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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB. A. (COMM.) 27/2024 & I.A. 10824/2024

AERIS COMMUNICATIONS INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. Shashank Deo Sudhi, Mr.
Aruprakash, Advs.

versus

M/S GLOBUS ECOTRONICS PVT. LTD.

.....Respondent

Through: Mr. Nizam Pasha, Mr. Mushtaq
Salim, Mr. Siddharth Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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29.04.2025

1. This is an appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 seeking to challenge the interim order dated 09.01.2024 passed by the learned arbitral tribunal in the arbitration matter of "*Aries Communications India Pvt. Ltd. v. M/s Globus Ecotronics Pvt. Ltd.*".
2. The brief facts of the case are that the appellant and the respondent entered into a Master Service Agreement ("MSA") dated 03.08.2018 for supply of goods on bill to ship to basis under which respondent was required to deliver the goods directly to M/s Kshiv Ventures Pvt. Ltd. and the respondent was required to raise invoices in name of the appellant and in turn, the appellant was required to raise invoices to M/s Kshiv Ventures Pvt. Ltd. towards the delivered goods. The MSA contains an arbitration clause, being Clause XXXV.
3. The appellant also had entered into an IoT Service Agreement dated 03.08.2018 with M/s Kshiv Ventures Pvt. Ltd. for supply of IoT goods



and services.

4. The appellant received 16 orders of LED lights and other electrical goods from M/s Kshiv Ventures Pvt. Ltd. and in terms of the MSA, the appellant placed orders with the respondent for supply of these goods directly to M/s Kshiv Ventures Pvt. Ltd. on bill to ship to basis.
5. The GST Department initiated inquiries against the parties for business transactions and according to the appellant, the respondent had not supplied the goods to M/s Kshiv Ventures Pvt. Ltd. and had received monies from the petitioner.
6. Subsequently, in terms of the arbitration clause under the MSA, the appellant invoked arbitration and filed Arb. P. 1066/2022, which was allowed and a sole arbitrator was appointed.
7. The appellant also invoked the arbitration agreement against M/s Kshiv Ventures Pvt. Ltd. under the IoT Agreement and filed Arb. P. 692/2022, which was allowed and a sole arbitrator was appointed. However, the arbitration proceedings were closed, as M/s Kshiv Ventures Pvt. Ltd. did not pay their share of the arbitral fee.
8. Thereafter, the appellant filed an application before this Court in Arb. P. 1066/2022 seeking for the disputes arising in the arbitration between the appellant and M/s Kshiv Ventures Pvt. Ltd. be adjudicated along with the disputes between the appellant and the respondent herein.
9. The said application was rejected but the petitioner was granted liberty to approach the appointed arbitral tribunal in the present case.
10. On 09.01.2024, the learned arbitral tribunal relied on the judgment of ***M/s. Arupri Logistics Pvt. Ltd. v. Shri Vitas Gupta & Ors. (2023:DHC:5058)*** to hold that the learned arbitral tribunal does not



have the power to implead any person without the reference by the Court and rejected the application of the appellant.

11. The operative portion of the impugned order reads as under:

“6. It is clear from the order dated 02.06.2023 the Delhi High Court gave liberty to the Claimant to approach the arbitrator by filing an application for impleadment of M/s. Kshiv Ventures Private Limited as a party respondent to the arbitral proceedings. However, the Delhi High Court in M/s. Arupri Logistics Pvt. Ltd. v. Shri Vilas Gupta & Ors1., observed as under: -

“93. What needs to be emphasised is that an AT cannot arrogate to itself powers which are neither conferred by the statute or the rules which govern the arbitration nor can it take recourse to inherent powers, which as has been found hereinabove, are acknowledged to inhere in courts and judicial authorities only. The AT, cannot, therefore, expropriate for itself powers which are vested solely in judicial institutions. It remains bound by the provisions of the statutes which prevail and which in this case undisputedly is the Act. In the absence of a power of impleadment having been conferred upon the AT in terms thereof, it would have no authority or jurisdiction to join or implead parties to the proceedings. The Court has already found that the power to implead cannot be sustained or traced to Sections 16 or 17 or 19 of the Act. In fact, the Act incorporates no provision which could be even remotely



considered as being liable to be read as being the repository of the power of the AT to implead.”

The tribunal lacks jurisdiction to direct impleadment of a party to the arbitral proceedings in view of the aforementioned judgment.”

