



2024:DHC:8383



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

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Reserved on: 15th May, 2024

Pronounced on: 28th October, 2024

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O.M.P. (COMM) 381/2017

HARI OM SHARMA

..... Petitioner

Through: Petitioner in person.

versus

SAUMAN KUMAR CHATTERJEE & ANR.

..... Respondents

Through: Mr. Rana S. Biswas & Mr. Kartik Chettiar, Advocates.

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O.M.P. (COMM) 433/2017, CRL.M.A. 1216/2019, I.A. 836/2019

SAUMEN KUMAR CHATTERJEE & ANR.

..... Petitioners

Through: Mr. Rana S. Biswas & Mr. Kartik Chettiar, Advocates.

versus

HARI OM SHARMA

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Petition bearing O.M.P. (COMM) 381/2017 under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed on behalf of the Claimant, Hari Om Sharma, partner seeking to challenge the Award dated 28.04.2017 and the corrected Award dated 01.07.2017 vide which the



learned Arbitrator has decided the claims of the Claimant in Arbitration proceedings pertaining to their partnership Firms M/s Ashika Textiles and *Classic Processors*.

2. The **facts in brief** are that the Claimant/petitioner, Mr. Hari Om Sharma and Mr. Sauman Kumar Chatterjee, and Mr. S.K. Malhotra, the respondent No.1 & 2 respectively, constituted M/s Ashika Textiles, the Partnership Firm at Will, by executing a Partnership Deed on 12.05.1995 in Sahibabad, Ghaziabad, Uttar Pradesh having its Head Office in Delhi. The second Partnership Firm in the name of *Ashika Textiles House* was constituted in the year 1999 by the same partners but it was closed in the year 2000 itself under the Orders of the Hon'ble Supreme Court of India, in regard to the Polluting industries. After the closure of M/s Ashika Textiles House, the *third Partnership Firm* at Will, namely, *Classic Processors* was constituted on 19.12.2000 at Sahibabad, Ghaziabad, Uttar Pradesh having its Head Office at Delhi. The job work had been commenced under the Partnership Firm in June, 2001.

3. Eventually, the Two Firms closed their business on 31.07.2003. Thereafter, disputes arose *inter se* the Partners. The petitioner served a *Legal Notice dated 27.10.2004*. With further facts that came to his knowledge till 01.08.2005, the Claimant served *second Legal Notice dated 01.08.2005* and also made his Claims. On receiving a Reply dated 16.08.2005 from the respondents, the petitioner then issued the *third Legal Notice dated 29.08.2005* for seeking redressal of his Disputes through Arbitration. The respondents gave their consent only in the case of Ashika Textiles and refused in the case of Classic Processors, on the false averment of there being No Arbitration Clause in the Partnership Deed.



4. The petitioner then sent a copy of the Partnership Deed of Classic Processors, which contained the Arbitration Clause in the year 2006, but no further response was received from the respondents. The Petitioner filed *Arbitration Petition No. 373/2006* under Section 11 of the Arbitration and Conciliation Act and Justice Satpal (Retired) was appointed as the Arbitrator on 28.03.2007 in the case of M/s Classic Processors. Since the respondents had already consented in the connected case of M/s Ashika Textiles, the Arbitrator was appointed for this Firm as well. On the request of the parties, both these cases were clubbed by the Arbitrator.

5. The Ld. Arbitrator entered into reference on 16.04.2007. **Fifteen Claims** were raised by the petitioner in connection to M/s Ashika Textiles, which are as under: -

“Claim No. 1: 1/3rd amount of Rs. 15,00,000/- towards the cost of Plant and Machinery.

Claim No. 2: 1/3rd amount of Rs. 12,00,000/- towards cost of Treatment Plant, Electric connection and Electric fittings, tube wells and its fittings, water fittings, printing tables, big size heavy duty generator, etc.

Claim No. 3: 1/3rd amount of Rs. 12,00,000/- towards stock of misprint sarees, cloth sketch books, beggary and aluminium dying frames, etc.

Claim No. 4: 1/3rd sum of Rs. 60,00,000/- towards goodwill.

Claim No. 5: a sum of Rs.2,86,651/- towards interest of capital amount (Hari Om Sharma)

Claim No. 6: a sum of Rs.3,92,000/- towards salary loss/damages from 01.04.2003 to 30.04.2007, and a sum of Rs. 1, 72,567/- towards compound interest on the said amount.

