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

+ **ARB.P. 340/2021**

SUNIL SUD & ANR.

..... Petitioners

Through Mr. Ashish Dholakia, Sr. Adv.
with Ms. Fareha Ahmad Khan, Ms. Shagun
Chopra and Mr. Akash Panwar, Advs.

Versus

AJAY SUD

..... Respondent

Through: Mr. Akhil Sibal, Sr. Adv. with
Mr. Nikhil Y. Chawla and Mr. Vikas
Mishra, Advs. for R-3
Mr. Nirmal Prasad, Adv. for R-5/Axis Bank

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

O R D E R (ORAL)

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19.04.2021

(video-conferencing)

C .HARI SHANKAR, J.

ARB.P. 340/2021

1. Mr. Akhil Sibal, learned Senior Counsel for the respondent, submits that he has no objection to the disputes in this petition being referred to arbitration.

2. The stakes are stated to be in the area of around ₹ 14 crores to ₹ 15 crores, though Mr. Ashish Dholakia, learned Senior Counsel for the petitioners, submits that they may be higher.

3. The facts stated in the petition, giving rise to the disputes between the parties, are thus set out in paras 1 to 16 of the petition:

“1. That the firm under the name and style of M/s Alnoor Exports, i.e. was originally constituted between two partners namely, Mr. Sunil Sud [Petitioner No. 1] and Mr. Ajay Sud under the deed of partnership dated 22.09.1992 [hereinafter referred to as “the Partnership Firm”]. The Partnership Firm, having its registered and principal office in New Delhi, was set up to, inter alia, carry on the business of manufacturing, processing, preserving, exporting and trading in frozen meat, food, eggs and vegetables for human and animal consumption.

2. That during the course of the business of the Partnership Firm, the following immovable assets have been purchased by the Partnership Firm:

a) Land at Jansath Road, Muzaffarnagar admeasuring 5683.96 square meters [herein after referred to as “the Factory”].

b) Flat No. 505, Sun View Apartment, Saket, Meerut.

c) Office at J-603, Jasola, New Delhi admeasuring 98.128 square metres.

3. That it is relevant to mention that while the Petitioner No. 1 was actively involved in the businesses of the family including in the Partnership Firm and was largely responsible for the exponential growth and success of the businesses, the Petitioner No. 1 was diagnosed with Motor Neuron Disease [MND] in the year 2013.

4. That in view of the ill-health of the Petitioner No. 1 and his inability to participate in the Partnership Firm, it was mutually decided between the Petitioner No. 1 and the Respondent to induct Petitioner No. 2, who is the daughter of the Petitioner No. 1 as a partner in the Partnership Firm. Accordingly, the Petitioner No. 2 was inducted as a partner with effect from 06.08.2013 and the partnership was reconstituted between the Petitioners and the Respondent without dissolving the Partnership Firm.

5. That under the Reconstituted Deed of Partnership, it was, inter alia, agreed that after providing for all expenses incidental to the business, the net yearly profit/loss of the business will be allocated between the partners as follows:

- i) Mr. Sunil Sud [Petitioner No. 1] :37.50%
- ii) Ms. Priya Sud [Petitioner No.2] :12.50%
- iii) Mr Ajay Sud [Respondent] : 50%

The Petitioners and the Respondent are therefore, equal partners in the Partnership Firm.

6. That however, taking undue advantage of the ill-health of the Petitioner No. 1, the Respondent has been conducting the business of the Partnership Firm to the exclusion and detriment of the Petitioners. In view of the dishonest manner in which the business of the Partnership Firm was being conducted by the Respondent, the Petitioner No. 1, in and around July 2020, confronted the Respondent. The Petitioner No. 1 raised objections not only with respect to the completely non-transparent manner of functioning by the Respondent in respect of the Partnership Firm but also objected to the wholly unjustifiable and excessive expenditures made by the Respondent without the consent or knowledge of the Petitioners.

