IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 18, 2021

\+ O.M.P. (I) (COMM) 339/2020, I.As. 9626/2020 & 9772/2020

MOHIT SARAF

..... Petitioner

Through: Mr.Parag Tripathi and Mr.Arvind Nigam, Sr. Advs. with Mr.Promod Nair, Mr.Sandeep Das, Ms.Anusha Nagaraj, Mr.Raghuvendra Singh & Ms.Arushi Mishra, Advs.

versus

RAJIV K LUTHRA

..... Respondent

Through: Dr. Abhishek Manu Singhvi, Sr. Adv., Mr. Neeraj Kishan Kaul, Sr. Adv. & Mr. A. S. Chandiok, Sr. Adv. with Ms.Haripriya Padmanabhan, Ms.Pooja Dhar, Mr.Shrutunjay Bharadwaj, Mr.Dipak Joshi, Ms.Ashima Chauhan and Ms.Simran Kohli, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

I.As. 9626/2020 & 9772/2020

These applications have been filed by the petitioner seeking permission to file additional documents on record.

The same are allowed and the additional documents are taken on record. Applications are disposed of.

O.M.P. (I) (COMM) 339/2020

1. The present petition has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act of 1996', for short) with the following prayers:

> *"Therefore, in the light of the facts and circumstances of the present case, and the submissions made in regard thereto, this Hon'ble Court may be pleased to:*
>
> *a) Stay the notice issued by the Respondent No. 1 to the Petitioner by way of email sent on 13.10.2020 purportedly terminating the Petitioner's partnership with L&L Partners, New Delhi and all actions taken consequent thereto;*
>
> *b) Restrain the Respondent No. 1 from directly or indirectly, interfering with the management and /or administration, and from participating in the affairs of the firm L&L Partners, New Delhi;*
>
> *c) Restrain the Respondent No. 1 from holding himself out as, or representing himself to be a partner in L&L Partners, New Delhi;*
>
> *d) Direct the Respondent No. 1 to forthwith hand over to the Petitioner all assets and properties of the firm L&L Partners, New Delhi, currently within his possession, including ownership and control over the website www.luthra.com;*
>
> *e) Restrain the Respondent No. 1 from accessing or using any of the assets of the firm, including but not limited to restraining the Respondent No. 1 from withdrawing any monies, or authorizing any payments out of, or otherwise operating bank accounts held by the firm, without the consent of the Petitioner;*
>
> *f) Restrain the Respondents from interdicting the Petitioner's rights to conduct and manage the affairs of the firms L&L Partners, New Delhi, L&L Partners, Mumbai and L&L Partners Litigation, New Delhi;*
>
> *g) Direct the Respondents to forthwith restore the Petitioner's access to his firm email id - MSaraf@luthra.com and the Petitioner's name as*

being part of the management on the websites of the firms, L&L Partners, New Delhi, L&L Partners, Mumbai and L&L Partners, Litigation, and further restrain the Respondents from directly or indirectly, preventing or otherwise restricting the Petitioner's access to and use of the Delhi Firm's IT infrastructure such as personal laptop, desktop, email with the domain name@luthra.com, servers, database, software subscriptions;

h) Direct the Respondents to forthwith restore the access of all employees and staff to, and enable use of the IT infrastructure such as personal laptop, desktop, emails with the domain name@luthra.com, servers, database, software subscriptions, whose access has been drastically blocked since 13.10.2020;

i) Direct the Respondent No. 1 to remove the 'bouncers' stationed by him at the office of the Delhi Firm at the 1st and 9th Floors, Ashoka Estate, 9, Barakhamba Road, New Delhi - 110001 and further restrain the said Respondents from restricting any manner the Petitioner's ingress and egress to the office space at 1st and 9th Floors, Ashoka Estate, 9, Barakhamba Road, New Delhi-110001;

j) Restrain the Respondents from causing any disturbance or damage to the office cabin of the Petitioner;

k) Direct the Respondent No. 1 to cease and desist from entering the offices at 1st and 9th Floors, Ashoka Estate, 9, Barakhamba Road, New Delhi - 110001, soliciting or contacting the employees, retainers, or clients of L&L Partners, New Delhi;

1) Restrain the Respondent No. 1 from making any representation to any of the clients or retainers or employees of any of the firms, L&L Partners, New Delhi, L&L Partners, Mumbai or L&L Partners, Litigation, New Delhi, and from making any representation, communication, filing, applications etc. to any regulatory authorities including the Registrar of Firms, or to the media to the effect or

on the basis that the Petitioner's partnership has been terminated, or that the Petitioner has ceased to be a partner of any of the said firms, or that the petitioner is not authorized to represent the said firms, and further direct the Respondent No. 1 that if any such communication has been made, then to forthwith withdraw the same;

m) Restrain the Respondent No. 1 from using the name "Luthra &Luthra" or "L&L Partners" or any variation thereof, for carrying on any business competing with the business of L&L Partners, New Delhi;

n) Grant ex parte ad interim reliefs in terms of the above;

o) Pass such order and any further other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The facts, as noted from the petition, are as follows:

2.1 Petitioner and respondent are Advocates within the meaning of the Advocates Act, 1961.

2.2 On March 31, 1999 petitioner and respondent executed a partnership deed ('Deed', for short) and founded the partnership firm L&L Partners, New Delhi (formerly Luthra & Luthra Law Offices, New Delhi) ('Delhi Corporate Firm', for short) having its office at Ashoka Estate, Barakhamba Road, New Delhi. It is undisputed and noted from the Deed that the partnership was not at will. The Delhi Corporate Firm was registered with the Registrar of Firms, New Delhi bearing registration number 615/04 on April 31, 2004.

2.3 On April 01, 2002, petitioner, respondent and three other lawyers entered into another partnership with one another for carrying on litigation related legal services and

executed the written partnership deed and founded the partnership firm L&L Partners Litigation (formerly Luthra & Luthra Law Offices, Litigation) with office in New Delhi ('Delhi Litigation Firm', for short). This firm is a partnership at will.

2.4 On March 03, 2003, petitioner and the respondent executed the written partnership deed and founded the partnership firm L&L Partners Mumbai (formerly Luthra & Luthra Law Offices, Mumbai) ('Mumbai Corporate Firm', for short). The firm is also a partnership at will.

2.5 On April 04, 2004, petitioner and the respondent varied and altered the profit (and loss) share in the partnership firms, Delhi Corporate Firm and Mumbai Corporate Firm to 33.33% and 66.67%, respectively.

2.6 It is stated that the aforesaid three partnership firms namely Delhi Corporate Firm, Delhi Litigation Firm and Mumbai Corporate Firm (collectively hereinafter referred to as 'L&L Firms') have achieved tremendous growth and success in the past two decades and are amongst the leading law firms in the country today. Together, the L&L Firms approximately retain 300 lawyers, 75 non-equity retainer partners, 200 employees and support staff. The Delhi Corporate Firm and the Mumbai Corporate Firm approximately retains 250 lawyers, 43 non-equity retainer partners, 150 employees and support staff. The cumulative revenue of the L&L Firms is more than INR 350 crores. The L&L Firms serve some of the largest industrial houses and

high net worth individuals and have won several accolades over the past few years. Illustratively, the L&L Firms were awarded the National Law Firm of the Year by Chambers and Partners in 2012, National Law Firm of the Year by IFLR-Asia for 3 years after 2013.

2.7 It is stated that the petitioner has played a pivotal role in developing the business and clientele of the L&L Firms. Particularly in the context of the Delhi Corporate Firm and the Mumbai Corporate Firm, the Petitioner has been the head of the corporate practice, and has been instrumental in the growth of the big practices like M&A, private equity, capital markets, banking & project finance, insolvency, general corporate etc., which have grown by leaps and bounds under the leadership and guidance of petitioner.

2.8 On the salient features of the Deed, it is stated by the petitioner as follows:

2.8.1 the name, goodwill, clients, assets, counsels, staff etc., exclusively belong to the Delhi Corporate Firm.

2.8.2 Deed envisages a gradual devolution of rights in favour of the petitioner over a period of time.

2.8.3 Between March 31, 1999 (date of entering into the Deed) and October 31, 2003, either party could leave the Delhi Corporate Firm, without being entitled to any value towards goodwill. However, if the petitioner was asked to leave the Delhi Corporate Firm, he would be entitled to fifty percent of the goodwill amount computed in the

manner stipulated in the Deed. During the same period, if the respondent intended to leave the Delhi Corporate Firm and retain its name, the respondent was required to compensate the petitioner for the full value of the goodwill.

2.8.4 After October 31, 2003, but before 12 years from the Effective Date under the Deed (i.e., 01.04.1999), if the respondent intended to leave the Delhi Corporate Firm and retain its name (in other words, exclude the petitioner from the Delhi Corporate Firm), the respondent was bound to compensate the petitioner for five times the amount of the goodwill as computed in accordance with the Deed, and all the clients of the Delhi Corporate Firm were to be retained by the petitioner.

2.8.5 That the Deed categorically and unequivocally provides that after the expiry of 12 years from the Effective Date, i.e., from March 31, 2011 onwards, the respondent may only leave the Delhi Corporate Firm, but shall have no right to retain its name, and that such name shall continue to be used by the remaining partners of the Delhi Corporate Firm. Also, the clients, assets, employees and goodwill were to be retained by the petitioner and that after 2011, the respondent has no right to exclude the petitioner from the Delhi Corporate Firm in any manner.

2.8.6 As per the Deed, after 2010 the respondent's right to render final binding decision was confined to certain specific matters stipulated therein.

2.8.7 Even though respondent could appraise the performance of the petitioner, as per the Deed, after 2010, even if the respondent were to find the petitioner to be wanting in any manner, only a token penalty could be imposed upon petitioner.

2.8.8 No new partners could be inducted by the respondent without the consent of the petitioner

2.8.9 Upon retirement, withdrawal or death of any of the partners or termination of the Deed, the Delhi Corporate Firm would subsist and the remaining partners would continue to run the Delhi Corporate Firm.

2.8.10 In the event of death or retirement/withdrawal of one of the partners from the Delhi Corporate Firm, or termination of the Deed, it is expressly stipulated that the surviving party shall: (i) continue to be a part of the Delhi Corporate Firm and retain all the assets, offices, employees, counsel, clients etc., and; (ii) continue to retain and use the name of the Delhi Corporate Firm and the goodwill attached thereto.

2.9 It is the case of the petitioner that until 2015, the petitioner and respondent enjoyed a healthy relationship and carried on the business of the Delhi Corporate Firm smoothly. And, with the growth of the L&L Firms, the need for professionalization became necessary and that the petitioner recognized and adopted this vision. The clamour for opening up of the equity partnership also increased within the organization, especially after several

professionals of impeccable talent and competence, had spent several years as a part of it.

2.10 It is stated that sometime in 2009, the petitioner and respondent announced that the retainer non-equity partners, who had been part of the firm for many years would be inducted as partners into the firms (Delhi Corporate Firm and Mumbai Corporate Firm). However, primarily due to reluctance on the part of the respondent to dilute his equity in the partnership no further steps were taken to give effect to the same.

2.11 On several occasions, petitioner had requested the respondent to take progressive and serious steps towards dilution of the equity in favour of senior professionals within the Delhi Corporate Firm and the Mumbai Corporate Firm. As a step towards professionalization and transparency in decision making, petitioner with the concurrence of the respondent, set up an Executive Committee ('EC', for short) in September 2012, comprising of certain senior members of the Delhi Corporate Firm and the Mumbai Corporate Firm. After due deliberation and discussion, on July 24, 2019, the guiding principles and frame work for decision-making by the EC was agreed to, by the members of the EC, including the petitioner and the respondent. And, that until recently apart from the parties to the present petition, the members of the EC include 4 other senior non-equity retainer partners of the Delhi Corporate Firm and Mumbai Corporate Firm, who are also members of

the WhatsApp Group named 'Executive Committee'.

2.12 It is stated by the petitioner that on multiple occasions, the petitioner solicited consensus of the respondent to induct new partners by diluting the equity, however was unsuccessful. This adversely affected the L&L Firms as many retainer non-equity partners left the firms for having been denied fair compensation. Particularly, from July 2019 onwards, petitioner urged the respondent to expeditiously deliver upon his commitment with respect to dilution of equity, and warned the respondent of the imminent danger of several competent and talented professionals leaving the Delhi Corporate Firm and the Mumbai Corporate Firm, in the event that the respondent failed to do so.

2.13 Between July and December 2019, primarily due to frustration amongst the senior members of the Delhi Corporate Firm and the Mumbai Corporate Firm at the lack of opening up of equity, there was a spate of high-profile exits.

2.14 Amongst similar communications by petitioner on the issue of equity dilution, and in response to the respondent requesting the petitioner to communicate his thoughts on equity dilution, by way of a message sent on December 26, 2019, the petitioner communicated in detail, his views on the manner in which equity needs to be diluted in favour of senior professionals in the Delhi Corporate Firm and the Mumbai Corporate Firm.

2.15 It is stated that as a reaction to the said message the respondent responded on the same date itself, denouncing the petitioner's views and stating that the best way forward was to go separate ways and called upon the petitioner to think of the most amicable way to achieve a parting. The respondent also suggested some high-level steps that would normally be taken into consideration when ending a partnership.

2.16 Petitioner expressed his agreement to an amicable solution on parting ways, which was however deliberately misconstrued and misrepresented by the respondent to other senior members of the Delhi Corporate Firm and partners of the Delhi Litigation Firm, as if the petitioner and the respondent had reached an agreement on dissolution of the Delhi Corporate Firm. The petitioner strongly denied each such suggestion and clearly stated that he was only agreeable to amicably parting ways.

2.17 It is stated that on January 06, 2020 respondent issued a notice to the petitioner for termination of the Delhi Corporate Firm and for dissolving the Mumbai Corporate Firm (180-days' notice) inter alia stating that *"... both the partnership deeds, mentioned above, shall now stand terminated on the 90th day (for Delhi) and 180th day (for Mumbai) ..."*

2.18 The petitioner immediately responded objecting to the respondent's misrepresentation and specifically pointed out that he had not consented to dissolution of the Delhi

Corporate Firm, as was sought to be misrepresented by the respondent. In his communications between January 06, 2020 and January 09, 2020, the petitioner also pointed out to the respondent, that in terms of the Deed, the respondent could not unilaterally terminate the partnership except by withdrawing from it and that the petitioner was agreeable to the respondent withdrawing from the Delhi Corporate Firm.

2.19 It is stated by the petitioner that under the Deed, respondent may only issue a notice of termination on one or more of the specific grounds mentioned under Clause 8. Clause 8(a) of the Deed refers to termination on the basis of a unanimous agreement between the parties, while Clause 8(e) provides for termination on the basis of withdrawal/ retirement from the partnership. The respondent's notice to terminate being unilateral in nature, and given that none of the contingencies in sub-clauses (b) to (d) of Clause 8 (material breach, bankruptcy, death, mental or physical incapacity) had arisen, or referred to, the respondent's actions and notice of January 06, 2020, was nothing but a notice of withdrawal / retirement from the Delhi Corporate Firm.

2.20 It is the case of the petitioner that the conduct of the respondent was in fact consistent with his intent and desire to withdraw from the Delhi Corporate Firm, which was evident from the several communications sent by the respondent between July 2019 and till recently. It is also stated that in an effort to amicably resolve issues in the

interest of the L&L Firms, petitioner and members of the EC held various discussions and the respondent placed several unrealistic proposals for equity dilution, which were not accepted by the petitioner or the EC members. Respondent kept reiterating his intent to proceed with unilateral termination / withdrawal, and to this end, continued to negotiate the terms of his exit in his communications with the Petitioner and with the EC. In this backdrop, the respondent unilaterally 'extended' his notice to terminate the Partnership Deed by communications issued on April 04, 2020 (by 60 days), May 28, 2020 (by one month), June 30, 2020 (by 60 days) and finally on August 30, 2020 up to October 31, 2020.

2.21 On September 13, 2020, after having extended his purported notices up to October 31, 2020, on the Corporate Partners (Whatsapp) Group, the respondent made a proposal for dilution of 20% of equity and warned of some structural 'rejig' in the Delhi Corporate Firm. The respondent unequivocally conveyed that the 'time for negotiation is over', and issued an ultimatum that if the aforesaid proposal were not acceptable, then the persons disagreeing are free to leave. The respondent gave everyone, including the petitioner, a period of one month to take a decision and communicated that he would no longer be participating in any partner meetings.

2.22 It is the case of the petitioner that in the context of the Deed, each of the communications issued by the

respondent seeking to unilaterally terminate the partnership with the petitioner, or unilaterally extend the deadline of termination, constitutes a withdrawal from the partnership, as, after 2011, the respondent has no right to oust or exclude the petitioner from the Delhi Corporate Firm in any manner.

2.23 It is also the case the petitioner that even before expiry of the one-month period, the respondent, by way of a message sent on the Corporate Partners group on October 04, 2020, represented to the petitioner and retainer non-equity partners that he proposes to unilaterally induct new partners into the Delhi Corporate Firm.

2.24 It is stated on October 05, 2020, response was given by the petitioner pointing out that under the Deed, no partner can be inducted without the consent and concurrence of the petitioner. The petitioner further stated that the proposal of respondent is a farce as the proposal mentions no criteria, selection method and percentage of equity dilution, among others, and is merely an artifice to induct few of his dependents as partners. The petitioner also disputed the right of the respondent to unilaterally induct partners. The respondent, without disputing the merits, disputed the contentions of the petitioner, in a message sent on October 06, 2020. On October 10, 2020, the respondent informed the petitioner and all retainers in the Delhi Corporate Firm that the respondent had inducted two individuals Aniket Sen Gupta and Barish Kumar as partners.

2.25 It is stated by the petitioner that in this light of

intention of the respondent's earlier communications and given that the respondent was in material breach (falling within the meaning Clause 8(b) of the Deed), which provided an additional ground for termination by the petitioner; and also given that the period for amicable resolution in terms of the Deed had long expired, on October 12, 2020, (before expiry of the period of one month stipulated in the respondent's communication of September 13, 2020), the petitioner issued a notice / letter by email to the respondent acknowledging and accepting the respondent's decision to leave and withdraw/retire from the Delhi Corporate Firm

2.26 It is further stated that being the surviving party / remaining partner under the Deed and being entitled to retain the name, goodwill, clients, assets, employees etc. of the Delhi Corporate Firm, the petitioner went on to reconstitute the Delhi Corporate Firm and inducted 23 retainer non-equity partners as equity partners of the Delhi Corporate Firm. All 24 persons executed the new partnership deed on the same date i.e. October 12, 2020. It is also the stated that approximately 25% of the equity in the Delhi Corporate Firm has been distributed amongst the newly inducted equity partners (as an initial distribution, on a token basis) and the remaining 42% of the equity is maintained in a pool for the benefit of, and to be distributed at a later stage amongst present and future partners of the Delhi Firm. It was also agreed in the new deed that further

equity dilution would take place by March 31, 2021, in favour of the 23 new partners, based on objective criteria to be discussed and agreed between the partners. The new partnership deed clearly stipulates that the petitioner's equity interest shall be 33%, which is his present equity interest.

2.27 It is the case of the petitioner that on October 12, 2020, at 22:34, the respondent sent an email to all retainers and employees of the L&L Firms, denying that he had retired from the Delhi Corporate Firm.

2.28 Thereafter, purely as a counter-blast, and without any foundation, legal right or basis, the respondent sent an email to the petitioner on October 13, 2020, purportedly terminating the petitioner's partnership in the Delhi Corporate Firm with immediate effect. Thereafter, it is stated that on October 13, 2020 at around 12:42 P.M, respondent sent an email to all employees and retainers of the L&L Firms stating that *"..... the email/ notice sent yesterday is the proverbial last nail in the coffin leaving me no option but to terminate Mr. Saraf's partnership, which was done earlier this morning. Mr. Saraf is now stripped of all authority and standing, and has no authority to instruct you or otherwise to act on behalf of the Firm. No one should fall into the trap of accepting any non-existent equity, which he wants to offer to anyone, and further complicate matters."*

2.29 It is averred by the petitioner that the said notice by

respondent to petitioner made various false, vague, baseless and frivolous allegations each of which were denied by the petitioner. Moreover, respondent is stated to justify termination on the basis of false allegations of material breach on the part of the petitioner purportedly on the basis of Clauses 7(A) and 8 of the Deed. The frivolity and lack of basis is manifest from the fact that the respondent had never alleged breach on the part of the petitioner, including in his repeated notices for termination of the partnership.

2.30 Without prejudice to the petitioner's position that the allegations in the notice are false, it is submitted that the said notice is further misconceived, as: (i) prior to issuance of such notice, the respondent had already withdrawn/ retired from the partnership; (ii) in any event, none of the allegations fall within the meaning of material breach, which has been specifically defined in Clause 8(b) of the Deed.

2.31 It is stated that the petitioner had in fact at around 10:25 A.M. sent an email on October 13, 2020 addressed to the key administrative employees and officials, requesting them not to precipitate matters. Petitioner informed all the members of the L&L Firms that despite the fact that respondent has ceased to be a partner, respondent ought to be respected and allowed unhindered access to the firms till completion of winding up of the Mumbai Corporate Firm and settlement of accounts of the Delhi Corporate Firm with respect to respondent’s entitlements. Petitioner, continuing with the exercise of management duties that he had been

conducting for the past two decades, instructed the administrative officials to seamlessly discharge their duties, and to not take any action at the instance of either the petitioner or the respondent, which would be prejudicial to the other.

2.32 Whereas, it is stated, despite the fact that the email IDs, servers and other IT infrastructure is common to all the L&L Firms, and undisputedly, the petitioner continues to be a partner in the Mumbai Corporate Firm and the Delhi Litigation Firm, the respondent with the aid and connivance of the staff terminated and disrupted the access of the petitioner to the resources of the firm such as access to emails and IT resources, removed the petitioner from the firm's website. Respondent has even denied entry of petitioner into the firm premises and threatened retainers and employees and the new partners to disassociate with the petitioner and coerced some employees to go on leave. Further, respondent wrote emails to large number of clients with which the petitioner has ongoing and concluded works that the petitioner is no longer a partner of the firms. It is also stated that the respondent has seized the petitioner's laptop / desktop which was kept in office and is unauthorizedly accessing the data and information contained therein, in flagrant breach of the provisions of the Information Technology Act, 2000. The respondent has unlawfully taken control of the servers, books, records, data, bank accounts to the exclusion of the petitioner. There is

hence a serious risk of misappropriation, data theft and manipulation of records at the behest of respondent in furtherance of his *mala fide* motives. Respondent continued with such and other irreparably injurious acts and falsehoods to the detriment of petitioner's right to carry on legal practice and partnership rights.

2.33 It is averred that the respondent *inter alia* has no right or authority to: (i) prevent the petitioner or any of the retainers of the Delhi Corporate Firm from lawfully accessing the office, or their emails, assets of the Delhi Corporate Firm etc., (ii) interfere with the business of the Delhi Corporate Firm in any manner, (iii) to instruct the employees, salaried partners, lawyers and employees of the Delhi Corporate Firm not to deal with the Petitioner, (iv) use or retain any of the assets of the Delhi Corporate Firm, or (v) solicit the clients, employees, retainers etc. of the Delhi Corporate Firm. The aforesaid position emanates as consequences of his withdrawal from the partnership, and especially given that the Delhi Corporate Firm has already been reconstituted. In addition, and without prejudice, it is also averred, the respondent has no right under the Deed, or basis to oust the petitioner from the Delhi Corporate Firm and therefore, each of the respondent's subsequent actions is illegal. Further, by blocking access of the petitioner to his emails, to the offices, data etc., the respondent is unlawfully preventing the petitioner from servicing clients, usurping the clients and business of the petitioner, and is preventing the

petitioner from lawfully carrying on with the business of the Delhi Corporate Firm, despite the fact that under the Partnership Deed, the petitioner is entitled to retain the name, goodwill, assets, clients and employees of the Delhi Corporate Firm. Moreover, the petitioner owes a duty, professional and fiduciary, to the clients, some of whom he has been advising for more than a decade. As part of his professional duties, the petitioner is expected to be available to advise and serve his clients at short notice, and the aforesaid acts on the part of the respondent would irreparably damage and destroy the client relationships built by the petitioner painstakingly over the years.

2.34 Further, the petitioner has been overseeing and taking decisions on financial requirements for regular day-to-day operations of the said firms, as well as for capital outlays, expansion of space, hiring and salaries, increments etc. for the Delhi Corporate Firm and the Mumbai Corporate Firm with the authority to independently operate the bank accounts of the Delhi Corporate Firm and Mumbai Corporate Firm. Without prejudice to other contentions, it is averred, the actions of the respondent also seek to drastically alter the *status quo* and to wrongfully hold out that the respondent is a partner of the Delhi Corporate Firm and misrepresent that the petitioner is not a partner of the same.

