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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 02.12.2024+ O.M.P.(I) (COMM.) 364/2024 and IA No.45236/2024

ENSERVE ELECTROCON

FURNISHERS PRIVATE LIMITED & ORS.

.....Petitioners

Through: Mr. A.S. Chandhoik, Sr. Adv., Mr. Virender Ganda, Sr. Adv. and Mr. Prashant Mehta, Mr. Vipul Ganda, Mr. Vishal Ganda, Mr. Ayandeb Mitra, Mr. Tarranjit Singh, Mr. Santosh Kumar Giri Ms. Jasmeet Kaur Ajimal, Ms Akanksha Mathur, Ms. Purna Kohli, Advs.

versus

SAMMAAN CAPITAL LIMITED & ORS.

.....Respondents

Through: Mr. Rajiv Nayar, Sr. Adv., Mr. Siddharth Joshi, Ms. Ujjawala Gupta, Mr. Naman Gowda, Advs. for R-1 and 2.
Mr. Darpan Wadhwa, Sr. Adv. and Ms. Devika Mohan, Adv. for R-3.
Mr. Sandeep Sethi, Sr. Adv. along with Mr. Anirudh Bakhru, Mr. Rishi Agrawal, Mr. Siddharth Joshi, Mr. Ankit Banati, Mr. Naman Gowda and Ms. Ujjawala Gupta, Advs. for R-4 to 6.
Mr. Dayan Krishnan, Sr. Adv. along with Mr. Karan Luthra, Mr. Yogesh



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Malik, Mr. Rohan Dua, Advs. for
R-7.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition has been filed on the basis of an Arbitration Agreement contained in a Settlement Agreement dated 29.03.2023. Only the respondent nos. 1 and 2 (along with the petitioners) were parties to the Settlement Agreement as originally executed.
2. The Settlement Agreement dated 29.03.2023 prescribes certain "Financial obligations" and "Agreement to Sell (ATS) Obligations".
3. The Settlement Agreement also contains an arbitration clause as under:-

*"This Agreement shall be governed as per the laws of India. The Parties agree that if any dispute/disagreement/difference ("**Dispute**") arises under /in connection with/relating to this Agreement, then such Dispute shall be resolved through arbitration in Delhi and the arbitration clause as mentioned in the Loan Documents shall mutatis mutandis apply to this Agreement. Subject to the above, the courts at Delhi shall have exclusive jurisdiction for any matter/dispute connected with this Agreement. The Borrower(s)/Obligor(s)/Sellers shall not dispute the facts mentioned in this Agreement and its/their liabilities/obligations under this Agreement and/or under the Loan Documents and the ATS read with this Agreement."*

4. Certain addendums (First Addendum dated 30.04.2023, Second Addendum dated 17.05.2023 and Third Addendum dated 22.02.2024) were executed in respect of the Settlement Agreement.
5. Clause-2 of the Third Addendum records as under:-

"(2) The Parties hereby acknowledge that the rights and obligations



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of the Purchaser(s) under the ATS stand assigned to Saisrushti (Devanahalli Lakshipura) Projects Pvt. Ltd.”

6. Certain Assignment Agreement/s are also stated to have been executed in connection with the transactions between the parties, *inter alia*, those referred to in a letter dated 23.08.2024 addressed by the respondent no.3 to the petitioners.

7. Respondent nos. 5 & 6 collectively referred to as Chakradev Group are stated to have been introduced by the respondent no.1 to the petitioners. It is alleged in the petition that “the transactions with the Chakradev Group are offshoot transactions, which are part of the larger transaction, involving the financial facilities extended by respondent nos. 1 & 2 to the petitioners.”

8. It is further averred in the petition that similar to the Chakradev Group, the respondent no.7 was introduced to the petitioners by the respondent nos. 1 & 2 pursuant to which certain transactions took place.

9. It is averred in the petition “the transaction with the respondent no.7 are offshoot transactions, which is part of the larger transaction, involving the financial facilities extended by respondent nos. 1 & 2 to the petitioners.”

10. It is further averred in the petition that the transactions involving the respondents are inter connected and form part of the transaction emanating from the Settlement Agreement dated 29.03.2023 (Para 50 of the petition).

11. The aforesaid contentions/averments are, however, vehemently denied by the respondents who submit that it would not be permissible to implead non-signatories in the proposed arbitration, and/or seek any interim measures against the respondents, premised on the Arbitration Agreement contained in the Settlement Agreement dated 29.03.2023. The same is, however, sought



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to be justified by the petitioner on the basis of alleged inter-linkage of transactions and by invoking various legal doctrines. Again, the respondents are emphatic in their assertion that the same is factually and legally misconceived.

12. However, the petitioner and the respondents are in agreement that in view of the judgment of the Supreme Court in *Cox & Kings Ltd. v. SAP India Pvt. Ltd.* 2023 SCC OnLine 1634, the issue as to whether it is permissible or not to implead the non-signatories can be adjudicated by the arbitral tribunal to be constituted on the basis of the arbitration agreement incorporated in the settlement agreement dated 29.03.2023. It is further jointly requested by the petitioner and all the respondents, that a sole Arbitrator be appointed by this Court in these proceedings itself. This has also been duly recorded in the previous order dated 28.11.2024.

13. Accordingly, with the consent of the parties, Mr. Justice (Retd.) V. Ramasubramanian, Former Judge, Supreme Court of India (Mob No. +91 9318456789) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The learned sole Arbitrator shall consider the objections raised by the respondent/s as regards jurisdiction/arbitrability in accordance with law, including the objection/s of the respondent as regards impleadment of non signatories and objection/s to the 'clubbing and consolidation of multiple separate transactions having independent clauses' and 'arbitrability of the disputes'.

15. It is made clear that this order shall not be construed as an expression of opinion of this Court as regards the said objection/s.



16. Further, with the consent of the parties, it is directed that the present application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') shall be treated and dealt with as an application under Section 17 of the A&C Act by the learned sole Arbitrator.

17. The parties shall be at liberty to seek to place on record any additional pleadings/document(s) as may be necessary for effective adjudication of the matter, with the leave of the learned sole Arbitrator.

18. It is noted that although no interim order has been passed so far in these proceedings, on a specific query to the respondents, it has been informed that during the pendency of these proceedings, no third party rights have been created nor any precipitative steps have been taken by the respondents in respect of any of the properties which are subject matter of the disputes between the parties, till date.

19. It shall be open for the learned sole Arbitrator to consider whether any interim measure/s of protection is warranted, based on the submissions/material on record, as may be placed before the learned sole Arbitrator. Again, it is made clear that this order shall not be construed as any expression of opinion with regard thereto.

20. Learned counsel for the petitioner submits that the Section 17 application be directed to be dealt with and disposed of expeditiously and in a time bound manner, in view of the urgency of the matter. The petitioner will be at liberty to make a request in this regard to the learned sole Arbitrator.

21. Learned sole Arbitrator shall fix his fees in consultation with the parties.



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22. The Arbitral Tribunal may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

23. All rights and contentions of the parties are expressly reserved.

24. The present petition is disposed of in the above terms. The pending application is also disposed of.

25. It is noted that an identical order has been passed in O.M.P.(I) (COMM.) 365/2024. It is made clear that the arbitration proceedings pursuant to the directions in the present matter and in O.M.P.(I) (COMM.) 365/2024 shall be independent of each other, although a common Arbitrator has been appointed for the sake of convenience, in view of commonality/similarity of the subject matter. It shall be open for the learned sole Arbitrator to have common hearings, if deemed expedient.

SACHIN DATTA, J

DECEMBER 2, 2024/uk