

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

% **Date of decision: 25th February, 2022.**

+ **CM(M) 1086/2021 & CM No.42689/2021(for stay)**

AANCHAL MITTAL & ORS.

..... Petitioners

Through: Mr. K. C. Mittal with Mr. Yugansh Mittal and Mr. Sanjay Kumar, Advocates.

Versus

ANKUR SHUKLA

..... Respondent

Through: Mr. Vishal Singh, Advocate.

CORAM:

**HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]**

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 7th October, 2021 passed by the District Judge Commercial-01, South East, New Delhi in C.S.(COMM) No.490/2019, whereby the application filed on behalf of the petitioners/defendants under Order VII Rule 10 and 11(d) of the Code of Civil Procedure, 1908 (CPC), has been dismissed.
2. Notice was issued on 30th November, 2021.
3. Counter affidavit has been filed on behalf of the respondent/plaintiff.
4. The plaint from which the present petition arises, was filed by the respondent/plaintiff, being one of the partners of the petitioner

no.3/defendant no.3, Baby Staples LLP, which is a Limited Liability Partnership (LLP), and against the respondents no.1 and 2/defendants no.1 and 2, who are the remaining partners of the said LLP.

5. The prayers made out in the plaint are set out below:

- a. Declare that the Plaintiff, being a Partner of the Defendant no. 3 and having consequential rights under law and the LLP Agreement, has at all times right of access to all business accounts of Defendant no. 3 including with Big Basket (for sales and supply), Amazon Seller Central (for sales and supply), Wordpress (for website and marketing), and Google Suite (the Plaintiff's professional email account with Defendant No. 3) and all information contained therein; and*
- b. Pass an order holding the actions of revocation of access of Plaintiff from all business accounts including with Big Basket (for sales and supply), Amazon Seller Central (for sales and supply), Wordpress (for website and marketing), and Google Suite (the Plaintiff's professional email account with Defendant No. 3), as illegal in law and therefore void; and*
- c. Pass an order directing the Defendants to grant access / possession of all business accounts of Defendant no. 3 to the Plaintiff and related information, including with Big Basket (for sales and supply), Amazon Seller Central (for sales and supply), Wordpress (for website and marketing), and Google Suite (the Plaintiff's professional email account with Defendant No. 3, and uninterrupted ability to operate the same for the purposes of the business of Defendant no. 3; and*
- d. Pass an order co-terminus with the reliefs sought in (a), (b) and (c) above, for any other business accounts which the Defendant no. 3 may have in future; and*

e. Pass an order permanently injunctioning the Defendants from altering or affecting in any manner, directly or indirectly, any rights which the Plaintiff may have as a Partner of the Defendant no. 3 under applicable law or the LLP Agreement, otherwise than by the process of law; or

f. Pass any order that is deemed fit in the interest of justice.”

6. The counsel appearing on behalf of the petitioners/defendants has made the following submissions:

- i. All the reliefs claimed in the plaint are claimed by the plaintiff in his capacity of being a partner of the LLP and in view of the fact that the registered office of the LLP and the defendants are located in Hyderabad, the Courts in Delhi do not have any jurisdiction.
- ii. None of the records of the LLP are kept in Delhi and no meetings of the partners have ever been held in Delhi and there are no assets of LLP in Delhi. Therefore, no cause of action is arising out of the territorial jurisdiction of the Courts at Delhi and the present suit cannot be maintained by the Courts in Delhi.
- iii. By consent, parties cannot give territorial jurisdiction to a Court, which inherently lacks the jurisdiction. In this regard, reference is made to the judgment of the Supreme Court in ***Patel Roadways Limited, Bombay Vs. Prasad Trading Company***, (1991) 4 SCC 270.
- iv. The definition of “body corporate” under Section 2(1)(d) of the LLP Act, 2008 includes an LLP and Section 2(1)(u) of the LLP Act defines “Tribunal” to be the National Company Law Tribunal. Therefore, in respect of disputes between partners of the LLP, the jurisdiction would be that of the National Company Law Tribunal (NCLT) and

not Civil Courts.

