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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.8 OF 2018

Yogendra N. Thakkar	)	
An individual, Indian inhabitant,	)	
residing at 133/134, Chandramani,	)	
7 th Floor, Telang X Road No.3,	)	
Matunga (C.R.), Mumbai – 400 019	)	...Petitioner

....Versus....

1). Vinay Balse,	)	
an individual, Indian inhabitant,	)	
having address at M/s.N.M. Ramji	)	
& Co. Chartered Accountants,	)	
Universal Insurance Building,	)	
6 th Floor, Sir P.M. Road, Fort,	)	
Mumbai – 400 001.	)	
	)	
2). S.N. Shivakumar	)	
an individual, Indian inhabitant,	)	
having address at M/s.N.M. Ramji	)	
& Co. Chartered Accountants,	)	
Universal Insurance Building,	)	
6 th Floor, Sir P.M. Road, Fort,	)	
Mumbai – 400 001.	)	...Respondents

WITH
NOTICE OF MOTION NO.43 OF 2018
IN
ARBITRATION PETITION NO.8 OF 2018

Yogendra N. Thakkar	)	
An individual, Indian inhabitant,	)	
residing at 133/134, Chandramani,	)	
7 th Floor, Telang X Road No.3,	)	
Matunga (C.R.), Mumbai – 400 019	)	...Applicant Ori.Petitioner

IN THE MATTER BETWEEN :

Yogendra N. Thakkar)
An individual, Indian inhabitant,)
residing at 133/134, Chandramani,)
7th Floor, Telang X Road No.3,)
Matunga (C.R.), Mumbai – 400 019) ...Petitioner

....Versus....

1). Vinay Balse,)
an individual, Indian inhabitant,)
having address at M/s.N.M. Ramji)
& Co. Chartered Accountants,)
Universal Insurance Building,)
6th Floor, Sir P.M. Road, Fort,)
Mumbai – 400 001.)
2). S.N. Shivakumar)
an individual, Indian inhabitant,)
having address at M/s.N.M. Ramji)
& Co. Chartered Accountants,)
Universal Insurance Building,)
6th Floor, Sir P.M. Road, Fort,)
Mumbai – 400 001.) ...Respondents

Mr.Snehal Shah with Ms.Priyanka Kothari, Mr.Ayaz Bilawala and Ms.Neha Bhatt i/b Bilawala & Co. for the Petitioner.

Mr.Simil Purohit with Mr.Gauraj Shah i/b Kanga & Co. for the Respondents.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 2ND MAY, 2018
PRONOUNCED ON : 13TH JUNE, 2018

JUDGMENT :-

1. Admit. Learned counsel for the respondents waives service. By consent of parties, petition is heard finally.

2. By this arbitration petition filed under section 37 of the Arbitration & Conciliation Act, 1996 (“for short “Arbitration Act”), the petitioner has impugned the order dated 11th October, 2017 passed by the learned sole arbitrator on the application filed by the respondents under section 16 of the Arbitration Act holding that the arbitral tribunal does not have jurisdiction to decide dissolution of partnership firm under section 44(g) of the Indian Partnership Act, 1932 (for short the “Partnership Act”) on just and equitable grounds and further holding that insofar as the decision on the disputes between the parties and dissolution of the partnership firm on the ground that the partnership is “at will” are concerned, the same is within the jurisdiction of the arbitral tribunal. During the course of the argument, learned counsel for the petitioner urged that the petitioner is impugning only part of the order to the extent that the arbitral tribunal does not have jurisdiction to dissolve the partnership firm under section 44(g) of the Partnership Act.

3. A short question that arises for the consideration of this Court in this petition is whether the power to dissolve a partnership firm under section 44(g) of the Partnership Act vests only in the Court and cannot be exercised by the arbitral tribunal or not. Some of the relevant facts for the purpose of deciding this petition are as under :

4. The petitioner herein is the original claimant in the arbitral proceedings, whereas the respondents herein are the original respondents i.e. Mr.Naishad M. Rajji, Vasant N. Rajji, Gangadhara A. Menon and Vijay V. Nerurkar who together constituted the partnership firm in the name and style of M/s.N.M. Rajji & Co. under the Partnership Deed dated 21st February, 1968. There was a change in

the constitution of the said firm several times. The last Deed of Partnership was executed on 24th April, 2000 wherein, the petitioner and the respondents were shown as the partners of the said firm under the terms and conditions more particularly set out in the said Deed of Partnership. Clause 1(b) of the said Deed of Partnership provided that the partnership shall be "at will" and dissolved only with unanimous consent of all the partners. No partners shall have a right to dissolve the partnership.

5. Clause 2 of the Deed of Partnership provided that any partner shall be at liberty to retire from the partnership on giving at least six calendar month's notice in writing to the other partner and on the expiry of such period, the partnership shall continue with the remaining partners on the terms and conditions decided mutually by the remaining partners. Clause 9(a) of the said Deed of Partnership provided that the goodwill of the partnership shall belong exclusively to the firm and no partner shall have right, title or interest whatsoever either on death, retirement or expulsion from the firm or on the dissolution of the firm or on the termination of the agreement for any cause or reason.

6. Clause 9 (b) provided that on the retirement, death or expulsion of a partner, or on dissolution of the firm, no payment is made to the outgoing partner, his widow or estate for goodwill, as it belongs to the firm and not to any individual partner. Clause 12 (a) of the Deed of Partnership provided that any partner may retire on giving such notice as is referred to in clause 2 of the said Deed of Partnership. Clause 12 (b) of the Deed of Partnership provided that every partner shall retire from the firm at the end of the firm's financial year in which he attains the age of 65. Clause 13 of the said Deed of

Partnership provided that the death or retirement of a partner shall not dissolve the partnership as to the other partner.

7. Clause 18 of the said Deed of Partnership recorded an arbitration agreement which reads as under :-

“All dispute and questions in connection with the Partnership of this Deed arising between Partners or their representatives shall be referred to Mr.Arun Jaswantlal of Matubhai Jomietram, Attorneys as sole Arbitrator and in case he is not available or declines to act or resigns, then to a single Arbitrator if the Partners agree upon one otherwise to the Arbitrators to be appointed by each party to the difference in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof”.

8. On 1st October, 2003, the respondents, Mr.Jayesh Gokhale and Mr.Sujal Shah issued a notice and sought to suspend the petitioner as a partner from the said suit firm. The petitioner invoked the arbitration agreement and challenged the said notice dated 1st October, 2003. The petitioner thereafter filed an arbitration petition under section 9 of the Arbitration Act bearing Arbitration Petition No.343 of 2004 in this Court. The parties filed the consent terms in the said arbitration petition on 8th September, 2005. The said arbitration petition was accordingly disposed of in terms of the consent terms. In the said arbitral proceedings, the learned arbitrator, a former Judge of this Court rendered an award on 25th June, 2007 holding that the said Deed of Partnership was invalid in view of the fact that number of other partners had already retired. Learned arbitrator in the said award dated 25th June, 2007 directed the partners to execute a fresh Deed of Partnership on or before 31st

July, 2007. None of the parties challenged the said award dated 25th June, 2007.

9. Learned arbitrator in the said award held that the business of the firm was being carried on in contravention of the mandate of the Deed of Partnership and thus only solution was the dissolution of the partnership in accordance with law. None of the partners entered into any new Deed of Partnership as directed by the learned arbitrator in the said award dated 25th June, 2007. The petitioner as well as the respondents continued the said firm under the orders and directions of the Court and by conduct of parties. Several litigations came to be filed by the parties *inter-se* before various forums relating to the said suit partnership firm.

