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

**Date of decision: 29th July, 2021**

\+ ARB.P. 444/2020

BLUE STAR LTD. ... Petitioner

Through: Mr. Jeevesh Nagrath, Mr. Harshit Agarwal and Mr. Chandan Datta, Advocates.

versus

BHASIN INFOTECH & INFRASTRUCTURE PVT LTD & ANR ... Respondents

Through: Mr. Lokesh Bhola and Karan Grover, Advocates for the Respondents.

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

**[VIA VIDEO CONFERENCING]**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] seeks appointment of a Sole Arbitrator for adjudication of disputes arising from and in relation to a Service Agreement dated 12th July, 2016 executed between the parties for providing specialized electrical maintenance services by the Petitioner at Grand Venice Mall, Greater Noida, developed by the Respondent No. 1. The arbitration agreement contained therein is extracted hereinbelow:

*"10. DISPUTE RESOLUTION*

*That, if any dispute or difference arise between the parties in relation to or in connection with this agreement, the same shall be resolved through mutual discussions / understanding however, if the parties are unable to resolve the same through mutual dialogues / discussions the same shall be referred to the Sole Arbitrator for arbitration in accordance with and subject to the Arbitration and Conciliation Act, 1996 or any statutory modification thereof for the time being in force. The Sole Arbitrator shall be appointed by the FIRST PARTY. The Award of the Sole Arbitrator shall be binding on both the parties to this agreement and the SECOND PARTY shall not challenge the Award of the Arbitrator. The arbitration proceedings shall be held at New Delhi and the Courts at New Delhi shall have the jurisdiction in the matter. It is also agreed between the Parties that during any such period the performance of Services and obligations by the SECOND PARTY as contemplated under this Agreement shall not be stopped, prevented or obstructed in any manner, whatsoever and the SECOND PARTY shall continue to discharge its obligations under this Agreement."*

2. The signatories to the aforenoted Service Agreement are only the Petitioner and Respondent No. 1. However, reference of disputes is sought *qua* both Bhasin Infotech & Infrastructure Pvt. Ltd. [ Respondent No. 1], and Venice Maintenance LLP [Respondent No. 2] on the strength of a subsequent letter dated 20th December, 2016 – signed by all three parties herein.

3. Mr. Lokesh Bhola, learned counsel who appeared on behalf of both the Respondents, did not dispute the existence of the Service Agreement, nor the existence of disputes between the parties. He very fairly agreed that contentions relating to merits of the claims/disputes have to be agitated before the Arbitral Tribunal, however, he strongly denied the existence of any arbitration agreement between the Petitioner and Respondent No. 2. To strengthen this argument, he drew the attention of the court to the following facts:

(a) On the face of it, Respondent No. 2 is not a signatory to the Service Agreement which contains the arbitration agreement;

(b) There is no privity of contract between Petitioner and Respondent No. 2,

and thus Respondent No. 2 is not a necessary party for arbitration;

(c) No documentation/exchange of communication has taken place between the Petitioner and Respondent No. 2 to constitute an arbitration agreement;

(d) No inference of an agreement to arbitrate can be implied from the letter dated 20th December, 2016;

(e) An arbitration clause can be imported into a contract only if there is specific reference so as to make the arbitration clause part of the contract. In the present case the reference to the service agreement in the letter referred above is general in nature and does not bind Respondent No. 2 to arbitration.

*Analysis:*

4. The Court has heard the counsel for the parties at length. It cannot be disputed that arbitration can take place only if parties have consented to this dispute resolution mechanism. Therefore, arbitration reference *qua* Respondent No. 2 would only be permissible provided there is an arbitration agreement in existence *qua* them. Since arbitration is being sought on the basis of a letter dated 20th December 2016, in order to resolve the controversy, this court would need to interpret the terms thereof to gather the intention of the parties.