2.35 The petitioner has also gone ahead and pointed out various material breaches committed by respondent under Clause 8B of the Deed. The said breaches as alleged in

short are as follows:-

- Unethical demands for payment made by respondent from one of the clients, which resulted in removal of the L&L Firms from the said client's approved list.
- In reckless disregard of his duties as a partner, the respondent conducted firm-wide video conference call unilaterally scheduled on September 24, 2020 with a *mala fide* motive to disclose the discord within the partnership and to discredit and defame the petitioner publicly on false grounds even after the petitioner requesting the said meeting to be cancelled.
- Invoices were raised by Luthra proprietorship for legal services on clients of Delhi Corporate Firm and Mumbai Corporate Firm.
- The respondent went ahead and invested in a competing business which is an online platform that provides legal and compliance solutions.
- No objection to the registration of the name 'L&L Partners' in the name of the Delhi Corporate Firm, and insisted upon its registration for the benefit of the Luthra Proprietorship as well.
- The domain name www.luthra.com has been wrongfully held by respondent in his personal capacity even though the same is the property of Delhi Corporate Firm and the same was never

transferred in favour of the Delhi Corporate Firm even after repeated requests.

- The respondent is in wrongful possession of retainership agreement of both Delhi Corporate Firm and Mumbai Corporate Firm.
- Ousting the petitioner from the partnership and depriving him and other partners from carrying on the business of Delhi Corporate Firm constitute material breach.
- The unilateral attempt of the respondent to induct partners without petitioner's consent.
- Respondent's unrealistic and grossly insufficient equity dilution proposals, while threatening to dissolve the Delhi Corporate Firm and making unreasonable demands for payment to be made for his exit from the Delhi Corporate Firm is in bad faith.
- The respondent also unreasonably without the consent of the petitioner demanded the resignation of a Senior Partner of the Delhi Corporate Firm.
- Respondent unilaterally vetoed a near unanimous decision taken by the then non-equity retainer partners of the corporate practice to disassociate with the Delhi Litigation Firm.
- Respondent malafidely and in bad faith to undermine the authority of the petitioner, delayed the appraisal process for the year 2019-20 pleading

to delays in promotion and bonuses.

- Respondent even requested certain clients serviced by the petitioner and some other partners, to disassociate with them, which are prejudicial not only to the petitioner but also to the firm.

2.36. It is stated that petitioner has a strong *prima facie* case as the petitioner is a partner in all the three partnership firms/ L & L Firms. Further, petitioner has a strong *prima facie* case as (i) the respondent has ceased to be a partner in Delhi Corporate Firm but despite that has breached and is continuing to breach his obligations under the Indian Partnership Act, 1932 ('Partnership Act', for short) and the Deed (which has an arbitration clause) with the aid and connivance of the staff; (ii) under the Partnership Deed, the respondent has no right whatsoever to exclude the petitioner from the Delhi Corporate Firm, after 2011; (iii) after respondent has withdrawn from the Delhi Corporate Firm, the respondent had no locus or right to issue the notice of termination dated October 13, 2020; and (iv) subsequent acts obstructing the Petitioner from carrying on with the business of the Delhi Corporate Firm are illegal and without authority. Similarly, the balance of convenience lies completely in favour of the petitioner and against the respondent as the petitioner took a reasonable stance and instructed the employees of the Delhi (email dated October 13, 2020) that matters should not be precipitated at the instance of one or the other until matters are resolved. On

the other hand, respondent has left no stone unturned in seeking to completely deprive the petitioner of his lawful rights and interests in the business. The respondent's actions also seek to irreversibly damage the reputation of the petitioner and is likely lead to significant loss of professional standing and goodwill within the profession and additionally the Delhi Corporate Firm having been reconstituted, the respondent is also depriving the petitioner and the partners of the Delhi Corporate Firm from accessing the offices, their emails, from carrying on the business of the Delhi Firm causing irreparable loss and damage to survival of the Delhi Corporate Firm as well as its lawyers and staff members, its reputation and its clients.

3. A preliminary reply has been duly filed by the respondent to the petition. The stand of respondent as per the reply is as follows:

3.1 The petition is not maintainable on four grounds viz. (i) absence of arbitration clause; (ii) misjoinder of cause of action; (iii) misjoinder of parties and; (iv) nonjoinder of parties.

3.1 (i) It is the case of the respondent that the petitioner is not only seeking preservation of his rights but also of the new 23 espoused partners, whose names are not even disclosed. And, in any eventuality there is no partnership deed between the respondent and the so called 23 partners, which follows that there is no arbitration clause either.

3.1 (ii) It is also the case of the respondent that the reliefs claimed by the petitioner pertains three separate partnership firms envisaged under three different partnership deeds. The natures of the deeds are different, different partners are involved in these different partnership deeds along with the common partners. Since in the petition, factual narration only pertains to the Delhi Corporate Firm, reliefs, particularly prayers (f), (g) and (l), sought in terms of the other partnership firms, without any cause of action being disclosed, the petition is liable to be dismissed.

3.1 (iii) The action of impleading respondent Nos. 2-7 who are neither signatories to the Deed nor bound by the arbitration agreement contained therein, means no relief can be claimed against them and the prayers (f), (g) and (l) are *ex facie* not maintainable, making the present petition suffer from 'multifariousness' i.e., misjoinder of parties and cause of action.

3.1 (iv) The partners inducted by respondent by exercising his power under Clause 7D of the Partnership Deed is before the termination of the petitioner (on October 13, 2020), who being necessary and proper parties to the petition, are not made parties to the petition. This, as per respondent makes the petition not maintainable for non-joinder of parties.

3.2 On the conduct of the petitioner, it is stated by respondent that the same would clearly make the petition

liable to be dismissed and states the following: -

3.2.1 The case of the petitioner that on the very same day as accepting alleged retirement of respondent, he has entered into deeds with 23 other salaried partners. Without prejudice, it is stated; the conduct clearly reflects the malicious and *mala fide* conduct of the petitioner in ousting the founding and managing partner much before the alleged date of retirement. Moreover, the activity could not have been achieved within a span of few hours.

3.2.2 The conduct of the petitioner in disclosing confidential information contrary to the interests of the Delhi Corporate Firm and the fact that he has been trying to create a rift within the firm and the fact that he has allegedly, on the same day on which he allegedly accepted the alleged retirement of the respondent and distributed the respondent's equity; all indicate that his acts were totally detrimental to the interests of the firm and also the principles of partnership enunciated under Section of the Partnership Act.

3.2.3 The petitioner has filed materials such as detailed Whatsapp conversations between petitioner and respondent, various members of the Partners Group of the L&L Firms, members of the EC, a transcript of a ZOOM call with the firm, lists of clients of the respondent as well as of the L&L Firms, in the present proceedings are nothing but a breach of the confidentiality policy of the L&L Firms and of the privacy of the partners and

associates.

3.2.4 The petitioner has also in open court proceedings disclosed details of the Delhi Corporate Firm's clients he was servicing prior to his termination and in the process even disclosed confidential details including price sensitive information concerning public listed companies. In addition, financial details of the L&L Firms have also been divulged which have immediately been picked upon and reported by the media.

3.2.5 Even though the petitioner claims that he has been terminated and has no access to his emails, he has still managed to not only access through his sources the emails sent by the respondent (again in confidence) to the Firm and the Clients, but chosen to file them before this Court. All these communications are once again private and confidential.

3.2.6 The respondent had issued the termination letter to the petitioner at 10.03 AM on October 13, 2020 and the reliance placed by the petitioner on his own email sent to staff members of the firm at 10.25 AM to offer unhindered access to both parties is nothing but an attempt to show change of heart after having realised his folly.

3.2.7 The petitioner, contrary to the Delhi High Court Mediation Rules has sought to file documents exchanged in mediation and the same was screenshared during the course of oral arguments.

3.2.8 Without discussing with the Senior Leadership of the firm, the petitioner unilaterally referred of foreign client for potential arbitration to a third party.

3.3 Without prejudice to the preliminary objections, it is stated by the respondent that the petitioner is neither seeking *status quo ante* nor *status quo*, but a final relief at the interim stage. In other words, the petitioner is seeking an entirely new state of affairs, where respondent is ousted from the Delhi Corporate Firm and with the petitioner being part of the Delhi Corporate Firm, which is in essence in the nature of a final relief being sought by him in the arbitration and cannot be granted by way of an interim prayer.

3.4 It is the case of respondent that petitioner is acting in a manner virtually to destroy the Delhi Corporate Firm and since it is a settled law that if there is an obligation not to do any actor deed against the interest of the Firm or other partner, then *prima facie*, the power to expel is implied in the agreement. If such an implied power is not read into, then the Clauses casting duties and responsibilities will be meaningless. Therefore, if *prima facie* the power exists and is exercised, the only way for the petitioner is to seek a declaration that the expulsion is bad in law, which will be decided at the trial. But it cannot be contended at this stage that expulsion is non-est.

3.5 It is the case of respondent that, in 1990, years before the petitioner even became a lawyer, respondent founded Luthra & Luthra Law Offices and is the sole

proprietor of the same till date. He also owns the name 'Luthra & Luthra Law Offices'. It was only around the year 1995 that the petitioner joined the said proprietorship. Thereafter, in 1999, respondent inducted him into a partnership firm vide the Partnership Deed.

3.6 On the various clauses of the Partnership Deed, it is stated by respondent that:

3.6.1 As per Clause 7(A) of the Partnership Deed all decisions are required to be taken by a majority of partners present and voting. However, in the event of a disagreement, the decision taken by respondent would be final and binding on the Delhi Corporate Firm and its partners. After the year 2010, while respondent's power to take a final and binding decision was to be limited to certain critical matters, those matters included 'termination'. Hence, the Deed recognizes the respondent's supreme position when it comes to matters of termination.

3.6.2 Similarly, as per Clause 7D the induction of new partners would ordinarily require the unanimous consent of both respondent and petitioner; however, in the event of a disagreement between them on the issue, the Deed confers a right upon respondent to unilaterally induct partners 'by giving a share from his own percentage interests' provided that the new person so inducted would not have management rights in the Delhi Corporate Firm. It is therefore stated that since no similar right is

conferred upon the petitioner, this shows the mutual understanding between the parties to the Partnership Deed that respondent was to always have the upper hand in the Delhi Corporate Firm.

3.6.3 Clause 8 of the Deed specifies that the Delhi Corporate Firm shall not be a partnership at will and the Deed may be terminated 'only' by respondent 'and none other'. The said Clause provides for a notice period that ought to be followed by respondent before termination. In other words, it is respondent's case, the petitioner has no power of termination under the Deed.

3.6.4 Clause 9 provides that in certain eventualities including termination under Clause 8, the surviving Party shall continue to be a part of the Firm, '*retain all the assets, offices, employees, counsel, clients etc.'* and '*retain and use the name of the Firm .... and the goodwill attached thereto'*. Therefore, after the petitioner's termination, the Delhi Corporate Firm comprising of respondent and the two equity partners becomes entitled to all assets, offices, employees, counsel, clients etc.

3.6.5 The initial profit-sharing percentage of 75 % (respondent) and 25 % (petitioner) was modified to 66.66% and 33.33% for respondent and petitioner respectively on April 01, 2004. Similar modification was done for Mumbai Corporate Firm (2004) and the petitioner was inducted as a 6th partner for Delhi Litigation Firm (April 21, 2015).

3.6.6 On August 04, 2018, even the names of the Delhi Corporate Firm, Mumbai Corporate Firm and Delhi Litigation Firm were changed to 'L&L Partners New Delhi', 'L&L Partners Mumbai', and 'L&L Partners Litigation' respectively.

3.7 It is stated by the respondent that between 2019 and 2020, respondent and petitioner were in talks about dilution of equity shares held by the two partners (petitioner and respondent) in Delhi Corporate Firm. Respondent readily agreed for diluting his equity in order to bring in other partners, and proposed that both respondent and petitioner should dilute their equity shares proportionately as provided in Clause 7D of the Deed. It is also stated by the respondent that even though he was not obliged under the Deed to do so, respondent agreed to this because he realized the need to expand the partnership to ensure future growth and prospects of the firm, as also to meet the aspirations of younger partners who had contributed to the firm's growth. It is stated, respondent even suggested that he will dilute a larger portion of his equity than the petitioner (thereby departing from the Deed against his own interests), provided that the difference in the extent of dilution is not unreasonably large.

3.8 However, it is averred by respondent that the petitioner kept making unreasonable proposals departing from the Deed, whereunder, respondent would dilute a huge chunk of his equity while petitioner would dilute virtually

nothing in comparison. This led to disagreements between the respondent and petitioner. While initially the disagreements were limited to private conversations between respondent and petitioner, the petitioner started behaving in the most unprofessional manner and began sharing the contents of his discussions with respondent on other Whatsapp chat groups involving Corporate Partners and Senior Partners of the Delhi Corporate Firm.

3.9 It is also stated that the petitioner also began insulting and making slanderous statements against respondent in front of the said Corporate Partners and Senior Partners, including raising various kinds of baseless allegations against respondent. All of this led to creation of a very unpleasant situation where the petitioner was clearly aiming to discredit the respondent to further his own motives, and which actions were contrary to the larger interests of the Delhi Corporate Firm. Ultimately, respondent realized that the petitioner was seeking to oust him from the firm altogether, and for this purpose kept on indulging in actions to make the position of respondent untenable, and had been setting the basis for the same over the last few years.

3.10 It is also pointed out by the respondent that it was to make the position of the L&L Firms in the public domain untenable that the petitioner has filed confidential messages exchanged between the parties, including client data, which were discussions never meant to be public. Further, it is

stated by respondent that through this highly unprofessional and unethical conduct, the petitioner has demonstrated that he has only his own interest at heart and cares nothing for the firm and its clients.

3.11 On the allegations of material breaches by the respondent, it is stated by respondent that the very issue of 'material breaches' cannot be made applicable to him as he is the primary partner as per the Deed, who alone can initiate termination. In other words, it is stated that the as per Clause 8 of the Deed, material breach as a ground for termination is not available against respondent, but only against other partners including the petitioner.

3.12 Without prejudice it is also stated that all the material breaches alleged by the petitioner are completely false and misconceived; which needs to be proved by the petitioner at trial leading substantive evidence. It is also stated by respondent that the all such allegations made by the petitioner in fact are defamatory and the respondent reserves his right to take appropriate action against the petitioner in this respect.

3.13 On the chronology of events, it is stated by the respondent as:

3.13.1 On December 04, 2019, respondent told the petitioner that they should talk and sort out the issues between them or else amicably part ways.

3.13.2 On December 26, 2019, respondent told the petitioner that the best way forward would be to part

ways and the petitioner agreed to the same unequivocally.

3.13.3 On December 29, 2019 respondent stated in the 'Corporate Partners' WhatsApp chat group that he and the petitioner had agreed to dissolve the Delhi Corporate Firm. The petitioner immediately denied this.

3.13.4 On January 06, 2020, respondent sent a message over 'WhatsApp' to the petitioner stating that recent events had pained him and damaged the very foundation of the partnership, owing to which he had decided to terminate the partnership of the petitioner. Accordingly, respondent informed the petitioner that the Deed shall come to an end within 90 days and the Mumbai Corporate Firm stands dissolved within 180 days from the date of the notice.

3.13.5 On January 09, 2020 respondent put to the petitioner that he had issued the termination notice and sought the petitioner's response if he wanted to further practice law and compete with respondent, or take a goodwill payment.

3.13.6 On January 26, 2020, respondent again clarified to the petitioner that termination meant that the petitioner would have to leave the firm.

3.13.7 Ever since the issuance of the said termination notice dated January 06, 2020, it is stated by the respondent that, from the Whatsapp conversations it was clear that the respondent's intention was to resolve

the disputes amicably within the firm, failing which the petitioner would have to exit the firm in pursuance of the termination notice.

3.13.8 On April 04, 2020 and thereafter on May 28, 2020, respondent, despite many obligations, extended in good faith the Termination Notice by 60 days.

3.13.9 On June 03, 2020 the petitioner, *inter alia* reiterated to respondent that he could consider leaving the firm if certain conditions were met. It is stated that the in the same communication, the petitioner falsely stated to respondent that as per terms, the Deed allows for dissolution by mutual consent and he did not give his consent, but only agreed to the suggestion being discussed further, and even on date there was no mutual agreement on who would leave the firm.

3.13.10 Thereafter, it is stated, on June 14, 2020, petitioner stated to respondent that he did not believe the firm could be saved, and asked respondent to make him an offer for his (i.e. the petitioner's) exit.

3.13.11 Further on June 24, 2020, petitioner presented respondent with some options including the petitioner leaving the firm and expressed his confidence that high performing teams and clients would come with him.

3.13.12 Further on August 30, 2020, the termination notice was extended till October 31, 2020. It is stated by the respondent No. 1 that all these extensions were made

by him *bona fide*, in the interests of the firm and repeatedly attempted to amicably resolve the disputes.

3.13.13 Thereafter, on September 13, 2020, on 'Corporate Partners' (WhatsApp Group), respondent declared that the time for negotiation was over and made a final proposal concerning the dilution of equity within the Firm and stated that if the foresaid proposal was not acceptable, persons disagreeing were free to leave after the end one month. Therefore, it is stated by the respondent that the petitioner's manipulative spin to his communications dubbing respondent wished to 'withdraw' or 'retire' from the Delhi Corporate Firm was totally contrary to his intentions.

3.13.14 It is stated by respondent that at the L&L Firm's 'townhall' meeting on September 24, 2020 the petitioner again tried to present a misleading picture in front of the entire firm that respondent had offered to resign. The respondent immediately called him out then and there denying any such offer and telling him not to cherry pick.

3.13.15 At the same meeting respondent informed the other partners that petitioner had omitted to read out portions of the message where he himself had asked respondent for money to leave the firm.

3.13.16 Thereafter, on October 04, 2020, on the 'Corporate Partners' WhatsApp Group, respondent announced that he proposes to induct new partners into

the Delhi Corporate Firm and then accordingly sent an email dated October 04, 2020 to the members of the firm intimating them all of this intention.

3.13.17 To the above stand of the respondent, petitioner objected on October 05, 2020 the misplaced ground that as per the Deed, partners cannot be inducted into the Delhi Corporate Firm without his (Petitioner's) consent.

3.13.18 October 06, 2020, respondent denied the petitioner's baseless statements in view of Clause 7(D) of the Deed.

3.13.19 It is stated that on October 10, 2020, as announced earlier, respondent inducted 2 new equity partners namely Aniket Sen Gupta and Harish Kumar into the Delhi Corporate Firm from his own share of equity by exercising his powers under Clause 7D of the Deed.

3.13.20 It is also stated that the petitioner's case is based on the belied allegation that respondent expressed desire to retire from the firm on January 06, 2020 through a notice of withdrawal and it is this offer which the petitioner claims to have accepted on October 12, 2020, through his communication. On the other hand, it is stated that it was respondent who sent a notice to the petitioner to terminate his partnership with respondent. And, the petitioner is merely cherry-picking communications between the parties to present a misleading picture.

3.13.21 It is further stated that pursuant to this

attempt to give a false and manipulative spin to the communications of the respondent, on the same day the petitioner reached out to all employees and retainers of the L&L Firms, misrepresenting to them that respondent had retired and left behind the petitioner as the sole surviving partner of the Delhi Corporate Firm.

3.13.22 It is also stated that the claim of the petitioner that he reconstituted the firm on the same day by inducting 23 new equity partners is also belied owing to the fact that it was on the evening of October 12, 2020 after 6:33 pm when the respondent was stated to have 'retired'. The petitioner has also overlooked the fact that even by his own showing, the respondent remained a partner until midnight on the night of October 12, 2020 and so no legal induction or redistribution of the respondent's 66.67% share could have taken place on that day. Moreover, the petitioner has not even produced the signed partnership deed or named the said partners before this Court, casting huge doubts over the veracity of the statements.

3.13.23 Twelve minutes later, on October 12, 2020 the respondent sent an e-mail to the employees and retainers of the 3 firms denying the petitioner's claims about respondent's retirement, repudiating the purported resignation. Further, it is stated that the petitioner has acted in violation of Section 9 of the Partnership Act to be just and faithful to each other.

3.13.24 On the morning of October 13, 2020 at 10.03 A.M., owing to the petitioner's egregious actions, the respondent was constrained to issue a notice under Clauses 7A & 8 of the Deed terminating the petitioner as partner of the Delhi Corporate Firm with immediate effect. And it was immediately on receiving the letter of termination that the petitioner shot out an email at 10.25 A.M. on October 13, 2020 to the support staff of the Delhi Corporate Firm reiterating the that respondent had retired but requesting that equal treatment be meted out to both the petitioner and respondent, while the missive object was the opposite. The petitioner even sought to prevent any administrative measures that would follow as a result of his termination and to usurp the Delhi Corporate Firm in which respondent has dominant control in terms of the Deed.

3.13.25 It was under these circumstances that the respondent, on October 14, 2020, was constrained to send communications to the clients of the Delhi Corporate Firm that the petitioner had been denuded of authority to represent the Delhi Corporate Firm.

3.13.26 Even thereafter, the petitioner was still determined to cause harm to the Delhi Corporate Firm. He was reaching out to clients, employees and retainers of the Delhi Corporate Firm misrepresenting to them that respondent had resigned, and that the petitioner was now the sole surviving partner of the Delhi Corporate Firm.

Thus, the respondent was constrained to instruct the staff of the Delhi Corporate Firm to block the petitioner's access to the Firm's offices, IT infrastructure and his official e-mail.

3.13.27 On October 15, 2020, a Partners' Meeting was held as scheduled on October 14, 2020 and 34 salaried partners (except 3-4) attended the meeting. On the same day, information was sent to the petitioner that he shall be paid a sum of Rs. 16 Crores (approx.) pursuant to his termination from the Delhi Corporate Firm.

3.13.28 Surprisingly, on October 15, 2020 itself, the petitioner filed this petition under Section 9 of the Act of 1996 claiming a host of reliefs as prayed for.

3.14 Without prejudice, it is stated that the petitioner is not entitled to any relief as what is sought for is neither *status quo ante* nor *status quo* but rather an unprecedented and totally illegal state of affairs. It is also stated that a partnership cannot be rendered helpless if one partner does acts which virtually amount to destruction of the partnership and then say that others have no power to expel him. It is the respondent's case, it is settled law that if there is an obligation not to do any act or deed against the interest of the firm or other partner, then *prima facie*, the power to expel is implied in the agreement. If such an implied power is not read then the clauses casting duties and responsibilities, will be meaningless. If therefore *prima facie* the power exists and is exercised, the only way for the

petitioner is to seek a declaration that the expulsion is bad in law, which will be decided at the trial. But it cannot be contended at this stage that expulsion is non-est.

3.15 It is averred that the petitioner is seeking reliefs which are, in essence, in the nature of a final relief to be sought by him in the prospective arbitration and cannot be granted by way of an interim prayer. In fact, in paragraph 39 of the petition, the petitioner admits that the respondent repudiated his alleged withdrawal from the Delhi Corporate Firm on October 12, 2020 itself. Thus, the case of the petitioner that the respondent has withdrawn from the firm is just his unilateral assertion (and contrary to his very pleadings and documents) and cannot be taken as truth till the petitioner seeks a declaration in this respect and is able to prove it at trial by leading evidence. This cannot be done in the present proceedings under Section 9 of the Act of 1996.

3.16 It is also averred that the petitioner has admitted that the respondent cannot be terminated from the Delhi Corporate Firm. The only ground on which the respondent ceases to be part of the Delhi Corporate Firm is, if the respondent chooses to retire or withdraw from the Delhi Corporate Firm in accordance with Clause 7E of the Deed. The reliance placed upon Clause 8(b) by the petitioner is completely misconceived as termination on the ground of 'material breach' is only available to respondent. Further, it is averred that if the case of the petitioner, that the

respondent has 'retired' is not *prima facie* sustainable and therefore, there is no question of the petitioner praying for the respondent to desist from managing the Delhi Corporate Firm. On the contrary, it is the petitioner who has been terminated as on October 13, 2020 by the respondent under Clause 7 and Clause 8 of the Deed under the powers conferred therein.

3.17 Without prejudice, it is stated that even if that the termination is not in accordance with the Deed, the petitioner is not entitled to be reinstated in the Delhi Corporate Firm, as it is his own case that he cannot work with respondent. Consequently, since it is also the respondent's own case that they cannot function together, there is no question of the petitioner being permitted to function in the Delhi Corporate Firm along with respondent. The only remedy, if at all available to the petitioner, even assuming the termination is held to be bad in law in any appropriate proceedings, is compensation for wrongful termination.

