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

\+ ARB.P. 341/2021

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

ORDER (ORAL)

% **19.04.2021**
(video-conferencing)

C .HARI SHANKAR, J.

ARB.P. 341/2021

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. Ashisk 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 19 of the petition:

"1. That the firm under the name and style of M/s Miki Exports International was originally constituted between three partners namely, Mr. Sunil Sud [Petitioner No. l], Mr. Ajay Sud [Respondent] and the mother of the Petitioner No. l and the Respondent under the deed of partnership dated 03.11.1993 [hereinafter referred to as "the Partnership Firm"]. The Partnership Firm 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) Factory and Land at M-43, MIDC Taloja admeasuring 6,050 square meters [hereinafter referred to as 'the Factory'].

b) Land at Sonipat, Haryana admeasuring 12 kanal 2 marla in Mundarja Khewat No. 79, Khatta No. 99, Gannaur, Sonipat.

The Partnership Firm does not own any other immovable properties.

3. That the Partnership Firm, to the knowledge of the Petitioner Nos. 1 and 2, operates the following Bank Accounts:

i) Bank Account No. 021663700000581 in Yes Bank.
ii) Bank Account N0. 918020010319455 in Axis Bank.
iii) Bank Account No. 08307630000956 in HDFC Bank.
iv) Bank Account No. 201003171593 in Induslnd Bank.
v) Bank Account No. 00000010309441919 in SBI Bank.

4. 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.

5. 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 by 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. During this time, the mother of the Petitioner No. 1 and Respondent also expressed her will to retire from the Partnership Firm. Accordingly, the mother of the Petitioner No. 1 and Respondent retired from the Partnership Firm and simultaneously, the Petitioner No. 2 was inducted as a partner with effect from 01.04.2014 and the partnership was reconstituted between the Petitioners and the Respondent Without dissolving the Partnership Firm.

6. That under the Reconstituted Deed of Partnership, it was agreed that after providing for all expense's 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%
iii) Ms. Radhika 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.

7. That however, taking unfair 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 the year 201 7, the Respondent set up a separate division/department within the Partnership Firm for processing and selling chicken. This division/department was started by the Respondent for his two sons- Aditya Rai Sud and Ashwin Rai Sud, to the complete exclusion of the Petitioners. Despite the said division/department being a part of the Partnership Firm, all

the decisions with respect to the said division were taken exclusively by the Respondent, while the Petitioners were never informed of any decision or dealings pertaining to the said division. It may not be out of place to mention that the said division was grossly mismanaged by the Respondent and his sons because of which severe losses to the tune of approximately Rs. 6,00,00,000 [Rupees six crores only] were incurred by the Partnership Firm between the years 2017-19.

8. That during this period, the Respondent approached the Petitioner No. 1 requesting that Ashwin Rai Sud be made an authorised signatory to the Bank Account maintained by the Partnership Firm with Yes Bank. This was requested by the Respondent ostensibly for ease of business since Ashwin Rai Sud was overseeing the chicken division of the Partnership Firm. In the interest of maintaining good family relations and with the expectation that the authority shall not be misused by the Respondent and his sons, the Petitioners herein passed a resolution dated 19.11.2018 additionally, authorising Ashwin Rai Sud to operate the Bank Account with Yes Bank.

9. That prior to the Petitioner No. 1 taking ill, it had always been the understanding between the Petitioner No. 1 and the Respondent that both branches of the family shall have equal shareholding and control in the businesses. With this understanding, the Petitioner No. 1 and the Respondent were negotiating the purchase of Lazeez Frozen Food Pvt. Ltd. wherein it was agreed that the son of the Petitioner No. 1- Arjun Rai Sud shall be a 50% shareholder in the said company while the Respondent and his two sons shall own the remaining 50% shareholding. Under the belief and on the express assurance of the Respondent, a sum of Rs. 63,00,000/- [Rupees sixty-three lakhs only] was transferred by Arjun Rai Sud to Lazeez Frozen Food Pvt. Ltd. in lieu of 50% shareholding in Lazeez Frozen Food Pvt. Ltd.
It may not be out of place to mention that Arjun Rai Sud made the aforesaid transfer and signed the necessary documentation with respect to the company in good faith at a time when the Petitioner No. 1 was in the hospital. This was done under the bonafide belief that the Respondent shall honour the understanding and make Arjun Rai Sud a 50% shareholder in the said company.

10. That however, contrary to the assurances given to the Petitioner No. 1, Arjun Rai Sud was allotted merely 33.33% of shareholding in Lazeez Frozen Food Pvt. Ltd. while the Respondent and his family were shareholders to the extent of 66.67%. This was in complete and utter disregard of the understanding and agreement between the Petitioner No. 1 and the Respondent. In view of the palpably dishonest conduct of the Respondent, the Petitioner No. 1 called upon the Respondent to either make Arjun Rai Sud an equal shareholder in the said company or otherwise, buy out the shareholding of Arjun Rai Sud. The Respondent has however, avoided doing so citing purported financial constraints. It has now become clear to the Petitioners that the induction of Arjun Rai Sud in Lazeez Frozen Pvt. Ltd. was but a ploy of the Respondent to divert personal monies of the Petitioner No. 1 and his family to the Respondent and his personal businesses.