Claim No. 7: a sum of Rs.1,58,462/- towards interest on unsecured loans and further a sum of Rs. 1,50,375/- towards



compound interest on the said amount for the period of 16.10.2003 to 30.04.2007, after adjustment of a sum of Rs. 1,00,000/- received on 15.08.2004 and a sum of Rs. 62,240/- towards compound interest from 15.08.2004 to 30.04.2007.

Claim No. 8: *a sum of Rs.1,45,165/- towards profit average per year Rs. 2,22,147/3.*

Claim No. 9: *sum of Rs.65,141/- towards loss/ damage in tenancy rights.*

Claim No. 10: *sum of Rs.1,95,423/- including compound interest towards his share in stock of color chemicals.*

Claim No. 11: *sum of Rs.17,97,562/- including compound interest towards amount of bills not entered in the books of M/s Ashika Textile.*

Claim No. 12: *sum of Rs.13,41,899/- including compound interest towards loss/damages sustained due to fabricated bills along with compound interest for the period of 01.04.2003 to 30.04.2007.*

Claim No. 13: *sum of Rs.19,505/- towards loss or rent security.*

Claim No. 14: *sum of Rs.71,89,388/- including compound interest towards the amount which became payable to job work to the claimant for which billing has not been made.*

Claim No. 15: *a sum of Rs.78,116/- towards interest on unsecured loan of Rs.2,00,000/- for the period 11.07.2002 to 31.03.2003 and on the balance amount of Rs. 1,50,000/- for the period of 15.08.2004 to 30.04.2008.*

6. Thus, the claimant has claimed a total sum of Rs. 1,51,22,374/- towards all his claims.

7. The petitioner in connection to M/s Classic Processors made ten Claims, which are as under: -

“Claim no. 1:(Claims as 1A, 1 B, 1C and 1D).



(a) **Claim no. 1A:** 1/3rd share of a sum of Rs.6,00,000/- towards cost of plant and Machinery and a sum of Rs.30,000/- towards cost of furniture.

(b) **Claim no. 1B,** the claimant has claimed 1/3rd share of a sum of Rs. 6,00,000/- towards Goodwill.

(c) **Claim no 1C,** the claimant has claimed his 1/3rd share of a sum of Rs. 2,00,000/- towards stores and small Articles.

(d)**Claim no. 1D:** 1/3rd share of Rs. 6,00,000/- towards cost of colour and chemicals stock and a sum of Rs. 1,00,000/- towards cost of other materials.

Thus in all, the claimant has claimed has claimed a sum of Rs. 25,10,000/- towards his 1/3rd share of the total amounts claimed under claims 1A, 1B, 1C and 1D.

Claim no. 2: sum of Rs. 90,990/- along with compound interest towards interest on capital.

Claim no. 3: sum of Rs. 3,43,000/- along with compound interest towards salary/loss/damages for the period 01.04.2003 to 30.04.2007.

Claim no. 4: sum of Rs. 62,219/- towards interest on unsecured loan.

Claim no. 05: sum of Rs.1,71,511/- towards loss/Damages in Net Profit.

Claim no. 6 the claimant has claimed a sum of Rs. 33,333/- along with compound interest towards Loss/Damage in Tenancy Right Value.

Claim no.7: sum of Rs.110843/- towards his share value of colour and chemicals and chemicals on 31.03 included in item no. 1.

Claim no. 08: sum of Rs.16,52,888/- along with compound interest for the period 01.06.2001 to 30.06.2003 and further a sum Rs.24,82,528/- along with compound interest for the period 01.07.2003 to 30.04.2007 towards loss/damage due to fabricated bills.



Claim no.9 the claimant has claimed a sum of Rs. 10,66,570/- along with compound interest towards loss / damage due to bogus wages entry.

Claim no. 10, the claimant has claimed a sum of Rs. 17,65,20/- along with compound interest for the years ending 31.03.2002, 31.03.2003 and 31.07.2003 and further a sum of Rs. 2,10,687/- along with compound interest for the period 01.08.2003 to 30.04.2007 towards Cartage misappropriated.”