3.18 On the grant of injunction, it is stated that an injunction cannot be granted where the underlying contract is otherwise incapable of specific performance. A contract for petitioner and respondent to remain and continue as partners cannot be enforced. The general rule is that an agreement to form and carry on a partnership would not be specifically enforced and specific performance cannot be granted where it involves personal volition, personal service

or continuing personal relationships between the parties which the Court cannot supervise.

3.19 It is also stated that the petitioner has not made a *prima facie* case as (i) the entire case of the petitioner is based on the allegation that respondent has withdrawn / retired from the firm, which is not the case; (ii) respondent had clearly on August 08, 2020 put all his proposals on the table and revealed his final offer, which is indicative of the fact that he is not retiring or withdrawing from the Delhi Corporate Firm but is only offering dilution of his equity to sort out issues; (iii) the message of September 13, 2020 is clear and reveals respondent's intention of resurrecting the firm; (iv) message on September 18, 2020 and communications/emails from October 4, 2020 to October 10, 2020 clearly demonstrate respondent's intention of rebuilding the firm and even petitioner has admitted to this as per his September 21, 2020 message, indicative of the fact that the petitioner was aware respondent was terminating and not retiring; (v) no power exist under the Deed for petitioner to remove the respondent and hence the entire attempt is to misread the messages to make out a case of retirement/withdrawal; (vii) Moreover, the petitioner's case can only mean that the minute the respondent withdrew from the firm, the firm had to necessarily stand dissolved, because there was no other partner in the firm and he cannot constitute a sole partnership. Thus, any induction of 23 alleged unnamed partners (contrary to Section 31 of

the Partnership Act) as alleged by the petitioner can only be in relation to a fresh partnership between the petitioner and 23 other unnamed persons, which has no relation to the L&L Firms; (viii) Condition as provided in Clause 7E or 8(e) for retirement/withdrawal has not been met in the petition; (ix) as per Clause 8 the partnership being not at Will, can only be terminated or dissolved by respondent by giving notices as stipulated therein i.e. giving of 90 days' notice and attempting to amicably resolve issues within the said 90 days period, and 90 days commenced on January 06, 2020. The said 90 days were extended by the respondent time and again. However, no amicable resolution was possible and matters came to a head on October 12, 2020. This forced respondent to exercise powers under Clause 7A and 8 to terminate the partnership of the petitioner; (x) termination letter issued to the petitioner on October 13, 2020 was not even replied or repudiated by the petitioner.

3.20 On balance of convenience, it is stated by the respondent that: (i) he has the dominant right to the Delhi Corporate Firm and its management as : (a) as per Clause 3 (ii) the respondent has greater financial rights than the petitioner; (b) as per Clause 7A, the respondent has the binding vote on all critical matters including termination; (c) under Clause 7C the respondent can appraise the work of the petitioner and not the other way around; (d) under Clause 7D the respondent has the superior right of induction of new partners by diluting his own share, without the consent of

the petitioner;(e) the respondent holds the majority stake in the Delhi Corporate Firm as it is respondent who has developed the said firm and brought it to its present level; (ii) petitioner in any case, has no right to use the name of the firm as per Clause 5A unless and until respondent is paid goodwill as calculated therein and it is not the case of the petitioner that respondent was paid any goodwill upon his alleged withdrawal from the firm; (iii) the actions and conduct of the petitioner demonstrate extreme prejudice towards not only the respondent, but also to the firm itself, as he has disclosed voluminous confidential chats between the partners of the firm, which not only relate to internal discussions but also touch upon client related matters, which are a gross breach of confidentiality and the ethical obligations of the petitioner as an advocate.

3.21 On no irreparable injury being suffered by the petitioner, it is by the respondent that: (i) the subsequent events after October 13, 2020 have shown that the termination of the petitioner has worked in the interests of the Delhi Corporate Firm. A public notice was issued informing the public at large about termination of the petitioner from the L&L Firms. The clients and employees were also duly informed, responsibilities have been reassigned and work is proceeding smoothly to the satisfaction clients. Not a single client has withdrawn its business. The website has been redesigned as well; (ii) the respondent has honoured the Deed and has issued a cheque

for Rs.15,60,68,127/- (Fifteen Crores, Sixty Lakhs, Sixty Eight Thousand, One Hundred & Twenty Seven) only, which is the amount due and payable to the petitioner upon his termination as per the Deed. If, after preparation of final accounts, some further amount is found payable to the petitioner, then even that will be paid. Thus, the petitioner will be properly compensated as per the Deed and no injury is suffered by him.

4. A rejoinder has also been filed by the petitioner.

5. Mr. Parag Tripathi, learned Senior Counsel, appearing on behalf of the petitioner stated as his primary contention that master-servant relationship is alien to partnership. It is submitted by him that it is settled law, a partnership is not a master-servant relationship or relationship of subordination rather it is one of equality, whether one is a majority or minority partner. In this regard he has relied upon ***Regional Director, ESI Corpn. v. Ramanuja Match Industries, (1985) 1 SCC 218*** and ***Keshavji Ravji & Co. v. CIT, (1990) 2 SCC 231.***

5.1. He further stated that no single partner has a superior right over the property brought into the partnership firm. The fact that the partners are equals and there exists no master-servant relationship is also supported by a long line of judgments holding that the property of a partnership firm, including the goodwill, is jointly owned by the partners, and each partner is entitled to his share upon dissolution of the firm. In this regard, reliance is placed upon Section 48 of the Partnership Act and ***Addanki Narayanappa v. Bhaskara Krishtappa, (1966) 3 SCR 400; CED v. Mrudula Nareshchandra, (1986) Supp***

SCC 357 and; CIT v S. Sivaprakasa Mudaliar, (1983) 144 ITR 285 (Madras HC).

5.2 It is submitted by Mr. Tripathi, the expression '*termination'* is incongruous while dealing with the issue of a partner leaving the firm as it relates to a master servant relationship and therefore 'termination' has relevance only in the context of termination of the Deed and not that of a partner. In so far as partner is concerned, the appropriate expression is *'expulsion'* and the same has been duly recognized under Section 33 of the Partnership Act. He went on to submit that as per the said Section, specific provision in the contract/deed is required for expulsion of a partner and such a contractual power demands exercise by means of demonstrable good faith irrespective of the power conferred in the contract/deed. In support of his contention, Mr. Tripathi has relied upon ***Dr. S. Vel Arvind v. Dr. Radhakrishnan, (2018) 4 Mad LJ 468*** and ***Mahendra Thakkar v. Yogendra Thakkar, 2008 SCC Online Bom 772.***

5.3 Mr. Tripathi submitted that the Section 33 is in fact a specific statutory manifestation of the general duty of good faith that the partners have towards each other by virtue of Section 9 of the Partnership Act. Thus, the duty of good faith imposed by the said Section is absolute and not subject to any partnership deed as opposed to many other rights / obligations of the partners as specified under the said Act. He also submitted that this duty is to be applied in the performance of the partnership deed and also in the dissolution of the partnership or removal of a partner, more so in light of the onerous consequences that flow from expulsion of a partner. Additionally, he also relied upon the *Seventh Report of the Law Commission of India*

(1957) to submit that there is a second condition precedent of principles of natural justice to be exercised to the right of expulsion.

5.4 On Section 9 of the Partnership Act, it is submitted by him that it cast general duties on the partners to act in good faith and recognises fiduciary relationship. The aspect of fiduciary duty heightens all the more, when one group has a clear majority *vis-à-vis* the minority akin to operation and management. In this regard he has drawn the attention of this Court to Section 12 of the Partnership Act as well as ***Lindley & Banks on Partnership, 20th Edition, Para 16-01/Page 115/CV II***. The latter reads as under:

> *"The utmost good faith is due from every member of a partnership towards every other member; and if any dispute arise between partner touching any transaction by which one seeks to benefit himself at the expense of the firm, he will be required to show, not only that he has law on his side, but that his conduct will bear to be tried by the highest standard of honour."*

5.5 Mr. Tripathi also submitted that the respondent's theory of the Deed bearing an overall intent of 'dominant partner' is of no relevance in ascertaining the existence of the power to expel. In other words, it is his submission in view of the terms of the Deed and Section 33 of the Partnership Act; the respondent had no power to take the actions that he took on October 13, 2020. In support of his submission, he stated that Section 33 envisages a general rule and imposes a prohibition in the expulsion of a partner in a partnership firm, and the exception to the rule stipulates express provision in the contract/deed and good faith. The expulsion clause, if any, as per the contract/deed needs to strictly construed as stated in ***Pollock & Mulla, The Indian Partnership Act, 8th Edn., Page 176***. Mr Tripathi furthered this

submission by stating that the respondent has failed to answer / make out the requirements of Section 33 of the Partnership Act.

5.6. On the court reinstating under this petition the last uncontested *status quo*, Mr. Tripathi submitted that the legality of the induction of the 23 new partners by the petitioner is separate and distinct from and has no bearing on the purported expulsion of the petitioner by respondent; the actions by petitioner and the respondent both requiring examination on merits. But the attempt made by the respondent is to conflate the two arguments in absence of any valid defence. It is also submitted by him that during arguments none of the grounds of alleged 'material breach' as alleged in the termination notice viz., of having received kickbacks in cash from a client who is being investigated by CBI, have been even referred to. To the contrary, an attempt has been made to discredit the Petitioner and make personal and scathing attacks on irrelevant and extraneous grounds. This is all the more important in light of the strict construction given to expulsion clauses and the statutorily mandated duty of good faith with which such a power, where it is held to have been conferred, is to be exercised.

5.7 In furtherance, Mr. Tripathi has drawn the attention of this Court to 3 possible scenarios to validate his contention for granting the last uncontested status quo. The scenarios are reproduced as under:

Scenario 1: Respondent stands retired and Petitioner constituted/reconstituted the partnership with 23 other partners on the basis of a new partnership deed – status quo as of 12.10.2020. These actions have not been challenged, much less stayed by any judicial authority. As such, these actions continue to remain valid.

Scenario 2: Even assuming that the Respondent has not retired/withdrawn from the partnership, the Petitioner is entitled to continue to function as a partner of the firm since the alleged expulsion / termination of his partnership by the Respondent is void and of no legal effect whatsoever.

Scenario 3: Assuming that the Respondent validly expelled/terminated the petitioner from the partnership (which is clearly not the case), in such a situation the partnership firm stands dissolved on the expulsion of one partner in a two-partner firm, since, as argued below, the induction of the alleged two partners is illegal and even if held to be valid, they are transferees of the respondent's interest, with no authority to manage or conduct the business of the Firm (section 29 of the Partnership Act).In such a case, until dissolution is completed, Petitioner has the right to continue asper section 47 of the Partnership Act. The only alternative would be for appointment of an administrator/receiver to oversee dissolution

5.8 In support of his second scenario, Mr. Tripathi has relied upon *Pollock and Mulla, The Indian Partnership Act, 8th Edn, pg. 176,* which reads as under:

> "An irregular expulsion is wholly without effect; it is like a conviction reached without jurisdiction. ***The partner whom the majority purports to excel does not cease to be a partner, and his proper remedy is to claim reinstatement in his right, not to sue for damages which, since he has not ceased to be a partner, he cannot have sustained."***

5.9 On the stand taken by the respondent that the Deed gives him right to unilaterally induct new partners and inducted two partners on

October 10, 2020, it is stated by Mr. Tripathi that Section 30(1) of the Partnership Act contemplates that in the absence of an express provision in the partnership deed, a new partner can only be admitted with the consent of all the existing partners. Further in terms of the Partnership Deed, it is submitted by him that no unilateral right is granted to the respondent under the Deed to induct new partners (Reference: Clause 7D). And, also, respondent lacks the power to unilaterally induct new partners when admittedly on October 10, 2020 petitioner was a partner and no consent was obtained from him. Furthermore, Clause 7D applies only when there is a disagreement between the petitioner and respondent. Mr. Tripathi submitted that even the names of the partners to be inducted were never communicated to the petitioner, which is clear from the e-mails dated October 04, 2010 and October 05, 2010.

5.10 According to Mr. Tripathi, the effect of the alleged expulsion of the petitioner, is that the partnership came to an end. On the falsity of the case of the respondent and the same being an afterthought, it is stated by Mr. Tripathi that the purported order of termination/expulsion of the petitioner by respondent neither refers to the view/consent of the so-called two new inductees nor is it marked to the new so-called inductees. Equally significant is that that it is not even the case of the Respondent that on October 10, 2020, whether with or without the consent of the petitioner, a new Partnership Deed was drawn up and/or much less signed and executed. The stand of during the course of oral submissions on behalf of the Respondent, a vague reference was made to the fact that the two so-called inductees had signed a Deed of Adherence which document has not even been

referred to in the Respondent's pleadings much less produced or relied upon by the Respondent. It was pointed out that induction of the so-called 'partners' is, at best, in line with Section 29 of the Partnership Act, wherein a partner is permitted to assign his interest in favour of a third party. He pointed out that such an assignee of economic interest will have no management role to play and certainly none without the consent of the petitioner.

5.11 On the terms of the Partnership Deed, it is submitted by Mr. Tripathi that as per Clause 7(A), respondent is not empowered to expel the petitioner. He submitted that the entire Notice dated October 13, 2020 has reference to only two provisions viz., Clause 7(A) and Clause 8. According to him Clause 7 deals with decision making of the firm and provides the general rule of majority of partners and naturally in the continued scenario of two partners unanimously. In the event of disagreement, if there are more than two partners, obviously the majority will prevail whether it contains respondent or not. If there are only two partners, even for the sake of argument that the respondent will have the final say, it cannot exceed the matters set out in Clause 7(A). He vehemently submitted that there exists a clear limitation on this authority of Respondent referred to as a 'Veto' power which is to be found in Clause 7(A) (3rd para) which reads as '*issues that have been agreed to between the parties including contents of this deed cannot be subsequently reopened by RKL under the VETO powers'.*

5.12 Further, as per Clause 7A, the issues on which the decision of respondent will be final and binding are: '*termination, performance review of partners……. removal of any constituent of the firm (other*

than partners)'. The termination here refers to the preceding words in the clause, namely, amalgamation, mergers, etc. According to him, to read 'termination' as including expulsion of petitioner, will run counter to the last entry and will render the more specific entry as redundant and otiose. Even otherwise, the expression '*termination of petitioner'* is inappropriate and grotesque to describe expulsion of a partner. He submitted that this termination is not a reference to termination of a partner or termination of petitioner; rather it is to the '*termination/dissolution of the firm'* as specified in Clause 8. This is clear from a perusal of the partnership deed**.** Moreover, Clause 7A specifically interdicts the respondent from using his alleged powers to confer a disproportionate benefit to himself and from participating in a decision when he would be *'directly or indirectly'* interested in the decision, which gets squarely attracted in this case.

5.13 On the respondent's stand that 'termination' has to take colour from the subsequent words '*Performance review of partners'*, he submitted, if that be so, then it obviously cannot mean termination of the Petitioner, as performance review of the Petitioner is separately provided in Clause 7C. Therefore, if performance review cannot pertain to the Petitioner, termination equally cannot pertain to the Petitioner. In terms of Clause 7A, the ultimate test according to him is Section 33 of the Partnership Act.

5.14 He has also relied upon Clause 5A (second para), which reads as '*if MS is asked to leave the firm'*, to submit that, what has been envisaged therein is the only part of the Deed which contemplates the respondent asking petitioner to leave. And, this was subject to a testing period of four and a half years under specified cause viz. misconduct

under section 7(iv), then arguably Petitioner is not entitled to any goodwill, otherwise Petitioner is entitled to 50% of the entitled value of goodwill.

5.15 On Clause 7(C) it is stated that the same underscores the importance of the testing period i.e., the first ten years of the firm's life and the period beyond the first ten years of the firm's life. Clause 7(C) makes it clear that during the first ten years, respondent had authority to reduce the percentage interest of Petitioner subject to a cap of 5% in a year. After the said period, Respondent could only impose a token penalty upon petitioner. In other words, it is his submission that the nature of the rights of the parties changed with efflux of time. The major timelines were the testing period of four and a half years, thereafter a consolidation period which varied between first ten years and the period thereafter. According to him, that there is no reference to termination. This is solely because termination is not contemplated beyond the testing period of four and a half years.

5.16 Mr. Tripathi also submitted that the expression 'termination/dissolution' used in Clause 8 refers to the termination/dissolution of the deed and therefore the Delhi Corporate Firm. This according to him is because the partnership is not at will, therefore, no party can dissolve the firm without cause. Secondly, '*the deed may be terminated or dissolved only by RKL'*. Thus, the expression 'terminated' is in the context of dissolving or terminating the deed and not terminating a partner or a party. He also stated that the confusion sought to be created by the respondent needs to rejected in view of (a) to (e) of Clause 8; which provides the basis of termination of the Deed. The consequences of what may happen if the

requirements of sub-clauses (a) to (e) of Clause 8 are fulfilled is the possible termination of the Partnership Deed and nothing else. Procedurally, there is also a substantive limitation on the exercise of this power to terminate/dissolve of the firm which is in the proviso to Clause 8 namely that before issuing the termination notice of 90 days, there would be a prior period of 90 days to try an amicably resolve the dispute. Moreover, Clause 8(b) is not in the context of the expulsion of a party/partner but in the context of a '*for cause termination/dissolution of the deed'*.

5.17 Insofar as Clause 9 is concerned, Mr. Tripathi stated that it provides for 'termination / dissolution / retirement / withdrawal / death' by referring to Clause 6 (successors of a partner), Clause 7(E) (retirement) and Clause 8 (termination and dissolution). Clause 9A(c) refers to the surviving party or the firm and/or the firm compensating the terminated/retiring/withdrawing and the heirs of the deceased party. This is the only place in the contract where the expression 'terminated' is used in the context of a party. According to him, this expression has meaning only in the context of the second para of Clause 5(A) as explained. This is made clear by Clause 9A(c)(i) when it states that such a party shall be paid '*a sum equivalent to the goodwill, as calculated pursuant and subject to Clause 5'*. Clearly, Clause 9 of the Deed has nothing to do with any power of expulsion, nor does it confer any such power. It only deals with the consequences of either termination or dissolution of the deed or the retirement/withdrawal/death of a partner. Rather this also reinforces the argument of the petitioner that there is no power of expulsion in the deed. Clause 10 of the Deed refers to the retirement, temporary

withdrawal or termination of a party for any of the reasons referred to in Clause 8. However, on Clause 11.2 it is stated by Mr. Tripathi that the word terminate is in the contest of the agreement like for instance dissolution and for expulsion, the expression used is '*if any party…..is asked to leave the firm'*. Thus, to read into termination, expulsion would be inconsistent with the scheme, drift and tenor of the Partnership Deed and the law of partnership.

5.18 Without prejudice, Mr. Tripathi contended that the alleged termination notices are in violation of the Partnership Act and Clause 8 of the Deed. This he says so by relying upon the Notice dated January 6, 2020 and other WhatsApp messages of the respondent. It is submitted by the Mr. Tripathi that the respondent was clear in all his communications that he is only referring to the dissolution of the partnership and not termination/expulsion of the petitioner from the Firm. The said communications read as under:

a. The notice of January 6, 2020 was issued expressly on the basis of the communications from December 26, 2019 onwards. On December 26, 2019, the Respondent's message was: "*The best way forward is Dissolve the Partnership"*

b. On December 29, 2019, *the Respondent said "since we have agreed to dissolution, let" go to next steps".*

c. April 04, 2020 *the Respondent while extending his notice of06.01.2020 stated that the automatic "dissolution of the firm" was about to get triggered.*

d. May 28, 2020 - the Respondent again extended the *"dissolution of the firm."*

e. June 30, 2020– the Respondent says that he sees little scope

of being able to reconcile things and move forward and he is thinking of the best way forward – until then again extends *"dissolution of the firm"*.

f. August 30, 2020– the Respondent again extends dissolution notice up to October 31, 2020.

5.19 Moreover, in view of the above communication, according to him the letter dated October 13, 2020 issued by the respondent is not but a knee-jerk reaction to the petitioner's letter dated October 12, 2020 accepting respondent's retirement.

5.20 Mr. Tripathi states even assuming that the Clause 8 refers to termination of a partner, compliance of the notice period under the said Clause is mandatory. The respondent in its reply has categorically averred and during the oral submissions it was argued on behalf of respondent that the notice dated January 6, 2020 was the relevant notice and since then more than 270 days have passed and therefore no further notice was required. According to Mr. Tripathi this argument needs to be rejected for the reason that the respondent's notice was a notice under Clause 8(a) and not under Clause 8(b) as argued on behalf of the respondent. Clause 8(a) cannot take effect in the absence of an unanimous agreement and there was no unanimous approval for dissolution from the petitioner (reference to whatsapp messages between petitioner and respondent on December 26, 2019 and December 29, 2019, page 98, 99 and 106 of Volume 1 / documents). Therefore, he stated that if there is no unanimity (in which context alone according to him the period for amicable resolution was long over) then the only consequence collateral termination is withdrawal from the firm, which the petitioner accepted

on October 12, 2020.

5.21 Mr. Tripathi stated that the respondent has failed to show the procedure specified in Clause 8 was followed and the condition precedent for exercise of power under Clause 8 is issuance of two separate notices (a) first notice under proviso to Clause 8, after which the parties will try to amicably resolve the disputes for a period of 90 days; and (b) second notice after the said amicable resolution fails which notice is for a period of 90 days. According to him, the proviso to Clause 8 makes it clear that the first notice has to be issued upon the occurrence of events specified in Clause 8(a) to 8(d). No such event has been specified in the notice dated January 6, 2020. And for this reason alone, the said notice ought not to be construed as a valid first notice of termination thereby triggering the commencement of the first 90 days period. Further, the notice dated October 13, 2020 does not even refer any of the aforesaid earlier notices that it purports to be in continuation of and at the best the notice dated October 10, 2020 can be contemplated as the first notice under Clause 8.

5.22 Without prejudice, he submitted that even if notice dated January 6, 2020 is considered as the first notice, the October 13, 2020 letter (email) in so far as it purports to be the second notice is invalid and illegal as it comes to effect immediately as opposed to adhering to mandatory 90 days period specified in Clause 8. He also states, the extension dated August 30, 2020 clearly states that the deadline under the dissolution notice has been extended till October 31, 2020 which period can be shortened by issuance of a 7 days' notice and even this 7 days' advance notice has been done away with, which clearly shows that the *mala fide* intent of the respondent. Moreover, without

prejudice he went on to state that the alleged two new partners are not even copied / addressed in the purported termination notice dated October 13, 2020 which is also in violation of Clause 8.

5.23 That apart, he submitted that the notice dated October 13, 2020 does not specify any material breach by the petitioner and none of the conditions as per Clause 8 is met / specified and the only allegation which falls in this category is with regard to kickbacks being taken from a firm which is currently under CBI investigation and does not provide adequate details for the petitioner to even issue a reply to. Mr. Tripathi, further submitted that the perusal of the said letter in fact pertains to respondent being displeased with petitioner conduct and the tone and tenor of the said termination letter resonates a master-servant relationship. Therefore, according to Mr. Tripathi the consequences of termination as specified in Clause 9 will only apply if the action is taken by the respondent in terms of provisions of the partnership deed including Clauses 6, 7E or 8 as the case may be or for bona fide and greatest common advantage as mandated under Section 9 of the Partnership Act; none of these have been satisfied in the present case.

5.24 In fact, he vehemently contended it is the respondent who had to defend the contents of the alleged termination letter dated October 13, 2020 and there has not been a whisper in the oral arguments on behalf of the respondent to justify or substantiate the allegations made out in the said letter.

5.25 He further submitted that the notice of January 6, 2020 was a notice under Clause 8(a) of the Deed and not under Clause 8(b). In this regard he stated that the petitioner has agreed for termination and thus the respondent using his authority under Clause 8 served the

termination notice which is evident from the communication of respondent on January 26, 2020, wherein he stated as "*Please get it straight, you agreed for termination of the partnership and thus, I, using my exclusive authority to terminate the partnership, did so under clause 8.*" He stated that the extending notices also followed the same premise. However, the petitioner never gave his consent to the termination in accordance with Clause 8(a). Neither, according to Mr. Tripathi, is the notice under Clause 8(b) as the facts on which the respondent based his allegations are vague, without any material and not found presence in the Notice dated January 6, 2020. In other words, Mr. Tripathi stated that the respondent put forth a vague stand on the clause under which the Notice dated January 6, 2020 was issued and from the Whatsapp messages dated December 29, 2019, January 9, 2020 and January 26, 2020 are all messages intended to foist an agreement upon the petitioner as to the dissolution. Moreover, Mr. Tripathi stated that if there was a genuine case of material breach it would have been the easiest thing allege and the petitioner did not have to insist that there was unanimous agreement.

