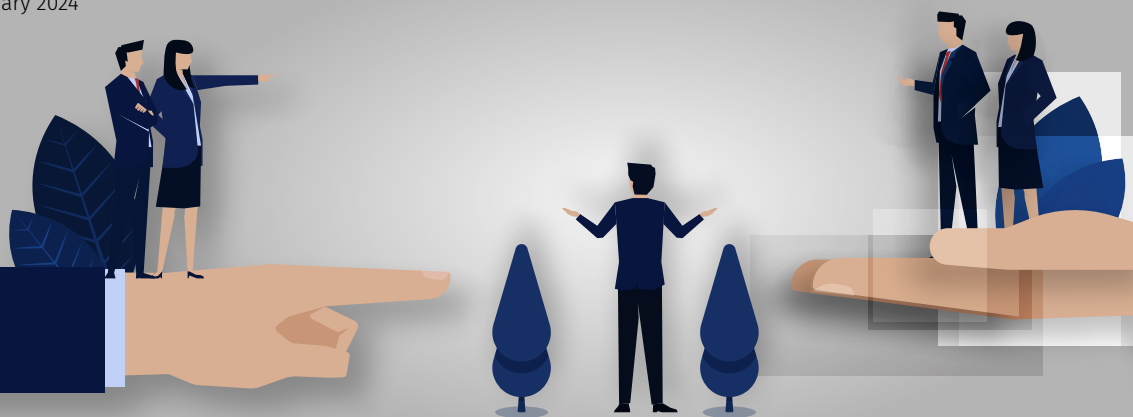


February 2024



## High Court of Delhi clarifies that non-signatory directors of a company cannot be made parties to an arbitration proceeding<sup>1</sup>

### Brief Facts

Vingro Developers Pvt. Ltd. (“**Petitioner**”) filed an application (“**Application**”) under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Act**”) before a Single Judge of the High Court of Delhi (“**Court**”) for appointment of an arbitrator for disputes arising out of two Builder Buyer Agreements (“**Agreements**”). These Agreements were executed between the Petitioner and the real estate developer, Nitya Shree Developers Private Limited (“**Respondent No. 1**”) in respect of Respondent No.1’s resident township project in Rajasthan. The Agreements stipulated an arbitration clause, which was invoked by the Petitioner as Respondent No. 1 did not complete the project in time. Respondent Nos. 2 and 3, being the directors of Respondent No. 1 (“**Directors**”), were impleaded as parties to the Application. Since Respondent No. 1 did not respond, the Petitioner filed the Application. The existence of an arbitration agreement, arbitrable dispute and territorial jurisdiction of the Court were not disputed in the Application.

### Issue

Whether the Directors, who are not parties to the arbitration agreement, can be made parties to the arbitration?

### Judgment

The Court observed that the scope of exercising jurisdiction under Section 11 of the Act is limited to looking into the aspect of the existence of a *prima facie* valid arbitration agreement, which requires examination as to whether the agreement contains an arbitration clause. The Court relied on (i) **Emmar MGF Land Ltd. v. Aftab Singh**,<sup>2</sup> where it was clarified that upon arbitration being invoked, the only valid reasoning for a court’s refusal to refer the matter to arbitration is the non-existence of an arbitration agreement; and (ii) **DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd.**,<sup>3</sup> which held that the jurisdiction of courts under Section 11 is primarily to find out whether there exists a written arbitration agreement between the parties.

The Court held that *prima facie* it is apparent that the current dispute may be referred to arbitration and the only scrutiny that must be done is whether Respondent Nos. 2 and 3, as directors or agents of the principal (i.e., Respondent No. 1), may be added as parties to the arbitration. The Court observed that to bind a non-signatory to an arbitration agreement, there must exist a common intention between the parties to do so. The court must examine the relationship between the parties and circumstances to impute the intended meaning behind them.

In this case, Respondent No. 2 was a signatory to the Agreements in his capacity as authorised signatory of company and Respondent No. 3 was a non-signatory. Both Respondent Nos. 2 and 3 were made parties to the Application in their capacities as Directors. The Court distinguished the Supreme Court’s judgment in **Cox & Kings Limited v. SAP India Private Limited**<sup>4</sup> (on the group of companies doctrine and its application to bind non-signatories to an arbitration agreement) because in the present case, the relationship between Respondent No. 1 and Respondent Nos. 2 and 3 was that of principal and agent. Accordingly, the intention to bind a non-signatory to the arbitration agreement cannot be found as per Section 182 of the Indian Contract Act, 1872 (“Contract Act”). Further, reliance was placed on the Supreme Court’s judgment in **Cheran Properties Ltd v. Kasturi & Sons Ltd.**,<sup>5</sup> where it was held that the circumstances in which an agreement was entered into may reflect an intention to bind both, signatory and non-signatory entities within the same group. Reliance was also placed on the Supreme Court’s judgment in **Vivek Automobiles Ltd v. Indian Inc.**,<sup>6</sup> where it was held

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that an agent could not be sued when the principal has been disclosed, and the decision of a coordinate bench of the Court in **ACE Innovators (P) Ltd. v. Hewlett Packard India Sales (P) Ltd.**,<sup>7</sup> where it was held that according to Section 230 of the Contract Act, in absence of any contract to that effect, an agent can neither personally enforce contracts entered into by him on behalf of his principal nor is he personally bound by them. Accordingly, it was held that Respondent Nos. 2 and 3 cannot be made parties to the arbitration and the Court referred the dispute to arbitration as against only Respondent No. 1.

## Analysis

The Court's decision reiterated that in a Section 11 application, while referring the parties to the arbitration, the court must examine the relationship and common intention of the parties irrespective of whether they are signatories or non-signatories to the arbitration agreement. The decision clarifies that if the relationship between the parties is that of a principal and agent, then the agent will not be party to the arbitration as the agent cannot be held liable for contracts entered into on behalf of the principal.

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## Endnotes

1 Authored by Suhani Dwivedi, Partner, Trisha Mukherjee, Senior Associate and Vidhi Sharma, Associate; *Vingro Developers Pvt. Ltd. v. Nitya Shree Developers Pvt. Ltd.* through its Principal Officer & Ors., Arb.P. No. 667/2023, High Court of Delhi, 2024 SCC OnLine Del 486, judgment dated 24 January 2024.

**Coram:** Dinesh Kumar Sharma, J.

2 (2019) 12 SCC 751.

3 (2021) 16 SCC 743.

4 2023 SCC OnLine SC 1634.

5 (2018) 16 SCC 413.

6 (2009) 17 SCC 657.

7 2013 SCC OnLine Del 4019.

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