8. On the Pleadings of the Parties, following Issues were framed on 05.09.2008:-

1. *Whether the claims raised on behalf of the claimant are barred by imitation.*
2. *Every claim will be treated as a separate issue.*
3. *Whether any interest, is payable or any amount, if so Awarded.*
4. *Whether the firms Classic Processors and Aashika Textiles stood dissolved on 31.07.2003 as alleged by the Petitioners as Respondents.*
4. *Relief.*

9. Both the parties had produced their witnesses who were duly cross-examined by the parties.

10. The learned Arbitrator gave the **Final Award dated** 28.04.2017 (corrected on 01.07.2017), **in both the Claim Petitions.**

11. **The Award in regard to M/s Ashika Textiles**, was in the following terms:-

“a. The respondents are directed to pay to the claimant a sum of Rs.05,65,060/- under claims no.01 & 02.



- b. *The respondents are directed to pay to the claimant a sum of Rs. 1,38,203/- under claim no. 05.*
- c. *The respondents are directed to pay to the claimant a sum of Rs.40,000/- under claim no.06.*
- d. *Against claims no.07 & 15, no amount towards principal has been awarded in favour of the claimant. However, against this claim a sum of Rs. 21,000/- has been awarded towards interest.*
- e. *The respondents are directed to pay to the claimant a sum, of Rs. 10,285/- against claim no. 08.*
- f. *The respondents are directed to pay to the claimant a sum of Rs.51,285/- against claim no.11.*
- g. *The respondents are directed to pay to the claimant a sum of Rs.10, 000/- against claim no. 13.*
- h. *The respondents are directed to pay a sum of Rs.10,79,907/- towards interest and this amount includes the amount of interest of Rs.21,000/- awarded against claims no.07 & 15.*
- i. *The claims no. 03, 04, 09, 10, 12 & 14 raised on behalf of the claimant have been rejected.*
- j. *The claim of the claimant towards cost has been rejected.*
- k. *As held in para 45 of the Award, the partnership firm namely : M/s. Ashika Textiles stands dissolved from the date of this Award i.e 28.04.2017.”*

12. The learned Arbitrator thus held that the two unregistered Partnership Firms were not dissolved on 31.07.2003, although the business of both the Partnership Firms had been closed on the said date and dissolved both the



Firms from the date of Award. The total value of the assets pertaining to M/s Ashika Textiles, was calculated as Rs.16,95,181/- and the 1/3rd share of the petitioner, has been calculated as 5,65,060/-. The learned Arbitrator has also held that the petitioner is entitled to recover the balance amount of the capital to the extent of Rs.1,38,203/- which was ascribed to his share as per the Balance Sheet as on 31.03.2003. The simple interest on the sum of Rs.2,00,000/- extended by him as loan for the period 01.04.2003 to 16.10.2003 and on Rs.1,50,000/- for the period 17.10.2003 to 18.08.2004, has been allowed. The has also been held entitled to Rs.10,285/-. The simple interest @9% p.a. has been granted on all the Claims except on Rs.1,38,203/- granted towards principal Capital Amount on which interest @12% p.a. has been granted.

13. The ***Final Award dated 28.04.2017 in regard to M/s Classic Processors, is*** in the following terms:-

- a. *The respondents are directed to pay to the claimant a sum of Rs.28,955/- under claim no.01 A.*
- b. *The respondents are directed to pay to the claimant a sum of Rs. 02,00,000/- under claim no. 01 D.*
- c. *The respondents are directed to pay to the claimant sum of Rs. 90,990/- under claim no. 02.*
- d. *The respondents are directed to pay to the claimant a sum of Rs. 28,525/- under claim no. 03.*
- d. *Against claims no. 04, no amount towards principal has been awarded in favour of the claimant. However, against this claim a sum of Rs.5,521/- has been awarded towards interest.*



- e. *The respondents are directed to pay to the claimant a sum of Rs. 18,604/- under Claim No. 05.*
- f. *The respondents are directed to pay to the claimant a sum of Rs.05,01,119/- towards interest and this amount includes the amount of interest of Rs.5,521/-awarded against claim no. 04.*
- g. *The claims no.01 B, 01 C, 06, 07, 08, 09 & 10 raised on behalf of the claimant have been rejected.*
- j. *The claim of the claimant towards cost has been rejected.*
- k. *As held in para 45 of the Award, the partnership firm namely: M/s. Classic Processors stands dissolved from the date, of this Award i.e 28.04.2017.”*