10. The petitioner through his advocate's notice dated 7th July, 2016 issued a notice for dissolution of the suit firm to the respondents. The respondents replied to the said notice dated 7th July, 2016 through their advocates and contended that the petitioner had no right to unilaterally dissolve the suit firm. The petitioner therefore, filed Arbitration Application No.286 of 2016 under section 11 of the Arbitration Act before this Court. By an order dated 8th May, 2017, this Court appointed Mr.Ankit Lohia, a counsel of this Court as a sole arbitrator. It was made clear in the said order that all the contentions including as to the jurisdiction are expressly kept open. Pursuant to the liberty granted by the learned arbitrator, the petitioner herein filed a statement of claim on 29th May, 2017 *inter-alia* praying for a declaration that the suit firm stands dissolved from the date of the notice dated 7th July, 2016 and/or from the date of filing of the said statement of claim or such other date as the learned arbitrator may deem fit and proper and for various other reliefs.

11. On 13th September, 2017, the respondents filed a written statement to the statement of claim filed by the petitioner and denied the averments and the submissions made by the petitioner. The respondents also denied the power to dissolve the partnership firm on the ground that it was just and equitable to do so lies only with the Court and the learned arbitrator does not have power to pass an order of dissolution of the suit firm on the ground that it is just and equitable to do so.

12. On 7th July, 2017, the respondents herein filed an application under section 16 of the Arbitration Act before the learned arbitrator inter-alia praying that the learned arbitrator be pleased to hold that he has no jurisdiction or authority to entertain the claims made by the petitioner and shall decline to grant the reliefs prayed for by the petitioner in his statement of claim. The said application was opposed by the petitioner by filing a reply dated 14th July, 2017. The petitioner denied that the learned arbitrator did not have jurisdiction to dissolve the partnership firm on any grounds whatsoever. The respondents filed a rejoinder to the said affidavit in reply on 27th July, 2017 and reiterated what was urged in the application filed under section 16 of the Arbitration Act.

13. On 11th October, 2017, learned arbitrator passed an order on the said application filed under section 16 of the Arbitration Act by the respondents holding that insofar as the decision on the disputes between the parties and the dissolution of the partnership firm on the ground that the partnership is “at will” are concerned, the same is within the jurisdiction of the learned arbitrator. Learned arbitrator however, allowed the said application filed by the respondents under

section 16 of the Arbitration Act partly to the extent that the learned arbitrator did not have jurisdiction to decide the dissolution of the partnership firm under section 44(g) of the Partnership Act on just and equitable grounds. The petitioner has impugned part of the said order dated 11th October, 2017 holding that he did not have jurisdiction to decide dissolution of partnership firm under section 44(g) of the Partnership Act on just and equitable grounds.

14. Mr.Snehal Shah, learned counsel appearing for the petitioner invited my attention to various provisions of the Deed of Partnership dated 24th April, 2000 and would submit that the arbitration clause agreed by and between the parties is very wide and the learned arbitrator has powers to decide all the disputes and questions in connection with the Deed of Partnership arising between the partners or their representatives and in accordance with the provisions of the Arbitration Act or any statutory modification thereof. It is submitted that the finding of the learned arbitrator that he did not have jurisdiction to dissolve the partnership on just and equitable grounds under section 44(g) of the Partnership Act is *ex-facie* contrary to section 44 of the Partnership Act and contrary to the arbitration agreement. He submits that all the disputes and questions in connection with the Deed of Partnership between the partners or their representatives can be decided by the learned arbitrator. Such a wide arbitration clause would include the powers of the learned arbitrator to dissolve the partnership firm under section 44(g) of the Partnership Act.

15. It is submitted that the impugned order is contrary to the principles of law laid down by the Supreme Court in case of **V.H. Patel & Co. & Ors. vs. Hirubhai Himabhai Patel (2000) 4 SCC 368**

and in particular paragraphs 2, 4, 9 to 12. He submits that the learned arbitrator has misconstrued the principles of law laid down by the Supreme Court in the said judgment and also the judgment of the Madras High Court in case of **Hindustan Life Care represented by its partner vs. N. Ramesh s/o Narayanaswamy.**

16. It is submitted by the learned counsel that there is no legal bar or impediment against an arbitrator provided in any provisions of law including under section 44(g) of the Partnership Act for the dissolution of the partnership firm on just and equitable grounds. The dissolution can be of the partnership firm and such dissolution is arbitrable subject to only two exceptions i.e. (i) if action is action in rem or (ii) if the same is expressly excluded or not arbitrable. The dissolution of the partnership firm on the just and equitable grounds and under section 44(g) of the Partnership Act is a dispute in personam and not in rem and is thus arbitrable and can be entertained by an arbitrable tribunal and more particularly in view of very wide arbitration clause. He placed reliance on section 39 and 43 of the Partnership Act and would submit that a partner is not required to file a proceedings in this Court in respect of the situation arising therefrom. A suit may be filed for the purpose of declaration that the dissolution has taken place or for declaration that situations described in those provisions had taken place resulting in dissolution of the partnership firm.

17. It is submitted by the learned counsel that the respondents have created a situation as set out in the correspondence exchanged between the parties and also in the statement of claim on the basis of which the petitioner become entitled to seek dissolution not only on various other grounds but also on the ground that it was just and

equitable to dissolve the suit partnership firm. He submits that the petitioner cannot be directed to file two separate proceedings both *inter-alia* praying for dissolution of the firm i.e. arbitration proceedings under clause 6(i) of the Partnership Deed and another i.e. suit on the just and equitable grounds. Both these proceedings *inter-alia* praying for dissolution of the suit partnership firm may culminate into two separate and inconsistent findings and the orders. He submits that it is not the case of the respondents that dissolution on the ground of just and equitable would be against the public policy or would be an action in rem. If a Court can decide the prayer for dissolution of the firm on just and equitable grounds, the arbitral tribunal also can decide and dissolve the partnership on the just and equitable grounds.

18. Learned counsel for the petitioner placed reliance also on the following judgments :-

a). The judgment of the Supreme Court in case of **Booz Allen & Hamilton INC. vs. SBI Home Finance Limited & Ors., (2011) 5 SCC 532** and in particular paragraphs 35 to 39.

b). The judgment of the Supreme Court in case of **A. Ayyasamy vs. A. Paramasivam & Ors., (2016) 10 SCC 386** and in particular paragraphs 35 to 37,

c). The judgment of the Delhi High Court in case of **HDFC Bank Ltd. vs. Satpal Singh Bakshi, 2013(134) DRJ 566(FB)** and in particular paragraphs 12 to 14,

d). The judgment of the Supreme Court in the case of **M.D.**

Frozen Foods Exports Pvt. Ltd. & Ors. vs. Hero Fincorp Ltd., 2017 SCC OnLine SC 1211 and in particular paragraphs 30, 31 and 34,

e). The judgment of the Delhi High Court in case of **J.B. Dadachanji & Ors. vs. Ravinder Narain & Anr., 2002 (65) DRJ 770** and in particular paragraphs 9, 12, 24 and 25,

f). The judgment of the Calcutta High Court in case of **Mahendra Kumar Poddar vs. Bansal Builders & Ors., AIR 2001 Cal.58** and in particular paragraphs 7, 10, 21, 24, 28 to 30),

g). The judgment of the Rajasthan High Court in case of **Jagdish Chandra & Anr. vs. Hari Narain & Anr., 2010(4) Arb.LR 399 (Rajasthan)** and in particular paragraphs 1, 3, 7, 22 and 24,

h). The judgment of the Punjab & Haryana High Court in case of **Ashok Kumar Malhotra & Ors. vs. Kasturi Lal Malhotra, 2012 SCC OnLine P & H, 2002** and in particular paragraphs 4 and 46 and

i). The judgment of the Privy Council in case of **Rehmatunnisa Begum & Ors. vs. Price & Ors., AIR 1917 Privy Council, 116** (relevant pages on pages 117 and 118).