5.26 Mr. Tripathi also stated that the reliance placed by the respondent upon the use of the word 'may' in the proviso to Clause 8 to contend that notice for amicable resolution was not mandatory is not tenable as the later part of the same sentence states that '*and the notice aforementioned, as provided above, shall be issued only after the Parties are unable to amicably resolve the issue….'* making the use of the word 'may' in the said Clause mandatory.

5.27 On the nature of expulsion clause in the Deed, it is stated by Mr. Tripathi that the same is punitive in nature and therefore has not been

exercised in a *bona fide* manner. In this regard, he has relied upon the Judgment of the Chancery Division in ***Blisset v. Daniel, (1853) 10 Hare 493.*** This judgment has been stated with approval by the Apex Court ***Needle Industries India v. Needle Industries Newey (India Holding Ltd.), 1981 SCC 333.*** Moreover, the expulsion clause has to be complied and interpreted strictly. Therefore, it is his submission that the reference to *'termination'* in Clause 7A is that of termination of the Deed and cannot be interpreted to mean termination of petitioner.

5.28 It is further submitted by Mr. Tripathi, on a demurrer, that the grounds in the letter dated October 13, 2020 (email) levelled against the petitioner does not afford grounds for expulsion and the only remedy for the respondent was dissolution of the Delhi Corporate Firm and that as per Section 47 of the Partnership Act till the winding up of the affairs of the firm each partner has the right to participate in the business. He also went on to submit that the in a two-partner partnership, expulsion of one partner would automatically lead to dissolution by relying upon the Apex Court judgment in ***Erach F.D. Mehta v. Minoo F.D. Mehta, 1970 (2) SCC 724.***

6. Mr. Arvind Nigam, Senior Counsel, also appearing on behalf of the petitioner, submitted additionally that the petitioner has proprietary rights in the Delhi Corporate Firm which cannot be lightly interfered with, as he is a partner and an owner of the said firm. His rights are well recognised under the Partnership Act and exclusion of a partner from the firm amounts to expropriation of his proprietary interests. In this regard he has relied upon Sections 4, 8 and 14 the Partnership Act. And also, on ***Regional Director, ESI Corpn. (supra), Addanki***

Narayanappa (supra), CED v. Mrudula Nareshchandra (supra) and; CIT v S. Sivaprakasa Mudaliar (supra).

6.1 By further relying upon the various provisions the Partnership Act, it is stated by him that(a) the statute itself stipulates a duty of good faith in dealings amongst partners [Section 9]; (b) a living partner may be excluded from the firm only by retirement [Section 32], expulsion [Section 33], or insolvency [Section 34]; (c) strict conditions are laid down for expulsion of a partner; (d) In all other circumstances, where partners are unable to work together, irrespective of the reason for inability of partners to work together, the only recourse is dissolution. Dissolution can be initiated either by notice (where the partnership is at will), by agreement between all the partners, or by instituting a suit for dissolution. According to him, the grounds for a suit for dissolution under Section 44 of the Partnership Act include delinquency of a partner. Thus, even where a partner is believed to be guilty of misconduct, it is not open to the other partners to simply exclude him from the business, and a suit for dissolution has to be necessarily filed. Even after the dissolution of the firm, under Section 47 of the Partnership Act, the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution. This provision is not subject to any contract between the partners. Therefore, even during the process of dissolution, a partner has a statutorily conferred right to continue to be part of the partnership business.

6.2 He also stated that these principles are of utmost importance as

a partnership is distinct from an ordinary contract as although the partnership is often called a contract it is more accurately a relationship that arises from a contract ***(Reference: Lindley & Banks on Partnership, 20th Edn., 2-17, page 21; and also, Section 5 of the Partnership Act***.)

6.3 Mr. Nigam went on to state that the case put forth by the respondent is belied not only in law but also on facts. He submitted that respondent has also argued *ad nauseum* about how it was the respondent that brought all the goodwill and clients to the firm; that it was the respondent who has been generous in inducting the Petitioner into the firm etc. The respondent's Counsels also sought to deride the petitioner by contending that the petitioner may be executing the mandates, but it is the respondent who brought the clients. According to him, the said stand needs to rejected as the respondent's Counsels' by placing reliance on Clause 5 have stated that the entire goodwill of the Delhi Corporate Firm has been brought in by respondent at the same time failed to address why same Clause, provides that after 5 years, if the respondent leaves, the said firm he would not be entitled to retain the clients. He also emphasised on the first line of Clause 5 A of the Deed which reads as, *"the Parties hereto agree that RKL and L&L have, over a long period of time, developed considerable goodwill*"; where L&L is the Proprietorship. In essence, the term 'L&L' was included because respondent was a constituent of the proprietorship from 1997 –1999.

6.4 It is also stated by Mr. Nigam that the name of the Delhi Corporate Firm is no longer *'Luthra & Luthra'* as the name was changed to 'L&L Partners, New Delhi'; which according to him was

the first step towards professionalising the firm. It is also stated that the petitioner and respondent have also set up an LLP, which is owned by the respondent and the petitioner in the ratio of 66.67% and 33.33%, respectively in the name and style of 'Lex & Legal LLP'. In other words, according to him the firm-name is only the name under which the business is carried on.

6.5 On the reliefs sought by the petitioner, it is submitted by Mr. Nigam that the same is not barred by the Specific Relief Act, 1963 ('SRA', for short) or any other law for that matter. The primary relief seeking stay on the illegal act of the respondent in terminating his partnership in the partnership firm 'L&L Partners, New Delhi'/ Delhi Corporate Firm and in expropriating the partnership property for his own exclusive benefit (for e.g. Clients, lawyers, employees, physical assets, bank accounts, client receivables etc). He also stated that the remaining reliefs are largely ancillary to this relief of a stay and an interlocutory prohibitory injunction to prohibit the respondent from interfering with the petitioner's rights as a partner of the firm.

6.6 In furtherance, he stated that the well-settled remedy of a partner, who has been wrongfully expelled is to claim reinstatement (*Reference: Pollock & Mulla on the India Partnership Act, 8th edn.*). He has also relied on the judgment of ***Dr. S. Vel Arvind (supra),*** wherein the Madras High Court while holding the expulsion to be invalid in law, set aside the order declining interim relief (sought by the expelled partner to exclude the others from management of the firm) and declared that the petitioner has right to participate in the administration of the firm; similar to the argument and relief sought by the petitioner. Anchoring on the said position of law, he stated it is no

answer that the petitioner may have a right to claim compensation, even if the expulsion is found to be wrongful. The question that arises is whether an interim injunction would be granted on the well-established tests of *prima facie* case, balance of convenience and irreparable injury and under the circumstances there is no other relief that could effectively protect the rights of the petitioner. Reliance is also placed on a Bombay High Court judgment in ***Champsey Bhimji & Co. v. Jamna Flour Mills Co. Ltd., AIR 1914 Bom 195,*** wherein the Court observed that if the courts had no power to grant an interlocutory injunction it would be in power of a party to cause insufferable inconvenience and grave injury to another during the whole time that would elapse between the commission of the wrongful act and the hearing of the suit filed to remedy the wrong and redress the injury.

6.7 Mr. Nigam stated that the Supreme Court has also in fact in the judgment of ***Dorab Cawasji Warden v. Comi Sorab Warden & Ors., (1990) 2 SCC 117***, *inter-alia* held as under:

> (a) an interlocutory mandatory injunction would be granted where the defendant attempts to steal a march over the plaintiff;
>
> (b) in granting an interim mandatory injunction, what the court had to determine is whether there is a fair and substantial question to be decided as to the rights of the parties, and whether the nature and difficulty of the questions is such that it was proper to grant such an injunction until the questions are decided.

6.8 On the stand of the respondent that specific relief cannot be granted to the petitioner in view of Section 41 (e) of the SRA, as it is submitted by Nigam that the respondent has failed to identify which

contract or which contractual obligation the petitioner is seeking specific performance of. Rather, the respondent has created an imaginary case for the petitioner and has then dealt with its submissions. Further, he also stated that the SRA does not operate to disentitle the petitioner from seeking performance of his rights under the Partnership Act (Reference: Section 3 of the SRA). On similar lines the Apex Court in ***Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, (1976) 1 SCC 496,*** on Section 38 (1) of the SRA had *inter alia* observed that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour irrespective of the fact whether the obligation arises at common law, under a contract or under a special statute and that Section 38(3) provides for grant of an injunction when the act of the defendant invades, or threatens to invade the plaintiff's right to, or enjoyment of property.

6.9 Mr. Nigam, additionally on the jurisdiction of this Court to grant interim relief, submitted that while the disputes and differences have arisen pursuant to the Deed, the injunction sought is primarily to (i) protect the petitioner's statutory rights as a partner, protect his right to, and enjoyment of partnership property; and (ii) to enforce the obligations of the respondent in common law and equity that have been defined under the Partnership Act, and not any specific obligation of the respondent under the partnership contract. This Court has the jurisdiction to grant this relief to protect the Petitioner's rights and enforce the respondent's obligations. He has also pointed to a judgment of this Court in ***Suresh Kumar Sanghi & Ors. v. Amrit Kumar Sanghi & Sons, 1983 (4) DRJ 186,*** wherein the Court had

specifically rejected the contention that an injunction cannot be granted to prevent the breach of a contract in the context of a partnership.

6.10 In fact, he stated that the relief that the petitioner is seeking ought to be distinguished from the performance of a contract; as primarily he is seeking enforcement of a statutory right conferred on a partner under the Partnership Act as per Section 33 which prohibits expulsion of a partner without compliance of mandatory requirements of that provision and secondly, a partnership contract leads to a relationship between partners which is distinct from the contract itself.

6.11 Without prejudice to the above, it is stated by Mr. Nigam that the relief sought by the petitioner is not barred even under Section 41 (e) of the SRA, as provisions barring specific performances in cases where compensation is adequate relief have been specifically deleted. He also stated that the legal consequences where a deed is terminated and the Delhi Corporate Firm is dissolved are accounts have to be settled amongst the partners and the status of a partner is not affected, which is clearly distinct from the termination of a contract. Thus, the principle that a terminated contract cannot be restored in exercise of powers under Section 9 of the Act of 1996 has no bearing in the facts of the present case, on the relief sought by a partner claiming to be wrongfully expelled. Moreover, the respondent's argument that a terminated contract cannot be revived under a Section 9 petition and that under Section 14 of the SRA, a determinable contract cannot be specifically enforced is also misconceived for the reason that it is the respondent's specific case that the Deed has not been terminated.

6.12 On the respondent's stand that the Court granting an injunction

would amount to the Court requiring the Court to run the affairs of the law firm, it is stated that is nothing more than an argument of prejudice.

6.13 Mr. Nigam, on the submissions of Mr.Tripathi that the 'equity partners' inducted by the respondent are not partners of the firm, additionally submitted, Clause 7D, which clearly provides that partners can only be inducted with the unanimous consent of both the petitioner and the respondent, is in tune with Section 31(1) of the Partnership Act. The underlying rationale of this rule is also based on agency- every partner of the firm is an agent of every other partner and can bind other partners and the firm through his actions. It stands to reason that a person would never make another person his agent and create binding obligations for him and the wider firm, unless he has full faith in the person sought to be admitted as a partner. Only for this reason, without consent of all the partners, an outsider cannot be admitted to the partnership. This view, according to him, has been approved by the Division Bench of this Court in the judgment of ***Additional Commissioner of Income-Tax v. Sunder Lal Banwari Lal, (1985) 156 ITR 617,*** wherein it stated that the foundation of the partnership is mutual confidence and for this reason the introduction is by agreement. He also stated on the second component of Clause 7D of the Deed that the induction having not been agreed to by the petitioner, the nominee of the respondent would only be entitled to receive a portion of the profits from respondent's percentage interest from the accrued profits of respondent after finalisation of profit and loss account for each accounting year. The losses would have to be contributed by respondent. The nominees will also not have any rights

in the management of the Delhi Corporate Firm. He submitted that such a nominee does not become a partner of the Delhi Corporate Firm as this would be contrary to the first part of the said Clause and Section 31 of the Partnership Act.

6.14 It is further submitted by him that this unilateral act of the respondent whereby the nominee becomes entitled to receive a portion of the accrued profits from respondent's percentage interest, is at best a right created in favour of the third-party under Section 29 of the Partnership Act. Section 29 of the Partnership Act falls under Chapter IV of the Act, which is titled as 'Relations of Partners to Third Parties' and not under Chapter V, which is titled as 'Incoming and Outgoing Partners'. It is important to note that Section 31 of the Act, which provides for induction of new partners, falls under Chapter V. Such beneficiaries of economic interest are recognised as third parties in relation to partners under the law of partnership. In support of his contention, he has relied upon a judgment of the Patna High Court in ***Ram Prasad Singh v. Shivanandan Misra, AIR 1963 Pat 149,*** wherein the Court *inter alia* held that that assignment of the interest in a partnership does not *ipso facto* entitle the transferee to become a partner in the firm and that if a person has been inducted with the consent of all partners, he is merely a transferee of interest with very limited rights, and is only entitled to claim a share of the profit to which the transferring partner is otherwise entitled to.

6.15 Mr. Nigam also submitted that the third component of Clause 7D provides that if the respondent's nominee has been a part of the Delhi Corporate Firm for five continuous years, such person may be admitted to the partnership with management rights that have been

unanimously agreed upon. It does not provide that such person can be admitted to the benefits of partnership unilaterally by the respondent. According to him, this component is an extension of the second component, which requires unanimous consent for induction of new partners. Since the petitioner did not grant his agreement (but expressly opposed it), the alleged partners are mere individuals who are transferees of economic interest under the second component. In law, even for being admitted to the benefits of partnership, the consent of all partners is required, and this is not subject to a contract to the contrary; *Arguendo*, a person admitted to the benefits of partnership (which is under chapter IV 'Relations of Partners to Third Parties'), is clearly not a partner. Section 30 of the Partnership Act, provides that minors can be admitted to the benefits of a partnership, with the consent of all partners for the time being.

6.16 Mr. Nigam on demurrer, submitted that at best, the two alleged partners are partners of a sub-partnership with respondent, which sub-partnership is separate, distinct and independent of the partnership firm, L&L Partners, New Delhi, between petitioner and respondent. This concept of a sub-partnership has been recognised by a Full Bench of the Supreme Court in ***CIT v. B. Posetty & Co., (1996) 11 SCC 11,*** wherein the Court held that the sub-partnership is a distinct and different firm. It is a one recognised by law and it is not a partnership with the main firm. It will not have the effect of making the partners in the sub-partnership, partners of the main firm.

6.17. Therefore, in substance on the induction of the new equity partners, Mr. Nigam submitted that when the Respondent *'terminated'* the petitioner on 13.10.2020 (assuming that such course of action is

permissible), the Delhi Corporate Firm, being a two-member partnership, automatically dissolved. No provision in the partnership deed can override this position in law. The Firm, under no circumstances, could have continued to the exclusion of the petitioner, if his termination is valid (which is vehemently disputed). He also submitted that the view that any form of exit of a partner from a two-member partnership will resulting an automatic dissolution of the Firm, has been approved on numerous occasions by the Supreme Court. Further, he stated, this position is valid even if the partnership deed provides otherwise. In such a case, until dissolution is completed, the Petitioner has the right to continue as partner under Section 47 of the Partnership Act till the winding up of the Firm is complete. The Court may appoint an administrator/receiver to oversee dissolution. Further, during the dissolution process, the Respondent cannot appropriate joint properties of the partnership for his sole benefit.

6.18 To buttress the same, he has relied upon a Supreme Court judgment in the case of ***CIT v. Seth Govindram Sugar Mills, (1965) 3 SCR 488,*** wherein the Supreme Court held that if one of the only two partners in a firm dies, the firm automatically comes to end. If pursuant to the wishes of the deceased partner or the agreement between the parties, the heir of the deceased partner replaces him in the partnership with the surviving partner, then that would constitute a new partnership. In fact, Mr. Nigam points out that the respondent has admitted to this position in reply at paragraph 48 at page 23, where respondent stated if he retired on October 12, 2020, the firm stands automatically dissolved.

6.19 Rebutting the stand of the respondent Mr. Nigam submitted that

respondent's argument that the prayers of the petitioner are contrary to Section 41 read with Section 14 of the SRA is also relevant in this context, as it fails to consider that the Petitioner is not merely seeking an enforcement of his statutory right under Section 33 of the Partnership Act (and right to continue as a partner under the Partnership Deed), but is in fact also seeking to enforce his statutory rights under Section 47 of the Partnership Act. Because the Firm is only a two-member firm and the necessary and automatic consequence of expulsion of one partner is dissolution. Under Section 47, the actions of a partner of a firm that has been dissolved can bind another partner in relation to transactions that have begun but remain unfinished at the time of the dissolution.

6.20 Mr. Nigam rebutting the stand taken by the respondent that the conduct of the petitioner does not entitle him for any relief as prayed for in the petition, stated that the petitioner has never conducted in a manner that would disentitle him from claiming equitable relief. He also stated that even though the respondent has repeatedly alleged that the petitioner has leaked confidential information to the press as well as made a part of the Court pleadings is concerned, the respondent has nowhere placed anything on record in support of his allegation other than his own speculations. In fact, it was the respondent who had on various occasions posted public comments about the disputes that exist between himself and the petitioner on equity dilution, even by issuing an unilateral statement.

6.21 It is also stated by Mr. Nigam that the petitioner had in fact during the 'townhall' conducted by Zoom on September 24, 2020 had repeatedly warned the respondent that the discussions could make

their way to the press. He has pointed out the relevant excerpts of the Townhall meeting in support of his contention. He also stated that it was respondent himself who had no objection in bringing the discussion regarding equity dilution before a larger fora and insisted upon sharing the entire details regarding the same with the entire 'Corporate Partners Group'. Whereas the petitioner was always diligent and gave prudence to keeping discussions and information private.

6.22 The claim that confidential information was made part of the documents filed in the Court, according to Mr. Nigam, is without merit as there is no breach of confidentiality. There is no provision of law which supports the claim of the respondent. The Whatsapp messages are filed owing to its importance as evidence, as bulk of the communications between the salary partners and also the EC for the L&L Firms are carried out via Whatsapp. In fact, the respondent himself has relied on these messages and even sent formal notices of dissolution of partnership deed on January 6, 2020 by means of Whatsapp messages. Mr. Nigam to cement the submission has relied upon a Supreme Court Judgment in the case of ***Ambalal Sarabhai v. KS Infraspace, 2020 5 SCC 410,*** wherein the Court has clearly recognized the evidentiary value of Whatsapp messages and relied upon it to establish the existence of a contract between the parties in a Suit for Specific Performance.

6.23 Moreover, Mr. Nigam also went on to state that the assertion about the conduct of the petitioner 'unbecoming of a lawyer' during the course of oral arguments is also without any merit as the said phrase in the definition of 'material breach' under Clause 8(b) of the

partnership deed has been used specifically in the context of applicable Code of Conduct. Therefore, the usage of unbecoming of a lawyer cannot be given nebulous and overarching meaning.

6.24 On the acceptance of notice of withdrawal of respondent by the petitioner vide its communication dated October 12, 2020 is not in bad faith, as according to Mr. Nigam, the same is primarily because respondent has not chosen to seek any protection from the same and in any case as per the Partnership Act, if a partner seeks to put an end to the partnership there are only two options, (1) retirement and (2) dissolution. Clause 7E and Clause 8 of the partnership deed reflects retirement and termination / dissolution respectively.

6.25 Therefore, in the absence of requisites under sub-cluse (b), (c) and (d) to Clause 8, the firm can only be dissolved either under Clause 8(a), i.e., unanimous agreement or under Clause 8(e) pertaining to retirement or withdrawal. Thus, it is stated by Mr. Nigam that since it is not the case of the respondent that petitioner withdrew from the firm, respondent could not dissolve the firm on that ground and therefore, the only option for the respondent to unilaterally terminate the partnership deed was to withdraw from the firm in accordance with the Clause 7E.

6.26 Mr. Nigam also stated that the respondent was trying to put to an end the partnership by first unanimously seeking an agreement between the parties to dissolve the firm which was refuted by the petitioner. In this regard, he has drawn the attention of this Court to communications exchanged between the petitioner and respondent amongst themselves as well as the communications by both of them in the Senior Partners Group on December 29, 2019. Additionally, the

Whatsapp messages exchanged between the parties on January 6, 2020, January 7, 2020, April 4, 2020, May 28, 2020, June 29, 2020, June 30, 2020 and August 30, 2020; transcripts of the 'townhall' meeting on Zoom (at Page 694 Volume-4) as well as message of one of the partners on the EC on February 21, 2020 (at Page 330, Volume-2). Relying on these communication, Mr. Nigam stated that it was respondent who was unwilling to work with the petitioner and who expressed his intent to leave the Delhi Corporate Firm.

6.27 Mr. Nigam has also adopted the argument of Mr. Tripathi on the nature of relief sought as well as on the petitioner establishing a prima facie case and having a balance of convenience in his favour and on suffering irreparable loss and injury if reliefs prayed for are not granted.

6.28 On the misjoinder and non-joinder objections raised on behalf of the respondent during the course of oral arguments, it is stated by Mr. Nigam that in addition to an oral statement being made restricting the present petition to Delhi Corporate Firm a statement was also made at paragraph 4 of the rejoinder. He also stated that the two partners alleged to have been inducted by the respondent are neither necessary nor proper parties as it is the petitioner's consistent case that they are not partners of the firm under the partnership deed and are transferees of respondent's interest in terms of Section 29 of the Partnership Act. Moreover, the alleged partners are not parties to the arbitration agreement between the petitioner and the respondent. Similarly, on the non-joinder of 23 other partners with whom the petitioner has constituted / re-constituted the firm are partners under a separate partnership contract with no relationship with the respondent

and no relief is sought in respect of them.

7. Mr. Pramod Nair, learned counsel also appearing on behalf of the petitioner in addition to the submissions made by Mr. Tripathi and Mr. Nigam has at the outset stated that his submissions would be limited to giving a summary of the factual background in which the current dispute has arisen. According to him, the respondent has sought to create a false and deeply malicious narrative about the petitioner to distract from his illegal actions. According to him, there are two primary assets for a law firm viz. (1) the people who worked at the firm and (2) the clients they service. And the best law firms are the one that attract the best and brightest lawyers and thereby provide high quality of service and legal assistance to the clients. Conversely, he stated if a firm is not able to attract and retain high quality talent, best and bright lawyers leave the firm forcing the clients to look for alternative options.

7.1 Mr. Nair stated, retaining good quality lawyers has been a problem for the Delhi Corporate Firm for a number of years now. Whilst it had 200+ lawyers, it had only two equity partners leaving the young bright lawyers with no stake in the partnership or any real say in the management of the firm, which was a simply an unsustainable model compared to other law firms run across the world / country.

7.2 To address this issue by broad basing the equity of the firm, discussions had been happening between the petitioner and the respondent for years together. All attempts for effectively implementing the same was stonewalled by the respondent, leaving the salaried partners, dissatisfied and frustrated.

7.3 He submitted, this resulted in a spate of senior level departures,

plunging the firm into a real crisis. By drawing the attention of the Court to various Whatsapp messages exchanged between the petitioner and the respondent particularly on July 8, 2019, July 9, 2019, July 10, 2019, July 21, 2019, December 4, 2019, December 5, 2019, December 6, 2019, January 21, 2020, May 3, 2020, June 3, 2020, August 11, 2020, August 12, 2020; he stated that the petitioner's only focus was to professionalize the firm and never to oust the respondent herein.

7.4 Mr. Nair submitted that in fact, a vast majority of the other salaried partners of the firm supported the petitioner's efforts to reform and professionalize the firm. This he says, by referring to communications exchanged on the Corporate Partners' Group, which, according to him, are relevant to gauge the frustration of young lawyers and high-performing partners with lack of commitment of respondent in performing such urgently needed reform. In particular, he refers to messages in the Corporate Partners Group by certain partners on July 31, 2020, August 1, 2020. Mr. Nair further stated that the fight was always in the context of differences between the parties to professionalize the firm and the various equity proposals submitted by respondent was never found acceptable by the members of the EC. Repeatedly respondent used to call upon the petitioners and the EC to work out the numbers that would be paid to him since his proposals were not accepted. The respondent also dangled the threat of dissolution of the firm, having issued a dissolution notice while negotiating for acceptance of his equity dissolution proposals or exit plan.

7.5 Mr. Nair also submitted in detail the various proposals put forth by the respondent and rejected by the EC members as according to

them those were nothing but self-serving proposals completely contrary to market standards. The stand taken by the respondent that it was the petitioner who was unwilling to dilute equity proportionally is belied as the proportionate equity dilution was never the issue and in fact respondent himself acknowledged in his proposals that his equity dilution should be greater. Mr. Nair has in particular drawn the attention to certain communications exchanged in the EC Whatsapp group by various partners in the firm at Page nos. 330, 331, 362, 364, 365, 385, 390, 395 and 398 of Volume 2, Page nos. 444, 445, 446, 450 and 451 of Volume-3.

