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

+ **OMP (COMM) 68/2017**

Date of decision: 21st November, 2017

NEW BANSAL GLASS WORKS Petitioner
Through: Mr. Nitin Bhardwaj, Adv.

versus

GAIL GAS LTD. & ORS. Respondents
Through: Mr.N.L.Ganapathi, Mr.Shaleen
Srivastava, Advs. For R-1

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) has been filed by the petitioner challenging the award dated 13th February, 2015 passed by the Sole Arbitrator dismissing the claims of the petitioner on the ground that the petitioner, being a partnership firm, is not registered and consequently in terms of Section 69 (3) of the Partnership Act, the claim petition is not maintainable.

2. Counsel for the petitioner submits that the firm was in fact registered with the Registration of Firm, Uttar Pradesh,

however, due to inadvertence, the said document was not placed on record before the Sole Arbitrator.

3. The counsel for the respondent submits that under Section 34 of the Act, the Arbitral Award cannot be challenged by relying upon a document which was not placed before the arbitrator and, therefore, no reliance can now be placed on the purported Registration Certificate that has been produced by the petitioner.

4. In my view, the above controversy would have no significance inasmuch as the Supreme Court in ***M/s Umesh Goel vs. Himachal Pradesh Co-operative Group Housing Society Ltd.*** AIR 2016 SC 311 6, has held that Arbitral proceedings will not come under the expression ‘other proceedings’ of Section 69(3) of the Partnership Act and, therefore, the ban imposed under the said Section 69 can have no application to Arbitral proceedings as well as the Arbitration Award. I may only quote from the judgment as under:-

“15) Keeping the above outcome of the legal position that can be derived from a reading of sub-section (1), (2) and (3) of Section 69 in mind we can draw further conclusions by making specific reference to sub-clauses (a) and (b) of sub-section (3) as well as the exceptions set out in sub-clauses (a) and (b) of sub-section (4) as well. When under sub-section (3) which also relates to a ban concerning ‘other proceedings’, the law makers wanted to specifically exclude from such ban such of those proceedings which also likely to arise in a suit, but yet

the imposition of ban of an unregistered firm need not be imposed. Keeping the said intent of the law makers in mind, when we read sub-clauses (a) and (b) of sub-section (3), it can be understood that even though such other proceedings may be for the enforcement of any right to sue but yet if it is for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realize the property of a dissolved firm, the same can be worked out by way of a suit in a Court or by way of other proceedings in that suit and the same will not be affected by the ban imposed under sub-section (3). Similarly, any steps initiated at the instance of an official assignee, a receiver or Court under the Presidency-Towns Insolvency Act of 1909 (3 of 1909) or the Provincial Insolvency Act of 1920 (5 of 1920) to realize the property of an insolvent partner in a pending suit of a Court also stand excluded from the ban imposed under sub-section (3). The specific exclusions contained in clauses (a) and (b) of sub-section (3) therefore makes the position clear to the effect that even though such proceedings may fall under the expression “other proceedings” and may be intrinsically connected with a suit in a Court, yet the ban would not operate against such proceedings.

16) When we read sub-section (4), the ban imposed under sub-section (1), (2) and (3) will have no application to any of those proceedings set out in sub-clauses (a) and (b) of the said sub-section (4). A specific reference to sub-clause (b) of sub-section (4) disclose that in the last part of the said sub-clause it is specifically provided that other proceedings incidental to or arising from any suit or claim of set off not exceeding Rs.100 in value under those specific statute referred to in the said sub-clause can also be launched without any ban being

operated as provided under sub-section (1), (2) and (3). The said part of sub-clause (b) of sub-section (4) thus gives a vivid picture as to the position that the 'other proceeding' specified in the said sub-section can only relate to a pending suit in a Court and not to any other different proceeding which can be categorized as 'other proceedings'.

17) We are thus able to arrive at a definite conclusion as to the scope and ambit of Section 69 in particular about Section 69(3). Having thus analyzed the provision in such minute details and its implication, we can now apply the said provision to the case on hand and find out whether Section 69(3) is attracted to the Arbitral Proceedings and the ultimate award passed therein by construing the same as falling under the expression "other proceedings."

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20) Based on the close analysis of Section 69 in its different parts, we are able to discern and hold that in order to attract the said Section, first and foremost the pending proceeding must be a suit instituted in a Court and in that suit a claim of set off or other proceedings will also be barred by virtue of the provision set out in sub-sections (1) and (2) of Section 69 as specifically stipulated in sub-section (3) of the said Section. Having regard to the manner in which the expressions are couched in sub-section(3), a claim of set off or other proceedings cannot have independent existence. In other words, the foundation for the application of the said sub-section should be the initiation of a suit in which a claim of set off or other proceedings which intrinsically connected with the suit arise and not otherwise.

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36) Though the learned senior counsel for the appellant and the respondent referred to certain other decisions in support of their respective submissions, as we are fortified by our conclusion, based on the interpretation of Section 69 of the Partnership Act vis-a-vis the 1996 Act and the 1940 Act as well as supported by the decision in Jagdish Chander (AIR 1964 SC 1882) (supra) and Kamal Pushp Enterprises (AIR 2000 SC 2676) (supra), we do not find any necessity to refer to those decisions in detail. Having regard to our conclusion that Arbitral Proceedings will not come under the expression “other proceedings” of Section 69(3) of the Partnership Act, the ban imposed under the said Section 69 can have no application to Arbitral proceedings as well as the Arbitration Award.”

5. In view of the above decision, the impugned arbitral award cannot be sustained.
6. At the request of the parties, the arbitral proceedings before the Sole Arbitrator are revived who shall deal with the merits of the claim in accordance with law.
7. Parties would accordingly approach the Arbitrator to take up the proceedings.
8. The petition is allowed in the above terms.

NAVIN CHAWLA, J

**NOVEMBER 21, 2017
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