19. Learned counsel placed reliance on paragraphs 28, 29, 43, 44, 45, 47 and 68 of the judgment of the Madras High Court which was strongly relied upon by the learned arbitrator in the impugned award and also relied upon by the learned counsel for the respondents. It is submitted that even the said judgment of the Madras High Court would indicate that the powers of the arbitrator to

dissolve the partnership firm on just and equitable grounds under section 44(g) of the Partnership Act are not taken away. He however, distinguished the other paragraphs of the said judgment on the ground that the arbitration clause considered by the Madras High Court in the said judgment was very narrow and not wide as in this case. It is submitted that the Supreme Court as well as other Courts have reiterated the views expressed by the Supreme Court in case of **Booz Allen & Hamilton INC** (supra). He strongly placed reliance on the judgment of the Calcutta High Court in case of **Mahendra Kumar Poddar** (supra) and would submit that after adverting to various judgments of the Supreme Court, the Calcutta High Court has categorically held that declaration of the dissolution of the firm can also be decided by the learned arbitrator.

20. Mr. Purohit, learned counsel appearing for the respondents on the other hand invited my attention to various provisions of the Partnership Deed entered into between the parties and would submit that the mode and manner of dissolution are specifically agreed by and between the parties in the said Partnership Deed. Learned arbitrator derives his powers under the said Partnership Deed and is creature of contract. Learned arbitrator cannot decide beyond the scope of the contract entered into between the parties. The Partnership Act provides for two means of dissolution i.e. (i) by an agreement of the parties and (ii) if there is no agreement between the parties then under section 44 of the Indian Partnership Act, 1932. Since the parties in this case have agreed to dissolve the firm in a particular manner, section 44 or at least section 44(g) of the Partnership Act, would not be attracted to the facts of this case.

21. It is submitted that the learned arbitrator has inherent

powers to dissolve a partnership firm on just and equitable grounds under section 44 which powers can be exercised only by the Court. The said provision makes a distinction between the powers of the arbitral tribunal and the Court. Section 44 of the Partnership Act does not refer to a contract / agreement between the parties for dissolution of the partnership firm. The Court has inherent powers under section 44(g) of the Partnership Act to dissolve the partnership firm on just and equitable grounds which powers cannot be exercised by an arbitral tribunal. Reliance is placed on section 69 of the Partnership Act in support of the submission that the said provision does not create any bar in initiating the arbitral proceedings but bars the suit for want of registration of the partnership firm.

22. Learned counsel for the respondents placed reliance on the following judgments :-

a). The judgment of the Supreme Court in case of **Paramjeet Singh Patheja vs. ICDS Ltd., (2006) 13 SCC 322** (paragraphs 18 to 21, 29 and 34 to 36,

b). The judgment of the Supreme Court in case of **V.H. Patel & Co. & Ors. vs. Hirubhai Himabhai Patel & Ors., (2000) 4 SCC 368** (paragraphs 2, 4 and 9 to 12),

c). The judgment of the Madras High Court in case of **Hindustan Life Care rep. By its Partner, Gopinath N. Goswami vs. N. Ramesh K. Narayanaswamy** in O.P. No.451 of 2008 and A.O. Nos.786, 769 and 770 of 2008 (paragraphs 28, 29, 43, 44, 45, 47 and 68),

d). The judgment of the Madras High Court in case of **N.C. Padmanabhan & Ors. vs. S. Srinivasan, 1965, Indian Law Reports, Madras, 438** (relevant paragraphs on pages 441 and 442),

e). The judgment of the Andhra Pradesh High Court in case of **N. Satyanarayana Murthy & Ors. vs. M. Venkata Bala Krishnamurthy, AIR 1989 AP 167** (paragraphs 11 to 13 and 17 to 21) ,

f). The judgment of the Chancery Division in case of **Phoenix vs. Pope (74) 1 ALL ER 513** (relevant paragraphs on pages 514, 515, 517 to 520) and

g). A passage from the commentary i.e. S.T. Desai's The Law of Partnership in India on section 44(g) of the Partnership Act.

23. It is submitted by the learned counsel for the respondents that since an arbitrator is not a Court, he cannot exercise inherent powers of the Court under section 44(g) of the Partnership Act. The language of section 44 of the Partnership Act is different than the language of sections 39 to 43 of the Partnership Act. If the contingencies provided in sections 41 and 42 have already taken place, dissolution of the firm would follow. The words “at the suit of a partner” provided in section 44 are missing in sections 41 and 42 of the Partnership Act.

24. It is submitted that the judgment of the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) has been interpreted and distinguished by the Madras High Court in **Hindustan Life Care represented by its partner** (supra) and it has been categorically held

that the power to dissolve the partnership firm under section 44(g) vests only with the Court and not with the arbitrator.

25. In his alternate submission, learned counsel for the respondents submits that in view of section 28(2) of the Arbitration Act, unless express powers are given by the parties to the learned arbitrator to dissolve a partnership firm under section 44(g) of the Partnership Act on just and equitable grounds, the arbitrator cannot exercise such powers. Learned arbitrator cannot decide whether it would be appropriate, just and equitable to dissolve the partnership firm or not. He submits that if such powers which vests only in a Court to dissolve the partnership firm under section 44(g) are exercised by the arbitrator without any specific provision in the agreement entered into between the parties, such powers would be beyond the provisions of the agreement and would be contrary to section 28 of the Arbitration Act.

26. It is submitted that if a dissolution is sought on the ground of just and equitable grounds under section 44(g) of the Partnership Act, and only if such matter is referred to arbitration by consent of parties only in that event the learned arbitrator can decide and dissolve the partnership firm under section 44(g) under just and equitable grounds and not otherwise. Reliance is placed on paragraph 12 of the judgment of the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) in support of the submission that even under the said paragraph, the Supreme Court has categorically held that the Court may refer such disputes to arbitration and thus the same is not mandatory. He submits that the powers of the Court under section 44(g) of the Partnership Act are discretionary.

27. Learned counsel for the respondents placed reliance on the judgment of the Supreme Court in case of **N. Satyanarayana Murthy & Ors.** (supra) in support of the submission that the powers of the Court under section 44(g) are extremely wide and without any fetter to dissolve the partnership on just and equitable grounds, whereas no such wide powers are given to the learned arbitrator in the Partnership Deed entered into between the parties or even otherwise under any provisions of law and more particularly the Indian Partnership Act, 1932.

28. Learned counsel for the respondents distinguished the judgment of the Supreme Court in case of **Booz Allen & Hamilton INC.** (supra) and various other judgments relied upon by Mr. Shah, learned counsel for the petitioner. It is submitted that the judgment of the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) does not decide that an arbitrator can decide the prayer for dissolution of the firm on the ground of just and equitable. Insofar as the judgment of the Delhi High Court in case of **HDFC Bank Limited** (supra) is concerned, the same is distinguished on the ground that though the Court was considering the powers of the Debt Recovery Tribunal and not the powers of the learned arbitrator under the provisions of the Arbitration Act. If an unfettered powers are given to the arbitrator, he would decide what according to him is required and would proceed beyond the terms of the agreement which is not permissible. It is submitted that there is no infirmity in the impugned order passed by the learned arbitrator.

29. Insofar as the judgment of the Supreme Court in case of **Paramjeet Singh Patheja** (supra) relied upon by the learned counsel for the respondents is concerned, Mr. Shah distinguished the said

judgment on the ground that the Supreme Court in the said judgment had not considered the powers of the arbitrator under section 44(g) of the Partnership Act. The Supreme Court had considered the provisions of section 9 of the Presidency Towns Insolvency Act, 1909 and the arbitral award defined under section 2(a) of the Arbitration Act. The question fell for consideration in that judgment before the Supreme Court was whether an award can be considered as a decree and based on such arbitral award whether insolvency proceedings can be initiated under the provisions of the Presidency Towns Insolvency Act, 1909. In that context the Supreme Court has held that the arbitrator is not a Court. The Supreme Court had not decided the issue as to whether the claim of dissolution of the partnership firm by an arbitrator under section 44(g) of the Partnership Act is arbitrable or not.