7.6 Being unable to muster support, it is stated by Mr.Nair, the respondent parallelly was calling upon the petitioner to indicate the amount that the petitioner would pay him for retiring from the firm. He also stated that it was in this regard that the dissolution notices were being extended from time to time to basically coerce everyone into either giving the respondent huge payout as his equity dilution proposals were not finding acceptance. In this regard, he has drawn the attention of this Court to Whatsapp messages exchanged between the petitioner and respondent on January 16, 2020, January 21, 2020, January 26, 2020 and May 28, 2020. He also referred to communications exchanged by members of the Executive Committee / corporate partners in the Whatsapp group on April 25, 2020, July 29, 2020, September 18, 2020 to buttress his submission that even the Executive Committee members en-block expressed dissatisfaction that how the respondent threatened dissolution and gave non-serious proposals.

7.7 In addition to adopting the arguments made by Mr. Tripathi and

Mr. Nigam on *prima facie* case and balance of convenience and irreparable injury being suffered by the petitioner, Mr. Nair stated that the removal of the petitioner from the Delhi Corporate Firm is not in accordance with the provisions of the deed and applicable law which establishes a *prima facie* case in his favour.

7.8 On the balance of convenience in favour of ordering restoration of the status quo ante failing which irreparable injury will be caused to the petitioner and other stakeholders of the partnership firm, it is stated by Mr. Nair that unlike the respondent the petitioner played a hands-on role in the day-to-day management of the firm in addition to servicing the clients. It is undisputed that the petitioner has been completely blocked from accessing his e-mails and confidential data entrusted to him by the clients and in fact even prevented from entering the premises of the Delhi Corporate Firm on instructions from respondent. This has virtually prevented the petitioner from servicing clients in on-going matters personally supervised by him. In addition, the petitioner being a partner of Delhi Corporate Firm since 1999, longstanding clients expect him to personally attend to their work which is also prevented.

7.9 It is stated by Mr. Nair that currently the Delhi Corporate Firm is being unilaterally managed by the respondent and if the petitioner is not allowed access to the Delhi Corporate Firm assets, his clients and since there exist a dispute as to who is the surviving partner, there is an imminent risk that the respondent may dispose of the assets of the firm or act to the detriment of those clients who are brought to the Delhi firm by the petitioner. This would in turn result in irreparable damage to the interest of the clients as well as on the revenue and

goodwill of the Delhi Corporate Firm. It is, therefore, in the interest of both parties as well as the lawyers, clients and employees of Delhi Corporate Firm that the *status quo ante* as it existed prior to October 12, 2020 is restored. He has also distinguished the judgments relied upon by the respondent.

8. Dr. Abhishek Manu Singhvi and Mr. Neeraj Kishan Kaul, learned Senior Counsels appearing on behalf of the respondent ('Counsels for the respondent', for short) have raised a preliminary objection on to the maintainability of the present petition. This, they say so owing to (a) non-joinder of necessary parties; (b) non-existence of arbitration agreement with the 23 persons purportedly inducted by the petitioner; (c) reliefs sought pertains to firms other than the Delhi Corporate Firm and; (d) mis-joinder of parties.

8.1 On the primary ground of non-joinder of necessary parties, it is stated by Counsels for the respondent that the respondent has admittedly inducted two partners in exercise of his rights under Clause 7D of the Deed. This was pursuant to his announcement (email) on October 4, 2020 that he genuinely intends to expand the equity partnership and would as a first step induct new partners on a certain criterion. It was also stated by the respondent in the said email that if the step/suggestion was not acceptable to the petitioner, then he would induct the persons as equity partners by parting with his own equity alone.

8.2 However, the petitioner refused to go with the plan and communicated the same vide email dated October 05, 2020. Subsequently, respondent inducted two new equity partners and the same was announced to the entire firm vide email dated October 10,

2020. It is stated by Counsels for the respondent that the petitioner was aware of these events and have in fact admitted the same in the petition. Moreover, it is stated by them that this decision has not been challenged by the petitioner and the said two partners continue to be the equity partners of the Delhi Corporate Firm. And, according to Counsels for the respondent, any decision in the present Section 9 petition under the Act of 1996 would materially affect the rights of the two new equity partners and therefore are necessary and proper parties to the present proceedings. It is further submitted by them, the plea of the petitioner that the Delhi Corporate Firm stood dissolved on the termination of the petitioner is entirely false, in law and on facts; as Clause 7D of Deed provides the power to respondent to induct partners parting within his equity, if the petitioner does not agree to the induction of new partners. Thus, respondent having inducted new partners under Clause 7D, prior to the termination of the petitioner, the Delhi Corporate Firm survives. In this regard they have relied upon the relevant portion of the said clause which reads as under:

> *"…such new person shall not have any rights in the management of the Firm. However, if any such person has been a part of the Firm for a continuous period of five (5) years or has practiced law for seven years* ***such person may also be admitted to the benefits of partnership with management rights****. The extent of management rights would need to be unanimously agreed by all the parties."*

8.3 Further, Dr. Singhvi and Mr. Kaul stated that the Deed contemplates two types of equity partnerships, i.e., partnership with management rights and that without it. The question about the extent of management rights will be jointly decided by the petitioner and the

respondent and till such time the new inductees shall remain as the equity partners without management rights.

8.4 On the plea of the petitioner that the induction of the new partners can only be a sub-partnership, it is submitted by the Counsels for the respondent that it was only during the course of rebuttal submissions that the petitioner raised this plea and the same never formed part of the written pleadings. Even otherwise according to them, a sub-partnership by respondent parting with his equity is not one which is contemplated under the Deed in which case the Deed would not have contemplated granting rights to manage the Delhi Corporate Firm. They also went on state that the reliance placed by the petitioner on Section 31 of the Partnership Act is belied owing to the fact the said provision contemplates and is '*subject to contract between the parties'* and the whole Section is on the induction of partners with the consent of other partners. In other words, they justify the right of the respondent to induct partners unilaterally under Clause 7D.

8.5 On the non-existence of arbitration agreement with the 23 purportedly inducted partners by the petitioner, it is stated by Counsels for the respondent that there is no privity of contract between the respondent and the alleged 23 partners of the Delhi Corporate Firm. As per the petition, the petitioner has claimed relief for himself as well as for the other 23 new equity partners and no relief can be granted to protect them in present Section 9 proceedings as there exist no arbitration agreement between the respondent and these 23 persons. They also stated that the petitioner in his rejoinder has altered his stand by stating as follows:

> *"It is submitted that reconstitution of the partnership firm and the introduction of the 23 partners is not germane to the present proceedings."*

This according to the Counsels for the respondent is nothing but resorting to contrary stands in the petition and rejoinder or orally altering what has been put down in writing in the pleadings when the petitioner realizes untenability of his arguments and the same should not be permitted by this Court.

8.6 Even otherwise, Dr. Singhvi and Mr. Kaul submitted that the petitioner has no right to induct any person as a partner under the Deed without the consent of respondent who is the managing partner. Without prejudice, they also stated that if the respondent had retired, the Delhi Corporate Firm would have stood dissolved and hence there is no question of inducting new partners into the said firm.

8.7 The Counsels for the respondent submitted that the petition is in fact not maintainable for the reliefs sought also pertains to firms other than the Delhi Corporate Firm. In particular, they have drawn the attention of the Court to prayers (f), (g) and (l) which according to them relate to Delhi Litigation Firm and Mumbai Corporate Firm and there being three different firms (L & L Firms), including the Delhi Corporate Firm, are governed by three different agreements. The nature of partnership and the partners of the L& L Firms are different which extends to the cause of action and rights under the different deeds.

8.8 On the misjoinder of parties, Counsels for the respondent stated that the petitioner has included certain employees of the Delhi Corporate Firm who are neither partners of the L& L Firms nor parties

to the agreement and when an argument objecting to the same is raised, a mere oral request was sought on behalf of the petitioner to delete these parties, which according to them is not tenable.

8.9 As a second limb of their argument, Counsels for the respondent stated that the petitioner is not entitled to seek a stay because he has prayed for the grant of a new *status quo* which cannot be granted by this Court in a petition under Section 9 of the Act of 1996. In particular, they have drawn the attention of this Court to prayers (b), (c), (d), (e), (l) and (m) to contend, the petitioner in addition to seeking a stay on termination has sought for prayers which are cumulative in nature and the same amounts to ousting the respondent from the Delhi Corporate Firm. Therefore, according to Dr. Singhvi and Mr. Kaul the prayer sought is neither *status quo* nor *status quo ante*, but totally a new state of affairs which are also in the nature of final relief. In support of their submission, they have relied upon the judgment in the case of ***Nandan Pictures Ltd v. Art Pictures Ltd., 1956 SCC OnLine Cal 36***, wherein the Calcutta High Court held that if at all a mandatory injunction is granted, it should be to restore the status quo (if justified in the facts of the case) and not to create a new state of things. He also relied on ***Samay Singh v. M/s. Hindustan Petroleum Corporation Ltd, 2012 SCC OnLine All 1253***, wherein it was held, reliefs which cannot be granted as final reliefs cannot be granted as interim reliefs either.

8.10 It is stated by Counsels for the respondent that when confronted with this argument, the petitioner has once again altered its stand during the course of oral submissions and sought to pray that he is only seeking a stay on termination. The same according to them

cannot be permitted as (i) this is not a case where petitioner has sought alternate relief and is now choosing to press one over the other, rather the prayers made are cumulative; (ii) the basis of the petition is that the firm continues with petitioner and 23 new partners and therefore the petitioner doing a complete volte-face and seeking to contend that he wants to merely stand on his termination; (iii) petitioner states that no amicable resolution is possible and admits that he agreed to parting of ways; (iv) it is the petitioner's case that the respondent has retired and in any event continuance of respondent is not in interest of the firm; and (v) the petitioner is distributed the equity of the respondent to 23 new persons. This being the case of the petitioner, oral request made on his behalf for limiting the interim relief to bring him back into the firm and work with the respondent while disputes are resolved through arbitration is wholly inconsistent with each other.

8.11 In support of their second limb, they also stated that no interim relief can be granted in view of Section 41 (e) of the SRA. Counsels for the respondent stated that the said Section stipulates, an injunction cannot be granted to prevent the breach of contract which would not be specifically enforced. Without prejudice to the fact that termination was not in breach of the Deed, it is stated that in the present case, the injunction of stay on termination sought by the petitioner cannot be granted if the Court would not otherwise grant specific performance of the Deed.

8.12 In furtherance they stated that as per Section 14(d) of the SRA, a contract which is by nature determinable cannot be specifically enforced and in the present case Clause 7A (1) and Clause 8 read with Clauses 5, 9 and 10 make it amply clear that the Deed is terminable.

Reliance has been placed on the following

1. ***Rajasthan Breweries Ltd. v. The Stroh Brewery Company, AIR 2000 Delhi 450***,

2. ***Turnaround Logistics (P) Ltd v. Jet Airways (India) Ltd. & Ors., MANU/DE/8741/2006***

3. ***M/s Bharat Catering Corporation v. Indian Railway Catering & Tourism Corp. Ltd., 2009 SCC OnLineDel 1606***

4. ***Indian Railway Catering & Tourism Corp. Ltd. v. Cox & Kings India Ltd., (2012) 186 DLT 552 (DB)***

8.13 Dr. Singhvi and Mr. Kaul by relying upon Section 14 (b) of the SRA also submitted that a contract requiring the performance of a continuous duty which the Court will not be able to supervise cannot be specifically enforced. In the present case, according to them, the partnership requires the two parties to work together and run the firm requiring the cooperation and performance of continuous duties and the Court cannot be called upon to supervise such continuous actions in day-to-day performance of duties. In this regard, he has relied upon the Judgments of this Court in ***Indian Railway Catering & Tourism Corp. Ltd. (supra)***; ***Hejian Solidkey Petroleum Machinery Co. Ltd. v. Indian Oil Corporation, 2015 SCC OnLine Del 10770.***

8.14 They have also drawn the attention of this Court to Section 14 (c) of the SRA where the performance of the contract depends on the personal qualifications and volition of the parties, it cannot be specifically enforced. He stated that both parties have made it clear that they cannot work with each other as both of them have contended that continuance of the other party is not in the best interests of the

firm. This being the mutual case, the Court should not make the parties to work with each other. Moreover, a partner is the agent of other partners and attempting to bring back the petitioner as a partner would force the respondent to also treat the petitioner as his agent and the respondent will have to be bound by the petitioner's action. This cannot be done when there is no volition to work with each other. In support of his submission, he has relied upon Judgments of Delhi and Bombay High Courts in ***Marriott International Inc. v. Ansal Hotels Ltd., 1999 SCC OnLine 716*** and ***Ramchandra Lalbhai & Anr. v. Chinubhai Lalbhai, AIR 1944 Bom 76.***

8.15 Section 16 (b) of the SRA has also been relied upon by the Counsels for the respondent to state that specific performance will not be granted in favour of a person who violates essential terms or acts in variance of the contract. According to them the petitioner has on various occasions offered to leave the firm; consented to parting ways, breached the deed himself by purporting to retire the respondent (which is not permitted under the deed), and thereafter gone ahead and distributed the equity of the respondent to 23 other persons in complete contravention to the very terms of the deed which he seeks to enforce by seeking a stay of termination. In support of their contention, they have relied upon the judgments of this Court in ***Rajeev Mehra v. Sudhir Kumar Sachdev, 2009 (109) DRJ 84*** and ***J.L. Gugnani (HUF) v. O.P. Arora, 2011 SCC OnLine Del 4221.***

8.16 Counsels for the respondent also submitted that in the present case, the petitioner has all throughout acted in bad faith contrary to the correspondence exchanged between the parties and even purported to retire the respondent which was not only contrary to the record but

also not permissible under the deed. In this regard, they have drawn the attention of the Court to the letter (email) dated October 12, 2020 issued by the petitioner wherein the petitioner stated that the retirement of the respondent was w.e.f from the said date. In the rejoinder to the present petition, the petitioner states that the retirement of the respondent relates back to the respondent's communications without clearly specifying the date. This, according to Counsels for the respondent, is nothing but contradiction in the claims of the petitioner. The reason for this contradiction is stated to be the reply of the respondent to the October 12, 2020 letter of the petitioner wherein the respondent categorically stated that induction of new partners by petitioner alone was not possible as respondent was also a partner till then. Moreover, the stand of the petitioner that the material breaches committed by the respondent under Clause 8 (b) entitles him to terminate the Deed with the respondent is also clearly fallacious, as Clause 8 of the deed clearly entitles the respondent to terminate the Deed. Therefore, according to them, the petitioner in totally self-contradictory fashion contends on one hand that if the termination of the petitioner is to be accepted, the Delhi Corporate Firm would stand dissolved and its assets cannot be appropriated till proper dissolution is effected whereas on the other hand, the petitioner does not acknowledge that if indeed the respondent stood retired from the date of his communication, the Delhi Corporate Firm should be dissolved and he could not have distributed the equity of the respondent to the alleged 23 partners. These actions / contradictory stands taken by the petitioner, according to Counsels for the respondent attracts Section 41(i) of the SRA which stipulates that no injunction will be granted in

favour of a person whose contract disentitle such relief. In this regard, he has relied upon the judgment of the Supreme Court in ***Gujarat Bottling Co. Ltd. v. Coca Cola Co., (1995) 5 SCC 545.***

8.17 They also stated that the petitioner will not suffer any irreparable loss of damage if the interim relief is not granted as he would be entitled to claim of damages if the petitioner's termination is found to be bad in law and the petitioner is within his right to practice the profession of law during the pendency of the disputes. He would not be however entitled to use the firms name, poach the retainers of the firm or clients of the firm and neither is he entitled to any goodwill payment in terms of Clause 5, 9 and 8. In any event, according to Dr. Singhvi and Mr. Kaul, the issue about goodwill may be agitated by the petitioner in arbitration proceedings.

8.18 As a third limb of their submissions, Counsels for the respondent, on the facts of the case, have stated that the respondent has not retired or withdrawn from the Delhi Corporate Firm. To establish this contention, they have drawn the attention of this Court to communications between the petitioner and the respondent that all throughout, the respondent's action was of terminating the petitioner from the partnership and himself continuing with the Delhi Corporate Firm. In particular, they relied upon the notice to terminate the partnership issued on January 6, 2020, which according to them, clearly calls for termination of Delhi Corporate Firm and dissolution of Mumbai Corporate Firm and clearly proceeds on the basis that the petitioner has acceded to the termination of partnership. Communication between the parties on January 9, 2020, January 12, 2020 (wherein the petitioner admits that the respondent had written

about the terminating the partnership he had agreed), January 26, 2020 (wherein the respondent refers to the misconduct of the petitioner etc. and specifically makes it clear that respondent is exercising its right to terminate the partnership with petitioner and he will continue with the firm), May 4, 2020, August 8, 2020 (wherein the petitioner makes it clear that all offers are on the table and in order to induct more equity persons he will dilute 20% of its equity and the petitioner is also bound to dilute proportionately under the deed), September 13, 2020 (wherein the respondent's intention of rebutting the firm and those who do not agree with him are free to leave the firm were made clear). The communication on September 13, 2020 as stated above has been construed rightly by the petitioner as is evident from paragraph 43 of the petition.

8.19 Counsels for the respondent has also stated that the petitioner tried to present a misleading picture that the respondent had offered to retire during the 'Townhall' meeting on September 24, 2020. This was vehemently objected by the respondent and the other partners of the Delhi Litigation Firm. They have also relied upon the communication between the parties on October 4,2020 and October 10, 2020 to state that the respondent had made his intention clear to broad base the equity partnership. Moreover, it is submitted, that the petitioner himself had admitted in the petition that the respondent extended the 90 days termination notice from time to time on four different occasions. A reading of these various communications makes it clear that the respondent had made clear his intention to not retire before the age of 75 as well as his various plans to dilute the equity to suggest that there is no question of respondent withdrawing or retiring from

the firm. In fact, it is submitted by the Counsels for the respondent that even the petitioner understood the correspondences to mean that that the respondent is terminating the petitioner and the same has been admitted in various paragraphs of the petition (35 & 43). The October 12, 2020 letter issued by the petitioner is nothing but a deliberate misconstruction of the correspondence exchanged between the parties.

8.20 Counsels for the respondent also made it clear that the respondent has not withdrawn or retired from the firm and the allegation that the respondent had indicated / said that he will retire is nothing but the petitioner picking a few messages of the respondent out of context to put wholly untenable twist to the respondent's intention. By relying upon communications between the parties on January 7, 2020, January 12, 2020, January 16, 2020, Counsels for the respondent contend that the communications clearly do not reveal the respondent's intention to retire and the perusal of the entire communications of said dates clearly reveals the same as against the petitioner interpretation by merely reading parts of it.

8.21 As the fourth head of their arguments, Counsels for the respondent have stated that the respondent has power under the Deed to terminate the petitioner. In this regard, they stated that a reading of all the Clauses of the Deed including Clause 5 which talks about *'Leaving Amount'* clearly states that in the title of the clause, it is *'Consideration for Non-Compete'*, contemplates respondent asking the petitioner to leave the Delhi Corporate Firm. The relevant clause which has been relied upon by them has been reproduced as under:

> *"However during this period if MS is asked to leave the Firm otherwise than for misconduct under Clause 7(iv) below, he shall be entitled to be paid for*

goodwill, (as stipulated below), to the extent of fifty percent of the entitled value thereof."

8.22 Similarly, Clause 7A of the deed which deals with the *'Decision Making*', while dealing with the right of the respondent to render final and binding decision, specifically stipulates that this power extends to '*……termination, performance review of partners….'*. This also according to Counsels for the respondent clearly contemplates that the respondent has the right to take final and binding decisions including termination of partners. The petitioner has in fact admitted that the respondent has right to terminate under Clause 7A of the Deed (page 588 / Docs. Vol. 3). He also relied upon Clause 8 of the Deed which grants the respondent the right to terminate or dissolve the partnership. Dr. Singhvi and Mr. Kaul went on to submit that termination of Deed stands apart from dissolution and whenever any party to a partnership deed leaves the firm for any reason, the said partnership deed stands terminated and a fresh reconstitution has to take place, making termination of Deed not equivalent to dissolution of a firm. Counsels for the respondent also stated that Clause 8 (b), (c), (d) and (e) of the Deed which talks about termination of the Deed due to a party breaching terms or being declared bankrupt or dying etc. make it clear that Clause 8 is not just for dissolution but also for reconstitution of the Deed on any partner being terminated, leaving or dying etc. They further stated that material breach or bankruptcy of an individual was obviously not intended to result in the dissolution of the firm but only the partner concerned being terminated. Further, they also took aid of Clause 9, 10 and 11.12 to state that termination of a partner under Clause 8 is fortified by the said Clauses. In any event according to

them, the petitioner admitted that the respondent has power to terminate under Clause 8 as per his pleading at Para 29 of the petition.

8.23 They in fact, vehemently contended that the argument of the petitioner in rejoinder that there is only power to dissolve and not to terminate a party and that the deed only talks of deed being terminated is *ex-facie* false. Rather, he stated that the reading of the deed as a whole and also usage of various of phrases like "terminated party" makes it clear that there is power to terminate under the deed. The contention of the petitioner that the respondent has no power to terminate is, according to Dr. Singhvi and Mr. Kaul, contrary to the petitioner's stand in the present petition as well as the correspondence exchanged.

8.24 They also submitted that even assuming without admitting that there is no explicit power, there is clearly an implied power to terminate and, in this regard, he relied upon the judgment of the Bombay High Court in the case of ***Kunda Madhukar Shetye v. Shaila Subrao Shetye & Ors., 2015 SCC Online Bom. 828.***

8.25 The fifth submission of Dr. Singhvi and Mr. Kaul, on the notice period for termination, is that nowhere in this petition the petitioner has stated that a notice as required under Clause 8 of the partnership deed has not been provided. Nor does the petitioner raise the issue of two ninety-day notices contemplated under the said Clause and on the contrary claimed that the notice period is over. In this regard, they stated that the petitioner himself in his various correspondences including the one on October 12, 2020 refers to the notice of January 6, 2020 and its various extensions *'as notice to terminate'*. In fact, the petitioner does not understand it to be a notice to amicably resolve or

as a pre-cursor to the notice to terminate. According to Counsels for the respondent, the petitioner rather stated that the period of 90 days is over and does not refer to any further 90 days' notice period but seeks to rely upon the expiry of notice period to contend that he has accepted the retirement of the respondent (in view of document at Page 6, Volume-I). They stated that in paragraph 1.10 and paragraph 28 of the petition, the petitioner admits that January 6, 2020 is the 90-day notice of termination and it was for the first time in the rejoinder that he took a plea that two notices of 90 days were required to be given under the deed and the same has not been complied with. However, even in the rejoinder, he admitted that attempts for amicable resolution went on for months and therefore it is submitted, notice needed for resolution is complied with.

8.26 On Clause 8 notice, it is submitted by Counsels for the respondent that the said Clause only contemplates one 90 days' notice and Clause mentioned in proviso to Clause 8 uses the word *"may"* making it optional. Contrasted with the word *"shall"* used in the beginning of the Clause, it is apparent that the notice was issued to resolve the disputes was optional. In this regard, it is submitted that notice dated January 6, 2020 read with subsequent correspondence is the notice of 90 days as referred to in Clause 8 for termination and the said notice at paragraph 5 stated that *"and in any event admittedly no further notice for termination needs to be given"*. The notice also refers to discussions the parties have had previously and that no amicable resolution could be arrived at, making it clear that the period of amicable resolution was over. Despite this or the next 270 days, till October 13, 2020 respondent gave more than ample opportunities to

the petitioner to sort out the issues. It is also submitted by Dr. Singhvi and Mr. Kaul that the said notice had also referred to the conduct of the petitioner and other various issues. Eventually, through subsequent correspondence the respondent made it clear that he is terminating the petitioner under his power under the deed and a perusal of the said correspondence also make it clear that the petitioner was also aware of the reasons for termination. To buttress his submission, they have relied upon a judgment of the Chancery Division Court of Appeals in the case of ***Green v. Howell, (1910) 1 Ch. 494***, wherein the Court *inter alia* held that where the notice to terminate did not give reasons for terminating a partner, the same is not to the prejudice of the other party as they were aware of the circumstances and the Court did not strike down the notice for want of particulars. In the present case, according to Counsels for the respondent, the contention of the petitioner that the notice did not furnish particulars is entirely false, as a notice refers to the disputes and issues between the parties. Without prejudice, it is also submitted that in the event it is found that there was deficiency in providing notice as contemplated under Clause 8 the same entitles the petitioner to damages, if any, suffered as a consequence thereof.