7. That instead of addressing the concerns raised by the Petitioner No. 1 and carrying out the affairs of the Partnership Firm in a just and fair manner, the Respondent, along with his sons, further restricted the access of the Petitioners to the business operations of the Partnership Firm. In furtherance of their dishonest intentions of excluding the Petitioners, the Respondent carried out a complete overhaul of the staff, including the accounting team, who had been in the employment of the Partnership Firm for several years. The old employees of the Partnership Firm, particularly in the finance division, have been replaced by the Respondent with new employees who have been instructed to report only to the Respondent and his two sons. The old employees of the Partnership Firm have not only been given very limited access to the accounting software but have reduced roles in the Partnership Firm. The Petitioners have also reliably learnt that the Respondent is in the process of changing the Chartered Accountant of the Partnership Firm.

8. That in furtherance of their intentions to completely exclude the Petitioners from the business of the Partnership Firm, the Respondent, at the behest of his two sons, has also changed the accounting platform from 'Tally' to 'Busy' without informing the Petitioners. It was only on 26.09.2020 that the Respondent informed the Petitioner No. 2, for the first time, that the entire accounts of the Partnership Firm have been shifted from 'Tally' to 'Busy'. Prior to the said communication, the Petitioners were not consulted or informed of the aforesaid change in the accounting software of the Partnership Firm. This change in accounting software was clearly carried out by the Respondent to conceal irregularities by the Respondent in the accounts of the Partnership Firm and to also take full and absolute control of the accounts. While in the email dated 26.09.2020, the Respondent No. 1 stated that both 'Tally' and 'Busy' will operate simultaneously at least till 31.03.2021, the Respondent No. 1, without notice, locked the Tally software round end November/early December 2020. Pursuant thereto, only the Respondent No. 1 has administrative access to the software while the Petitioners can merely view the online accounts.

9. That when the Respondent provided a copy of the draft Balance Sheet for the year 2019-20 to the Petitioners for confirmation, discrepancies in the Balance Sheet of the Partnership Firm for the Financial Year 2019-20 were noticed by the Petitioner No. 1. The same were specifically raised by the Petitioner No. 1 with the Respondent. However, despite the questions and concerns raised by the Petitioners with respect to the business of the Partnership Firm, the Respondent failed to address the same. In view of the gross discrepancies and manipulations noticed in the Balance Sheet and the absolute reluctance of the Respondent to share any accounting information, the Petitioners have refused to sign the Balance Sheet for the Financial Year 2019-20.

10. In view of the complete mismanagement of the affairs of not only the Partnership Firm but also of other businesses by the Respondent, the Petitioner No. 1 was constrained to take steps to prevent further illegalities by the Respondent. In this regard, a communication was sent by the Petitioner No. 1 to Yes Bank in relation to another partnership firm i.e. Miki

Exports International wherein the Petitioner No. 1, inter alia, instructed Yes Bank that henceforth, operations of the Bank accounts should be on the signatures of two partners and not merely on the signature of the Respondent.

11. That to the complete shock of the Petitioner No. 1, the Respondent, pursuant to the communication dated 01.10.2020 sent by the Petitioner No. 1 to Yes Bank, blocked the Petitioner No. 1's access to his business email account sunil@mikiexports.com on 03.10.2020. To this date, the business email accounts of the Petitioners remain blocked by the Respondent and the Petitioners do not have access to or information of the business operations being conducted by the Respondent on behalf of the Partnership Firm. It is also the apprehension of the Petitioners that the email accounts of the Petitioners may be mis-used by the Respondent and/or evidence, in the form of emails etc, may be destroyed by the Respondent and his sons.

12. That the Petitioners have further learnt that the Respondent, along with his two sons, behind the back of, and without any intimation to, the Petitioners, incorporated Suco Exports Pvt. Ltd. on 04.11.2019, to carry on business similar to that of the Partnership Firm. It is learnt that Suco Exports Pvt. Ltd., while being incorporated on 04.11.2019, appears to have only recently, started actively carrying on business. With the *malafide* intention of promoting Suco Exports Pvt. Ltd. at the cost of the Partnership Firm, the Respondent has deliberately been acting to the detriment of the Partnership Firm. In an attempt to tarnish the well- established reputation of the Partnership Firm and the brand name 'Al Noor', the Respondent is deliberately not complying with the orders placed by various buyers on the Partnership Firm. Less than satisfactory services are also being provided by the Respondent to the buyers of the Partnership Firm with the intention that the said buyers discontinue their association with the Partnership Firm. Grievances from buyers have been received by the Petitioners wherein the Petitioners have been informed that the Respondent has been acting unprofessionally as a result of which it will no longer be possible for the buyers to be associated with the Partnership Firm.