30. Learned counsel for the petitioner also distinguished the passage from the commentary of S.T. Desai's The Law of Partnership in India and would submit that the said commentary would not throw any light on the issue whether an arbitrator can dissolve a partnership firm under section 44(g) of the Partnership Act or not. Learned counsel strongly placed reliance on various paragraphs of the judgment of the Supreme Court in case of **Booz Allen & Hamilton INC.** (supra).

31. Learned counsel placed reliance on sections 39 to 43 of the Partnership Act and would submit that in the event of any of those contingencies having accrued, a partner is not liable to go to Court. The suit however may be filed only for the purpose of declaration that the dissolution had happened and for distribution of the assets. The arbitrator is a substitute of a Court. A right of dissolution does not

depend upon the contract between the parties. Learned counsel once again placed reliance on the judgment of the Privy Council in case of **Rehmatunnisa Begum & Ors.** (supra) in support of the submission that there is no bar against the arbitral tribunal to dissolve a partnership firm under section 44(g) on just and equitable grounds. It is submitted that if the arguments of the respondents is accepted that if the partners do not agree for dissolution of the firm on any grounds whatsoever, such firm can never be dissolved in any circumstances.

32. It is submitted by the learned counsel that the prayer for dissolution of the partnership firm is on the ground that clause in the partnership firm is “at will” and dissolution under section 44(g) on the just and equitable grounds are actions in personam and not in rem. No public interest or public policy is involved in both the situations. Learned counsel once again placed reliance on the judgment of the Chancery Division in case of **Phoenix vs. Pope (74) 1 ALL ER 513** and more particularly paragraphs on pages 514, 515, 517 to 520).

33. Mr.Purohit, learned counsel for the respondents submits that the learned counsel for the petitioner has not addressed this Court on the issue as to whether the learned arbitrator has inherent powers to dissolve a partnership firm under section 44(g) of the Partnership Act or not. He once again placed reliance on paragraph 36 of the judgment of the Supreme Court in case of **Paramjeet Singh Patheja** (supra) in support of his submission that the powers of dissolution of the partnership firm by a Court and by an arbitrator are different.

REASONS AND CONCLUSIONS :

34. A perusal of the Partnership Deed dated 24th April, 2000 indicates that under clause 1(b) of the Partnership Deed all the partners had agreed that the partnership shall be a partnership “at will”. No partners shall have a right to dissolve the firm. Clause 13 provided that death or retirement of a partner shall not dissolve the partnership. Clause 18 of the Partnership Deed which records an arbitration agreement clearly provides that all the disputes and questions in connection with the Partnership Deed arising between the partners or their representatives shall be referred to arbitration in accordance with the provisions of the Arbitration Act, 1996 or any statutory modifications thereof.

35. The petitioner had issued a notice of dissolution on 7th July, 2016 to the respondents stating that the duration of the suit firm was “at will”. The respondents had on the contrary contended that the firm could not be unilaterally dissolved by the petitioner and that the firm could be dissolved only by unanimous decision of the partnership firm. In response to the said reply, it was contended by the petitioner in his advocate's letter dated 30th August, 2016 that in the past the respondents vide their advocate's letter dated 17th November, 2005 had informed the petitioner that the respondents had lost trust and confidence in the petitioner and that it would not possible for them to continue with the practise / profession in the firm name and style of M/s.N.M. Raiji & Co. and that it would be just reasonable and equitable that the suit firm be dissolved. In the said letter, it was contended that the situation of the suit firm and the relations between the partners have since then only gotten worse.

36. Both the parties have filed several proceedings against each other. The petitioner also referred to the remarks alleged to

have been made by the respondents in the correspondence and more particularly in the email dated 16th July, 2016 against the petitioner calling him “nonsensical”. The petitioner contended in the said letter that since there was a complete break-down of the mutual confidence and trust between them, including common courtesy in the language used in correspondence, it would not be possible for the petitioner to continue to carry on the practise and profession of Chartered Accountant with the respondents in the suit firm. In the said letter, the petitioner informed the respondents that without prejudice to the contentions raised by the petitioner in the notice of dissolution dated 7th July, 2016 which was just and equitable under section 44(g) of the Partnership Act that the suit firm be dissolved. The petitioner suggested the name of the arbitrator by the said letter.

37. On 8th May, 2017, this Court passed an order in the Arbitration Application No.286 of 2016. By consent of parties, the disputes between the parties as set out in the arbitration application came to be referred to the sole arbitration of Mr.Ankit Lohia, a counsel of this Court. In paragraph 6 of the order, it was made it clear that all the contentions including as to jurisdiction are expressly kept open.

38. In the statement of claim filed by the petitioner, the petitioner referred to those allegations which were made in the correspondence in the statement of claim and invoked section 44(g) of the Partnership Act and applied for dissolution of the firm under the said provisions on just and equitable grounds. The petitioner prayed that the suit firm stood dissolved from the date of the notice dated 7th July, 2016 and/or from the date of filing of the statement of claim or some other date the learned arbitrator may deem fit and for other reliefs. In the statement of claim, the petitioner had also prayed for

dissolution of the firm on the ground that the duration of the suit firm was “at will” and in the alternate for dissolution on the ground of just and equitable grounds under section 44(g) of the Partnership Act.

39. The respondents in the written statement raised a plea of jurisdiction of the learned arbitrator to the order of dismissal of the firm on just and equitable grounds under section 44(g) of the Partnership Act and filed a separate application under section 16 of the Arbitration Act. The respondents opposed both the prayers for dissolution on the ground that the same were beyond the jurisdiction of the learned arbitrator.

40. Learned arbitrator passed an order on 11th October, 2017. It is not in dispute that the learned arbitrator in the impugned order rejected the contention of the respondents that he had no jurisdiction to dissolve the partnership firm on the ground that the firm could be dissolved only by all the partners and categorically held that he had jurisdiction to dissolve the partnership firm on the ground that the partnership was “at will”. This part of the order rejecting the contentions of the respondents partly is admittedly not challenged by the respondents by filing a separate petition under section 37 of the Arbitration Act. Learned arbitrator however, accepted the plea of the respondents that he had no jurisdiction to dissolve the partnership firm under section 44(g) of the Partnership Act on just and equitable grounds.

41. A perusal of the impugned order passed by the learned arbitrator indicates that the learned arbitrator accepted the plea of the respondents that he had no jurisdiction to pass an order on dissolution of the partnership firm under section 44(g) of the

Partnership Act on just and equitable grounds by placing reliance on the judgment of the Madras High Court in case of **Hindustan Life Care represented by its partner** (supra). He held that the Madras High Court had distinguished the judgment of the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra). It is held by the learned arbitrator that the learned arbitrator was bound by the judgment of the Madras High Court. He held that the powers under section 44 of the Partnership Act are vested with the Courts which have powers to adjudicate upon various disputes mentioned in section 44 and which powers are not available to the arbitral tribunal.

42. Learned arbitrator gave an example in paragraph 21 of the impugned order that a Court of law would have powers to adjudicate a person as a person of an unsound mind, whereas no such powers are available with an arbitral tribunal. It is held that interpretation of section 44 has to be looked at in light of the various clauses of section 44 and it needs to be examined whether an arbitral tribunal has powers to grant reliefs under all clauses of section 44. If this test is not satisfied, then it would not be open to interpret section 44 to mean that the powers of the Court under section 44 can be exercised by an arbitral tribunal. Learned arbitrator accordingly held that in his view, it is not open for the arbitral tribunal to adjudicate a person to be an insolvent. He held that in the present case, through the arbitration clause in the Partnership Deed is wide, it cannot be read to confer powers upon an arbitral tribunal which are otherwise available only with a Court of Law. It is further held that in this view of the matter, it cannot be said that the powers of section 44, which have been granted to a court, can be exercised by an arbitral tribunal and thus he does not have means to pass such orders.

43. Learned counsel appearing for both the parties placed reliance on several judgments in support of their rival contentions whether the powers to dissolve the partnership firm under section 44(g) of the Partnership Act on just and equitable grounds can be exercised only by the Court or can also be exercised by an arbitral tribunal without any such specific provisions prescribed under the Partnership Deed or not.

