

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/PETN. UNDER ARBITRATION ACT NO. 194 of 2021**

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HEMLATA JAIN W/O DEEPAK KUMAR JAIN

Versus

PADMAVATI ANALKUMAR MISHRA W/O LATE ANALA KUMAR MISHRA

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Appearance:

MR MAULIK NANAVATI FOR MS MANVI A DAMLE(10805) for
Petitioner No. 1

MR DARSHANKUMAR R KABRA(11246) for Respondent(s) No. 3

MR SHAKTI S JADEJA(5491) for the Respondent(s) No. 1

MR SP MAJMUDAR(3456) for the Respondent(s) No. 1

SERVED BY RPAD (N) for the Respondent(s) No. 2

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CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND
KUMAR

Date : 07/10/2022
ORAL ORDER

1. This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') seeking for appointment of an arbitrator.

BRIEF BACKGROUND :

2. Petitioner and respondent Nos.1 to 3 entered into a Partnership Agreement on 10.12.2018 for carrying on the business of manufacturing, trading, import and export, to act as distributor agent, consignment agent of chemical fertilizers, Bio-fertilizers, organic fertilizers etc. and other activities as more fully described in the Deed of Partnership. The partnership firm was having its

registered office at Vadodara. On account of certain disputes having arisen between partners in respect of the said Partnership Deed resulted in a notice dated 03.02.2021 being issued by the second respondent to petitioner for settling the dispute and differences amicably. Under the said notice, second respondent had indicated that the parties should express their intention within 15 days to settle the above disputes and differences. On account of there being no such settlement arrived at, petitioner got issued a notice on 23.03.2021 invoking the arbitration clause referred to in the Partnership Deed dated 10.12.2018 by nominating Mr.Abhishek Kukkar as the sole arbitrator to adjudicate the dispute and differences which had arisen between parties under the Partnership Deed dated 10.12.2018 and sought for the concurrence of the respondents namely other partners of the firm. On account of there being no concurrence and averments made in the notice having been denied by respondent Nos.1 and 3, petitioner has approached this Court for appointment of an arbitrator.

3. I have heard the arguments of Shri Maulik Nanavati, learned counsel appearing for petitioner, Mr.Shakti Jadeja, learned counsel appearing for respondent No.1 and Mr.Darshankumar Kabra, learned counsel appearing for respondent No.3.

4. It is the contention of Mr.Maulik Nanavati, learned counsel appearing for petitioner that Deed of Partnership clearly provides for resolution of disputes between parties through arbitration and in furtherance of the same petitioner had got issued legal notice on 23.03.2021 invoking arbitration clause / agreement and also suggesting the name of the arbitrator for which there has been evasive reply from the respondent Nos.1 and 3 or in other words, there being no concurrence given by the respondents to the name of the arbitrator suggested by the petitioner. Hence, petitioner has no other option but to approach this Court by this petition seeking for appointment of a sole arbitrator. He has prayed for allowing this petition.

5. Per contra, Shri Shakti Jadeja, learned counsel appearing for respondent No.1 opposing the prayer sought for in the petition would contend that the Partnership Deed which has been relied upon is an unregistered Partnership Deed and as such, the principles enunciated by the Hon'ble Apex Court in the case of **Jagdish Chandra Gupta vs Kajaria Traders India Limited**, reported in **AIR 1964 SC 1882**, would be squarely applicable and as such he prays for rejection of the petition. He would also submit that notice dated 23.03.2021 issued by petitioner seeking for concurrence of the name of the arbitrator suggested by petitioner is not only bereft of material particulars but it also lacks merits and on this ground itself, petition is liable to be dismissed. Mr.Darshankumar Kabra, learned counsel appearing for respondent No.3 would oppose the petition vehemently and prays for petition being rejected.

6. By way of reply, Mr.Maulik Nanavati, learned counsel appearing for petitioner would draw the attention of the Court to the judgment of the Hon'ble Apex Court in

the case of **Umesh Goel vs. Himachal Pradesh Cooperative Group Housing Society Limited** reported in **(2016) 11 SCC 313**, to contend that issue of prohibition contained under sub-section (3) of Section 69 of the Partnership Act, 1932, being attracted would not be applicable to the proceedings under the Arbitration and Conciliation Act, 1996, and this issue has been laid to rest by the Hon'ble Apex Court in the said judgment and as such he prays for rejection of the contention raised by the learned counsel appearing for first respondent.