7. *Per contra*, it has been contended on behalf of the counsel for the respondent/plaintiff as follows:

- i. In terms of Clause 23 of the LLP Agreement dated 12th October, 2018 entered between the parties, the exclusive jurisdiction has been given to the Courts in Delhi.
- ii. The business of the LLP was duly being carried out in Delhi through the respondent/plaintiff and therefore, the cause of action would arise in Delhi. In this regard, reference is made to e-mail dated 8th August, 2018 written by the petitioner no.1/defendant no.1 wherein, the respondent/plaintiff has been asked to promote the business of LLP in Delhi.
- iii. The LLP is supplying its goods to “Nature’s Soul”, which is a physical store situated at 27, Ground Floor, Defence Colony, Main Market, South East, Delhi and therefore, it cannot be said that the LLP is not doing business in Delhi and accordingly, the Courts in Delhi would be competent to try and entertain the present suit.
- iv. The dispute raised in the present suit is not in the nature of the compromise or arrangement between the partners and therefore, does not fall under provisions of Sections 60, 61, 62 and 63 of the LLP Act. Hence, the parties cannot invoke the jurisdiction of the NCLT.

8. Vide the impugned order, the Commercial Court after noting the submissions of the parties, dismissed the application filed on behalf of the petitioners by observing as under:

“20. Since the averments made in the plaint regarding the defendant’s carrying on the business within the territorial

jurisdiction of this Court has not been denied as per provision of Civil Procedure Code or as per commercial courts act for the reasons discussed above, the averments in the plaint regarding the jurisdiction of this court has to be deemed to be admitted. Since as per averments in the plaint in the absence of specific denial of the same, the defendants are carrying on business in Delhi and within the territorial jurisdiction of this Court, therefore, granting of exclusive jurisdiction under the LLP agreement clause 23 to the Courts in Delhi is a legally valid and enforceable agreement and is not a void agreement u/s 28 of the Indian Contract Act as is being claimed by the defendant.”

9. I have gone through the entire plaint, including the prayers made therein.

10. The entire case set out in the plaint is with regard to *inter se* disputes between the petitioners/defendants and the respondent/plaintiff. The grievance of the respondent/plaintiff is that he has been denied access to the business accounts of the respondent no.3/defendant no.3. Even the prayers made in the plaint seek directions for the respondent/plaintiff to be provided access at all times to the business accounts in possession of the respondent no.3/defendant no.3.

11. It has nowhere been pleaded in the plaint that the business accounts, in respect of which access is sought by the respondent/plaintiff, are kept in Delhi. In fact, the plaint is conspicuously silent with regard to the cause of action for filing of the suit. The only averment in suit with regard to the territorial jurisdiction are contained in paragraph 27 of the plaint which is set out below:

“27. *The Suit is a commercial suit, is being filed bona fide and the Hon’ble Court has jurisdiction to entertain the same,*

particularly because the parties are carrying on their business through the Defendant no.3 within the territorial limits of this Hon'ble Court, and the Defendant has substantial sales as well as customers and vendors in the south-east district of New Delhi, and the products of Defendant no.3 are also sold through a retail outlet located in south-east district of New Delhi. Further, the parties have agreed in the LLP Agreement that “competent courts in Delhi shall have exclusive jurisdiction”.

12. As regards, the cause of action for filing of the present case, the only averment made are in paragraph 28 of the plaint which is set out below:

“28. The Suit is within limitation as per the provisions of the Limitation Act, 1963, as the contemporaneous events that resulted in the cause of action have only recently occurred in the month of November, 2019.”

13. No details have been pleaded in the aforesaid paragraph of the plaint with regard to the cause of action that arose in favour of the respondent/plaintiff to file the present suit in Delhi.

14. The entire basis of the respondent/plaintiff for filing the suit in Delhi is on account of the fact that the LLP carried out business in Delhi and that the products of the LLP are regularly sold in Delhi by means of online sales as well as through physical stores such as Nature's Soul, which is in Delhi.

15. In my considered view, taking into account the nature of the disputes raised in the plaint being *inter-se* disputes of partners, the fact that business of the LLP is being carried out in Delhi would not vest the Courts of Delhi with jurisdiction to try and entertain the present suit.

16. An LLP or any other business entity can carry out business in different parts of the country. But that would not mean that a suit, with regard to disputes between the partners, could be filed in any place where

the business of the firm/LLP is carried out. What has been raised in the plaint is a dispute with regard to the business accounts of the LLP.

17. Section 13 of the LLP Act provides that every LLP shall have a registered office, where all communications and notices may be addressed and shall be received. In terms of Sections 11 and 36 of the LLP Act, documents in respect of the LLP, including the incorporation document, the statement of account, annual return, etc., shall also be available for inspection with the Registrar of the concerned State in which the LLP is registered. In terms of Section 34(1) of the LLP Act, the books of account in respect of an LLP shall be maintained at the registered office.