14. Aggrieved by the Award dated 28.04.2017, *the petitioner/claimant, Mr. Hari Om Sharma has filed his Objections under Section 34 of the Arbitration and Conciliation Act.* It has been claimed that the Award is in conflict with the *Public Policy of India* as well as is in contravention of the *Fundamental Policy of Indian Law*. The learned Arbitrator has not only gone beyond his Jurisdiction but has misconducted himself in so much as the Claims have not been decided in accordance with the Partnership Deed, and the Partnership Act/Trust Act despite there being Clause No. 19 in the Partnership Deed with regard to the Partnership Act being applicable for dealing with the disputes connected with the Partnership Firm. It is alleged that the learned Arbitrator appeared to be *biased* in favour of the respondents, who had immoral contact with him. *The Award is in conflict with the basic motions of justice and morality.*



15. The petitioner, Mr. Hari Om Sharma claims that he started remaining ill since the end of the year 2000/beginning of the year 2001 and was frequently hospitalised for acute/serious illnesses, and he had no active participation in the day-to-day working of the Partnership Firms. It is reflected from the Records that all of the day-to-day affairs were being looked after only by the respondents. During this period of illness, while the claimant/petitioner was admitted in the Hospital at Jaipur during 14.07.2003 to 09.09.2003, both the respondents took away all the Partnership Properties/Assets without counting and weighing the materials to their pre-arranged places on the last Working Day of the Partnership Business i.e. 31.07.2003. They also took the entire Capital and his Loan Amount given to the Firms. The respondents without following any provision of the Partnership Deeds or the Law also handed over the business premises to the landlord on the same day. No written Notice was served by the respondents on the petitioner as was required for the dissolution of the Firms as both the Firms were *Partnership at Will*.

16. The records reflects that after the Closure of the Partnership Business, both the respondents withdrew the Capital amount in the Partnership Firms during the year 2003-2004, to run the same Business with the same Customers by using the Business Connection Goodwill, Properties/Assets etc. belonging to the Partnership Business. This new Business was started by the respondent No. 1 under the name and style of *S.S. Processors* in April 2003 while the respondent No. 2 started his business in the name and style of *Ruchika Prints* since 01.08.2003.

17. The petitioner claimed that the misconduct of the respondents came to his knowledge in June 2004. He approached the respondents to seek



explanation, who did not respond satisfactorily due to which the petitioner was compelled to get the bank accounts of the Partnership Firms suspended on 19.07.2004.

18. The respondent No. 2 provided List of Assets dated 10.08.2003, on 15.08.2004. On the same day, some Accounting Records were also made available to the petitioner. On not coming forward for clarifications and explanations, the petitioner served them with three Legal Notices and ultimately, initiated the Arbitration proceedings.

19. It is asserted that the *Issue No. 1 in regard to limitation* has been decided wrongly by the learned Arbitrator. It has been proved on record from the documents and the evidence as led by the parties, that the factory and business of the Partnership Firm was illegally closed w.e.f. 01.08.2003. The vacant possession of the business premises was handed over to the landlord on the last working day of Partnership Business i.e. 31.07.2003, which has resulted in damages to the appellant. The learned Arbitrator has failed to appreciate the evidence on record and has wrongly and arbitrarily decided that the *cause of action arose on 31.07.2003*.

20. The petitioner had come to know about the closure of the Business only in the first week of June 2004, consequent to which he got the Bank Accounts of the Partnership Firm suspended on 19.07.2004. The first Legal Notice was issued on 27.10.2004, after which some documents and Accounting Records along with the cheque in lieu of balance loan amount of Rs.1,50,000/-, were received by the petitioner on 15.08.2004. The date of *Cause of Action* should have been taken as first week of June 2004 but the learned Arbitrator has not conducted properly in arriving at the illegal decision. In concluding that all the Claims and disputes have arisen prior to



three years from 29.08.2005 i.e. the date of invoking the Arbitration, are barred by limitation. The learned Arbitrator has wrongly declined to decide Claims Nos. 8, 12 and 14 in the case of M/s Ashika Textiles and Claim Nos. 8, 9 and 10 in the case of M/s Classic Processors by observing that they are all barred by limitation.

21. The petitioner has further claimed that in **Issue No.2** instead of grant of damages for the pre-Reference Period while deciding the *Claim Nos. 8, 11, 12 and 14 in the Case of M/s Ashika Textiles* and *Claim Nos. 8, 9 and 10 in the Case of Classic Processors*, the learned Arbitrator has granted interest/one month profit (reduced profit in the Final Accounts)/one month salary, which was never claimed by the petitioner.

