petitioner cannot be permitted to raise the disputes subsequently by filing its statement of claim. Respondent Nos. 2 and 3 had no chance or opportunity to dispute the averments made by the petitioner either in the notice under section 21 of 1996 Act or in the petition seeking reference to arbitration. It cannot be that the respondent Nos. 2 and 3, for the first time, before an Arbitral Tribunal will file their statement of defence and would contest the arbitration proceedings.

26. The judgment of this Court in *Alupro Building System Pvt. Ltd.* (*supra*) is clear and the relevant paras reads as under:-

“25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

26. Thirdly, and importantly, where the parties have agreed



on a procedure for the appointment of an arbitrator, unless there is such a notice invoking the arbitration clause, it will not be possible to know whether the procedure as envisaged in the arbitration clause has been followed. Invariably, arbitration clauses do not contemplate the unilateral appointment of an arbitrator by one of the parties. There has to be a consensus. The notice under Section 21 serves an important purpose of facilitating a consensus on the appointment of an arbitrator.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of the person it proposes to appoint. It is quite possible that such person may be 'disqualified' to act as an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this defect and the claimant may be persuaded to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

28. Lastly, for the purposes of Section 11(6) of the Act, without the notice under Section 21 of the Act, a party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an arbitrator. The trigger for the Court's jurisdiction under Section 11 of the Act is such failure by one party to respond."

27. Reliance placed on the judgment of *De Lage Landen Financial Service India Pvt. Ltd (supra)* is misconceived as the respondents therein who were sought to be impleaded in the arbitration proceedings were guarantors. Further, the respondents therein were also parties to the arbitration petition as well. Respondents who were sought to be



impleaded joined and participated in the arbitration proceedings which is absent in the facts of the present case.

28. In *Cardinal Energy and Infra Structure Private Ltd. (supra)*, the Bombay High Court was of the view that it is for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement and the Court should not decide the said issue at the referral stage. In the present case, learned Arbitrator vide impugned order dated 15.02.2024 has decided the issue and held that respondent Nos. 2 and 3 are not the proper parties to the arbitration proceedings.
29. The judgment of *Cox & Kings Ltd. (supra)* categorically states that it is the referral court which would *prima facie* be required to rule on the existence of the arbitration agreement and whether non-signatory is a veritable party to the arbitration proceeding. In the present case, respondent Nos. 2 and 3 were not made parties before the referral court and the petitioner had restricted its claims only against respondent Nos. 1. Hence, the petitioner before the Arbitrator cannot seek to implead respondent Nos. 2 and 3 at the stage of filing statement of claim.
30. Ms. Brar, learned counsel for the petitioner draws my attention to Clause 8 and 40 of the Arbitration Clause which reads as under:

“8. Chief Executive Officer (CEO)

The Partners hereto decide that, Mr. Kishore Krishnamoorthy who will looks after the business of the LLP more particularly the execution of the contract and focus on administration of the business, shall be designated as CEO of the LLP.

.....

40. Disputes or differences, if any, that may arise between partners interse and /or between the partner(s) and LLP hereto or their affiliates, assigns, successors, attorneys, administrators and all those claiming through it touching



these presents or the construction thereof or any clause or thing herein contained or otherwise or in any way relating to or concerning these presents or the rights duties or liabilities of any of the partners hereto in connection therewith the matters in such dispute or difference shall be referred to the arbitration in accordance with and subject to the provisions of Arbitration and Conciliation Act, 1996 or to any statutory modification or re-enactment thereof for the time being in force. The venue of the Arbitration shall be decided by the Arbitrator so appointed by mutual consent of both partners.”

- 31.** Relying on the above said clause, Ms. Brar submits that clause 40 read with Clause 8 of Agreement covers respondent Nos. 2 and 3, in my opinion, is also bereft of merit. The petitioner at the time of giving notice under section 21 or at the stage of filing Section 11 petition was fully empowered to implead respondent Nos. 2 and 3. Having chosen not to exercise that right, the petitioner at the stage of filing statement of claim cannot implead respondent Nos. 2 and 3.
- 32.** The contention that even though respondent No. 2 had signed the contract and the monies from OIL contract has come to respondent No. 2 is a factual dispute and in view of my findings hereinabove, the same does not merit consideration.
- 33.** For the said reasons, the petition is devoid of merits and there is no infirmity in the impugned order dated 15.02.2024. Hence, the petition is dismissed.
- 34.** Pending applications, if any, are disposed of.

JASMEET SINGH, J

JULY 8, 2024/DM

(Corrected and released on 16.07.2024)