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

*Date of decision: 28.08.2023*

+ CM(M) 846/2023 & CM APPL. 26512/2023

UPPAL ENGINEERING CO. PVT. LTD. .... Petitioner  
Through: Mr. Ritesh Khatri, Advocate

versus

JAG PARVESH SURA ..... Respondent  
Through: Mr. Sameer Jain, Adv. (through VC)

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**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition filed under Article 227 of Constitution of India impugns the order dated 14.03.2023 passed by the learned Sole Arbitrator, dismissing an application filed by the Petitioner herein under Section 16 of the Arbitration & Conciliation Act, 1996 ('the Act').

1.1. The Petitioner herein is the respondent no.1 and the Respondent herein is the claimant in the arbitration proceedings.

2. Learned counsel for the Petitioner states that the agreement of sub-contract dated 10.03.2005 ('the agreement') filed as Annexure P-3, which is the subject matter of the Arbitration, was executed between the Petitioner herein and one M/s Sura Construction Company. He states that upon perusal of the said agreement, it is evident from the recital and stamp of M/s Sura Construction Company, affixed on the said agreement, that it was signed by Respondent No. 1 herein as a 'partner' on behalf of M/s Sura Construction



Company. He states that therefore, the Petitioner believed that M/s Sura Construction Company is a partnership firm and the Petitioner dealt with the Respondent as the partner of the said firm.

2.1. He states that however, the statement of claim in the arbitral proceedings has been filed by Respondent herein i.e., Mr. Jag Parvesh Sura as an individual claiming himself to be sole proprietor of the firm i.e., M/s Sura Construction Company. He states that the Respondent has now asserted that M/s Sura Construction Company is a sole proprietorship firm. He states therefore, the Petitioner herein has no contract with the Respondent and the relationship, if any, is with the partnership firm known as M/s Sura Construction Company. He states that from the year 2005 until 2022, the Petitioner has never been informed that M/s Sura Construction Company is a sole proprietorship firm of the Respondent.

2.2. He states that he is aggrieved by the impugned order since the learned Sole Arbitrator has failed to accept the said submission and dismissed the arbitration proceedings in exercise of its jurisdiction under Section 16 of the Act.

2.3. He states that in addition, the Petitioner herein had also raised an objection before the learned Sole Arbitrator that claims raised in the statement of claims are barred by limitation. He states that however, the learned Sole Arbitrator has declined to consider the said issue at this stage itself and has incorrectly opined that the issue of limitation will be decided at the stage of final adjudication.

2.4. He states that the learned Sole Arbitrator should have decided the issue of limitation as a preliminary issue at the earliest stage. In this regard he has relied upon the judgment of Coordinate Bench of this Court in **Metcon India**



***Realty and Infrastructure Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.,***  
**2023 SCC OnLine Del 576**, wherein the Court has held as under:

*“52. It is thus settled that the issue of limitation which concerns the “admissibility” of the claim must be decided by the Arbitral Tribunal as a preliminary issue.”*

3. In reply, the learned counsel for the Respondent submits that he disputes the contention of the Petitioner that the documents exchanged between the parties carry the stamp of the partner. He specifically denies the stamp which appears on the copy of the agreement filed as Annexure P-3 to this petition.

3.1. He states that all payments under the said agreement have been made by the Petitioner to the Respondent in his capacity as the proprietor of M/s Sura Construction Company. He states that M/s Sura Construction Company is a Sole proprietorship firm and therefore, the Permanent Account Number (‘PAN’) used by the said firm and the Respondent (as an individual) is one and the same. In this regard, he relies upon the bank account statement and the income tax returns (‘ITRs’) filed by the Respondent. He states therefore, the learned Sole Arbitrator rightly dismissed the application filed by the Petitioner.

3.2. He states that with respect to issue of claim being barred by limitation, he relies upon clause (e) of the agreement. He states that the Respondent was a sub-contractor under the Petitioner and the payments under the agreement were to be disbursed to the Respondent, upon the same being received by the Petitioner from Northern Railways.

3.3. He states that since the Petitioner, admittedly, received the payment from the Northern Railways in the year 2017 under a decree of the Court, the Respondent herein was well within the limitation at the time of invoking of



arbitration proceedings for recovery of the amount due and payable to the Respondent under the agreement.

4. In rejoinder, learned counsel for the Petitioner states that the amounts received from Northern Railways, which is the subject matter of the statement of claim does not arise on account of the transaction under the agreement.

5. This Court has considered the submission of learned counsel for the parties and perused the record.

6. The findings of the learned Sole Arbitrator with respect to the unity of identity of M/s Sura Construction Company and the Respondent is not disputed by the Petitioner. The finding of the learned Sole Arbitrator that all payments, transactions and statutory dues were paid to the sole proprietor concern of M/s Sura Construction Company has not been disputed before this Court. It is not disputed by the Petitioner that the PAN of M/s Sura Construction Company and the Respondent used in the transaction is same.