44. Section 39 of the Partnership Act provides that dissolution of the partnership between all the partners of a firm is called the “dissolution of the firm”. Section 40 provides that the firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. Section 41 provides for compulsory dissolution i.e. (a) by the adjudication of all the partners or of all the partners but one as insolvent, or (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership subject to proviso that where more than one separate adventure or undertaking is carried on by the firm the illegality of one or more shall not be itself cause the dissolution of the firm in respect of its lawful adventures and undertakings. It is not the case of any party to these proceedings that section 41 is attracted to the facts of this case.

45. Section 42 of the Partnership Act provides for dissolution by notice of the partnership “at will”. It is not in dispute that in this case, the petitioner had issued a notice for dissolution of the partnership “at will”. Be that as it may, the learned arbitrator has rejected the contention of the respondents that the suit partnership firm could not be dissolved unless agreed by all the partners. This part of the order passed by the learned arbitrator has thus attained

finality.

46. Even if a firm is dissolved by notice of the partnership “at will” under section 43 of the Partnership Act, if dispute continues to persist about the distribution of the assets and liabilities and the mode of settlement of account between the partners, a suit is required to be filed for the purpose of declaration of dissolution of the partner firm and for settlement of the accounts between the parties, for distribution of the rights of partners to have the business wound up after dissolution, for adjudication of the rights and liabilities of the partnership firm in accordance with sections 45 to 48 of the Partnership Act.

47. Section 44 of the Partnership Act provides for various contingencies that if happened, the Court may dissolve a firm on any of those grounds mentioned in section 44 on the application of a partner.

48. A perusal of the correspondence exchanged between the parties and also the averments made in the statement of claim indicates that it was the case of the petitioner that the respondents themselves in their advocate's letter dated 17th November, 2005 referred in the letter dated 30th August, 2016 addressed by the learned advocates for the petitioner to the respondents that the respondents had alleged to have lost trust and confidence in the petitioner and that it was not possible for them to continue the practise / profession in the name of the suit firm and that it was just and equitable that the suit firm be dissolved. The petitioner had alleged that the situation of the suit firm and the relations between the partners had become worst. Several litigations are filed by the

parties against each other in civil Courts and before the Institute of Chartered Accountant of India and other authorities.

49. It is the case of the petitioner that the respondents have made various derogatory remarks against the petitioner calling him “insane” and alleging that reply of the petitioner was “nonsensical”. The petitioner has contended that there is a complete break-down of mutual confidence and trust between the partners including common courtesy in the language used in the correspondence and thus it was not possible for the petitioner to continue to carry on the practise and profession of the Chartered Accountant with the respondents. Similar allegations and the contentions are made and urged in the statement of claim filed before the learned arbitrator.

50. On the contrary, the respondents in their written statement has alleged that the petitioner had started various obstacles and started raising objections adversely affecting smooth working of the suit firm. The petitioner had alleged to have raised various frivolous disputes and had initiated about eight arbitrations against the respondents which were proved to be infructuous. The petitioner also got the bankers of the suit firm to freeze its bank accounts. The petitioner persisted in his obstructive attitude causing hindrance in the smooth running and working of the suit firm and thereby compelling the respondents and the then partners of the suit firm to again approach this court for various interim reliefs. Both the parties have made serious allegations of breach of their obligation under the provisions of the Partnership Deed in their pleadings.

51. A perusal of the aforesaid allegations and counter allegations made by the parties made against each other would

clearly indicate that those allegations would fall at least under section 44(c), (d) and (f). The petitioner has also sought to make certain allegations by invoking section 44(a) of the Partnership Act against the respondents. In respect of these situations, this Court is not required to go into the issue as to whether the petitioner has made out a case for dissolution of the suit firm on just and equitable ground under section 44(g) of the Partnership Act or not. The only question fell for consideration of this Court is whether the learned arbitrator has jurisdiction to pass an order of dissolution of the suit firm under section 44(g) of the Partnership Act on any other ground not falling under section 44 (a) to (f) which renders it just and equitable that the firm should be dissolved.

52. The Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) has considered the issue whether the arbitrator is empowered to dissolve the suit firm under the provisions of the Indian Partnership Act, 1932 or not. The parties in the said proceedings had filed the consent terms and agreed that the disputes relating to the rights and obligations of the parties arising out of the agreement and to the user of the trademarks in question and determination of the rights of one of the respondent as partner of the suit firm filed before the Civil Court be referred to the sole arbitration of a retired Judge of this Court. Learned arbitrator made an award declaring that the rights executed between the parties were invalid, void, in effective and not binding on the parties. He further declared that the respondent no.1 therein had not retired under those rights but continue as partner of the firm Mr.V.H. Patel & Co. The said award was challenged before this Court.

53. This Court was pleased to set aside the finding of the learned arbitrator that he had jurisdiction to entertain the counter

claim by which the respondent no.1 had sought for dissolution of the firm and remitted the issue to the learned arbitrator for *de-novo* consideration and in accordance with law. The question arose before the Supreme Court whether the arbitrator was competent to entertain the counter claim filed by the respondent for dissolution of firm V.H. Patel & Co. and was within the scope of the terms of reference made by the Court, whether the counter claim for dissolution of the firm was not within the terms of the reference either expressly or mutually or the parties did not refer the disputes relating to the suit firm to the arbitrator. This Court was of the view that once the matter is referred to the arbitrator, his jurisdiction to consider all the questions raised before him by the parties which relates to the dispute would be considered and driving a party to a separate litigation for the reliefs which relates to the dispute referred to the learned arbitrator would not be proper. It is accordingly held that it was open to the respondent no.1 to claim a decree of dissolution of the firm in exercise of his rights as partner of the firm which he could have made by amending his pleadings in the civil suit and therefore, it was within the jurisdiction of the learned arbitrator to consider that question.

54. The Supreme Court in the said judgment held that even if a partner had not retired pursuant to the terms of the agreement entered into between the parties, it is certainly permissible for him that the disputes had arisen between the parties but asking for dissolution of the partnership by mutual consent was not possible, the dispute could certainly arise thereto and such a situation could have been referred to arbitration in terms of the arbitration agreement entered into between the parties. It is held that if that was permissible such a contention could be raised in the suit filed by the parties. Merely because the disputes between the parties have been referred to

arbitration, he is not prevented from raising such a question nor is prevented from deciding such a matter. The Supreme Court agreed with the views expressed by this Court and rejected the contention raised on behalf of the petitioner in the said petition that it was not permissible for the arbitrator to enter upon the question of dissolution of the partnership.

55. The Supreme Court held that though the disputes between the parties originate on the basis whether one or other partner had not retired from the partnership or as to the rights arising in relation to the trademarks or otherwise, still when there is no mutual trust between the parties and the relationship were so strained that it was impossible to carry on the business as partners, it was certainly open to them to claim dissolution and such a question could be adjudicated. The scope of reference cannot be understood on the actual working used in the course of the order made by this Court or the memorandum concerned filed before this Court, but it should be looked from the angle as to what was the spirit behind the reference to the arbitration. The idea was to settle all the disputes between the parties and not to confine the same to any one or the other issue arising thereunder. The Supreme Court accordingly held that in view of the matter, the contention addressed to the contrary was untenable.

