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

+ **ARB. A. (COMM.) 10/2017**

SHRI ROOPAK N. KOTHARI & ANR. Petitioner

Through Mr.Anshul Tyagi, Ms.Cauveri Birbal,
Mr.Gurpreet Singh Kahlon and Mr.Arn timer Sanyal,
Advs.

versus

SHRI ANUP N.KOTHARI & ANR. Respondent

Through Ms.Anusuya Salwan, Mr.Abhishek
Pundir, Mr.Ankit Singhal, Ms.Nikita Salwan and
Ms.Renuka Arora, Advts.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **04.05.2017**

IA No.5494/2017 (exemption)

Exemption allowed, subject to all just exceptions.

ARB. A. (COMM.) 10/2017 & IA No.5493/2017 (stay)

1. Present appeal is filed under section 37(2)(a) of the Arbitration and Conciliation Act, 1996 seeking to impugn the order dated 25.3.2017 passed by the learned Arbitrator allowing the application filed by the respondents under section 16 of the Act.
2. The basic controversy pertains to the partnership firm by the name of

Kothari & Associates which was formed in 1965. The case of the petitioners is that the partnership firm and the company by the name of Kothari Associates Private Limited is a single economic unit. The partnership firm has an arbitration clause. As disputes arose between the parties the respondents issued a notice invoking the arbitration clause. Proceedings took place before this court under section 9 of the Act and under section 11 of the Act. By a common order dated 30.3.2016 passed in Arb.P.660/2015 this court was pleased to refer the dispute to the arbitral tribunal comprising Hon'ble Mr. Justice Devinder Gupta to act as a sole Arbitrator with a direction that both the section 9 petitions filed by the respondents will be treated as petition under section 17 of the Act.

3. The respondents thereafter filed an application under section 16 of the Act before the learned Arbitrator. It was the case of the respondents in the application that as per order of this court dated 30.3.2016 this court had made a reference to the Tribunal to adjudicate upon the disputes arising out of the agreement in question between the parties as mentioned in the petition. It was further stated that contrary to this order, the petitioners have in the counter-claim and statement of claim raised disputes with respect to the Private Limited Company, namely, Kothari Associates Private Limited and that the said disputes are beyond the scope and jurisdiction of the Arbitral Tribunal.

4. By the impugned order the learned Arbitrator has held that the partnership deed has an arbitration clause but neither the Memorandum of Association nor the Article of Association of the company has an arbitration clause. It further noted that while invoking the arbitration clause both the parties in their respective notices sought disputes and differences arising out

of the partnership firm to be adjudicated. Noting that the Arbitrator gets its jurisdiction from the specific terms of the arbitration clause coupled with the orders passed by this court, the learned arbitrator accepted the submissions made on behalf of the respondents and allowed the application of the respondents. The learned Arbitrator further directed that the statement of defence of the petitioners be taken off the record with a direction to the petitioners to file a fresh statement of defence and a counter-claim, if any, as per directions of the court dated 30.3.2016, confining the same only. the disputes and difference between the parties arising out of affairs of the partnership firm.

5. I have heard learned counsel for the parties. The learned counsel for the petitioners has vehemently submitted that as per clause 13 of the arbitration clause as envisaged in the partnership deed the entire dispute between the parties of the “Independent Economic Unit” were to be adjudicated upon. After some arguments he submits that the petitioners be permitted to at least make averments in the defence statement/counter-claim to show the conduct of the respondents. In his context it is urged that reference would be required to be made with respect to some of the facts pertaining to the company. He submits that in the defence statement /counter-claim no amount would be sought based on the events that have taken place in the company or in matters pertaining to the company.

6. Learned counsel for the respondents submits that it is implicit in the order of the learned Arbitrator that the petitioner can make submissions to give the complete picture but cannot make claim/counter-claim based on the alleged events or issues that have taken place in the company or pertain to the company.

7. The above submission of learned counsel for the respondent is taken on record. Accordingly, the present petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

8. Learned counsel for the petitioner submits that he would file the statement of claim/counter-claim within 10 days from today.

JAYANT NATH, J

MAY 04, 2017

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