6.1. The Petitioner has not disputed that the Respondent herein is the only individual who dealt with the Petitioner with respect to the performance of the agreement. The learned counsel for the Petitioner fairly admitted that he is not aware of details of any other individual who was a partner in the firm. It therefore appears that the Petitioner is chasing a phantom which does not exist.

6.2. It is trite law that a sole proprietorship firm is not a juristic entity and does not have any existence separate from its sole proprietor. Even otherwise in law, a sole proprietorship firm cannot maintain a legal proceedings and it is only the proprietor who can maintain a statement of claim in his/her name in the arbitral proceedings.

6.3. The Petitioner admittedly has not received claims from any third-party



under the agreement. During the course of the arguments, the Petitioner was also unable to point out to the Court the prejudice, if any, in fact or in law, which the Petitioner may suffer in case the proceedings are continued by the Respondent for the claims arising under the agreement.

6.4. Thus, the sole basis of the contention of the Petitioner for asserting that M/s Sura Construction Company was believed to be a partnership firm is based on the recital of the agreement; and the stamp (which is also disputed by the Respondent). However, in view of the stand taken by the Respondent that he disputes the copy of the article of agreement filed in this petition, which carries a stamp of partner, it is evident that there is no admission by the Respondent that it held to be partnership firm to the Petitioner. The submission of the Respondent that the description in the recital is erroneous cannot be discarded because there is no evidence on record of the legal existence of the partnership firm.

6.5. Therefore, in view of the fact that there was admittedly no partnership firm by the name of M/s Sura Construction Company existing as on the date of signing of the agreement dated 10.03.2005 or in the year 2008, when as per the Petitioner himself the agreement came to be end, the objections raised by the Petitioner that M/s Sura Construction Company is a partnership firm, is without any merit.

6.6. This Court is therefore of the opinion that there is no infirmity in the impugned order rejecting the application of the Petitioner with respect to the ground of partnership vis-à-vis sole proprietorship firm.

7. With respect to the plea of limitation, in view of the stand taken by the Respondent that the agreement dated 10.03.2005 is the back-to-back agreement with the agreement executed between Northern Railway and the



Petitioner; and the fact that the amounts due and payable to the Petitioner from Northern Railway were only received in the year 2017, the opinion of the learned Sole Arbitrator that the issue of limitation would be decided after evidence has been adduced by the parties is a reasonable course of action.

7.1. The recital of the agreement records that the said agreement has been executed between the parties herein to perform the work awarded by Northern Railways to the Petitioner in pursuance to letter dated 18.01.2005.

7.2. Further, clause (e) of the agreement unequivocally records that the progressive running and final payment of the work executed by the Respondent shall be made upon receipt of payment from Northern Railways. Therefore, the plea of the Respondent that the cause of action for the claims arose when monies were received by the Petitioner from Northern Railways in the year 2017 is a reasonable explanation, which needs to be adjudicated.

7.3. The learned counsel for the Petitioner during the course of arguments submitted that the Respondent did not extend any cooperation with the Petitioner for pursuing the claims against Northern Railways and therefore, is disentitled from now sharing the fruits of the efforts of the Petitioner. In the opinion of this Court, the effect, if any, of the said submission of the Petitioner will be adjudicated by the learned Sole Arbitrator, however, this plea does not outrightly disentitle the Respondent from maintaining its claims in view of clause (e) of the agreement.

7.4. This Court is therefore of the opinion that there is no infirmity in the order of learned Sole Arbitrator declining to determine the issue of limitation at this initial stage of the proceedings.

8. With respect to the maintainability of this petition under Article 227 of Constitution of India, the Coordinate Bench of this Court in *Virtual*



***Perception OPC Pvt. Ltd. v. Panasonic India Pvt. Ltd., 2022 SCC OnLine Del 566***, while relying on earlier decisions of Supreme Court has observed that a petition under Article 227 of Constitution of India is maintainable against the order passed in application under Section 16 of the Act only in ‘exceptional circumstances’. The Coordinate Bench observed that in order to maintain a challenge under Article 227 of Constitution of India against the order passed in an application filed under Section 16 of the Act, the party has to make out a case for patent lack of jurisdiction of the Arbitrator as well as has to show the perversity in the impugned order which “*stares one in the face*”.

8.1. This Court is of the opinion that in view of the discussion held hereinabove, the order passed by the learned Sole Arbitrator does not suffer from any perversity or inherent lack of jurisdiction. The Petitioner has failed to make out any case for patent lack of inherent jurisdiction and/or any perversity in the impugned order passed by the learned Sole Arbitrator. In this view of the aforesaid, this petition under Article 227 of Constitution of India is not maintainable and considering the fact that the Petitioner herein has statutory remedy available to it under Section 34 of the Act, against the final award passed by the learned Sole Arbitrator, this Court is of the opinion that maintaining the present petition under Article 227 of the Constitution of India at this interim stage is neither warranted nor maintainable.

9. This Court finds no reason to interfere with the proceedings, accordingly, the present petition is dismissed. Pending applications are also disposed of.

**MANMEET PRITAM SINGH ARORA**  
**(JUDGE)**

**AUGUST 28, 2023/Neelam/aa**