8.27 Further as their sixth submission, Dr. Singhvi and Mr. Kaul, justifies the termination of the petitioner. In this regard, they have relied upon the various Whatsapp communications exchanged between the parties on December 28, 2019, December 6, 2019, January 1, 2020, January 7, 2020, January 16, 2020, January 26, 2020, March 14, 2020. Communications exchanged in the Whatsapp group in the executive partners on May 4, 2020, communications exchanged in the

corporate partners Whatsapp group on July 23, 2020, August 8, 2020, August 24, 2020. In an open communication petitioner even went on to seek an appraisal from the respondent which is clearly barred as per Clause 7C of Deed. They pointed out that on September 23, 2020, the respondent replied on the corporate partnership group that he has proof against various allegations and false malicious campaigns. They also pointed out that the petitioner has given false information in his Linked in profile and even went on to accept one of his Whatsapp communication with respondent on May 15, 2020 about his conduct being rude.

8.28 According to Counsels for the respondent the above communications which revealed facts about the conduct of the petitioner, very well explain the circumstances under which the respondent was constrained to terminate the petitioner. Further, even as per Section 9 of the Partnership Act, partners must act in good faith towards each other and there should be mutual trust and confidence; which is lacking in the petitioner's conduct. Dr. Singhvi and Mr. Kaul also stated that lot of new averments were made in the rejoinder such as respondent was not willing to dilute his equity etc. which are false.

8.29 Counsels for the respondent, thus stated that the on the basis of their submissions, it is clear that the respondent has not retired from the Delhi Corporate Firm and in fact has the power to terminate the petitioner under the Deed, which he has rightly exercised. On the aspect of the Partnership Act, they again reiterated that the provisions under the said Act are subject to the contract between the parties and therefore the Deed should be given priority. In this regard, he has anchored his submission on a judgment of this Court in ***M/s Bhagwan***

Dass Khanna Jewellers v. Bhagwan Das Khanna Jewellers Pvt. Ltd., 2012 SCC Online Del 6129, wherein, the Court *inter-alia* held that the relation between the partners in the partnership is a contractual one and the same has been recognized by the Partnership Act under Section 42. Similarly, he has also relied on Bombay High Court judgment in ***Veena Nalin Merchant v. Laljee Godhoo & Co., 2015 SCC Online Bom 2034.***

8.30 Thus, they submitted that the Deed grants the respondent greater powers than the petitioner, which is in fact permissible in law and the rights of the parties are strictly to be governed by the Partnership Deed. They also reiterated the contradictory nature of the arguments put forth on behalf of the petitioner and also stated that pending the decision of the arbitral tribunal, the respondent continues as partner with the two new inductees and the petitioner should not be granted the interim reliefs as prayed for.

9. It is also stated on behalf of the respondent that a new plea was raised during arguments in rejoinder that L&L in the name of the firm stands for 'Lex and Legal'. The submission made for the first-time during rejoinder arguments and not on affidavit, is factually incorrect. The origin of 'L&L' is traceable and an acronym to 'Luthra & Luthra' which name belongs to the respondent, in every sense possible. It is also commonly understood within the legal fraternity and in the business circles, that L&L Partners is the respondent's law firm being based on his name Rajiv K. Luthra.

FINDNGS/CONCLUSION:

10. Having heard the learned counsel for the parties and perused the record, at the outset I may state that the parties were relegated to

mediation process to be conducted by Mr. Sriram Panchu, Senior Advocate vide order dated October 16, 2020. The mediation process did not bear any fruits and the counsels for the parties agreed that the Court may finally hear the petition as noted in the order dated November 02, 2020. I may also state, on November 02, 2020 the statement of Mr. Parag Tripathi was recorded on behalf of the petitioner that he shall delete the respondent Nos.2 to 7 from the array of parties. An amended memo of parties has been filed by the petitioner wherein respondent, Rajiv K. Luthra, is the only sole respondent. His statement was also recorded on November 12, 2020 on behalf of the petitioner that he shall not press the reliefs at f, g & l of the petition. So, it follows that the remaining reliefs have only been prayed against Rajiv K. Luthra, the sole respondent.

11. For convenience, where ever reference is made to the submissions of Mr. Tripathi, Mr. Nigam (Senior Counsels) and Mr. Nair, hereinafter, they shall be referred as 'Counsels for the petitioner'.

12. The first prayer in the petition is for staying the email dated October 13, 2020 of the respondent terminating the petitioner from partnership of the Delhi Corporate Firm. The other reliefs are for directions against the respondent restraining him from interfering directly or indirectly with the management and / or participating in the affairs of the Delhi Corporate Firm and that he should handover the assets of the said firm which are in his possession.

13. I have already noted the case set up by the petitioner in this petition. To sum up, his case in the petition is that, he along with respondent were partners in the Delhi Corporate Firm. On October 12,

2020, 23 news partners were inducted in the Delhi Corporate Firm by the petitioner. The respondent having withdrawn himself from the Delhi Corporate Firm, should be restrained from interfering with the right of the petitioner to conduct the business of the Delhi Corporate Firm.

14. It is the conceded case of the parties that they have constituted the Delhi Corporate Firm after executing a written partnership deed dated March 31, 1999. Originally the Delhi Corporate Firm was constituted in the name of *Luthra & Luthra Law Offices*, New Delhi but pursuant to an amendment executed to the Deed on August 04, 2018 the name of the said firm was changed to *L&L Partners*, New Delhi. Initially, the profit and loss share of the petitioner and the respondent was 25% and 75% respectively. By way of an amendment to the Deed executed on April 01, 2004 the shares were changed to 33.33% and 66.67%. Before the partnership of the parties was formed in the year 1999, respondent was doing legal practice through a sole proprietorship concern by the name Luthra & Luthra Law Offices. The petitioner who joined legal practice in the year 1995 joined the respondent as a retainer lawyer. It is a fact that thereafter two more firms were formed viz. Delhi Litigation Firm and Mumbai Corporate Firm, wherein the parties herein among others are also partners.

15. The case of the petitioner as contended by his Counsels is that if the respondent intends to leave the Delhi Corporate Firm at any time and retain its name, he needs to exercise his option within 12 years from the effective date (April 01, 1999) i.e., March 31, 2011. After, March 31, 2011, the respondent on leaving the Delhi Corporate Firm shall have no right to retain its name and that the same shall continue

to be used by the remaining partners of the Delhi Corporate Firm. Also, the clients, assets, employees and goodwill were to be retained by the petitioner. Some of the relevant Clauses of the Deed on which reliance was placed by the learned counsels for the parties are reproduced as under:

> ***"5.A. LEAVING AMOUNT (Not in case of Death; Consideration for Non-Compete).***
>
> *The Parties hereto agree that RKL & L&L have, over a long period of time, developed considerable goodwill and after the Effective Date, the Firm would also develop goodwill for itself and the name i.e. Luthra & Luthra Law Offices, licensed to and used by the Firm. It is therefore agreed that upon any of the Party(ies) leaving the Firm, on account of retirement pursuant to Section 7E or otherwise and not due to death, a certain value of the goodwill shall have accrued and be payable to such Party. In this regard it is agreed that a leaving amount shall be payable to the leaving Party(ies) as follows:*
> *For Party(ies), other than RKL leaving the Firm, on or before October 31, 2003, such Party(ies) shall not be entitled to any value towards goodwill. However, during this period if MS is asked to leave the Firm otherwise than for misconduct under Clause 7(iv) below, he shall be entitled to be paid for goodwill, (as stipulated below), to the extent of fifty percent of the entitled value thereof.*
> *For Party(ies), other that RKL, leaving the Firm after October 31, 2003, such Party(ies) shall be paid a value of the goodwill (as stipulated below), to the extent of hundred percent of the entitled value*
> *thereof.*
> *(i) If RKL chooses to leave the Firm at any time and does not practice law, he shall at his option be paid the full value of goodwill as stipulated below. It is agreed and understood between the Parties that if RKL exercise the option of being paid for goodwill then in consideration of the payment for goodwill to RKL, RKL unequivocally and unconditionally*

agrees to renounce his right, title and interest in the Firm and the name "Luthra & Luthra Law Offices New Delhi"; "Luthra & Luthra Law Offices" which would thereafter vest with the remaining partners of the Firm.

In the event RKL wishes to leave the Firm and retain the name of the Firm he would need to exercise his option within 12 years (twelve) from the Effective Date. If RKL exercises this option during the first four and a half years from the Effective Date, he shall be required to compensate MS for the full value of goodwill. However, if RKL exercises this option after four and a half years from the Effective Date but before 12 years then RKL shall be required to pay MS five (5) times the value of the goodwill pursuant to Section 5 of this Deed and MS shall retain all the existing clients of the Firm. RKL shall not be permitted to exercise this option after the expiry of 12 years. It is agreed between the Parties that after making payment for goodwill under this paragraph (1) RKL shall not be bound by non compete obligation pursuant to Section 10 and (II) Name User Agreement shall stand expunged.

RKL may leave the Firm for any reason whatsoever and if he exercises the option of leaving without taking payment for goodwill, then RKL may continue to practice Law, however, the Name Luthra & Luthra Law Offices will continue to be used by remaining partners under the Name User Agreement.

It is agreed that value of goodwill shall be computed as follows:

Value of goodwill payable to MS in case MS leaves the Firm

15% of the TO of the Firm.

"TO" shall mean the average of the Turnover of the· Firm in the past or subsequent three financial years (financial year to mean April 1 of a year to March 31 of the subsequent year), whichever is higher. The value shall Initially be calculated on the basis of the past three financial years and be paid

	within 6 months from the date when MS decides to leave the Firm. Thereafter, upon completion of the subsequent three financial years, the value of goodwill shall be re-calculated. In the event the amount arrived at after such re-calculation is more than that paid to MS, the Firm shall be required to pay the difference within 6 months from the date of such re-calculation.
Value of goodwill payable to RKL In case RKL leaves the Firm	*45% of the TO of the Firm. "TO" shall mean the average of the Turnover of the Firm in the past or subsequent three financial years (financial year to mean April 1 of a year to March 31 of the subsequent year), whichever is higher. The value shall initially be calculated on the basis of the past three financial years and be paid within 6 months from the date when RKL decides to leave the Firm. Thereafter, upon completion of the subsequent three financial years, the value of goodwill shall be calculated. In the event the amount arrived at after such re-calculation is more than that paid to RKL, the Firm shall be required to pay the difference within 6 months from the date of such re-calculation.*

For clarificatory purposes, the TO shall mean the total average Turnover for the concerned years not the average Turnover.
After payment of the above stated amounts MS shall have no further claims re Goodwill payment on either RKL or the Firm. Likewise, RKL shall have no further claims re Goodwill payment on MS.
The Parties hereby agree that in the event the goodwill of the Firm is sold to any third party, as a going concern or otherwise, at any time prior to or after October 1, 2003, RKL and MS shall be entitled to a share in the sale value in the ratio of their respective percentage interest in the Firm, after the settlement of the account.

B. LEAVING AMOUNT (In case of Death).

The Parties hereto agree that RKL & L&L have, over a long period of time, developed considerable goodwill and after the Effective Date, the Firm would also develop goodwill for itself and the name i.e. Luthra & Luthra Law Offices, licensed to and used by the Firm. It is therefore agreed that upon any of the Party(ies) leaving the Firm, due to death, a certain value of the goodwill shall have accrued and be payable to heirs of such Party.
In this regard it is agreed that heirs of RKL and MS would be provided with two Options, Option-I and Option-II. The heirs of RKL and MS would be required to choose one of these options:
It is agreed that the value of goodwill shall be computed as follows:
OPTION-I

Value of goodwill payable to MS's heirs in case of MS's death

30% of the TO of the Firm.
"TO" shall mean the average of the Turnover of the firm in the just or subsequent three financial years (financial year to mean April 1 of a year to March 31 of the subsequent year), whichever is higher. The value shall initially be calculated on the basis of the past three financial years and be paid in three (3) equal annual instalments. The first instalment shall become payable within 30

	days from the death. Thereafter, upon completion of the subsequent three financial years, the value of goodwill shall be recalculated. In the event the amount arrived at after such re-calculation is more than that paid to the heirs of MS, the Firm shall be required to pay the difference within 6 months from the date of such re-calculation.
Value of goodwill payable to RKL's heirs in case RKL's death	*90% of the TO of the Firm. "TO" shall mean the average Turnover of the Firm in the past or subsequent three financial years (financial year to mean April 1 -of a year to March 31 of the subsequent year), whichever is higher. The value shall initially be calculated on the basis of the past three financial years and be paid in three (3) equal annual instalments. The first instalment shall become payable within 30 days from the death. Thereafter, upon completion of the subsequent three financial years, the value of goodwill shall be re-calculated.*

OPTION-II

The heirs of RKL and MS shall be paid annual 5% and 1.67% respectively of the annual Turnover.

7. A. DECISION-MAKING.

1. Notwithstanding anything contained in this Deed, all material decisions to be taken after due deliberation and though effective consultation, the intent being to arrive at

decisions which are in the best interest of the Firm. Subject to stricter requirements provided in this Deed, all decisions shall be taken by vote of majority of partners present and voting. In the event of dissagreement the decision of RKL shall be final and binding on the Firm and its Partners. However, after 2010 the light of RKL to render final and binding decisions shall be confined to the following matters.

Investments, setting up of new firms or branches wherein RKL and MS are partners in the ratio of 3:1:1, amalgamation, merger or collaboration in any form with other reputed international law firms, termination, performance review of partners, all information pertaining to the Firm to third parties, removal of any constituent of the Firm (other than partners). Notwithstanding anything to the contrary, any decision for the merger, amalgamation or collaboration of the Firm with any any Indian law firms or individuals would require the approval of both RKL and MS.

It is agreed and understood between the Parties that any Party who is directly or indirectly interested in a certain decision being taken, such Party shall whilst such decision is being considered refrain from participating in the decision making process.

Furthermore, all issues that have been agreed to between the Parties, including the contents of this Deed, cannot be subsequently re-opened by RKL under the veto powers. The veto rights, contemplated in this deed, are rights granted in person only and shall not be assigned by RKL to his successors and/or any other/third parties. RKL cannot exercise the veto powers to confer any dis-proportionate benefits to himself, either directly or indirectly.

B. *xxx* *xxx* *xxx*

C. Performance Appraisals.

It is unconditionally and irrevocably agreed that RKL may from time to time, at intervals of not less than one year appraise the performance of MS. It is further unconditionally and irrevocably agreed that only RKL shall have the right to appraise MS's performance and if in his opinion he is found wanting in any way, he shall have the following right:

(i) During the first ten years of the Firm, RKL can reduce for a maximum period of one year, the percentage interest of MS subject to a maximum cap of 5% in a year.

(ii) and thereafter RKL can impose only a token penalty. It is agreed between the Parties that MS cannot appraise the performance of RKL. It is further clarified that MS cannot question the utilisation of time by RKL.

D. Induction of New Partners.

vi. In the event it is deemed necessary and feasible to induct new partners in the Firm, the same shall require the unanimous consent of RKL and MS. In the event of an induction being agreed upon, the percentage interest that is allocated to such new partner shall initially be only a nominal percentage and shall be contributed by reducing the existing percentage interest of the Parties, pro-rata. It is further agreed that if RKL and MS do not agree upon the induction of a new partner, RKL may elect to nominate someone, who will be entitled to receive a portion of his profits, which would have accrued to RKL, by giving a share from his own percentage interest, provided however, such new person shalt not have any rights in the management of the Firm. However, if any such person has been a part of the Firm for a continous period of five (5) years, or practised law for seven years such person may also be admitted to the benefits of partnership with management rights. The extent of management rights would need to be unanimously agreed by all the Parties.

E. RETIREMENT.

A. RKL shall retire from the Firm when he has attained the the age of 80 years, MS shall retire from the Firm when he have attained the age of 75 years. RKL and MS may be required to take pre-mature retirement when they are not in position to continue as a partner due to mental incapacity which leads to a situation where such party is unfit to practice the profession of law.

Subject to the clauses of this Deed, a retiring Party(ies) shall strictly comply with the provisions of Article 10 hereof and any breach thereof shall provide a right to the Firm to seek damages from the retiring Party. In case of retirement, the

retiring partner shall have the right to be paid for goodwill pursuant to Section 5.

8. TERMINATION / DISSOLUTION.

This shall not be a partnership at will and the Deed may be terminated or dissolved only by RKL and none other, by giving a ninety (90) days
written notice to the other Parties, only upon the following

a. If all the Parties unanimously agree to terminate or dissolve the Deed;
b. Material Breach (as defined hereinafter) of terms by any party;
c. If a Party has been declared bankrupt, insolvent, or looses of the right to practice the profession of law;
d. The death or physical/ mental incapacity of a Party which leads to a situation where such a Party is unfit to practice the profession of law;
e. A Party seeks retirement, withdrawal pursuant to Section 7

Provided, however, that upon the occurrence of any of the aforesaid events, RKL may issue a notice to the others and thereafter parties shall put in their best efforts to try and amicably resolve the issues and the notice of termination, as provided above, shall be issued only after the Parties are unable to amicably resolve the issue, inspite of best efforts, over a period of ninety (90) days, from the date of issuance of a written notice.
Material Breach, as used in Article 8(a) shall mean, any of the following situations:

(i). Where a Party engages in providing legal advice .and assistance to third party(ies), other than through the Firm, for material consideration, subject to this Agreement;
(ii). Where a Party receives any monies, or material. consideration in any other form, from a client of. the Firm, for legal services, except as permitted under this Agreement. Where a Party engages in any business or vocation, other than the activities of the Firm, as a full time occupation.
(iii). Where a Party engages in an activity which is

unbecoming of a lawyer, or is not permissible for a lawyer, as per applicable code of conduct for the profession.

9. CONSEQUENCES OF TERMINATION / DISSOLUTION / RETIREMENT / WITHDRAWAL / DEATH.

A. In the situations enumerated in 6, 7E & 8, the following shall apply:

a. The surviving Party, including the Party issuing the notice shall continue to be a part of the Firm and retain all the assets, offices, employees, counsel, clients etc.;

b. The surviving Party shall continue to retain and use the name of the Firm (in terms of the license agreement) and the goodwill attached thereto;

c. The surviving Party and/or the Firm shall compensate the terminated/retiring/withdrawing and the heirs of the deceased Party as follows:

i. Pay a sum equivalent to percentage interest of the goodwill, as calculated pursuant and subject to Article 5. It is clearly understood between the Parties that no goodwill shall be paid to any Party retiring/withdrawing/ exiting from the Firm to carry on the legal practice in another law Firm or to provide legal, services in the employment of any other organisation.

ii. Pay a sum towards the share in the assets, in proportion to the percentage interest, which, for moveable assets, shall be calculated as the book value of the assets and for immovable assets shall be calculated as cost of acquisition plus the gain from indexation in terms of the index for capital gains as published by the Government of India.

iii. Finalise the accounts and pay the balance outstanding as on the date of termination, however, all monies due but not received shall be paid on receipt by the Firm. However if MS leaves the Firm on his violation before October 1, 2003 monies due but recievable shall not be paid.

It is further agreed that the surviving Parties and/or the Firm shall make best efforts to make the payments, as aforesaid, at the earliest possible but shall make the necessary payments no later than six months from the date of such termination, withdrawal, retirement. The recipient shall be entitled to receive an interest calculated at the prime lending rate of the State Bank of India plus 5%, for the period of delay beyond six months."

16. Having noted some of the Clauses of the Deed, it may be stated that the learned Counsels for the respondent have taken an objection on the maintainability of the petition on the ground of non-joinder / mis-joinder / non-existence of arbitration agreement / reliefs sought with regard to firms other than Delhi Corporate Firm. Insofar as the pleas other than non-joinder of necessary parties are concerned, the same may not sustain as of today in view of the statement of Mr. Tripathi recorded by this Court on November 02, 2020 wherein he has deleted the respondent Nos.2 to 7 from the array of parties including the reliefs at (f) (g) and (l). In so far as the plea of non-joinder of parties is concerned, I intend to deal with the same in the later part of the judgement when I shall deal with the pleas of the petitioner and the respondent that they have inducted 23 and 2 partners in the firm respectively.

STATUS OF PARTNERS:

17. Submissions have been made by the Counsels for the respondent that; (i) the respondent has the dominant right to the firm and its management; (ii) he has great financial right than the petitioner; (iii) the respondent has binding vote on all critical matters; (iv) the respondent can apprise the work of the petitioner and not the other way; (v) the respondent holds majority stake in the firm etc. In other words, it was the endeavour of the Counsels for the respondent

to submit that the above cumulatively vests a power in the respondent to terminate the petitioner from the Delhi Corporate Firm.

18. The learned Counsels for the petitioner have contested the aforesaid position by stating that a partnership firm is not a legal entity. A partner acts as an agent of the other and the relationship between partners is not that of a master and servant or employee, which concept involves an element of subordination, but that of equality.

19. I agree with the submission of learned Counsels for the petitioner that partners in the firm stand on equal footing. One partner acts as an agent of the other(s). Together they constitute a firm. The partnership *per se* is not a distinct legal entity. The Supreme Court in the case of ***Kesavji Ravji and Co. & Ors. (supra)*** has by referring to its earlier judgment in the case of ***Regional Director, Employees State Insurance Corporation (supra),*** wherein the Court dealt with the question whether there could be a relationship of master and servant between a firm on one hand and its partners on the other indicated that under the law of partnership there can be no such relationship as it would lead to the anomalous position of the same person being, both master and the servant. The Supreme Court in ***Kesavji Ravji and Co. & Ors. (supra)*** has observed as under:

> *"21. In Regional Director Employees State Insurance Corporation, Trichur v. Ramanuja Watch Industries: (1985) 2 SCR 119: AIR 1985 SC 278 this Court dealing with the question whether there could be a relationship of master and servant between a firm on the one hand and its partners on the other, indicated that under the law of partnership there can be no such relationship as it would lead to the anomalous position of the same person being both the master and the servant. The following*

observations of Justice Mathew in Ellis v. Joseph Ellis and Co. (1905) 1 KB 324 were referred to with approval: (SCC p. 224, para 7: SCR p.126)

> *"The argument on behalf of the applicant in this appeal appears to involve a legal impossibility, namely, that the same person can occupy the position of being both master and servant, employer and employed.*

22. And observed (SCC p. 221, para 4: SCR p. 123)

> *"...A partnership firm is not a legal entity. This Court in Champaran Cane Concern v. State of Bihar: AIR 1963 SC 1737, pointed out that in a partnership each partner acts as an agent of the other. The position of a partner qua the firm is thus not that of a master and a servant or employee which concept involves an element of subordination but that of equality. The partnership business belongs to the partners and each one of them is an owner thereof.."(SCC p.224, para 9: SCR p. 127)."*
>
> *(Emphasis supplied)*

20. So, the partnership property vests in all partners and in that sense every partner has an interest in the assets, however, the extent of interest held by a partner is irrelevant as he continues to be the owner of his interest in the firm. This I say so, in view of the judgment of the Apex Court in ***Addanki Narayanappa and Ors. (supra),*** wherein by relying upon Section 48 of the Partnership Act, it was held as under:

> *"4. ……..From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the*

partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause(b) of s. 48. It has been stated in Lindley on Partnership, 12th ed. at p. 375:

> *"What is meant by the share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is, and this only which on the death of a partner passes to his representatives, or to a legatee of his share ..... and which on this bankruptcy passes to his trustee."*

21. Even in ***Lindley & Banks on Partnership, 20th Edition at 3-07, page 44,*** under the heading *Status and Liability of a Partner*, the following has been stated:

> *"Also central to an understanding of the law of partnership is the dual capacity in which a partner acts i.e. both as a principal and an agent. Lord Lindley explained:*
>
> > *"As a principal [a member of an ordinary partnership] is bound by what he does himself and by what has co-partners do on behalf of the firm, provided they keep within the limits of their authority: as an agent, he binds them by what he does for the firm, provided he keeps within the limits of his authority."*

22. Moreover, it is settled position of law that in the matter of sharing the profits, the partners can agree to share the profits in any manner they like but still they continue to be partners working as

agents for each other, which in no way confer a dominant legal status on the partner drawing a higher interest (Ref: ***K.D. Kamath and Co. v. CIT, 1971 (2) SCC 873***).

23. Similarly, it is also a settled law, in view of Section 4 of the Partnership Act, it is open to two partners to allow the business of the partnership to be conducted by one of the partners (Ref: ***Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628***). Merely, the fact that the control of the business is kept with one partner and that he has certain extra rights as a major partner does not in any sense negate the partnership (Ref: ***In Re: Ambalal Sarabhai, AIR 1924 Bom 182***). In other words, no partner has a dominant status even if one partner has extra rights and/or higher financial stake.