12. Aggrieved by the impugned order, the appellant has filed the present petition.
13. Mr. Sudhi, learned counsel for the appellant, states that the invoice shows that the ultimate consignee was M/s Kshiv Ventures Pvt. Ltd. and relies on the judgments of ***Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd., (1995) 3 SCC 732*** and ***Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) v. M/s Indo Arya Logistics & Anr., order dated 19.01.2022.***
14. The Coordinate Bench in ***Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) (supra)***, particularly in paragraphs 10 and 11, has held as under:

“10. However, in the opinion of the Court, in view of several judgments of this Court as well as of the Supreme Court, the afore-noted objections of the Sub-Lessees are without merit. Although the Court is always cautious to refer non-signatories to arbitration, there can be no quarrel that non-signatories or third-parties to arbitral agreements can be referred to arbitration, without their prior consent, in exceptional cases which fall within the touchstone of Court-laid precedents. One such principle under which Courts have referred non-signatories to arbitration is when the Courts have commonality of subject-



matter and the circumstances indicate that the adjudication of a dispute in arbitration cannot be possible without the presence of such non-signatory. [See: Cheran Properties Limited v. Kasturi and Sons Limited,¹ Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.,² Ameet Lalchand Lalchand Shah and Others v. Rishabh Enterprises and Anr.³ and Shapoorji Pallonji & Co. Pvt. Ltd. v. Rattan Power Ltd. & Anr.⁴]

11. Keeping in mind the principles enunciated in the aforementioned decisions, the Court finds a clear commonality of subject matter - being the Leased Premises - between the two agreements i.e., the Lease Deeds (executed between HAFED and IAL) and the unregistered Lease Deeds (executed between IAL and Sub-Lessees). Indisputability, the disputes sought to be adjudicated in arbitration concern the Leased Premises, and as the Sub-Lessees are claiming to be lessees under IAL, albeit under separate agreements, their presence would certainly be necessary for the adjudication of any dispute between HAFED and IAL. In fact, from HAFED's standpoint, the Sub-lessees are unauthorised occupants/sub-lessees. Thus, for effective adjudication of disputes, recovery of vacant possession of the Leased Premises, it would not only be proper, but necessary that all the Sub- Lessees are also referred to the arbitration. In such circumstances, the Court is inclined to accept HAFED's request qua Sub-Lessees.”

15. He further states in the present case, for effective adjudication, the presence of M/s Kshiv Ventures Pvt. Ltd. is important and M/s Kshiv



Ventures Pvt. Ltd. is a veritable party.

16. I have heard learned counsel for the parties.
17. In the present case, admittedly, M/s Kshiv Ventures Pvt. Ltd. is one of the consignees to which the respondent is to make supplies.
18. Under the MSA, the appellant would have many consignees to whom the respondent would be required to make the supplies.
19. The IoT Agreement between M/s Kshiv Ventures Pvt. Ltd. and the appellant and the MSA between the appellant and the respondent are separate and independent agreements. The transactions are separate and there is no commonality of the subject matter of disputes between M/s Kshiv Ventures Pvt. Ltd. and the respondent herein. M/s Kshiv Ventures Pvt. Ltd. is not a veritable party in the dispute herein.
20. The same is evident from the understanding of the appellant itself as the appellant had filed 2 separate arbitration petitions seeking appointment of 2 separate arbitrators for adjudication of the disputes with the 2 entities separately.
21. It is only on account of the fact that the arbitral proceedings in M/s Kshiv Ventures Pvt. Ltd. were closed that the appellant is now wanting to consolidate the disputes.
22. The said issue has already been adjudicated once *vide* the order dated 02.06.2023 in ARB.P. 1066/2022 passed by the Coordinate Bench of this Court, wherein it was held:

“9. In view of the aforesaid contentions of learned counsel for the respondent/non-applicant, it would be unwarranted to direct that the petitioner’s claims against the respondent herein and against Kshiv be tried together and/or to



replace/substitute the Arbitral Tribunal constituted vide order dated 22.03.2023.”

23. The appellant is now seeking to re-argue the same issue, which cannot be permitted as per the principle of *res judicata*.
24. For the said reasons, I find no merit in the appeal and hence, the appeal is dismissed.

JASMEET SINGH, J

APRIL 29, 2025 / (MS)

[Click here to check corrigendum, if any](#)