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

+ **O.M.P. (T)(COMM.) 38/2023 & I.A. 554/2024**

PRADEEP AGRAWAL & ANR

..... Petitioners

Through: Mr. J.S. Lamba and Mr. Mukesh
Kumar Sharma, Advocates.

versus

S. S. BRIJBASI & SONS & ORS.

..... Respondents

Through: Mr. Nihit Nagpal, Ms. Bindra Rana
and Mr. Manas Syal, Advocates for
R-1 and R-2.

Mr. S.S. Tripathy, Mr. P.C. Patnaik
Ms. Bharti Pawar, Ms. Stuti Jain, Mr.
Vikrant Malwal and Mr. S.K. Jain,
Advocates for R-3, R-4, R-6 and R-7.
Mr. Mohit Bangwal, Advocate for R-
8, R-9 & R-10.

Mr. Rajat Malhotra, Mr. Anubhav
Bhasin, Ms. Madhu K. Singh and Mr.
Yash Tiwari, Advocates for R-11 to
R-13.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

11.01.2024

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By way of the present petition under section 14 of the Arbitration & Conciliation Act 1996 ('1996 Act'), the petitioners seek termination of the mandate of the learned Sole Arbitrator, appointed by this court *vide* order dated 04.05.2004 passed in CS(OS) No. 1272/1993 titled *S.S. Brijbasi & Sons vs. Chandra Bhan Garg & Ors.*, on certain grounds as mentioned in the petition.



2. Notice on this petition was issued on 24.05.2023; consequent whereupon replies have been filed by the respondents.
3. Be that as it may, it transpires that after the present petition was filed, the learned Sole Arbitrator has passed-away on 27.09.2023; consequent whereupon, the mandate of the learned Sole Arbitrator in any case stood terminated.
4. Learned counsel, as above, jointly submit that an alternate arbitrator may be appointed to take-forward the proceedings that were pending before the learned Sole Arbitrator.
5. Mr. Nihit Nagpal, learned counsel appearing for respondents Nos.1 and 2 however submits that the arbitration proceedings before the previous learned Sole Arbitrator were going-on under the Arbitration Act, 1940 and not under the 1996 Act.
6. This submission is however belied by what was recorded in order dated 04.05.2004 made by this court, whereby, while referring the matter to arbitration by consent of the parties, the court also proceeded to record that the learned arbitrator would have the powers as envisaged “.....under Section 17 of the Arbitration Act”; which could only have been a reference to the 1996 Act.
7. Moreover, it is also observed that the proceedings have been pending since 2004; and have not attained fruition by reason of the demise of the learned Sole Arbitrator.
8. Learned counsel for the parties further submit, that since the dispute arises from a partnership arrangement among family members, they wish to attempt conciliation before proceedings in arbitration go-forward.



9. In the circumstances, the present petition is disposed-of; and Mr.Aayush Agarwala, Advocate (Cellphone No.: 9999105064) is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
10. Parties request that since they had already paid arbitration fee to the previous learned Arbitrator, the court may direct the arbitrator now appointed to charge reasonable fee giving due consideration to the fact that fee has already been paid by the parties.
11. Considering the circumstances obtaining in the matter, the learned Arbitrator is requested to determine his fee with consent of the parties, in a manner that is reasonable both as to quantum and schedule of payment.
12. Parties shall share the arbitrator's fee and arbitral costs, equally.
13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.
14. Parties are directed to approach the learned Arbitrator appointed within 10 days.
15. It is made clear that the proceedings would be conducted under the Arbitration & Conciliation Act, 1996; and the learned Sole Arbitrator will proceed from the point at which the proceedings were left-of by the previous learned Arbitrator. The arbitrator shall call for the record of the proceedings from the office of the previous learned Arbitrator.
16. As requested by learned counsel for the parties, the learned Arbitrator is requested to first attempt conciliation in accordance with the 1996 Act; and thereafter proceed with the matter, if considered necessary.



17. A copy of this order be communicated by the Registry to the learned Sole Arbitrator.
18. The petition stands disposed-of in the above terms.
19. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 11, 2024/ak