24. Having said that the learned Counsels for the respondent have made reference to Clauses 7A, 7C and 7D in support of their submission that the respondent has dominant rights in the partnership to justify his action of terminating the partnership of the petitioner. The said provisions shall be considered and dealt with in the later part of the judgment when I shall deal with the contentions of the parties in support of their respective stand on the impugned action.

SCOPE OF PETITION UNDER SECTION 9 OF THE ACT OF 1996:

25. It is the case of the petitioner that in terms of WhatsApp message dated January 06, 2020, the respondent had expressed himself to withdraw from the partnership by giving a 90 days' notice and which notice period (though according to petitioner not permissible) was extended by the respondent on four occasions finally leading to issuance of email dated October 12, 2020 by the petitioner.

26. On the other hand, the case of the respondent is that it was notice of termination of the partnership of the petitioner. Suffice to state, the parties are at variance with regard to the nature of the communication dated January 06, 2020. In any case, it is the issuance of the email dated October 13, 2020 whereby the respondent has, in purported exercise of powers under Clauses 7A & 8 of the Deed, terminated the petitioner from the partnership, which triggered the filing of the present petition. Though no challenge is made to communication dated October 12, 2020 by the respondent, the issue that needs to be decided in this petition under Section 9 of the Act of 1996 is, pending adjudication of the disputes between the parties whether the petitioner is entitled to the reliefs as prayed for in this petition.

27. A plea has been taken by the Counsels for the respondent that the prayer 'e' as sought for by the petitioner is in the nature of a final relief and the same, not being a prayer for *status quo* / *status quo ante* but a new state of affairs, the same cannot be granted by this Court. In this regard, I may state that the power of the Court to exercise its jurisdiction under Section 9 of the Act, 1996 is well settled by a judgment of a coordinate Bench of this Court in ***Ashok Kumar v. SBI Officers Association, 2013 (3) Arb LR 246 (Del)*** and also by this Court in ***Jaguar Overseas Ltd. v. Seagull Maritime Agencies Pvt. Ltd., OMP(I)(COMM) 183/2020*** decided on August 06, 2020, wherein the scope of Section 9 of the Act of 1996 was delineated in the following manner:

> *"33. That apart it is a settled position of law, that under section 9 of the Act of 1996, the Court has a wide discretion to mould*

the relief for safeguarding the rights of the parties in other words under section 9 of the Act of 1996, the court has the discretion to pass an interim order of protection as may be just and convenient when the court arrives at a finding that the rights of the party are going to be adversely affected pending the arbitration. In this regard I may refer to the judgment of a coordinate bench of this court in the case of ***Ashok Kumar v. SBI Officers Association 2013 (3) Arb LR 246 (Del) / 2013 SCC OnLine 1631*** *wherein in this court has held as under:*

> *"57. There is another reason which persuades me to reject which is the limited scope of Section 9 of the Act. The mere reading of Section 9 of the Act would reveal that the power of the court under Section 9 can be exercised prior to or during the pendency of the arbitral proceeding or even after passing the award but before enforcement to protect or preserve or sale of any good, amount, or property or thing or any other interim measure as may appear to court just and convenient. The said orders of interim measures under Section 9 are aimed at safeguarding the rights of a party to the arbitration agreement pending the arbitration or its enforcement so that no prejudice can be caused to the said party on account of pendency of the proceedings. However, the said orders of interim protection are not passed on the mere asking when there exists no possibility of safeguarding any private right of the party.*
>
> *58. It is true that this court has power to pass interim order of interim protection if it appears to the court as "just and convenient". The wordings just and convenient provide wide discretion to the court to mould the interim relief for safeguarding the rights of the parties. But the said discretion has to be exercised judiciously and not capriciously or in an arbitrary manner. I agree with Mr. Sandeep Sethi, learned Senior counsel appearing on behalf of the respondents, that the show cause notice issued by the respondents is not liable to be stayed under*

> *the scheme of Section 9 of the Act as the petitioners instead of giving the explanation in the meeting or following the prescribed procedure have approached the Court.*
>
> ******** ******** ********
>
> *60. Applying the said principle of law to section 9, it can be said that the courts discretion to pass the interim protection order as just and convenient can be exercised when the court arrives at the finding that the rights of the party are going to be affected pending the arbitration or prior to enforcement which needs protection in the interim which makes it just and convenient to pass the order."*

28. During the rejoinder submissions the Counsels for petitioner have stated that this petition has been primarily filed seeking urgent interim relief of seeking stay of email October 13, 2020, leaving final adjudication as to the effect and nature of the communications dated October 12, 2020 and October 13, 2020 in the prospective arbitration proceedings.

29. Noting the position of law in ***Ashok Kumar (supra)*** and ***Jaguar Overseas Ltd. (supra)*** it can be stated that this Court may not necessarily consider the prayers in the manner made by the petitioner in this petition but on a finding of *prima facie* case, irreparable injury and balance of convenience grant, pending adjudication of the disputes in the prospective arbitration proceedings between the petitioner and respondent, such reliefs as deem appropriate.

30. It is also a settled law, the Court while exercising power under Section 9 of the Act of 1996 can interpret the provisions of the contract to come to a *prima facie* conclusion. In this regard, I may refer to the judgment of a Coordinate Bench of this Court in the case of ***KSL and Industries Ltd. vs. National Textiles Corporation Ltd.,***

2012 (3) ArbLR 470(Delhi), wherein it was held as under:

> *61. The scope of enquiry in these proceedings is limited to the examination of the issues raised by the parties only at a prima facie stage. The court while exercising its jurisdiction under Section 9 of the Act does not finally determine any issue of fact or of law, which fall within the jurisdiction of the Arbitral Tribunal to determine. The interpretation of the terms of the Contract/MOU, as also the determination of the scope of the Contract/MOU would eventually, and finally, fall for determination of the Arbitral Tribunal. The court while dealing with a petition under Section 9 of the Act applies the same principle as are applicable to the determination of an application under Order 39 Rules 1 & 2 of the CPC in a pending suit. Thus, the examination of the submission of the parties, as well as the terms of the MOU, would be made only to assess the strength of the petitioner's case on a prima facie basis, and any observation made during the course of such evaluation would, obviously, not be binding either on the parties or the Arbitral Tribunal, which has the jurisdiction to determine all such issues of fact and law independently, without, in any manner being influenced by any observation that may be made in the present order."*

TERMINATION OF THE PARTNERSHIP OF THE PETITIONER:

31. On the termination of the petitioner from the partnership it is the submission of the Counsels for the petitioner that the respondent has no power to take action which he took vide the email on October 13, 2020. According to them, the expression *'termination'* is incongruous while dealing with the issue of a partner leaving the firm as it relates to a master-servant relationship and therefore the word *'termination'* has relevance only in the context of termination of the partnership deed.

32. I have already reproduced above Clauses 7A and 8 of the Deed.

Clause 8 of the Deed contemplates the Deed being terminated / dissolved. Whereas, Clause 7A is under the heading *'DECISION-MAKING'*, i.e., decision making powers of the partners. No doubt, it refers to the word *'termination'* but whether the same refers to termination of the petitioner, is the question. The submission of Counsels for petitioner is that the word *'termination'* in this Clause refers to amalgamation, mergers etc. On the other hand, the plea of the Counsels for the respondent is that the word *'termination'* has to take colour from the subsequent words *'performance review of partners'*.

33. *Prima facie* as per the initial part of the first paragraph of Clause 7A, *amalgamation, merger or collaboration in any form with other reputed international law firms , termination, performance review of partners*, post the year 2010, confers a right on the respondent to render final and binding decision on investments / setting of new firms or branches / amalgamation / merger or collaboration in any firm with other reputed international law firms / termination / performance review of all partners / removal of any constituent of the firm but in contrast the later part, *Notwithstanding anything to the contrary, any decision for the merger, amalgamation or collaboration of the Firm with any any Indian law firms or individuals would require the approval of both RKL and MS*, stipulates that any decision for the merger, amalgamation or collaboration of the firm with any Indian law firm or individuals require the approval of respondent/RKL and petitioner/MS. When the later part of Clause 7A contemplates approval of respondent/RKL and petitioner/MS in the decision-making process, then earlier part of Clause 7A cannot be construed to mean the power of the respondent/RKL to terminate petitioner/MS. I also

note, as per Clause 10B, power vests with both the petitioner and the respondent to take decision with regard amalgamation, merger, collaboration and buy-out of the firm by third parties. This clause appears to be at variance with the initial limb of Clause 7A. Be that as it may, when a vital decision with regard to buy-out of firm requires the concurrence of both the petitioner and the respondent, it cannot be construed that *'termination'* under Clause 7A would mean the grant of power on respondent to terminate the petitioner from partnership which has come into existence on the execution of the Deed by both the petitioner and the respondent. Clause 10B of the deed reads as under:

> *"10B. All, decisions with respect to amalgamations, mergers, collaborations, but-out etc. shall be taken by RKL and MS. In the event, RKL and MS decide to sell the Firm to any third party, notwithstanding anything to the contrary, the consideration received from such sale shall be shared in the ration of the percentage interest of the Parties in the Firm, after the settlement of accounts."*

34. Further, the submission of the Counsels for respondent to relate the power of performance review of partners by respondent in Clause 7A to mean the power to *terminate* the petitioner is not appealing as Clause 7C separately provides for performance appraisal of petitioner/MS by respondent/RKL. If the performance of petitioner/MS, is found wanting, after expiry of ten years of firm, then it can only entail imposition of penalty on petitioner/MS. Thus, in any case performance appraisal of petitioner/MS cannot lead to termination. *Prima facie*, the only purpose I see for the existence of the word '*termination'* and words *'performance review'* in Clause 7A, is for the termination and performance review of equity partners who

could be inducted by the respondent within his equity / share. The fact that Clause 7A does not contemplate termination of the petitioner as a partner is also indicative from a reading of Clause 9 of the Deed which prescribes the consequences of termination/dissolution/retirement / withdrawal / death, otherwise it would have mentioned / prescribed Clause 7A as well.

35. Even otherwise, the Partnership Act (under Section 33) contemplates only *expulsion* and not *termination* of a partner, that too in good faith. In ***Leigh v. Crescent Square Limited, 80 Ohio App. 3d 231,*** it has been held by the Courts of appeals of Ohio that *"Generally relations between partners are governed by the terms of the partnership agreement, provided such terms are not in conflict with the statute"*. The termination of partner not being contemplated, the *termination* in Clause 7A cannot be that of the petitioner. It is also held in the aforesaid judgment that *"Courts may not imply additional terms in a contract or agreement where none clearly exists"*. Admittedly, there is no Clause in the Deed for expulsion as well. In the absence of such a Clause even expulsion of the petitioner could not have been effected.

36. It was the submission of the learned Counsels for the petitioner that petitioner's termination from the partnership is not in good faith. *Prima facie*, I agree with such a submission for the reasons viz. (i) the termination was effected by invoking provisions which do not contemplate termination of the petitioner as a partner; (ii) the termination was effected immediately after the issuance of email dated October 12, 2020 by the petitioner acknowledging the decision of respondent to withdraw / retire from the firm; (iii) no challenge is

made by the respondent to the email dated October 12, 2020; (iv) in the absence of a challenge to email dated October 12, 2020, the respondent *prima facie* could not have issued the email dated October 13, 2020; and (v) the respondent resorted to the termination of the petitioner from partnership and not dissolution / termination of Deed as contemplated under the notice/communication dated January 06, 2020.

37. Learned Counsels for the petitioner are justified in relying upon the judgment of the Madras High Court in ***Dr. S. Vel Arvind (supra)*** wherein the Court deliberating upon Section 33 of the Partnership Act held that without express provision or good faith, partners cannot be expelled. The relevant paragraphs read as under:

> ***"12.*** *The only issue to be decided in this matter is whether one of the partners has got a right to expel one other partner on the ground of allegation of misappropriation and whether the first respondent can solely claim right over the Hospital.*
> ***13.*** *To decide the above issue, it is relevant to extract Section 33 of the Indian Partnership Act:*
>
> *"33. Expulsion of a partner:-*
>
> *(1) A Partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.*
>
> *(2) The provisions of sub-sections (2), (3) and (4) of Section 32 shall apply to an expelled partner as if he were a retired partner."*
>
> ***14.*** *Section 33(1) of the Indian Partnership Act is unambiguously clear that partners cannot be expelled even by majority of partners. Partners can be removed or expelled only in exercise of good faith of powers conferred by contract between partners. The above proposition that the relationship between the partners in a partnership is that of principal to agent for one another is confirmed by a plethora of cases decided by various High Courts.*

15. *Therefore, in the absence of explicit provisions in the contract agreed to between the partners regarding expulsion of partners, only remedy available to the disgruntled partners is taking recourse to Section 44 of the Indian Partnership Act for dissolution to be ordered by the Court on a suit of the partner and they cannot dismiss or expel the other partner.*

16. *Even assuming that the appellants have committed malpractice, the Arbitrator alone has to decide the dispute according to law and therefore, the expulsion of the appellants by the first respondent is erroneous. In this regard, it is relevant to extract below Paragraph Nos. 34 to 36, 40 and 41 of the decision of the Calcutta High Court in Santiram Mullick v. Hiranmony Bagechi reported in (1991) 2 CALLT 399 HC.*

> *"34. I have carefully considered the submissions made by both the parties. It is an admitted fact that even though in the earlier Arbitration agreement there was a specific provision for expulsion of partners, no such provision has been made in the agreement dated 1st April 1987 by which the partnership firm was reconstituted and the petitioner and the Respondent nos. 1, 2 and 3 have become partners on the reconstitution of the partnership business. The partnership agreement in Clause 13 provides that retirement or a death of a partner will not ipso facto operate as a dissolution of the firm and the remaining/surviving partners shall continue the profession with or without any other partner or partners. Clause 12 provides that on retirement of a partner being incapable of carrying on profession or in the event of a death of a partner a goodwill shall be raised and the value thereof shall be computed or arrived at on 2 years purchase price and the last three years average, net profits of the firm, and the net profits for this purpose as computed in terms of Clause 12 shall be paid to the retiring or deceased partner. The only provision regarding the expulsion of a partner is contained in Section 33 of the Partnership Act and Section 33 as already been referred to in the above, does not contemplate expulsion of a partner unless the terms of agreement of the partnership firm confer upon the*

majority of the partners to do so and that too such power has to be exercised in good-faith. Therefore, the law of the land is that a partner may be expelled from a firm by the majority of the partners and in good-faith if the terms of partnership confer such power, otherwise not. Admittedly terms of partnership did not confer such power to the partners to expel any partner from the firm. However, the Partnership Act does not make the partners without any remedy when any of the partners commits breach of the partnership agreement. The remedy is in Section 44 of the Partnership Act. If a partner commits breach of the agreement then under Clause (d) of Section 44 at the suit of a partner, the court may dissolve the partnership firm.

35. I am unable to accept the contention of Mr. Gupta that the court has power in a similar circumstances in case of breach of agreement of partnership by a partner to order his expulsion. The Partnership Act does not confer such power upon the court. If under the agreement a majority of the partners expelled a partner then the partner who has been so expelled or the majority of the partners expelling the partner may approach the court either to challenge or to uphold the action of expulsion and in such a case the court will have to decide the issue. If the court finds that the partnership agreement conferred such power to the majority of the partners to expel a partner, it has still to consider as to whether the same was done in good faith or not. But if the partnership agreement does not provide for expulsion, no partner can approach the court seeking relief for expelling a partner from the partnership business on the allegation that the concerned partner had committed the breach of the partnership agreement.

36. It is true that the partnership agreement may either expressly or by implication provide the provision regarding expulsion. It is also true that a partnership agreement may be varied by subsequently to incorporate the provision of expulsion if originally in the agreement there was no such power. But there is nothing to show save and except that in the statement of facts before the

Arbitrators the partners for the first time asked the arbitrators to exercise the power of expulsion that there was no contract either express or implied that the partners of the present partnership business at any time agreed that the majority of the partners would be competent to expel a partner. On behalf of the respondents, it is submitted that in the statement of the claim of the petitioner before the Arbitrators he sought for the expulsion of the Respondent no. 2 and the Respondent nos. 1, 2 and 3 sought for the expulsion of the petitioner before the Arbitrators and there-fore the Arbitrators were clothed with the jurisdiction to expel a partner on coming to the finding that he committed the breach of the partnership agreement. The relief was sought for before the arbitrators in their separate statements of claim that the partners themselves no doubt but the parties were not at ad idem on the question of expulsion. But each of them made separate allegations against each other and sought for expulsion of a particular partner. The petitioner sought for expulsion of the Respondent no. 2 and the respondents sought for expulsion of the petitioner.

40. In that view of the matter, I am convinced that even if in the statements of claim the partners demanded expulsion of the partners committing breach of the agreement, the arbitrators who are to decide the disputes according to law and are bound to follow and comply the law definitely committed an error of law by ordering expulsion of the petitioner when under the law a partner cannot be expelled unless there is a specific agreement between the parties authorising such expulsion of a partner by majority of the partners. Therefore, that part of the award of the majority of the arbitrators ordering expulsion of the petitioner being an error apparent on the face of the award being contrary to law is liable to be set aside. The arbitrators have also committed misconduct in law by ordering expulsion when under the law the arbitrators could not expel a partner in the absence of such sanction of expulsion in the partnership agreement and when Section 33 of the Partnership Act only

authorised expulsion. When the partnership agreement empowers the majority of the partners to expel a partner.

41. In the petition, however, the petitioner has also challenged the money award, I find from the award that the arbitrators on own admission of the petitioner about the realisation of the amount of Rs. 68,800/- by earning made from the other parties which was in violation of the partnership agreement directed the said amount to be returned to the firm within 30 days from the date of the award has been passed by the majority of the arbitrators. But I do not find any error apparent on the face of the award. I have already indicated that Section 16(b) of the Partnership Act provides that if a partner carries on a business of the same nature and is competing with the firm he shall account for the payment received by him in that business. Therefore, there was definite sanction in the law for the majority of the arbitrators passing that money award. That money award is severable from the other part of the award, namely, the expulsion of the petitioner. Therefore, even if that part of the award regarding expulsion is set aside by this court, the money award can be upheld as the said award is in accordance with law and there is no error apparent on the face of the award to justify setting aside of the money award made by the majority of the arbitrators."

17. *In the present case, there is no explicit provision regarding expulsion of partners and in my considered opinion, the only remedy available to the disgruntled partners is taking recourse to Section 44 of the Indian Partnership Act, for dissolution to be ordered by the Court on a suit of the partner and they cannot dismiss or expel the other partner. The petitioners have got all the rights to participate in the administration."*

(Emphasis Supplied.)

38. The plea of the Counsels for the respondent that even if there is no explicit power, there is an implied power to terminate the partnership of the petitioner is also not appealing. Firstly, the statute i.e., the Partnership Act do not contemplate termination of a partner.

Such a provision can neither expressly nor impliedly be read in the statute nor in the Deed. What is contemplated under the Partnership Act is expulsion of a partner under Section 33, but in good faith of powers stipulated in the partnership deed. No such power of expulsion is also stipulated. The reliance has been placed by the Counsels on the judgment of the Bombay High Court in the case of ***Kunda Madhukar Shetye (supra)*** in support of their contention that implied power of expulsion can be read into a Deed and Section 33 does not bar expulsion. Suffice to state that the said judgment has to be read in the facts of that case wherein clause 12 and 18 of the partnership deed therein contemplates the following:

> *"**Clause 12**; each partner shall;*
>
> *Each (i) be just and faithful to the others; (ii) devote his / her time and attention to the partnership business; (iii) render true and correct accounts of the partnership business to the others on demand at all times*
>
> ***Clause 18***
>
> *No partners shall do any act deed or thing whereby the interest of the firm and / or the other partner may be jeopardised."*

39. The Court therein after perusing the said clauses and Section 33 of the Partnership Act held as under:

> *"**34**. ……These clauses cast a responsibility on the partner not to do any act or deed against the interest of the Firm or other partner and to see that the other partners are not affected. Having cast this obligation there must be some way that it can be enforced. It is the contention of Mr. Lotlikar that these clauses are only reiteration of a general law, and there is nothing specific about these clauses. Even that position is accepted, the question still remains is*

> *whether a Majority can be rendered helpless if one partner does acts which virtually amount to destruction of the partnership.*
>
> *xxx* *xxx* *xxx*
>
> ***36.*** *In the present case the Majority is of the opinion that the plaintiff's stand will lead to destruction of the Firm and consequently the Mine. If the Majority is correct, then it cannot be that plaintiff takes steps to virtually destroy the firm and then say that others have no power to expel her. If such an obligation is cast, then prima facie, the power to expel is implied in the agreement. If such an implied power is not read then the clauses casting duties and responsibilities, will be meaningless. If therefore prima facie the power exists and is exercised, the only way for the plaintiff is to seek a declaration that the expulsion is bad in law, which will be decided at the trial. But it cannot be contended at this stage that expulsion is non est."*

40. In the said case there were more than two partners and the facts which fell for consideration of the High Court reveals that the partner so expelled was taking steps virtually to destroy the firm and its assets and the Court on a *prima facie* conclusion held that there is an implied power to read into the aforesaid clauses in the partnership deed, casting obligation on the partners a responsibility not to do any act against the interest of the firm or other partners, an implied power to expel a partner by a majority decision in good faith for the benefit of the firm. On the contrary in the case in hand, the parties (petitioner and respondent) are the only two partners with management rights i.e. to take decisions (though no right to terminate the partnership of the petitioner exists under Clause 7A) and an implied power (even an express power) cannot be read into the Deed consisting of two partners as such a power is susceptible for an illegal use / use for extraneous reasons to obviate dissolution / termination of Deed.

41. Even otherwise the very exercise of power by the respondent by invoking Clauses 7A and 8 together is unsustainable. By exercising power under Clause 7A the respondent has terminated the partnership of the petitioner in the Delhi Corporate Firm. Whereas power under Clause 8 is for termination of the Deed / dissolution. The termination of a partner is different from terminating the Deed / dissolution as both have different consequences, the later one entailing action under Section 46 of the Partnership Act. In fact, Clause 8 having been invoked by the respondent it can be said that the impugned action is for termination of deed / dissolution which would entail the continuance of the petitioner till the winding up of the affairs of the firm in terms of the Section 47 of the Partnership Act.

42. A plea was taken by the Counsels for the respondent that the petitioner has at page 588 of the Index 4 Volume of the petitioner's documents (WhatsApp chats between corporate partners) admitted that the respondent has the right to terminate the petitioner's partnership. I have seen the document at page 588 and perused the message sent by the petitioner. No such conclusion can be drawn therefrom, at least it cannot be inferred that the petitioner has stated that the respondent has the right to terminate the petitioner. This is clear, when petitioner has stated as under:

> *"….. Post 2010 all decisions had to be taken by us unanimously post deliberation and consultations and only on limited matter you have a casting vote such as termination or review future equity partners that as copted by us to the deed subsequently. This casting votes however does not apply to higher and firing of salaried partners of the firm who have a retainership arrangement with the firm and are neither consequents nor employees of the firm."*

43. Similarly, a reference to paragraph 29 of the petition has been made by the Counsels for the respondent for a similar argument that the petitioner has admitted that the respondent has power to terminate under Clause 8 of the Deed. The averments made in said paragraph have been read out of context by the counsels for the respondent. In this para the petitioner has only stated that *"the respondent may issue a notice of termination on one or more of the specific grounds mentioned in Clause 8 thereof*", which is the reproduction of the said provision. The express provision of Clause 8 cannot be overlooked. In other words, the petitioner has not stated that the respondent can terminate him from the partnership by invoking Clause 8.

44. The decision to terminate has been taken by the respondent alone as the two partners alleged to have been inducted by the respondent had no management rights as no concurrence was given by the petitioner. It also depicts that the respondent was an interested party and being an interested party, the respondent could not have taken such an action in view of the express provision in second paragraph to Clause 7A (as reproduced above) and action being in violation of the same cannot be said to be *bona fide* in nature.

45. Even otherwise, the so-called termination having serious punitive consequences, such a power needs to exist expressly in a partnership deed for being exercised *strictissimi juris* and *bonafidely* (Ref: ***Blisset (supra);*** re ***A Solicitors' Arbitration, (1962) 1 W.L.R. 353).***

46. A plea has been taken by learned Counsels for the petitioner, even the exercise of the power under Clause 8 of the Deed has to be exercised by giving two notices for 90 days each, first one for

amicably resolving the issue(s) and on failure to resolve the issue(s) resulting in the issuance of the second notice for termination of the Deed.

47. The said Clause mandates issuance of two notices, first one being a written notice of 90 days upon occurrence of any of the events specified in sub-clauses (a) to (e) of Clause 8 of the Deed. This 90 days' notice is to enable the parties amicably resolve the issue, which forms subject matter of the notice. It is on failure to resolve the issues amicably by the partners that results in the issuance of second 90 days' notice that too for termination of Deed / dissolution.