13. That not only has the Respondent been acting against the

interests of the Partnership Firm, the Petitioners were further shocked to learn that the Respondent has also been receiving monies in Suco Exports, Pvt. Ltd. for orders placed by buyers on the Partnership Firm. In this regard, reference may be had to a buyer of the Partnership Firm by the name of Bui Thuy Ya. On 25.02.2021, the Petitioners received a message from Bui Thuy Ya enquiring as to whether the Partnership Firm has changed its name, 'Al Noor'. While denying that there has been any change in the name of 'Al Noor', the Petitioners enquired from Bui Thuy Ya the reasons for enquiring the same. It was then that Bui Thuy Ya informed the Petitioners that Bui Thuy Ya had discussed, with the Respondent, an order to be placed on the Partnership Firm. However, when the Respondent sent the payment details, the same were not of the Partnership Firm but were in fact, of Suco Exports Pvt. Ltd.

From the aforesaid, it is abundantly clear that the Respondent is not only acting to the detriment of the Partnership Firm in order to benefit the Respondent but further that the Respondent, while acting as Partner of the Partnership Firm and accepting orders as such, is however, receiving monies for the same in Suco Exports Pvt. Ltd. The Respondent is effectively siphoning away the business, funds, material resources and commercial opportunities in gross violation of their fiduciary duties towards the other partners and the provisions of the Partnership Act, 1932.

14. That while the Respondent has informed the Petitioners that there has been no production taking place in the Partnership Firm since December 2020 and only the existing stock is being sold and shipped, the Petitioners have learnt that production under the name of the Partnership Firm 'Al Noor' continues to carry on in factories other than that of the Partnership Firm. This is being done using the Agricultural and Processed Food Products Export Development Authority (APEDA) Plant Number of the Partnership Firm without informing the Petitioners.

15. That it has come to the attention of the Petitioners that meat is being processed in a manufacturing unit other than Al Noor Exports unit, using the license of the Partnership Firm and being sold by one 'Al-Rayyan'. The Petitioners specifically enquired from the Respondent whether such production and processing was being done under the

instructions of the Respondent. However, the Respondent failed to respond to the same. It is therefore, reasonably apprehended by the Petitioners that the Respondent is mis-using the licenses of the Partnership Firm to carry out production and processing in other units without the consent or knowledge of the Petitioners.

16. That the Petitioners were served with a notice dated 02.02.2021 wherein the Respondent invoked Clauses 14 of the Reconstituted Deed of Partnership of M/s Miki Exports International and Clause 19 of the Partnership Deed with respect to M/s Al Noor Exports [herein after referred to as “the notice invoking arbitration”]. It is stated that M/s Miki Exports International is a partnership firm comprising the Petitioner No. 1, Respondent No. 1 and Radhika Sud who is the daughter of the Petitioner No. 1.”

4. Needless to say, the aforesaid averments in the petition have only been reproduced, so as to set out, precisely, the disputes that the petitioners seek refer to arbitration. This shall be without prejudice to the rights of the respondent to dispute the allegations raised by the petitioners as well as raised all other differences, including the arbitrability of the disputes itself, if they so choose. The respondent would also be at liberty to file any Counter-Claim in the matter.

5. In view thereof, this Court appoints Hon’ble Ms Justice Gita Mittal, former Chief Justice of the High Court of Jammu and Kashmir and former Acting Chief Justice of this Court [Cell No.9811322190 & Email ID : gitamittaloffice@gmail.com] as the arbitrator, to arbitrate on the disputes between the parties. As jointly requested, the learned arbitrator shall be entitled to charge fees in accordance with the Fourth Schedule to the Arbitration and Conciliation Act, 1996 (“1996 Act”).

6. The learned arbitrator shall furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

7. Keeping all issues of fact and law alive for agitation before the learned Arbitrator, this petition stands disposed of in the aforesaid terms.

APRIL 19, 2021
r.bararia

C.HARI SHANKAR, J



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