18. In light of the aforesaid, it is deemed prudent to review the clauses of the LLP Agreement dated 12th October, 2018. Clause 3 of the LLP Agreement evidently provides that the registered office of the LLP shall be at Plot No.74, Road No.4, Prashasan Nagar, Jubilee Hills, Hyderabad-500096, and which fact is not in dispute. Clause 12 and 13 of the LLP Agreement provides for the books of accounts of the respondent no.3/defendant no.3 LLP to be maintained and constraints its removal from the registered office, without the consent of all the partners. It is not the case of the respondent/plaintiff that any consent was taken to remove the books of account from the registered office to Delhi. Therefore, it would have to be taken that the books of accounts of the LLP are kept at its registered office in Hyderabad.

19. The present suit impugns the denial of access to the business accounts of the petitioner no.3/defendant no.3 to the respondent/plaintiff. It has not been averred by the respondent/plaintiff that the books of account of the petitioner no.3/defendant no.3 are kept in Delhi. On such an emergence of

facts from a reading of the plaint, in the opinion of this Court, the jurisdiction to entertain the present suit shall vest with the Courts in Hyderabad.

20. In respect of the contention of the counsel for the respondent/plaintiff that exclusive jurisdiction would vest in the Courts in Delhi in terms of Clause 23 of the LLP Agreement, Clause 23 of the LLP Agreement is set out below:

“23. Jurisdiction: Subject to the provisions mentioned hereinbefore, competent courts in Delhi shall have exclusive jurisdiction to adjudicate over matters relating to or arising out of the present Agreement”

21. In the opinion of this Court, the counsel for the petitioners/defendants in this regard has correctly placed reliance on the judgment of the Supreme Court in *Patel Roadways* (supra) to contend that a jurisdiction cannot be vested on a Court by agreement of the parties if that Court inherently lacks jurisdiction.

22. It is evident from the facts of the present case that there is no principal or subordinate office of the LLP in the State of Delhi and neither are the books of accounts kept in Delhi, therefore, there is no cause of action in respect of the present suit, which is arising within the territorial limits of the Courts in Delhi. Furthermore, the parties by agreement cannot give jurisdiction to a Court, which otherwise does not have such jurisdiction. Thus, I am of the considered view that the Courts in Delhi lack the territorial jurisdiction to try and entertain the present suit.

23. However, I may also note that I do not agree with the submission made on behalf of the petitioners/defendants that the jurisdiction with regard

to the present suit would vest exclusively with the NCLT. In my view, the disputes raised in the present suit do not pertain to Sections 60, 61, 62 and 63 of the LLP Act in respect of which jurisdiction has been vested with the NCLT. Sections 60, 61 and 62 of Chapter XII of the LLP Act pertain to compromise, arrangement or reconstruction of LLPs, while Section 63 of Chapter XIII of the LLP Act deals with the winding up and dissolution of LLPs, none of which form the subject matter of the present suit. The disputes raised in the present petition pertain to *inter se* disputes of the partners of the LLP with regard to business accounts of the LLP and therefore, the remedy of the aggrieved partner would be to file a commercial suit in terms of the provisions of the Commercial Courts Act, 2015.

24. Section 9 of the CPC states that Courts shall have the jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. Merely because the definition of the “body corporate” under Section 2(1)(d) of the LLP Act includes an LLP, it is not automatically implied that the NCLT would be the competent forum for deciding all disputes *inter se* the partners of an LLP. Unlike Section 430 of the Companies Act, 2013, there is no bar on the jurisdiction of the Civil Courts under the provisions of the LLP Act. Therefore, in terms of Section 9 of the CPC, the suit shall be maintainable in a Civil Court.

25. In light of the above, the petitioners/defendants have made out a case fit for interference by this Court under Article 227 of the Constitution of India as the Commercial Court has failed to appreciate that on a reading of the plaint, the Courts in Delhi lack the territorial jurisdiction to try and entertain the present suit. In my view, the present petition stands allowed in the aforesaid terms and the impugned order of the Commercial Court is set

aside.

26. The plaint be returned to the plaintiff to be filed in the appropriate Court of competent jurisdiction.

27. The pending application stands disposed of.

AMIT BANSAL, J.

FEBRUARY 25, 2022

at

HIGH COURT OF DELHI



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