48. The plea of Counsels for respondent is that in the proviso to Clause 8 the presence of the word '*may'* is to mean the issuance of the second notice is not obligatory. I am not in agreement with this submission made by the Counsels. It is a settled law that words in an agreement / contract should be given a natural and ordinary meaning. In fact, it is the understanding of the respondent himself that two 90 days' notice have to be issued under Clause 8. This is clear from his own conduct, on him issuing email dated October 15, 2020, wherein he has computed the payment, to be made to the petitioner pursuant to the impugned email dated October 13, 2020, to include salary for three months in lieu of the 90 days' notice period.

49. It is also the submission of Counsels for the respondent that the petitioner has admitted in the rejoinder that attempts for amicable resolution went on for months and the notice needed for resolution is complete. This submission is also not appealing for two reasons; firstly, the notice dated January 06, 2020 was for termination of Deed, which notice is different from termination of petitioner from

partnership purportedly on material breaches. The attempts to amicably resolve can be said to be for termination of Deed and, not for termination of the petitioner from partnership. Secondly, when the grounds for termination are with serious allegations, which do not form part of notice dated January 06, 2020, like taking kick backs from a party who is under investigation by the CBI, constituting material breach of the terms as per the Deed, it was obligatory on the part of the respondent to have given an opportunity to the petitioner to reply to the same, as such a termination would cast a stigma on the petitioner. In this regard, the Counsels for the petitioner are justified in relying upon the judgment of Chanchery Division in ***Blisset (supra)*** wherein it was *inter alia* held that the partner who is sought to be expelled from a partnership should have some intimation of the cause of complaint and an opportunity of meeting the case alleged against him and the charges should be substantiated in a reasonable manner. This view has been also followed in ***Nemi Das v. Kunj Behari, AIR 1928 Oudh 424***. The relevant portion reads as under:

> *"10. The law, as we understand it, applicable to the facts is that the person (charged should have reasonable notice of the charges proposed to be brought against him, that he should hive a reasonable opportunity of defending himself and that the charges should be substantiated in a reasonable manner. The learned trial Judge has laid great stress upon the decision in Labouchere v. Earl of Wharncliffe [1880] 13 Ch. D. 346. The learned Counsel for the plaintiff respondent has addressed us at length upon the law. It appears to us to be summarized reasonably in the finding which we have already given and we find nothing in Amir Begam v. Bader-ud-din Husain A.I.R. 1914 P.C. 105, or Mohamed Kalim-ud-din v. Stewart [1920] 47 Cal. 623 which carries the law any further……"*

50. The Counsels for the respondent have relied upon the Chancery Division judgment in ***Green v. Howell (supra)*** in support of their submission that no notice need be issued disclosing to the partner the causes of complaint against him or give him an opportunity of being heard in his defence. I am unable to agree with the proposition as advanced, as disclosing reasons for termination (in this case) would have been in compliance of the principles of natural justice and also enable the petitioner to answer precisely the allegations levelled against him. As noted above no notice was issued to the petitioner before issuing the impugned email dated October 13, 2020. Even the respondent has not produced in these proceedings, documents / evidence *prima facie* justifying the allegations, constituting material breach, against the petitioner which form the subject matter of the email dated October 13, 2020.

51. Reliance was also placed on ***Bhagwan Dass Khanna Jewellers (supra)*** and ***Veena Nalin Merchant (supra)*** by the Counsels for the respondent in support of their contentions that the respondent has the power to terminate the petitioner from the partnership in terms of the binding and sacrosanct nature of the partnership deed entered into between the parties. In view of my conclusion above in paragraphs 36, 40 & 41, the said judgments are clearly distinguishable.

STATUS OF EQUITY PARTNERS INDUCTED BY THE PARTIES:

52. The learned Counsels for the petitioner have also without prejudice, faulted the impugned communication dated October 13, 2020 on the ground that the same has not been copied to the alleged two partners said to have been inducted by the respondent. In this

regard, I may state that in fact it is the case of both the parties that they have inducted 23 (by petitioner) and 2 (by the respondent) partners in the firm, while disputing *inter-se* the other party's power to induct partners without their approval. In any case, I find no document has been produced in support of their respective stands i.e., no document evidencing the name, acceptance of such offer by such partners, partnership deed etc. In fact, based on such a stand the petitioner's case is that with acceptance of the withdrawal / retirement of the respondent by the petitioner from the Delhi Corporate Firm, in view of email dated October 12, 2020 and with the induction of 23 partners, the Delhi Corporate Firm continues to exist / survive and had not been dissolved. Similar is the plea of the respondent that even on termination of the petitioner, the Delhi Corporate Firm continues to exist / survive with the alleged two partners inducted by the respondent on October 10, 2020 and had not been dissolved. I have serious doubt on the stand of the parties, for the reason that the induction of partners could have only taken place with the approval of the other partner. It is the case of the parties here, no approval was taken by the opposite party for the induction of respective partners by them. In the absence of any approval, no induction of partner could have been made. So, it follows on acceptance of withdrawal / retirement of the respondent by the petitioner in terms of email dated October 12, 2020 or termination of partnership of the petitioner vide email dated October 13, 2020 by the respondent, the partnership stood dissolved.

53. I may also state that the Counsels for the respondent had relied upon communications / emails dated October 04, 2020 and October

10, 2020 to contend that the respondent had informed the petitioner about his decision to induct two partners in the Delhi Corporate Firm to justify their induction. This plea is also without merit as the induction of the alleged two partners is within the equity of the respondent without management rights. On a reading of Clause 7D, it is clear that induction of partners with management rights have to be necessarily with the concurrence of the petitioner, which has not been obtained as is clear from the email dated October 05, 2020 of the petitioner. A plea has been taken by the Counsels for the petitioner that equity participation would not render the two persons as partners of the firm rather they would be transferees of the respondent's interest in the firm in view Section 29 of the Partnership Act. In other words, it is only a sub-partnership between the respondent and the alleged two partners, who are not the partners of the Delhi Corporate Firm. Section 29 of the Partnership Act reads as under:

"29. Rights of transferee or a partner's interest

> *(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a change on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.*
>
> *(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."*

54. On a reading of Section 29 of the Partnership Act, it is clear that

a transferee has a very limited right under Section 29(1). The main partnership and the sub-partnership for the purpose of law are distinct and different entities. Even where a partner transfers his interest in the firm the transferor does not cease to become a partner nor does the transferee become a partner in the firm. (Ref: ***Sunku Munuswami Chettiar v. Sunku Narasimhalu Chettiar and Ors.; 1958 2 MLJ 233***). In this regard, the Counsels for the petitioner are justified in relying upon the Apex Court judgment in the case of ***CIT v. B. Posetty & Co. (supra).*** The relevant portion of the judgment reads as under:

> *"8. Dealing with sub-partnership and its validity, S. T. Desai on The Law of Partnership in India (6th Edn.) at page 152, states the law, thus:*
>
> > *"Sub-partnership may arise when as a result of an agreement between a partner in a firm and a stranger the latter becomes jointly interested with that partner so far as his share in the firm is concerned. Such mutual interests may amount to a partnership, but it is not a partnership in the main firm, but what is called a sub-partnership. Such an agreement will not have the effect of making the stranger a partner of the main firm. He will have no demand against that firm, nor will he be entitled to ask for accounts of its business so long as it continues to trade. It would hardly be questioned that a sub-partner is not liable to the creditors of the main firm for any of its debts.*
> >
> > *Sub-partnerships have been recognised in India both before and after the present act came into force. In Muralidhar vs. CIT MANU/SC/0116/1966: [1966]62ITR323(SC) the Supreme Court quoted with approval the following statement of the law from Lindley on Partnership:*
> >
> > > *"A sub-partnership is, as it were, a partnership within a partnership; it presupposes the existence of a partnership to which it is itself subordinate. An agreement to*

> *share profits only constitutes partnership between the parties to the agreement. If, therefore, several persons are partners and one of them agrees to share the profits derived by him with a stranger, this agreement does not make the stranger a partner in the original firm. The result of such an agreement is to constitute what is called a sub-partnership, that is to say, it makes the parties to it partners inter se; but it in no way affects the other members of the principal firm."*

In this case, the lessee is Nizamabad Group Sendhi Contractors (main firm). The sub-partnership is a distinct and different firm. It is one recognised by law and it is not a partnership with the main firm. It will not have the effect of making the partners in the sub-partnership, partners of the main firm. In other words, the main firm, the lessees and the sub-partnership are distinct and different. In the light of the above legal position, it cannot be said that either the sub-partnership in the instant case, or any of its partners as a partner, became a partner of the main firm, Nizamabad Group Sendhi Contractors. The inhibition contained in s. 14 of the Abkari act will apply only in a case where the lessee declares any person as its partner. Here, the lessees, M/s Nizamabad Group Sendhi Contractors, had not declared either the sub-partnership or any other person, as its partner. In such circumstances, the inhibition contained in s. 14 of the Abkari act cannot apply. It is true that Sri Posetty and 10 others formed the sub-partnership, "B. Posetty & Co." - for a legitimate business purpose, to provide the requisite finance, on condition of allotment of certain shares to them out of Mr. Posettys share in the main firm. The sub-partnership financed one of its partners to make a capital investment in the main firm. Such an arrangement or agreement between persons who formed a distinct and different firm, is valid in law and to such a situation s. 14 of the Abkari act is not attracted; nor is there any basis to hold that there was any contravention of the provisions of the said Act. Law recognises formation of sub-partnership. The main partnership and the sub-partnership

> *are, for the purpose of law, distinct and different entities. Registration cannot be refused to the sub-partnership on the ground that one of the partners of the main firm had agreed to share the profits received by him from the firm, with a stranger or strangers (members of the sub-partnership) since the agreement does not make the stranger or strangers or the sub-partnership firm, a partner in the original firm and such an arrangement or agreement does not affect either the main firm or its other members, in any way…..''*
>
> ***(emphasis supplied)***

55. The Counsels for the respondent have in fact relied upon the judgment of the Karnataka High Court in the case of ***Mushtaque & Co. v. Commissioner of Income Tax, Mysore, (1972) 84 ITR 561,*** in support of their submission that the respondent has power to introduce partners into the Delhi Corporate Firm. The said judgment nowhere gives a unilateral power to a partner to introduce a partner to the partnership firm. In fact, by referring to Sections 30 and 31 of the Partnership Act, it is held in the said judgment that no person shall be admitted to the partnership of an existing firm without the consent of the existing partners. The judgment is of no help to the respondent.

56. In view of above conclusion, the issue of non-joinder of the partners alleged to have been inducted by the respondent is liable to be rejected. Further, the agreement in terms of the Deed which incorporates the arbitration clause is between the parties herein and not with the alleged inducted partners.

WHETHER GRANT OF RELIEF AS PER PRAYED FOR IS BARRED IN VIEW OF THE PROVISIONS OF SRA:

57. A submission was made by the Counsels for the respondent that the Deed being terminable in nature, the same cannot be specifically enforced under Section 14(d) of the SRA in view of Clauses 7A and 8

read with Clauses 5, 9 and 10 of the Deed. Reliance was also placed on Sections 14(b), 16(b) and 41(e) and (i) of SRA for an argument that the Deed cannot be specifically enforced/injunction cannot be granted. The relevant portion of the said provisions of the SRA are reproduced as under:

> *"**14. Contracts not specifically enforceable**.- The following contracts cannot be specifically enforced, namely:-*
> *(a) ……;*
> *(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;*
> *(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and*
> *(d) a contract which is in its nature determinable."*
>
> *xxx xxx xxx*
> ***16. Personal bars to relief.-***
> *(a)……*
> *(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performance, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*
> *(c) ……"*
>
> *xxx xxx xxx*
>
> ***41. Injunction when refused**.- An injunction cannot be granted-*
> *(a)……*
> *(b)……*
> *(c)……*
> *(d)…….*
> *(e) to prevent the breach of a contract the performance of which would not be specifically enforced;*
> *(f)……*
> *(g)……*

(h)……
(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
(j)……"

58. To consider this submission based on Section 14(d) of the SRA this Court has to consider the effect of Clauses 7A and 8 read with Clauses 5, 9 and 10 of the Deed, which I have already been reproduced above. A contract is said to be determinable if their exists in the contract a clause for termination at the option of one of the partners.

59. I have already in paragraphs 33 and 34 above held that Clause 7A of the Deed does not contemplate termination of the petitioner from partnership by the respondent. So, it is not a provision relating to determination of the Deed. Even, Clause 8 prescribes termination of the Deed / dissolution by the respondent, which Clause though invoked, has not resulted in the termination of the Deed/dissolution. Rather, it is the case of the respondent that the Delhi Corporate Firm continues to be exist / survive. Moreover, the stipulation in Clause 8 that the partnership being not 'at will' also fortifies my conclusion that the partnership is not determinable. Further, Clauses 5, 9 and 10 which prescribes leaving amount; the consequences of termination / retirement / death; and Non-Compete and Buy-out by third parties respectively are not indicative of the Deed being determinable.

60. Therefore, Section 14(d) and for that matter Section 41(e) of the SRA have no applicability. It is also settled position of law that a contract if not determinable, the Court is within its power to enforce the same (Ref: ***Intercontinental Hotels Group-India Private Limited***

and Ors. v. Shiva Satya Hotels Private Limited, 2014 GLH (1) 357).

61. Having said that I may state, the Counsels for the respondent may be justified in arguing as a general rule that where a contract is determinable, the Court will not order the specific performance of a partnership. But there are exceptions to this general rule, which according to ***Lindley & Banks on Partnership, 20th Edition at 23-137, page 841***, states as under:

> *"Where one or more partners are intent on ignoring the terms of the partnership agreement or otherwise acting in breach of the implied duty of good faith which they owe to their co-partners, the court will, in an appropriate case, intervene either by granting an injunction against the miscreant partner(s) or by appointing a receiver or a receiver and manager. These two remedies are very different in their effect, not least because the appointment of a receiver will affect all the partners, both claimant(s) and defendant(s) alike. Lord Lindley summarised the position as follows:*
>
> > *"These two modes of interference require to be considered separately; for they are not had recourse to indiscriminately. The appointment of a receiver, it is true, always operates as an injunction, for the Court will not suffer its officer to be interfered with by anyone, but it by no means follows that because the Court will not take the affairs of a partner-ship into its own hands, it will not restrain some one or more of the partners from doing what may be complained of."*

Similarly, at ***23-140, page 842***, it is stated as under:

> *"Exclusion: Where a partner, who had recovered from a temporary mental disorder, was excluded from the management of the partnership affairs, he was granted an injunction restraining the other partners from seeking to prevent him transacting the business of the partnership. In another case, an excluded partner was granted an injunction restraining the defendant from applying any of the moneys and effects of the*

> *partnership otherwise than in the ordinary course of business, and from obstructing or interfering with the claimant in the exercise or enjoyment of his rights under the partnership agreement. A similar attitude will be adopted where any partner seeks to exclude his co-partners from possession of any partnership chattels or land, even if he is the sole trustee thereof. The position will be no different after the firm has been dissolved. However, the balance of convenience may, in some cases, weigh against the court's interference."*

And at ***23-145, page 844***, it is stated as under:

> *"On the same basis, it may be that injunctive relief could be obtained against a partner who seeks to obstruct a particular course of action which will benefit the partnership at no detriment to himself, if his actions involve a deliberate breach of the duty of good faith, e.g. where he is attempting to secure an alteration to the partnership agreement in his own favour as the price of his co-operation. However, the current editor considers that such an order would only be entertained by the court in exceptional circumstances."*

62. In view of my conclusion above and the fact that the termination of the Deed has not been effected coupled with the action of the respondent not being a bona fide action/ in good faith, the exception to the general rule that a contract cannot be specifically enforced shall be applicable and the plea of the Counsels for the respondent is rejected.

63. The learned Counsels for the respondent have relied upon the judgment in the case of ***Rajasthan Brewery Ltd. (supra),*** wherein the Court in the facts of the case held that even in the absence of specific clause authorising or enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement being a private commercial transaction, the same could be terminated even without assigning any reason by

serving a reasonable notice. The said judgment is clearly distinguishable on facts inasmuch as the case in hand is not a private commercial transaction but a partnership, wherein the relation between the partners is fiduciary in character where the partners act for the common benefit of all in all transactions relating to the firm's business and not indulging in taking advantage of one another by misrepresentation, concealment of any sort. Further, there is nothing in the Deed which remotely indicate termination of a partner except termination of the Deed /dissolution. That apart, the termination has been effected without even a notice as contemplated under Clause 8 for eliciting a reply from the petitioner on the grounds on which the termination has been effected.

64. Similarly, the reliance placed by the Counsels for the respondent on the judgment of this Court in the case of ***Turnaround Logistics Private Ltd. (supra)*** is distinguishable in as much as the ground on which injunction against termination sought was that the plaintiff therein had furnished a bank guarantee. On the other hand, the defendant therein, justified the termination on the ground that the plaintiff was not an IATA approved company. It was on these facts that the Court held the termination cannot be unreasonable, bad in law or illegal. Even the Division Bench judgment of this Court in the case of ***Indian Railway Catering and Tourism Corporation (supra)*** has no applicability to the facts of this case inasmuch as the contract between the parties therein was a joint-venture agreement, which is purely a commercial contract, whereby the parties came together for operating a luxury train. An argument by the respondents therein that the train is akin to a partnership property was negated by the Court in the facts of

that case. Further, the reliance placed on the judgment of a Coordinate Bench of this Court in ***M/s Bharat Catering Corporation (supra)*** is also misplaced in as much as there is a specific clause in the contract which stipulated that the contract could be terminated by the respondent for various reasons provided therein unlike the case in hand.

65. Insofar as the submission of learned Counsels for the respondent that this Court in view of Section 14(b) of the SRA also would not like to give direction for specific performance of the contract as grant of such direction would involve a performance of a continuous duty which the Court cannot supervise by relying the judgment of this Court in ***Heijan Solidkey Petroleum (supra).*** This submission of the counsels is also not appealing in the facts of this case as noted in detail above. In fact, what has been said in ***Lindley & Banks on Partnership, 20th Edition at 23-137, page 841*** and ***at 23-145, page 844*** as reproduced in paragraph 61 above are applicable on all fours to reject this argument. Additionally, as held by Bombay High Court in ***Ganpat v. Annaji, 1898 (23) ILR 144 Bom.,*** where a partner has been wrongfully terminated from the partnership the Court can grant an injunction restraining the other partners from preventing him from taking part in the business of the firm.

66. Even the plea of the Counsels for the respondent by relying on Section 14(c) of SRA that when both the parties have made it clear that they cannot work with each other as both of them have contended that continuance of other party is not in the best interest of the firm, the Court should not make the parties work with each other though looks appealing on a first blush, the acceptance of such a plea would

have the effect sustaining the impugned email dated October 13, 2020 terminating the petitioner from the partnership which *prima facie* in the facts is impermissible. And as such, the petition has to be decided in accordance with law. It is my conclusion, *prima facie*, the termination of the partnership of the petitioner being illegal and in violation of the Deed, without there being any power on the respondent to take such an action, the legal consequence thereof that the partner needs to be reinstated must follow. Even the Counsels for the petitioner are justified in relying upon ***Pollock & Mulla on the Indian Partnership Act, 8th Edn., at page 176***, wherein the following has been stated:-

> *"An irregular expulsion is wholly without effect; it is like a conviction reached without jurisdiction. The partner whom the majority purports to expel does not cease to be a partner, and his proper remedy is to claim reinstatement in his right, not to sue for damages which, since he has not ceased to be a partner, he cannot have sustained."*

67. The Counsels for the petitioner are also right in relying upon the judgment of Bombay High Court in ***Champsey Bhimji & Co. (supra),*** wherein in paragrapgh 2 the Court has held as under:

> *"2. Having regard to the very clear wording of Order 39, Rule 2, and to the fact that this Court has always exercised the power of remedying an injury or wrong by a mandatory injunction on an interlocutory application, I have no doubt whatever that this Court has power to make a mandatory order on an interlocutory application. If the Court had no such power it would be in the power of a party to cause insufferable inconvenience and grave injury to another during the whole time that would elapse between the commission of the wrongful act and the hearing of the suit filed to remedy the wrong and redress the injury."*

68. In support of their submission the learned Counsels for the

respondent have relied upon the judgments in the case of ***Marriott International Inc. (supra)*** and ***Ramchandra Lalbhai (supra)*** are not appliable in view of my conclusion drawn above. Moreover, the facts in these judgments reveal that the contracts therein were commercial contracts unlike the case in hand where this Court is concerned with a partnership deed.

69. Even the submission of the Counsels for the respondent based on Section 16(b) of the SRA to contend that specific performance will not be granted in favour of a person who violates an essential term or acts in variance of the contract is not appealing. This submission is primarily premised on the ground that the petitioner declaring the withdrawal/retirement of the respondent went ahead distributing the equity of the respondent to 23 other persons. Admittedly, there is no challenge of the respondent to the email dated October 12, 2020. In the absence of any challenge to the same, it is doubtful whether the respondent can say that the act of the petitioner amounts to breaching the terms of the Deed. In any case, there are *inter-se* allegations made by the parties which necessarily have to be adjudicated finally in the prospective arbitration proceedings. The judgment relied upon the Counsel for the respondent in support for their contention in ***Rajeev Mehra (supra)*** is not a decision under Section 9 of the Act of 1996 nor it arises from a partnership agreement, rather it is on an application under Order 12 Rule 6 in a suit for specific performance of an agreement to sell wherein despite admissions of the opposite party but on an observation that the plaintiff therein acted at variance with the agreement has denied the relief of specific performance at that stage and had relegated the parties to trial. Reliance was placed by the

Counsels for the respondent on ***J.L Gugnani (HUF) (supra)*** and Chancery Division judgment in ***Carmichael v. Evans (1904) 1 Ch. 486***. Insofar as the judgment in the case of ***J.L Gugnani (HUF) (supra)*** on which reliance has been placed by the Counsels for the respondent is concerned, the same is on similar lines to ***Rajeev Mehra (supra),*** wherein the division bench of this Court also refused to grant specific performance of the contract as the conduct of one of the parties was contrary to the contract therein. Rightly so, for a claim for specific performance, a party has to show that it was ready and willing to perform the contract and has not breached the same. It is in this perspective that the judgments on which reliance has been placed needs to read and understood. In ***Carmichael v. Evans (supra)***, the Court refused to grant injunction against expulsion of one the partners, in the interest of the firm, as the partner seeking injunction therein was convicted of fraud by the Magistrate. The judgment is distinguishable.

70. A related argument was taken by the Counsels for respondent that under Section 41(i) of the SRA, the conduct of the petitioner does not entitle him the reliefs as sought for by relying upon ***Gujarat Bottling Co. Ltd. (supra).*** As stated above, there are allegations and counter-allegations by the parties on the breach of the terms of the Deed. The said allegations have to be conclusively proved on finding of facts based on cogent evidence in the prospective arbitration proceedings. Moreover, I have concluded, that the termination of the petitioner from the partnership by the respondent, of which injunction is sought, *prima facie* is in violation of the Deed, such a plea is unsustainable. Hence, the reliance placed on the judgment in ***Gujarat Bottling Co. Ltd. (supra)*** is misplaced in the facts of this case, as the

contract in hand is a partnership contract and certain rights flow in a favour of a partner under the Partnership Act and such rights may not be adequately protected / compensated if I am to agree with the plea of the Counsels for the respondent.

71. The Counsels for the respondent have also relied upon the judgments in ***Samay Singh (supra), Nandan Pictures (supra)*** and ***Online Hotel Reservations Pvt. Ltd. v. Classic Citi Investment Pvt. Ltd., 2009 (158) DLT 739;*** to contend that relief in the nature of final relief should not be granted; to buttress the submission that injunction should not be granted to create new state of affairs; and a direction restoring the status of the parties after termination under Section 9 of the Act of 1996 should not be granted, respectively. The said judgments are distinguishable on facts when the partnership consist of two partners out of which one partner has been terminated by the other and a serious question arises on the status of such a partnership.

RELIEF:

72. In view of my above discussion, *prima facie* the termination of the petitioner from partnership by the respondent in terms of email dated October 13, 2020 being in violation of the Deed and the Partnership Act, keeping in view the mandate of Section 12 of the Partnership Act, where a partner has the right to take part in the conduct of the business and also keeping away the petitioner from the partnership business shall be to his prejudice, if he finally succeeds in the prospective arbitration proceedings, I direct that there shall be a stay of the operation of the email dated October 13, 2020 issued by the respondent terminating the petitioner from the partnership till the conclusion of the prospective arbitration proceedings.

73. It is made clear that the aforesaid is a tentative / *prima facie* view.

74. The petition is disposed of. No costs.

V. KAMESWAR RAO, J

JANUARY 18, 2021*/aky/jro*