

OC-51

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE

AP-COM/951/2024
IA No.GA-COM/1/2025

BIRLA CORPORATION LIMITED
VS.
SUMIT KUMAR CHATTERJEE AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 17th February, 2025.

Mr. Satadeep Bhattacharyya, Adv.
Mr. Aman Agarwal, Adv.
Ms. Sriparna Mitra, Adv.
Mr. H. Bhawsinghka, Adv.
... for the petitioner.

Mr. Anuj Singh, Adv.
Ms. Ankita Baid, Adv.
Ms. Trinisha De, Adv.
Mr. Arun Kr.Singh, Adv.
. . . for respondent no.2.

Ms. Rituparna Sanyal, Adv.
Ms. Antalina Guha, Adv.
for respondent no.3.

The Court : Affidavit-in-opposition to GA-COM/1/2025 and affidavit-in-reply to AP-COM/951/2024 are taken on record.

GA-COM/1/2025 is an application for deletion of the name of the respondent no.3 from the array of respondents in AP-COM/951/2024.

The respondent no.3 submits that the said respondent was admitted as a partner of M/s. Big Market Organizer from August 1, 2022, and the partnership was reconstituted. The arbitration agreement is dated May 1, 2022. The respondent no.3 is not a signatory to the arbitration agreement and, as such, does not have any liability towards the claim of the petitioner. It is also submitted that the said respondent no.3 resigned from the partnership, by issuing a notice dated September 21, 2023. The notice was duly received by the partners. The respondent no.3 also requested for reconstitution of the firm. Thus, this Court must not refer the dispute to arbitration in respect of the liability of the respondent no.3.

Mr. Satadeep Bhattacharyya, learned Advocate for the petitioner submits that after the agreement, the partnership was reconstituted. The partnership is in an unregistered partnership firm and as such, all the partners are required to be sued. Even if the respondent no.3 was a non-signatory to the agreement, the said respondent was inducted as a partner and all rights and liabilities of the erstwhile partners had been shifted to the partners of the reconstituted partnership firm. Reference is made to the decision in the case of **Cox And Kings Limited Vs. SAP India Private Limited And Another** reported in **(2024) 4 SCC 1**.

The respondent no.3 was connected with the partnership business, upon its reconstitution. The rights and liabilities of the said respondent no.3 arising out of the partnership business cannot be ruled out even if the said respondent is a non-signatory to the agreement. It is further submitted that when the

notice invoking arbitration was issued, the partnership firm had already been reconstituted and the respondent no.3 was depicted as one of the partners of the unregistered partnership firm. Unless the said partner is added as a respondent, the application will be defective.

Under such circumstances, in my prima facie view, the respondent no.3 should not be expunged from the array of respondents in this application. In the decision of *Cox and Kings (supra)* the Hon'ble Apex Court clarified the position of law. It was held that even if the group companies doctrine does not squarely apply in case of non-signatories, if the referral Court, prima facie, finds that the non-signatory is either inter-linked or interconnected with the underlying contract or with the business of the signatories etc., the referral Court should not deal with such issue, but should leave the matter to be decided by the learned Arbitrator. Whether there is an intention to be bound by the agreement is to be ascertained.

In the matter of ***Cox & Kings (supra)***, the Hon'ble Apex Court held as follows:-

“31.

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.”

According to the Hon’ble Apex Court, definition of parties under Section 2(1)(h) read with Section 7 of the Arbitration and Conciliation Act, 1996 includes both signatories as well as non-signatories. The conduct of the non-signatory party is an indicator as to whether the said party chooses to be bound by the arbitration agreement.

In the instant case, upon reconstitution of the partnership firm, the respondent no.3 was inducted as a partner. As soon as such induction was made, in my prima facie view, the rights and liability of the firm vested on the newly inducted partner along with other partners. With regard to resignation of the respondent No.3, this Court does not find any material to hold that the resignation of the respondent no.3 had either been accepted by the other partners or that the partnership has been reconstituted. No records have been produced by the respondent no. 3, indicating due compliance of statutory requirements after the letter of resignation was submitted. The referral Court should leave it to the Arbitral Tribunal to decide whether the respondent no. 3 will be bound by the arbitration agreement or not.

Under such circumstances, the issue raised by the respondent no.3 can

be raised before the learned Arbitrator and the learned Arbitrator can decide the same in accordance with law.

This Court finds from the records that Clause 38 of the agreement provides for resolution of the dispute by arbitration. The jurisdiction is only Kolkata. The notice invoking arbitration was issued on July 30, 2024. A further addendum was also issued sometime in September, 2024.

Under such circumstances, the referral Court is not required to go beyond such issue. The application is disposed of, leaving it open to the applicant to raise the issue of mis-joinder, before the learned Arbitrator.

Re : AP-COM/951/2024

This is an application for appointment of an arbitrator.

Despite service on various occasions and paper publication, the respondent no.1 has chosen not to appear.

The respondent nos.2 and 3 who are allegedly the existing partners, according to the petitioner, are before the Court.

The Court proceeds ex parte against the respondent no.1.

All the respondents are entitled to raise their individual objections with regard to the claim, computation, limitation, mis-joinder of parties etc. before the learned Arbitrator.

When the arbitration agreement is not in dispute and the notice invoking arbitration is available from the records, the Court appoints Mr.

Samrat Sen, learned Senior Advocate as the sole Arbitrator, to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

The observations made hereinabove are restricted to the disposal of these applications, and are tentative.

AP-COM/951/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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