7. Having regard to the rival contentions raised, it would clearly emerge from the records that petitioner and respondents had entered into partnership under deed dated 10.12.2018 which contains the arbitration clause and said deed is an unregistered Partnership Deed undisputedly. Sub-section (3) of Section 69 of the Partnership Act would indicate that no suit to enforce a right arising from a contract or conferred by the said Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any

person alleged to be or have been a partner of the firm unless the firm is registered. The question would be, whether said bar extends to arbitration proceedings under the Arbitration and Conciliation Act, 1996? This issue as rightly contended by Mr. Maulik Nanavati is no more *res integra* in view of the authoritative law laid down by the Hon'ble Apex Court in **Umesh Goel's** case referred to supra, whereunder in conclusion their lordships have held to the following effect :

*“37. Though the learned senior counsel for the appellant and the respondent referred to certain other decisions in support of their respective submissions, as we are fortified by our conclusion, based on the interpretation of **Section 69** of the Partnership Act vis-à-vis the 1996 Act and the 1940 Act as well as supported by the decision in Jagdish Chander and Kamal Pushp Enterprises, we do not find any necessity to refer to those decisions in detail. **Having regard to our conclusion that Arbitral Proceedings will not come under the expression “other proceedings” of **Section 69(3)** of the Partnership Act, the ban imposed under the said **Section 69** can have no application to Arbitral proceedings as well as the Arbitration Award.** Therefore, the appeal stands allowed, the impugned judgment of the Division Bench is set aside and the judgment of the learned Single Judge stands restored. No costs.”*

(emphasis supplied by me)

8. In light of Section 69 of the Partnership Act, 1932, finding recorded by the Hon'ble Apex Court above that would have no application to arbitration proceedings and law laid down by the Hon'ble Apex Court would squarely cover the issue on hand. Hence, it has to be necessarily held that the arbitration proceedings will not come under the expression "other proceedings" indicated in Section 69(3) of the Partnership Act and the bar imposed under the said Section 69 would have no application to arbitral proceedings. Hence, first contention raised by learned counsel appearing for the first respondent would not hold water and it stands rejected.

9. Insofar as the notice invoking arbitration clause issued under Section 21 of the Act being vague or bereft of material particulars would not be a ground on which the prayer sought for appointment of an arbitrator under sub-section (6) of Section 11 of the Act can be rejected. In order to appreciate the said contention, I am of the

considered view that it would be apt and appropriate to extract Section 21, which reads thus :

“21. Commencement of arbitral proceedings - Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

10. A plain reading of the above provision would indicate that arbitral proceedings in respect of a particular dispute would commence on the date on which a request for that dispute is to be referred to arbitration is received by respondent. In order to give cause of action for initiating the proceedings, Section 21 can be taken recourse to. A plain reading of the said provision does not even remotely suggests that the nature of dispute has to be enumerated or explained in the notice so issued seeking for the dispute being referred to arbitral tribunal. In the instant case, a notice has been issued by petitioner which has been produced along with petition at Annexure-A, which is dated Nil said to have been

dispatched on 23.03.2021 (as per the postal receipt enclosed) would indicate that petitioner is seeking for resolution of the dispute arising under the Partnership Agreement dated 10.12.2018. Thus, it would be open for the parties to raise their claim or counter-claim as the case may be before the Arbitral Tribunal and there being notice seeking for reference to the Arbitral Tribunal, present notice would fall within the four corners of notice for arbitration as required under Section 21. In that view of the matter, second contention of the petitioner also falls to ground.

11. For the reasons aforesaid, I proceed to pass the following :

ORDER

- (i) Petition is allowed.
- (ii) Shri B.L.Jadav, Retired District Judge, residing at : A-101, Gratecial Flat, Nr. Kalyan Party Plot, Vasna Road, Vadodara, having phone number 9727534437 and Email ID: bl.jadav_gj@nic.in, is hereby nominated as the sole Arbitrator to resolve the dispute between

the parties which has arisen between the parties who shall act in accordance with the Arbitration Centre (Domestic and International), High Court of Gujarat Rules, 2021. Both Parties would also be governed by said Rules. The Arbitrator would be at liberty to conduct the proceedings online also.

(iii) Registry to communicate this order to the sole Arbitrator forthwith by Speed Post.

(iv) Consequently, connected application/s, if any, stands consigned to records.

GAURAV J THAKER

(ARAVIND KUMAR, CJ)

