

ORDER SHEET

EC-COM/367/2024

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

ARUN KUMAR SUREKA AND ORS.
VS
GAURAV CHURIWAL AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 7th October, 2024.

Appearance:

Mr. Rajarshi Dutta, Adv.

Mr. Shounak Mukhopadhyay, Adv.

Mr. Sayantan Bose, Adv.

Ms. Manisha Das, Adv.

...for the award-holders

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Kumarjit Banerjee, Adv.

Ms. Sanchari Chakraborty, Adv.

Ms. Akanksha Chowdhury, Adv.

Ms. Tanishka Khandelwal, Adv.

...for the respondents

The Court: Learned counsel for the petitioner contends that in order to give effect to the arbitral award from which the present application arises, a reconstitution of the LLP (Limited Liability Partnership) is required. By placing the operative portion of the interim award, it is pointed out that the interim award requires induction of the respondent as a partner in place of his deceased father. The learned Arbitrator also recorded that upon being inducted as a partner, the claimant would have to comply with all necessary legal formalities as mentioned in prayer (b) of the said application.

Prayer (b) of the application for interim award is to the effect that a consequential award be passed directing the claimant to fill up and submit “Form-9” under the LLP Rules and take all other consequential steps in pursuance of his induction as designated partner of the respondent no.1 firm.

Learned counsel seeks to elaborate on the expression “take all other consequential steps” in the interim award and takes the Court through several provisions of the Limited Liability Partnership Act, 2008 and the connected Rules.

The pivot of reliance of the petitioner is on Section 23 under Chapter IV of the LLP Act. Sub-Section (2) of Section 23, in particular, stipulates that the Limited Liability Partnership Agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

Sub-Section (3) of Section 23 requires a ratification by all partners after the incorporation of the Limited Liability Partnership in the event an agreement in writing made before the incorporation of such a limited liability partnership between the persons who subscribed their names to the incorporation documents imposes obligations on the LLP.

Learned counsel also takes the Court through Rules 7 and 21 of the LLP Rules and points out that Form-3 under the said Rules incorporates a provision for a statement as regards the inducted partner giving information to the best of his knowledge and belief in the form and stating that the same is correct and complete.

Consent to become a partner/designate partner is also contemplated under the forms.

Learned counsel for the petitioner submits that the general contemplation of the relevant forms and rules of the LLP Rules operates within the periphery of Section 23 of the LLP Act.

Since in case of change of a partnership firm, a ratification is necessary as well as due formalities have to be complied with in such context, it is sought to be argued that the same brings about a reconstitution of the firm.

Learned counsel argues that the very fact of induction of a new partner into the LLP forms the basis of a reconstitution of the partnership firm. As such, a direction is sought on the respondent to agree to the reconstitution in the partnership firm consequential upon his induction as per the draft suggested by the petitioner.

Learned senior counsel appearing for the respondent controverts the submissions of the petitioner and points out that the very premise of Section 23 is a change due to induction of a partner and/or change of address which does not constitute a reconstitution of the LLP as such. Moreover, the reconstitution suggested by the petitioner is way beyond the limited consequence of the induction.

Upon hearing learned counsel for the parties, it transpires that Section 23(1) provides that the mutual rights and duties of the partners of a Limited Liability Partnership and the mutual rights and duties of such a partnership and its partners shall be governed by the Limited Liability

Partnership Agreement between the partners, or between the LLP and its partners.

In such backdrop, Sub-Section (2) provides that the LLP agreement and any changes made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

The innocuous context of the said provision is any change in the partnership agreement - nothing more, nothing less. Sub-Section (3) requires a ratification only in case of there being any obligation imposed by virtue of the agreement of the LLP.

However, in the present case, the respondent has stepped into the shoes of his predecessor-in-interest, who was in turn a partner of the LLP. Hence, the induction, *ipso facto*, does not alter the paradigm of the rights and liabilities or profit-sharing ratio between the partners and/or does not bring about any major change whatsoever in the constitution of the LLP as such.

On the other hand, a perusal of Section 25 of the Act shows that in case of any change in name or address in respect of an LLP, certain formalities have to be complied with. Section 25(2)(a) provides that a Limited Liability Partnership shall, where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner.

Sub-Section (3)(b) provides that a notice filed with the Registrar under Sub-Section (2) shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed.

As such, nothing in Sections 23 or 25 mandate a reconstitution of the LLP itself wherever there is an induction of a partner.

All changes do not tantamount to a reconstitution of an LLP. Changes of an innocuous nature such as where a partner is inducted in place of his predecessor and steps into the shoes of such predecessor do not require any reconstitution of the partnership, since there are no substantial alterations in the interrelationship between the partners or the partners and the LLP.

In such view of the matter, the contention of the petitioner that the induction of the respondent as a partner in place of his predecessor by itself requires a reconstitution of the Partnership Act is not tenable in the eye of law and cannot be accepted.

Accordingly, EC-COM/367/2024 is dismissed.

However, it is made clear that nothing in the above order shall preclude the parties from carrying out the directions of the learned Arbitrator in the interim award in question at the earliest.

(SABYASACHI BHATTACHARYYA, J.)