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

+ **ARB.P. 621/2024**

ADMAGNETO MEDIA LLP

.....Petitioner

Through: **Mr. Gopal Singh and Mr. Vishal
Thakre, Advocates.**

versus

IRISH EXPERT LLP

.....Respondent

Through: **Ms. Thithiksha Padman, Advocate**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

23.01.2025

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1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the parties have entered into an Advertising Service Agreement dated 01.01.2023 and as per Clause 10, it is stipulated that disputes arising out of and in connection with the said agreement shall be resolved through arbitration as per provisions of A&C Act. It further provides for the place of arbitration to be at Gurgaon or Delhi NCR, as also previously noted in the order dated 10.05.2024.
3. Learned counsel for the petitioner submits that disputes having arisen between the parties, petitioner invoked arbitration vide notice dated 23.11.2023, issued under Section 21 of the A&C Act, which was replied to by the respondent vide letter dated 07.12.2023 and though the respondent



admitted the said arbitration agreement, however, did not agree to the name of the Sole Arbitrator so proposed by the petitioner in its notice dated 23.11.2023.

4. Learned counsel for the respondent, on the other hand, submits that the petitioner has impleaded only '*Irish Expert LLP*', which is the Indian name of '*Irish Universal LLP*'. She further submits that the subject agreement was entered into between the petitioner and one *Irish Universal LLP* and that the present respondent, i.e., *Irish Expert LLP* is not a signatory of the aforesaid agreement.

5. At this stage, learned counsel for the petitioner has referred to the subject agreement itself to submit that the subject agreement was entered into between the petitioner and *Irish Universal LLP*, wherein it has been mentioned that *Irish Universal LLP* (United Kingdom and India based) is known as '*Irish Expert LLP*' in India. It is further contended that the subject agreement is signed by *Mr. Akshay Kumar Kunnath*, *Mr. Arun Antony* and *Mr. Swethesh*. In regard to this, the petitioner states that *Mr. Akshay Kumar Kunnath* is the Managing Director and CEO of both the aforesaid companies and in fact, the address mentioned in the said agreement is also of *Irish Expert LLP*/respondent herein. It is furthermore pointed out that *Irish Expert LLP* has in fact, vide notice dated 07.10.2023, while claiming breach of the subject agreement, raised a dispute and made a demand of GBP 5431/-. It is also stated that again on 06.11.2023, a reply to the legal notice dated 23.10.2023 was sent by none other than the respondent/*Irish Expert LLP*.

6. At this juncture, it is deemed apposite to refer to the decision of the Supreme Court in Cox & Kings Ltd. v. SAP India (P) Ltd., reported as **(2024) 4 SCC 1**, wherein the Court has held, as under:



“37. Over time, this Court has identified certain additional factors for the invocation of the Group of Companies doctrine. In Reckitt Benckiser (India) (P) Ltd. v. Reynders Label Printing (India) (P) Ltd. [Reckitt Benckiser (India) (P) Ltd. v. Reynders Label Printing (India) (P) Ltd., (2019) 7 SCC 62 : (2019) 3 SCC (Civ) 453] , a two-Judge Bench of this Court was dealing with an application under Section 11(6) of the Arbitration Act seeking the appointment of an arbitrator. This Court prima facie observed that the parties belonged to the same group of companies. Subsequently, the issue before this Court was whether there was a clear intention of the parties to bind both the signatory and non-signatory parties based on their participation in the negotiation of the underlying contract. The Court held that the non-signatory party, even though a constituent part of the corporate group, did not have “any causal connection with the process of negotiations preceding the agreement or the execution thereof, whatsoever”. Thus, the participation of the non-signatory party in the negotiation and performance of the underlying contract was held to be the key determinant of the intention of the parties to be bound by an arbitration agreement.

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115. In Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] , this Court refined and clarified the cumulative factors that the Courts and tribunals should consider in deciding whether a company within a group of companies is bound by the arbitration agreement : (SCC p. 75, para 40)

“40. In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors:

- (i) The mutual intent of the parties;*
- (ii) The relationship of a non-signatory to a party which is a signatory to the agreement;*
- (iii) The commonality of the subject-matter;*



(iv) *The composite nature of the transactions; and*
(v) *The performance of the contract.””*

7. The instant petition is also accompanied by a notice invoking arbitration dated 23.11.2023 issued by the petitioner. The said notice claims disputes in the context of the aforesaid agreement. In the said notice, the petitioner has proposed the name of the Sole Arbitrator. The said notice was replied by *Irish Expert LLP*, wherein while admitting to the said agreement, the proposed name of the Arbitrator was not agreed to. A perusal of the entire correspondence would show that it is, in fact, the present respondent who has been responding to all the communications and has also filed a reply. It is the admitted case of the respondent that it is the Indian arm of *Irish Universal LLP*, the original signatory to the subject agreement, and therefore, it is a fit case where the doctrine of ‘Group of Companies’ can be invoked.

8. In view of the aforesaid, the objection raised by the respondent to the present petition is rejected and the present petition is disposed of with the following directions:-

- i) The disputes between the parties under the said agreement are referred to the Arbitral Tribunal.
- ii) Ms. Sonakshi Singh, Advocate, Advocate (Mob: 9711834225) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).



- iv) The learned Arbitrator shall furnish a declaration in terms of Section 12 of the A&C Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator. Further, the respondent shall be at liberty to raise counter-claims, if any.
- vi) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018 or as the parties may agree.
- vii) The parties shall approach the learned Arbitrator within two weeks from today.

MANOJ KUMAR OHRI, J

JANUARY 23, 2025/rd