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

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Date of Decision: 18.04.2023

+ **FAO (COMM) 81/2023 & CM APPL. 16033/2023, 16034/2023 & 16035/2023**

NIRMALA DEVI JINDAL

..... Appellant

Through: **Mr. Prateek Gupta & Ms. Akansha Choudhary, Advs.**

Versus

USHA GOEL & ORS.

..... Respondents

Through: **Counsel (appearance not given)**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1976 (hereafter 'the A&C Act') impugning a judgment dated 09.06.2022 (hereafter 'the impugned judgment') whereby the appellant's application under Section 34 of the A&C Act was rejected.

2. The appellant is essentially aggrieved by an Arbitral Award dated 14.03.2020 (hereafter 'the impugned award') whereby the Arbitral Tribunal had awarded an amount of ₹22,87,317/- in favour of respondent no.1 (claimant before the Arbitral Tribunal) along with

interest, at the rate of 8% per annum from the date of award till the date of the payment.

3. Respondent no. 1 (proprietor of V.D. Industries) claimed that she is engaged in the business of manufacturing PVC compound granules since 1996 and is registered under the Micro, Small & Medium Enterprises Development Act, 2006 (hereafter 'the MSMED Act'). She claimed that during the period December 2017 to June 2018, she had supplied goods to M/s Govind Cable Industries (hereafter 'the Firm'), of an aggregate value of ₹26,77,420/-. The said amount remained outstanding and the Firm and its partners had failed and neglected to pay the said amount. The disputes between the parties were, referred by the MSME Council under Section 18 of the MSMED Act for arbitration under the aegis of Delhi International Arbitration Centre (DIAC).

4. The Arbitral Tribunal had examined the aforesaid claims and passed the impugned award.

5. It is the appellant's case that she was not an active partner of the Firm till 20.04.2018 and therefore was not liable for the amounts due by the said firm to respondent no.1.

6. Admittedly, the appellant was inducted as a partner of the Firm in terms of the Partnership Deed executed on 24.08.2017. Accordingly, the Arbitral Tribunal rejected the appellant's contention that she was liable for the amounts due and payable by the Firm only in respect of transaction entered into after 20.04.2018.

7. The relevant extract of the impugned award rejecting the appellant's contention and the reasons for the same are set out below:-

“10.3 As already noticed earlier, the partnership deed Ex RWI/A, was executed between the parties on 24.08.2017. All the transactions detailed in para no.2 of the claim statement are subsequent to this date. As per section 18 of the, Indian Partnership Act, 1932, which occurs in Chapter IV of the Act- Relations of Partners to Third Parties - a partner is the agent of the firm for the purpose of the business of the firm. As per section 25 of the Act, which also occurs in this chapter, every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. In the case in hand, all the respondents no.2, 3 and 4 constitute partners of the respondent no. 1 firm. There is nothing in the partnership deed to show that partnership evidenced by it was not to commence till the respondent no.2 was made authorised signatory in the bank account of the firm. Hence, the presumption is that the partnership came into existence on the very date of the execution of the deed. Hence, the respondent no.2 cannot claim that she became effective partner only with effect from 20.04.2018 when she was made one of the authorised signatories in the bank account of the, firm. Similarly, she cannot claim that she is not liable for the business of the firm after 05.10.2018 because disputes arose again between the partners.”

8. The learned Commercial Court declined to interfere with the impugned award.

9. The learned counsel appearing for appellant has assailed the impugned award and the impugned judgement on the sole ground that the same are in violation of the provision of the Section 25 of the Partnership Act, 1932.

10. Section 25 of the Partnership Act, 1932 reads as under:-

“25. LIABILITY OF A PARTNER FOR ACTS OF THE FIRM.

Every partner is liable, jointly with all the other partners and

also severally, for all acts of the firm done while he is a partner.”

11. It is apparent from the plain reading of the Section 25 that every partner is liable, jointly with the other partners for the acts of the Firm done while he is a partner. According to the appellant, the appellant became an effective partner only with effect from 20.04.2018 when she was included as one of the signatories to the bank account. It is claimed that prior to the said date, the appellant was not in effective management of the Firm.

12. We find no merit in the said contention. Admittedly, the appellant was inducted as partner in terms of the Partnership Deed dated 24.08.2017. Thus, she was introduced as a partner of the Firm on 24.08.2017. It is also relevant to refer to Section 31 (2) of the Partnership Act, which specifically provides that a person, who is introduced as a partner into a firm, does not thereby become liable for any act of the Firm done before he became a partner. Thus, undisputedly, the appellant would be liable for acts of the Firm after she became a partner. The Arbitral Tribunal had found that the appellant had become a partner on 24.08.2017 after examining the Partnership Deed (which was exhibited as RW1). The appellant therefore is liable for any act of the Firm from the date she was introduced as a partner.

13. We are unable to find any ground to fault the impugned award. It is also material to note that the scope of examination under Section 34 of the A&C Act is limited and does not extend to reviewing the

arbitral award on merits.

14. In view of the above, the present appeal is unmerited and accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 18, 2023
Ch

