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

\+ ARB.P. 412/2018

SATISH KUMAR PAWA ..... Petitioner

Through: Mr.Shalabh Gupta and Mr.Atul Jain, Advs.

versus

SANT LAL AGGARWAL ..... Respondent

Through: Mr.Sachin Datta, Sr.Adv.with Mr.Soumyajit Pani, Mr.Inayat Ahmed, Ms.Rehana Ahmed and Mr.Chittaranjan Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>O R D E R</u>

% 06.12.2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Partnership Deed dated 01.01.1995.

2. The Partnership Deed was executed between the petitioner and the respondent alongwith one Smt.Sudha Pawa and Smt.Rajni Goel as partners. The said Partnership Deed contained an Arbitration Agreement in form of Clause 12 thereof which read as under:

> *"12. Any dispute or difference which may arise amongst the partners with regard to the construction meaning rights or liabilities of the partnership firm or winding up of the business or any matter relating to the firm shall be referred to the Arbitrator(s) and provisions of Indian Arbitration Act shall apply."*

3. Smt.Sudha Pawa and Smt.Rajni Goel retired from the partnership business and a Deed of Dissolution dated 16.03.2015 was executed between the petitioner and the respondent whereby they agreed to continue the partnership on the terms and conditions mentioned in the Partnership Deed dated 01.01.1995.

4. By a notice dated 12.03.2018, the petitioner expressed its intent to dissolve the Partnership Firm and sought appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the affairs of the Partnership Business and the Settlement of the Accounts. As no reply was received from the respondent to the said notice, the present petition was filed.

5. Learned senior counsel for the respondent submits that the disputes being one of the Settlement of Accounts between the partners in terms of Clause 48 of the Indian Partnership Act, 1932 on dissolution of the firm, the same would involve the rights and liability of the third parties, including financial institutions and other unsecured creditors, which are not party to the Arbitration Agreement. Relying upon the judgment of the Supreme Court in ***Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Ors.***, AIR 2011 SC 2507, he submits that a claim of winding up cannot be referred to arbitration. He submits that in the present case, various allegations of fraud have been made by the petitioner against the respondent and there have been some police complaints also filed. He submits that these claims are inherently incapable of being referred to arbitration.

6. I find no merit in the submission made by the learned senior counsel for the respondent. The disputes being raised by the petitioner are in relation to the working of the Partnership Business and the Settlement of its

Account upon dissolution of the firm. In the Indian Partnership Act, unlike the Insolvency Act or the Companies Act, there is no provision mandating the winding up of Partnership Business only through Court/Tribunal.

7. As far as the allegation of fraud and of criminal complaint being filed is concerned, I may only note that the same are again in relation to the carrying out of the Partnership Business.

8. The Supreme Court in ***A. Ayyasamy v. P.Paramasivam and Ors.,*** (2016) 10 SCC 386, has considered this issue at length and has held as under:

> ***"25.*** *In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simpliciter may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by the civil court on the appreciation of the voluminous evidence that needs to be produced, the court can sidetrack the agreement by dismissing the application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to*

arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the court has to be on the question as to whether jurisdiction of the court has been ousted instead of focusing on the issue as to whether the court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, courts i.e. public fora, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject-matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected..

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38. *Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an ordinary civil court is* *excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration.*

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45.2. *Allegations of fraud are not alien to ordinary civil courts. Generations of judges have dealt with such allegations in the context of civil and commercial disputes. If an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration. The parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. The parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed."*

9. A reading of the above judgment clearly shows that mere allegation of fraud in the course of contract, does not make the dispute non referable to arbitration. These disputes are primarily civil in nature and therefore can be referred to arbitration.

10. In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Lease Deed.

11. I appoint **Mr.Bharat Bhusan**, Retired Additional District Judge, Delhi (House No.12, D.D.A. Site No.1, New Rajinder Nagar, Behind Fire

Station, Shankar Road, New Delhi, Ph: 28744766, 9899285640) as an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Lease Deed.

12. The Arbitrator shall give disclosure in terms of Section 12 of the Act before proceeding with the reference.

13. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

DECEMBER 06, 2018/Arya