5. Let us thus take a closer look at the letter dated 20th December, 2016. The same is extracted hereinbelow:

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Bhasin GROUP

To,

Dated: - 20-12-2016

M/s Blue Star Limited,

44/12, Okhla Industrial Area,

Phase-II, New Delhi-110020

Sub: - Regarding Changed of Bill Name

Dear Sir/Madam,

This is to bring to the notice that from Jul-2016 all the invoices for the services provided as per service agreement dated 12-07-2016 shall be raised/billed to M/s Venice Maintenance LLP instead of M/s Bhasin Infotech & Infrastructure Pvt Ltd. That the WO/LOI and agreement executed and signed on 20-10-2016 has the same effect and all clauses are binding on all the parties, only the billing name has been changed from M/s Bhasin Infotech & Infrastructure Pvt Ltd to to M/s Venice Maintenance LLP. That this letter shall be attached as an addendum to the WO/LOI and agreement executed and signed on 20-10-2016.

Thanking You

Yours Sincerely

For Bhasin Infotech & Infrastructure Pvt Ltd

Authorized Signatory

Agreed & Accepted by

Signatory)
(M/s Venice Maintenance LLP)

Received Agreed & Accepted by

BLUE STAR LIMITED

(M/s Blue Star Limited)

6. This letter bears the signatures of all the parties to the instant petition (i.e., Petitioner, Respondent No. 1 and Respondent No. 2). On the face of it, there appears to be an error with respect to the date of the agreement. At one place, the date of the Service Agreement is correctly mentioned as 12th July, 2016, however at two places the date is mentioned as 20th October, 2016. The Respondents argue that reference to an agreement dated 20th October, 2016 cannot be construed as reference to the Service Agreement dated 12th July, 2016. It was also argued that this cannot be a typographical error, as the words

'agreement dated 20th October, 2016' find mention in two places; and it can only mean that the parties are referring to another agreement entered into by them as on that date. When the Respondent's counsel was enquired if he could demonstrate the existence of an agreement dated 20th October, 2016, the response was in negative. Thus, this argument, in the opinion of the Court, is merely an argument of convenience, and not one backed by any documentary evidence. It is apparent that there is a typographical error with respect to the date of the Service Agreement dated 12th July, 2016, which is the only contractual relationship that exists between the parties.

7. This brings us to the crux of the matter, i.e., whether the said letter/Addendum would meet the requirement of Section 7 of the Act. The Respondents argued that this document only contains a general reference to the terms of the Service Agreement dated 12th July, 2016, and does not meet the statutory requirement of a specific reference of disputes to arbitration, in order to make the arbitration agreement binding and enforceable.

8. On the afore-noted issue, the Petitioner relied upon the judgment of this Court in ***Indiacan Education Pvt. Ltd. v. Amit Popli***,[1] and of the Supreme Court in ***MTNL v. Canara Bank.***[2] The Respondent, on the other hand, differentiated these judgments and argued that the judgments hold that there has to be a clear reference and incorporation of the arbitration agreement. Further reliance was also placed upon the judgment in ***Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya & Anr.***,[3] to argue that there cannot be any piece-meal reference to arbitration.

[1] 2016 SCC OnLine Del 4497.
[2] AIR 2019 SC 4449.
[3] AIR 2003 SC 2252.

9. The judgment of the coordinate bench in ***Indiacan Education*** *(supra)* has been examined by the Court. The factual scenario therein was similar to the instant petition, in the sense that there was an agreement between the parties which incorporated an arbitration clause, and an addendum to the said agreement, which did not have an arbitration clause. The question was whether such agreement, which contained the arbitration clause, ceased to exist when the addendum was introduced. Answering in the negative, the Court held that the addendum was not a replacement for the agreement but in addition to the same, and thus the arbitration clause was found to be valid and subsisting. In the present case, too, the letter dated 20th December, 2016, specifically states that the document shall be attached as an Addendum to the Service Agreement executed and signed on 20th October, 2016 (sic) [12th July, 2016]. It was, thus, meant to serve as an addendum.