56. In paragraph 12 of the said judgment, the Supreme Court held that insofar the power of the arbitrator to dissolve the partnership is concerned, the law is clear where there is a clause in the articles of partnership or the agreement or the order referring all the matters in difference between the partners to arbitration, the arbitrator has power to decide whether or not the partnership shall be

dissolved and to award its dissolution. The Supreme Court adverted to the judgment of the Chancery Division in case of **Phoenix vs. Pope** (supra). It is held by the Supreme Court that the power of the arbitrator will primarily depend upon the arbitration clause and the reference made by the Court to it. If under the terms of the reference all the disputes and differences arising between the parties have been referred to arbitration, the arbitrator will, in general, be able to deal with all the matters, including dissolution. There is no principle of law or any provision which bars an arbitrator to examine such a question. The Supreme Court however, clarified that although the learned counsel for the petitioner relied upon the passage of Pollock & Mulla, quoted in the said judgment, that passage was only confined to the inherent powers of the Court as to whether dissolution of the partnership was just and equitable. The Supreme Court however, clarified in the said order that it was permissible for the Court to refer to arbitration a dispute in relation to dissolution as well on grounds such as destruction of mutual trust and confidence between the partners which is the foundation therefor.

57. In my view, the Supreme Court has not accepted the submission of the petitioner that the arbitrator has no power to dissolve the partnership firm specially on the ground that such dissolution is based on a ground or any other ground which renders it just and equitable to dissolve and with his power of the Court. A perusal of the said judgment clearly indicates that one of the partners before the Supreme Court had sought for dissolution of the partnership on various grounds enumerated in section 44(c) to (f) which were found sufficient for dissolution of the partnership by an arbitrator. Some of the grounds raised before the Supreme Court are also raised by the parties *inter-se* against each other in these

proceedings also.

58. A perusal of the arbitration agreement recorded in clause 18 of the Partner Deed is very wide which provides that all the disputes and questions in connection with the Partnership Deed arising between the partners are to be referred to an arbitrator in accordance with the provisions of the Arbitration Act, 1996 or any statutory modification thereof. A perusal of section 44 of the Partnership Act though refers to the dissolution of the partnership firm by a Court, the said provision does not indicate that there is any bar against an arbitrator to dissolve a partnership. The Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) has recognized the powers of an arbitrator to dissolve the partnership firm at least under section 44(c) to (f) of the Partnership Act which provision also referred to same wordings i.e. “at the suit of a partner, the Court may dissolve a firm on any of those grounds mentioned in section 44(a) to (g)”. In my view, since Court is empowered to dissolve a firm on the grounds mentioned in sub-section (a) to (g) of section 44 of the Partnership Act, in view of there being no bar against the arbitral tribunal under the said provision or under any of the provisions of the Arbitration Act, 1996, a partnership firm can be dissolved even by an arbitral tribunal.

59. I am not inclined to accept the submission of Mr.Purohit, learned counsel for the respondents that even if the arbitral tribunal can dissolve a partnership firm under section 44(c) to (f), the learned arbitral tribunal cannot dissolve a firm under section 44(g) of the Partnership Act. In view of the fact that the arbitration clause is very wide and the intention of the parties which is a paramount consideration indicates that all the disputes and questions in connection with the partnership under the said Partnership Deed can

be referred to arbitration, in my view whether the said partnership firm shall be dissolved also on just and equitable grounds can be referred to and be decided by the arbitral tribunal. The Supreme Court in the said judgment has accepted the finding of the High Court that once the matter is referred to the arbitrator, his jurisdiction would be to consider all the question raised before him by the parties which were related to the dispute and driving a party to a separate litigation for the relief which relates to the dispute referred to the arbitrator could not be proper.

60. In my view, Mr.Snehal Shah, learned counsel appearing for the petitioner is thus right in his submission that the petitioner cannot be asked to file a civil suit for the purpose of dissolution on just and equitable grounds and at the same time to pursue the relief for dissolution of the suit partnership firm between the same partners on other grounds permissible under the provisions of the Partnership Act, 1932 by invoking the same arbitration agreement. There may be conflicting findings and the decisions in the arbitration proceedings and the suit for dissolution of the same Partnership Deed between the parties. In my view, the parties have not intended for file such parallel proceedings for dissolution of the partnership firm i.e. one before the arbitral tribunal and another before the Civil Court.

61. Ultimately, the learned arbitrator will have to decide whether a partner seeking dissolution of the suit partnership firm has made out a case under any of the grounds available under section 41 to 44 of the Partnership Act or not and whether the partnership firm can be dissolved on any other ground or not. If the arbitral tribunal finds it just and equitable to dissolve the partnership firm on any other ground, it can pass appropriate order for dissolution of the firm on that

ground, I am not inclined to accept the submission of the learned counsel for the respondents that the Court exercises any inherent powers under section 44(g) of the Partnership Act or that the same cannot be exercised by the arbitral tribunal. The respondents themselves have urged before this Court that the arbitral tribunal could have exercised powers of dissolution of a partnership firm under section 44(g) of the Partnership Act if any such power would have been provided in the arbitration agreement. In my view, the respondents thus cannot be allowed to urge at the same time that the powers under section 44(g) would vest only in the Court and not in the arbitral tribunal. The principles of law laid down by the Supreme Court in case of **M/s.V.H. Patel & Co. & Ors.** (supra) upholding the views of the High Court in which High Court had recognized the powers of the arbitral tribunal to dissolve a partnership firm at least on sub-section (c), (d) and (f) of section 44 in the arbitration would apply also in case of the grounds mentioned in sub-section (f) and (g) of section 44 in the arbitration proceedings.

62. The Supreme Court in case of **Booz Allen & Hamilton INC.** (supra) has held that the arbitral tribunal are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of Courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a Court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the arbitral tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora

(courts and tribunals), may by necessary implication stand excluded from the purview of private fora. It is held that consequently, where the cause / dispute is inarbitrable, the Court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Arbitration Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

63. The Supreme Court in the said judgment has illustrated various non-arbitrable disputes. It is held by the Supreme Court that generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration ; and all disputes relating to rights in rem are required to be adjudicated by Courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable. The Arbitration Act does not specifically exclude any category of dispute as not being arbitrable. The Supreme Court in the said judgment adverted to the earlier judgments of the Supreme Court in case of **Haryana Telecom Ltd. vs. Sterlite Industries (India) Ltd., (1999) 5 SCC 688** (paragraphs 4 and 5), judgment of the Supreme Court in case of **Olympus Superstructures (P) Ltd. vs. Meena Vijay Khetan, (1999) 5 SCC 651** (paragraphs 34 and 35), judgment of the Supreme Court in case of **Chirajnilal Shrilal Goenka vs. Jasjit Singh, (1993) 2 SCC 507** and held that the power to order winding up of a company is contained under the Companies Act and is conferred on the Court, and the arbitrator would have no jurisdiction to order winding up of a company. The arbitrator has power to grant specific performance of sale-deeds with contractual rights. Grant of probate is a judgment in rem and is conclusive and binding not only on the parties but also entire world, and therefore, the Courts

alone will have exclusive jurisdiction to grant probate and an arbitral tribunal will not have the jurisdiction, even if consented to by the parties to adjudicate upon the proof or validity of the will respectively.

64. It is not the case of the respondents that the power of the arbitral tribunal to dissolve a partnership firm under sub-section (c), (d) and (e) of section 44 of the Partnership Act would be a cause in personam, whereas the power of the arbitral tribunal to dissolve a partnership firm on just and equitable grounds under section 44(g) shall be an action in rem. In my view, the powers to dissolve the partnership under section 44(g) can be exercised if the grounds of dissolution set out in other provision of the Partnership Act are not satisfied and if the Court or the tribunal as the case may be, is satisfied that it is just and equitable to dissolve a partnership firm on the other ground not set out in other provisions in the Partnership Act providing for dissolution of the partnership firm.

65. In my view, the power of dissolution of the partnership firm under enumerated under section 44(g) on just and equitable grounds also is an action in personam and not an action in rem. Even if a firm is dissolved under section 44(g) of the Partnership Act, the decision of the arbitral tribunal would be binding upon the parties to the arbitration agreement and not the world at large. The principles laid down by the Supreme Court in case of **Booz Allen & Hamilton INC.** (supra) would apply to the facts of this case. I am respectively bound by the said judgment.

