OC-30

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

(Commercial Division)

AP-COM/658/2024

SUJAY TEWARI
VS
VIVEK ASSOCIATES AND ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 7th August, 2024

Appearance:
Mr. S. Dutt, Adv.
Mr. Arnab Dutt, Adv.
…for the petitioner

Mr. Anindya Lahiri, Adv.
Ms. Sulagna Mukherjee, Adv.
Mr. a. Chakraborty, Adv.
…for the respondent nos. 1, 2 and 3

Mr. Goutam Misra, Adv.
Mr. Vaskar Pal, Adv.
…for the respondent no. 4

The Court:- Affidavit of service filed in Court today be kept on record.

Learned counsel for the petitioner contends that the petitioner retired from the respondent no. 1-partnership firm but his dues have not yet been cleared by the respondent no.1-firm and the other respondents, who are the rest of the partners.

Learned counsel appearing for the respondent nos. 1 to 3 submits that the substantive dispute between the parties is palpably barred by limitation and ought to be considered as "deadwood". In support of such submissions, learned counsel cites *Arif Azim Company Limited Vs. Aptech Limited* reported in *(2024) 5 SCC 313.*

Learned counsel further points out that even if certain documents have been annexed which are purportedly the balance sheet of the firm for periods relating to the years 2021 and 2023, it is well-settled that within the contemplation of Section 18 of the Limitation Act, if the limitation period for a particular claim expires, subsequent "acknowledgement" cannot lend a new lease of life to the time-barred claim. As such, it is submitted that the said documents are not germane for the present consideration of limitation.

Learned counsel for the petitioner, in reply, places specific reliance on the balance sheets of the firm as on March 31, 2021 and March 31, 2023, annexed respectively at pages 25 and 35A of the application, where apparently, under the head "Unsecured Loans", the dues of the petitioner have been reflected.

It is further argued that the liability of the firm and the other partners to clear off the dues of the petitioner is a continuing liability.

Upon hearing learned counsel for the parties, it is found that this Court, sitting in jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, cannot conclusively decide the issue of limitation raised in the present case. Contrary to the submissions of the respondents, it cannot be said that the substantive claim of the petitioner is palpably or *ex-facie* barred by limitation.

The issue of limitation in the present matter can at best be arguable and a mixed question of fact of law.

It is, to say the least, arguable as to whether the liability of the firm to clear off the dues of the petitioner cast a continuing liability on the firm and as such the cause of action is a continuing one. There is also some amount of arguability with regard to whether the reflection of the dues of the petitioner under the head “Unsecured Loans” in the balance sheets of the partnership firm continuously after the retirement of the petitioner, as late as in the years 2021 and 2023, could be taken into consideration to hold that the claim is not barred by limitation. There is also dispute as regards whether the reflection of the petitioner’s dues in the balance sheet was continuous or not.

Be that as it may, all said and done, the above issues are required to be decided of facts and law by the competent Arbitrator and it is not within the zone of consideration by the Court in an application under Section 11 of the 1996 Act to conclusively determine such issues.

Thus, a sufficient *prima facie* case has been made out by the petitioner even on the question of limitation for the matter to be referred to arbitration. Needless to say, it will be open to the respondent to raise all issues, including the objection as to limitation, before the learned Arbitrator.

Accordingly, AP-COM/658/2024 is allowed on contest, thereby appointing Justice Aloke Chakrabarti (retired) as the sole Arbitrator to resolve the dispute between the parties, subject to a declaration being obtained from the said learned Arbitrator under Section 12 of the 1996 Act.

The learned Arbitrator shall fix his remuneration in consultation with the parties within the framework of the 1996 Act read with its Schedules.

It is made clear that it will be open to the learned Arbitrator to decide on all points on merits irrespective of the findings rendered for the limited purpose of deciding the present appeal.

(SABYASACHI BHATTACHARYYA, J.)

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