10. Next, in ***MTNL*** *(supra)*, parties were before the arbitrator and preliminary objection of joinder of a party was being addressed. The clinching factor which weighed on the mind of the Court therein was that the party sought to be joined was a wholly-owned subsidiary of the Respondent. The Supreme Court invoked the 'Group of Companies' doctrine to hold that the subsidiary was a necessary party to the arbitration. Furthermore, and this is particularly germane to the issue at hand, the Court examined the facts and came to the conclusion that the dispute could not be resolved unless all the three parties participated in the arbitration proceedings. The relevant paragraphs are extracted hereinbelow:

> *"10.4. (...) The circumstances in which the 'Group of Companies' Doctrine could be invoked to bind the non-signatory affiliate of a parent company, or inclusion of a third party to an arbitration, if there is a direct relationship between the party which*

*is a signatory to the arbitration agreement; direct commonality of the subject matter; the composite nature of the transaction between the parties.*

*A 'composite transaction' refers to a transaction which is inter-linked in nature; or, where the performance of the agreement may not be feasible without the aid, execution, and performance of the supplementary or the ancillary agreement, for achieving the common object, and collectively having a bearing on the dispute.*

*10.5. to 10.8.* *xx ... xx ... xx*

*10.9. It will be a futile effort to decide the disputes only between MTNL and Canara Bank, in the absence of CANFINA, since undisputedly, the original transaction emanated from a transaction between MTNL and CANFINA- the original purchaser of the Bonds. The disputes arose on the cancellation of the Bonds by MTNL on the ground that the entire consideration was not paid.*

*There is a clear and direct nexus between the issuance of the Bonds, its subsequent transfer by CANFINA to Canara Bank, and the cancellation by MTNL, which has led to disputes between the three parties.*

*Therefore, CANFINA is undoubtedly a necessary and proper party to the arbitration proceedings.*

*10.10. Given the tri-partite nature of the transaction, there can be a final resolution of the disputes, only if all three parties are joined in the arbitration proceedings, to finally resolve the disputes which have been pending for over 26 years now."*

11. In the present case, applying the principles enshrined in the above-quoted paragraphs, and as made clear from the conduct of the parties herein, Respondent No. 2 is a necessary and proper party to the arbitration proceedings. The letter dated 20th December, 2016 contains a reference to the Service Agreement and stipulates that the Work Order/Letter of Intent and Agreement executed and signed on 20th October, 2016 (sic) have the same effect, and all clauses are binding on all the parties. Only the agreed name on

the billing has been changed from Respondent No. 1 to Respondent No. 2. This clearly brings out the intention of the parties to be collectively enjoined to the work order and contract. The letter dated 20th December, 2016, being an addendum to the Service Agreement, indicates that the parties had agreed to all the clauses specified in the Service Agreement dated 12th July, 2016, which would include the arbitration clause. It cannot be assumed that the parties agreed to be bound by all the clauses in the service agreement, as clearly stipulated, but not the arbitration clause. Such a stipulation would have to be specifically made out in the Addendum.

12. Thus, in the *prima facie* opinion of the Court, in view of the letter/Addendum dated 20th December, 2016, there exists an arbitration agreement between the parties. Nonetheless, Respondent No. 2 would be at liberty to raise this jurisdictional objection before the arbitral tribunal. In view of the above, the present petition is allowed.

13. Accordingly, Ms. Nidhi Mohan Prashar, Advocate [Contact No.: 9953899908] is appointed as the Sole Arbitrator to adjudicate disputes that have arisen between the Petitioner and Respondents No. 1 and 2 in respect of the Service Agreement dated 12th July, 2016 along with the letter/Addendum dated 20th December, 2016.

14. The parties are directed to appear before the learned Arbitrator as and when notified. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

15. The learned Arbitrator will be paid her fee in terms of the provisions of the Fourth Schedule appended to the Act.

16. It is clarified that the Court has not examined any of the claims of the parties and all rights and contentions on merits, including and limited to jurisdictional objection regarding the existence and/or validity of arbitration agreement are left open. Both the parties shall be free to raise their claims/counter claims before the learned Arbitrator in accordance with law.

17. The present petition is allowed and stands disposed of.

**SANJEEV NARULA, J**

**JULY 29, 2020/**v
(corrected and released on 05/08/2021)