66. The Supreme Court in case of **A. Ayyasamy vs. A. Paramasivam & Ors.** (supra) has adverted to the judgment of the Supreme Court in case of **Booz Allen & Hamilton INC.** (supra) and

has held that ordinarily every civil or commercial dispute whether based on contract or otherwise which is capable of being decided by a civil Court is in principle capable of being adjudicated upon and resolved by arbitration “subject to the dispute being governed by the arbitration agreement” unless the jurisdiction of the arbitral tribunal is excluded either expressly or by necessary implication. It is held that all disputes relating to rights in personam are considered to be amenable to arbitration while rights in rem are required to be adjudicated by Courts and public tribunals. In my view, dissolution of a partnership firm under section 44(g) of the Partnership Act on just and equitable grounds is not excluded expressly under the provisions of the Partnership Act or under the Arbitration Act, 1996 or under the arbitration agreement entered into between the parties or by necessary implication from the jurisdiction of an arbitral tribunal. The principles laid down by the Supreme Court in case of **A. Ayyasamy** (supra) thus would apply to the facts of this case and would assist the case of the petitioner.

67. The Delhi High Court in case of **HDFC Bank Limited** (supra) has adverted to the judgment of the Supreme Court in case of **Booz Allen & Hamilton INC.** (supra) and several other judgments and has held that all the disputes relating to the right in personam are arbitrable and choice is given to the parties to choose this alternative forum, whereas those relating to the rights in rem having necessary public interest are not arbitrable and the parties choice to choose the said forum is ousted. In my view, the principles of law laid by the Delhi High Court in the said judgment would apply to the facts of this case. I am in respectful agreement with the views expressed by the Delhi High Court in the said judgment.

68. The Supreme Court in case of **M.D. Frozen Foods Exports Pvt. Ltd. & Ors.** (supra) has adverted to the judgment of the Full Bench delivered by the Delhi High Court in case of **HDFC Bank Limited** (supra) and has approved the principles laid down therein. It is held that the arbitration is an alternative to the civil proceedings. It is held that the jurisdiction of the Civil Court is barred for matters covered by the RDDB Act, but the parties still have freedom to choose a forum, alternate to, and in place of the regular Courts or judicial system for deciding their *inter-se* disputes. All disputes relating to the right in personam are arbitrable and therefore, the choice is given to the parties to choose this alternative forum. In my view, dissolution of the partnership firm by the arbitrable tribunal under section 44(g) on just and equitable grounds cannot have any element of public interest and thus cannot be considered as a right in rem. The principles laid down by the Supreme Court in case of **M.D. Frozen Foods Exports Pvt. Ltd. & Ors.** (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

69. The Delhi High Court in case of **J.B. Dadachanji & Ors.** (supra) has followed the principles laid down by the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) and after considering an identical wide arbitration agreement held that the said arbitration clause couched in wide terms and includes all the matters in difference relating to the firm, its affairs and its partners and, therefore, the arbitrator will be competent to decide all the questions in relation thereto, including the question whether or not the partnerships shall be dissolved or not and make the award accordingly. The Delhi High Court rejected the contention of a party that the arbitral tribunal cannot exercise the powers under section 44(g) to adjudicate upon the disputes sought to be raised by other party. The principles laid

down by the Delhi High Court in case of **J.B. Dadachanji & Ors.** (supra) applies to the facts of this case. I agree with the views expressed by the Delhi High Court in the said judgment.

70. The Calcutta High Court in case of **Mahendra Kumar Poddar** (supra) considered a similar arbitration clause and held that it cannot be construed that dissolution of the partnership firm cannot be decided by the arbitrator at all. It is held by the Court that a declaration in respect of the dissolution of the firm by an arbitrator cannot be subject to be *non-est* by saying that in view of section 44 of the Partnership Act, only the Court may dissolve a firm but not the arbitrator. The Calcutta High Court has interpreted the word “Court” under section 44 of the Partnership Act, 1932 and held that the word “Court” includes the arbitrator. The principles laid by the Calcutta High Court in case of **Mahendra Kumar Poddar** (supra) squarely applies to the facts of this case. In my view, the word “Court” described in section 44 of the Indian Partnership Act, 1932 would include the word “arbitral tribunal” and thus the arbitral tribunal will also have jurisdiction to dissolve a partnership firm on all the grounds also mentioned in section 44 including on the ground of just and equitable. I am in respectful agreement with the views expressed by the Calcutta High Court in the said judgment.

71. The Punjab & Haryana High Court in case of **Ashok Kumar Malhotra** (supra) adverted to the judgment of the Supreme Court in case of **Booz Allen & Hamilton INC.** (supra) and several other judgments of the Supreme Court and has held that the order of dissolution of a partnership firm will be an order in personam and section 44 of the Indian Partnership Act, 1932 does not oust the

jurisdiction of the arbitrator to consider the dissolution of a firm. The principles laid down by the Punjab & Haryana High Court applies to the facts of this case. I am in respectful agreement with the views expressed by the Punjab & Haryana High Court in the said judgment.

72. The Rajasthan High Court in case of **Jagdish Chandra & Anr.** (supra) has after adverting to several judgments of the Supreme Court and other High Courts and the judgment of the Privy Council in case of **Rehmatunnisa Begum & Ors.** (supra) has held that it cannot be said that the arbitrator cannot decide the issue which otherwise the Court is required to decide in a suit for dissolution of a partnership. The judgment of the Rajasthan High Court in case of **Jagdish Chandra & Anr.** (supra) applies to the facts of this case. I am in respectful agreement with the views expressed by the Rajasthan High Court in the said judgment.

73. Insofar as the judgment of the Privy Council in case of **Rehmatunnisa Begum & Ors.** (supra) is concerned, the said judgment is approved by the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) and also by various High Courts. The principles laid down by the Privy Council in case of **Rehmatunnisa Begum & Ors.** (supra) applies to the facts of this case. I am in respectful agreement with the views expressed by the Privy Council.

74. The Andhra Pradesh High Court in case of **Vijayalakshmi Jayaram vs. M.R. Parasuram & Ors., AIR 1995 AP 351** has adverted to the several judgments of the Supreme Court and other High Courts and after construing the arbitration agreement which was similar to the arbitration clause in this case and also after considering the passage from Russel's 18th Edition at page 166 has held that

there is nothing in law to prevent an arbitrator awarding a dissolution of partnership if the arbitration agreement is sufficiently wide to enable him to do so. It is held that this is in accordance with the general proposition that question should be left to the arbitral tribunal selected by the parties. It is held that it is open to the parties to provide in the partnership a clause for dissolution at the instance of any partner either “at will” or on any grounds set out in section 44 of the Partnership Act. After all, the arbitrator has to decide the issue not only in accordance with the clause in the agreement but also applying the law applicable and governing the rights and liabilities of the partners. The ingredients mentioned in section 44 are also to be taken into account by the arbitral tribunal while deciding the point whether the firm is to be dissolved or not.

75. It is held that under the arbitration clause entered into between the parties, the arbitrator has power to decide whether the firm can be dissolved or not even though there is no specific provision in the Partnership Deed providing for dissolution of the firm, at the instance of one of the partners. In my view, the principles laid down by the Andhra Pradesh High Court in case of **Vijayalakshmi Jayaram** (supra) would apply to the facts of this case. I am in respectful agreement with the views expressed by the Andhra Pradesh High Court in the said judgment. In my view, powers of dissolution mentioned in the arbitration agreement have to be read with provisions of law provided in the Partnership Act.

76. Insofar as the judgment of the Supreme Court in case of **Paramjeet Singh Patheja** (supra) relied upon by the learned counsel for the respondents is concerned, a perusal of the said judgment would clearly indicate that the issue before the Supreme Court in the

said judgment was whether an arbitral award rendered under the provisions of the Arbitration & Conciliation Act, 1996 can be construed as a decree or an order for the purpose of issuance of the insolvency notice under section 9(2) of the Presidency Towns Insolvency Act, 1909. The Supreme Court in the said judgment after construing the definition of a decree and order under sections 2(2) and 2(14) of the Code of Civil Procedure, 1908 held that the words “court”, “adjudication” and “suit” conclusively show that only a Court can pass a decree and that too only in a suit commenced by a plaint and after adjudication of a dispute by a judgment pronounced by the Court.