11. That in September 2020, when the Respondent provided a copy of the draft Balance Sheet for the years 2018-19 and 2019-20 to the Petitioners for confirmation, the Petitioners were shocked to learn that the Respondent had changed the Chartered Accountant of the Partnership Firm. Mr. Alok Agarwal, who had been the Chartered Accountant for the Partnership Firm since it's constitution in the year 1993 was removed by the Respondent and replaced with another Chartered Accountant. Additionally, the External Auditor of the Partnership Firm, Mr. P.S. Kashyap was also replaced by the Respondent. The aforesaid crucial decisions with respect to the Partnership Firm were taken by the Respondent without the consent or knowledge of the Petitioners. Furthermore, the Respondent did not issue any formal communication to the said auditors intimating the said auditors of their discharge from services.

12. That furthermore, discrepancies and manipulations in the draft 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 accounts of the Partnership Firm, the Respondent failed to address the same. In view of the gross discrepancies 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.

13. That it may also not be out of place to mention that the property of the Partnership Firm, which was to be held and used by the partners exclusively for the purposes of the business of the Partnership Firm has however, unauthorisedly and illegally been used by the Respondent for purposes other than that of the Partnership Firm. In this regard it is stated that the Respondent along with the Respondent's two sons, behind the back of, and without any intimation to, the Petitioners, incorporated Suco Exports Pvt. Ltd. on 04.1 1.2019. In February 2021, through an intimation received by Priya Sud from Food Safety and Standards Authority of India [FSSAI], the Petitioners were shocked to learn that the entire business of Suco Exports Pvt. Ltd. is being conducted by the Respondent and his sons on the strength of the licenses of the Partnership Firm that are being misused by the Respondent. This is being done unauthorisedly and illegally by the Respondent without the knowledge or consent of the Petitioners. The Petitioners have further learnt that applications for Import Export Code [IEC] and Goods and Service Tax [GST] have been applied for by the Respondent by falsely representing an association with the Partnership Firm, without the consent or knowledge of the Petitioner Nos. 1 and 2.

14. That in addition to using the premises and the plant and machinery of the Partnership Firm for the Respondent's independent business concerns, the Respondent has been misusing the established brand name 'Al Kadir' of the Partnership Firm. Al Kadir, which is the brand name under which the Partnership Firm exports to various international markets, is being illegally and unauthorisedly used by Suco Exports Pvt. Ltd. The Respondent is therefore, 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.

15. In view of the complete mismanagement of the affairs of the Partnership Firm by the Respondent and to prevent further misuse of funds by the Respondent, the Petitioner No. 1 was constrained to issue a communication dated 01.10.2020

to Yes Bank. Vide the said communication dated 01.10.2020, the Petitioner No. 1 instructed Yes Bank that henceforth, operations of the Bank account should be on the signatures of two partners and not merely on the signature of the Respondent.

16. That to the complete shock of the Petitioners, 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 aforesaid business email accounts of the Petitioners remain blocked by the Respondent and the Petitioners do not have access to, or information of any business operations being conducted by the Respondent on behalf of the Partnership Firm.

17. That despite numerous requests made by the Petitioners to Yes Bank to place the Bank account on debit freeze or activate the facility of dual signature, Yes Bank avoided doing so. In view of the complete inaction on the part of Yes Bank to place the Partnership Firm's Bank Account on debit freeze, the Petitioner Nos. 1 and 2 were constrained to issue a legal notice to Yes Bank on 01.02.2021. This was necessitated in view of the fact that large sums of monies were being withdrawn by the Respondent without the consent of the Petitioners. Vide the legal notice dated 01.02.2021, the Petitioners called upon Yes Bank to immediately stop all further banking operations for the Bank Account bearing no. 021663700000581 till Yes Bank adds the Petitioners as dual signatories. The Petitioners further called upon Yes Bank to update the system to add the contact details of the Petitioners and provide regular updates of the transactions undertaken in the Bank Account bearing no. 021663700000581.

18. That it was only pursuant to the aforesaid legal notice issued by the Petitioner No. 1 that Yes Bank intimated the parties herein, on 03.02.2020, that Account No. 021663700000581 maintained by the Partnership Firm Yes Bank has been marked debit freeze. However, Yes Bank has, till date, not added the Petitioners as a joint signatory which would allow the Petitioners to jointly operate the Bank Account with the Respondent.

> 19. 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 Al Noor Exports is a partnership firm comprising the Petitioner No. 1, Respondent No. 1 and Priya 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 counter-claims, if it so chooses which, if filed, would be dealt with in accordance with law.

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. The parties are directed to contact the learned Arbitrator within a week of being communicated a copy of this order by e-mail by the Registry of this Court.

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

C.HARI SHANKAR, J

APRIL 19, 2021
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