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

+ **O.M.P. (COMM) 335/2020 & I.A. 1692/2020**

M/S BHARDWAJ BROTHERS

.....Petitioner

Through: Mr. Prashant Mehta & Mr. Alok
Tripathi, Advocate.

versus

M/S BLR SUMER JV

.....Respondent

Through: Mr. Mansimran Singh and Ms.
Balram Srivastva, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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28.08.2024

1. The challenge in this petition is to an Arbitral Award dated 01.10.2019, by which a learned sole arbitrator has adjudicated disputes between the parties under an agreement dated 21.01.2010 [“the Agreement”].

2. The said Agreement was executed between the respondent herein and a partnership firm by the name of M/s Bhardwaj Brothers for execution of electrical works in a project for construction of schools, which had been awarded to the respondent by the Delhi State Industrial and Infrastructure Development Corporation Ltd. [“DSIIDC”]. The Agreement admittedly contained an arbitration clause and the learned sole arbitrator was appointed by the order of this Court dated 31.10.2018 in ARB.P. 368/2018.

3. I have heard learned counsel for the parties.

4. The principal question agitated by learned counsel for the



petitioner is that the learned arbitrator has rejected the petitioner's claims *inter-alia* on the basis of the maintainability, holding that the petitioner had instituted the arbitration proceedings as the sole proprietor of M/s Bhardwaj Brothers, whereas the contract was entered into by a partnership firm of the same name.

5. Factually, it appears that at the time of execution of the contract, M/s Bhardwaj Brothers was a partnership firm of which two brothers were partners, namely Mr. Harbans Lal Bhardwaj and Mr. Ashwani Kumar Bhardwaj. Mr. Harbans Lal Bhardwaj died on 14.10.2014, during the execution of the project. In the statement of claim, the petitioner has claimed as a sole proprietorship concern of Mr. Ashwani Kumar Bhardwaj. The averments in the statement of claims are clear, to the effect that M/s Bhardwaj Brothers became a sole proprietorship of Ms. Ashwani Kumar Bhardwaj upon the demise of Mr. Harbans Lal Bhardwaj.

6. In the impugned award, the learned arbitrator has found that this assertion is unsupported by records.

7. Dealing with issue No. 1, relating to recovery of an amount of Rs.43,69,415/-, the learned arbitrator has noted that the Agreement was entered into by M/s Bhardwaj Brothers as a partnership concern, but the partnership concern was not the claimant in the arbitral proceedings. The learned arbitrator found that the claimant did not plead the necessary facts to establish his right to claim as the proprietor of the firm, or to show that upon the death of Mr. Harbans Lal Bhardwaj, the assets and liabilities of the partnership firm had devolved upon him alone. He therefore concluded that the proprietorship firm cannot claim any amount under the



Agreement to which it was not a party, and that the claim asserted in the arbitral proceedings was not on behalf of the dissolved partnership firm, or as a successor or assignee of the partnership firm. The claims were therefore held to be not maintainable at the instance of the petitioner.

8. Mr. Prashant Mehta, learned counsel for the petitioner, submits that he would be satisfied with a clarification that the partners of the dissolved partnership firm, their successor-in-interest, or the firm as it presently stands, may be permitted to agitate its claims in accordance with law. However, he submits that the learned arbitrator has proceeded to adjudicate the claims on the question of limitation and merits, despite the aforesaid findings on maintainability. Mr. Mehta apprehends that these observations will stand in the way of any claim instituted in accordance with law on behalf of the partnership firm or its partners, including the legal heirs of the deceased partner.

9. Having heard learned counsel for the parties, I am of the view that the observations in the impugned order on the question of limitation and on merits cannot bind the persons who were not party to the award at all. Having held that the claims were not maintainable at the instance of the petitioner, who claimed as the proprietor of M/s Bhardwaj Brothers, the matter ought to have been closed there. The findings rendered by the learned arbitrator on limitation and on the merits of the claims, cannot possibly foreclose the rights and claims of the partnership firm or its successors, when they have expressly been held not to be party to the proceedings. There is nothing in the award to suggest that the partnership firm and/or its successors in accordance with law cannot agitate their claims, subject, of course, to the defences of limitation and merits that



may be available to the respondent.

10. The petition is therefore disposed of with the aforesaid observations, making it clear that the findings in the impugned award do not bind the partnership firm or its successors-in-interest, who may agitate their claims in accordance with law. All defences available to the respondent are also expressly reserved.

PRATEEK JALAN, J

AUGUST 28, 2024

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