77. In that context it is held by the Supreme Court that it is obvious that an arbitrator is not a Court, an arbitration is not an adjudication and, therefore, an award is not a decree. The Supreme Court interpreted section 36 of the Arbitration & Conciliation Act, 1996 and held that the words described in section 36 i.e. “as if” in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created. The Supreme Court accordingly held that no insolvency notice can be issued under section 9(2) of the Presidency Towns Insolvency Act, 1909 on the basis of an arbitration award. The execution proceedings in respect of the award cannot be proceeded with in view of the statutory stay under section 22 of the SICA Act. As such, no insolvency notice is liable to be issued against the appellant therein on an arbitration award. The arbitration award is neither a decree nor an order for payment within the meaning of section 9(2) of the Presidency Towns Insolvency Act, 1909. In my view the judgment of the Supreme Court in case of **Paramjeet Singh Patheja** (supra) relied upon by the learned counsel for the respondents in support of the submission that

the learned arbitrator cannot be construed as a Court is of no assistance to the respondents in the facts of this case. The issue before the Supreme Court in the said judgment was totally different.

78. Insofar as the judgment of the Madras High Court in case of **Hindustan Life Care represented by its partner** (supra) strongly relied upon by the respondents as well as by the learned arbitrator in the impugned order is concerned, a perusal of the arbitration agreement considered by the Madras High Court in the said judgment indicates that it was agreed by and between the parties thereto that “in case of disputes among the partners the provisions of the Indian Arbitration Act, 1940 shall apply”. However in the facts of this case, the arbitration clause agreed by and between the parties is very wide and totally different. The Madras High Court has construed such narrowly worded arbitration clause in the agreement and held that the resort to section 44 of the Partnership Act by an arbitrator is possible only when the parties agreed to such a course. In the absence of any agreement, merely because there exists a statutory right, that does not empower a partner to move the arbitrator for dissolution on the grounds under section 44 of the Partnership Act.

79. It is held in the said judgment that if statutory right, as such, for invoking the arbitration clause is available for any aggrieved partner to choose arbitration as a method of resolution of the disputes, certainly, there is no need at all for section 44 to be separately enumerated as distinct from the contractual terms as provided for under section 40 under which, the parties could agree upon the modality as to the dissolution of the firm. A perusal of the said judgment clearly indicates that even the Madras High Court has recognized that if an arbitration clause provides for dissolution of the

partnership firm and if such clause is wide, a partner can apply for dissolution of the partnership firm even under section 44 of the Partnership Act, 1932. However, in the facts of that case, in view of the arbitration clause not being wide, the Madras High Court took a view that the relief of dissolution of the partnership firm on the grounds mentioned under section 44(g) of the Partnership Act would not be available in the facts and circumstances of that case.

80. In my view, the judgment of the Madras High Court in case of **Hindustan Life Care represented by its partner** (supra) thus would not assist the case of the respondents and is clearly distinguishable in the facts of this case and more particularly in view of the arbitration agreement agreed by and between the parties in this case being very wide and would include the powers of the arbitrator to dissolve a partnership firm on the basis of the grounds mentioned in section 44 of the Partnership Act, 1932 and other grounds described in other sections of the Partnership Act. I am inclined to agree with the submission made by Mr. Shah, learned counsel for the petitioner that the said judgment of the Madras High Court also recognizes the power of the arbitral tribunal to dissolve a partnership firm under section 44(g) if an arbitration agreement to that effect provides for resolution of such dispute as is provided in this case. In my view, the learned arbitrator has not appreciated the judgment of the Madras High Court in proper perspective.

81. Insofar as the passage relied upon from the commentary of the S.T. Desai's "The Law of Partnership in India" on applicability of section 44(g) of the Partnership Act is concerned, it is not in dispute that the said opinion of the learned author does not deal with the powers of an arbitral tribunal to dissolve a partnership firm under

section 44(g) of the Partnership Act. The said passage from the treatise of S.T. Desai's on "The Law of Partnership in India" thus would be of no assistance to the respondents.

82. Insofar as the judgment of the Madras High Court in case of **N.C. Padmanabhan & Ors.** (supra) relied upon by Mr.Purohit, learned counsel for the respondents is concerned, a perusal of the said judgment indicates that the Madras High Court has not dealt with the principles of law laid down by the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) and various other judgments of various High Courts referred to aforesaid. The said judgment of the Madras High Court thus would be of no assistance to the respondents.

83. Insofar as the judgment of the Andhra Pradesh High Court in case of **N. Satyanarayana Murthy & Ors.** (supra) relied upon by Mr.Purohit, learned counsel for the respondents is concerned, a perusal of the said judgment indicates that the Andhra Pradesh High Court in the said judgment did not consider whether the powers under section 44(g) of the Partnership Act, 1932 could be considered by an arbitral tribunal or not under a wide arbitration agreement agreed by and between the parties as agreed in this case. The said judgment thus would be of no assistance to the respondents.

84. The respondents have already accepted part of the impugned order passed by the learned arbitrator holding that he has jurisdiction to pass an order of dissolution of the partnership firm on the ground that the partnership is "at will". The respondents have also in their alternate submission have accepted that under the arbitration agreement entered into between the parties, arbitral tribunal will have jurisdiction to dissolve a partnership firm if the grounds are made out

under sub-section (c), (d), and (e) of section 44 of the Partnership Act, 1932. In my view, the respondents thus cannot be allowed to urge that though the arbitral tribunal has power to dissolve a partnership firm under sub-section (d), (e) and (f) of section 44 of the Partnership Act by exercising powers under the arbitration agreement entered into between the parties in this case, the arbitral tribunal will have no power to dissolve the said partnership firm by exercising powers under section 44(g) of the Partnership Act, 1932. This submission urged by the learned counsel for the respondents in my view is contrary to the principles laid down by the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) and several other judgments referred to aforesaid which were relied upon by the learned counsel for the petitioner. The argument of the respondents is also devoid of merit in view of the wide arbitration clause agreed by and between the parties which would include the resolution of all the disputes and questions in connection with the Partnership Deed arising between the partners or their representatives. Dissolution on the just and equitable ground is also one of the mode of dissolution of a partnership firm.

85. In my view, part of the impugned order holding that the learned arbitrator has no jurisdiction to dissolve the suit firm under section 44(g) of the Partnership Act and the said order only vests in a Court is contrary to the principles of law laid down by the Supreme Court in case of **V.H. Patel & Co. & Ors.** (supra) and other judgments referred to aforesaid which were relied upon by the petitioner and thus that part of the order deserves to be set aside.

86. I therefore, pass the following order :-

a). The impugned order dated 11th October, 2017 passed by

the learned arbitrator is set aside to the extent it holds that the learned arbitrator has no jurisdiction to dissolve the suit partnership firm under section 44(g) of the Partnership Act, 1932 by exercising his powers under clause 18 of the Partnership Act. It is declared that the learned arbitrator has jurisdiction to dissolve the suit partnership firm also under section 44(g) of the Partnership Act, 1932. It is however, made clear that this Court has not expressed any views as to whether the petitioner has made out a case for dissolution of the suit partnership firm under section 44(g) of the Partnership Act, 1932 or not and the said issue is kept open.

- b). The arbitration petition is allowed in aforesaid terms. Learned arbitrator shall proceed with the arbitral proceedings and shall make an award expeditiously.
- c). There shall be no order as to costs.
- d). The parties as well as the learned arbitrator to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)

87. Learned arbitrator shall not proceed with the hearing for a period of four weeks from today. If any Special Leave Petition is filed by the respondents, a copy thereof shall be served upon the petitioner's advocate in advance.

88. In view of disposal of the arbitration petition, the Notice of Motion No.43 of 2018 does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)