22. The petitioner further claimed that the Bank Accounts were being operated by the other respondents, who were also making purchases of raw material, doing job work for remuneration, receiving bills for the raw materials, creating bills for the job work and consequently, they both have succeeded in allegedly deceiving the petitioner.

23. It was also asserted that the respondents without the knowledge of the petitioner started their own respective Proprietorship businesses, for doing the same job work with the same customers, using the goodwill of the two Firms and also using the skilled labour and the equipment without dissolving the Partnership business. It was claimed that the goodwill and the customers of the two Firms, have been diverted by the respondents to their respective businesses. As per his Claim Statement, he is entitled to damages which has been caused to him since 01.08.2003, because of the deliberate and wilful misconduct of the respondents enclosing down the factory and business of the Partnership Firm w.e.f. 01.08.2003, with the *mala fide* intention of



running the same business in their individual names by expelling the petitioner from the business.

24. It is further asserted that the respondents are liable to make good the losses to the Claimant of his share misappropriated by the respondents along with the Damages for the period prior to the Reference by taking the misappropriated amount as part of the actual profit along with the shown reduced profit in the Balance Sheets, for the relevant period for deciding the Claim of the petitioner for Damages.

25. It is further asserted that such Claims of the petitioner were not barred by Limitation and have been wrongly denied simply on the ground of being barred by Limitation.

26. It is further asserted that the amount awarded for the *Claim No. 4 in M/s Ashika Textiles* and *Claim No. 1(b) in the case of M/s Classic Processors, for goodwill of the petitioner in both the Firms*, is much too less and is not justifiable, according to the Principles of Natural Justice and is, therefore, unlawful. Furthermore, the facts and the documents have been considered by violating and overlooking the provisions of the Partnership Act and these Claims have been decided arbitrarily by the learned Arbitrator, by taking its own views, which are not based on facts, relevant material and substantial law of the Land.

27. It is also asserted that the learned Arbitrator while deciding the *Claims of Goodwill in both the Cases* has wrongly rejected and found no merit in the allegations of the petitioner that the Accounts audited by the Chartered Accountant, were fabricated. It is asserted that these findings are *de horse* the evidence and the contents of the Partnership Deed and other



documents. The conclusions have been arrived at *de horse* the admissions and the evidence made by the witnesses/respondents in their testimony.

28. It is further asserted that ***Claim No. 11 of the petitioner for Damages for the period beyond 31.07.2003***, have been wrongly denied by the learned Arbitrator by observing that the factory and the business of the Partnership, stood closed on 31.07.2003, and the petitioner was not entitled to any Damages beyond 31.07.2003. It is asserted that such findings of the learned Arbitrator were arbitrary and beyond the jurisdiction under the Law.

29. By way of the *Claim No. 12 in M/s Ashika Textiles*, the petitioner had sought the amount misappropriated by the respondents, by entering false and fabricated Bills in the Books of Accounts for the purpose of showing reduced actual Profits, to cause injury to the plaintiff. The learned Arbitrator failed to consider the fabricated and false bills on the ground of falling within the period prior to three years from 31.08.2005 i.e. the date of invoking the Arbitration and held them to be barred by limitation. It is asserted that such findings of the Claim being barred by Limitation, was contrary to the statute and also contrary to the admissions made by the Witness No. 4 of the respondents, Mr. Kapil Dev Kumar, an Associate of CA Firm. The observations of the learned Arbitrator are also contrary to the evidence on Record and the Audit Reports, the Final Accounts and Balance Sheets of each Accounting Year, which have been held to be genuine.

30. It is further asserted that the learned Arbitrator had referred to the Legal Notice dated 01.08.2005, Ex. CW-1/5 wherein the Claimant had admitted that “*everything was fine in the month of June 2003*”. However, the learned Arbitrator has failed to consider that the Claimant came to know about more misappropriations done by the respondents under the Head of



Wages and Cartage Accounts in the case of M/s Classic Processors, as well as, in the case of M/s Ashika Textiles, wherein certain entries of *Job Work*, had not been entered into the Account Books. Unless the Accounts were explained or clarified by the respondents along with the other attending circumstances, the Account Books were to be considered as fine till June 2003. However, by neglecting and ignoring the Claims of such false and fabricated Bills for Rs.30,00,000/- in the same Legal Notice. By taking only selective incomplete material and evidence, relevant and favourable only to the respondents, the learned Arbitrator was adamant to see only that which was favourable to the respondents. There is complete violation of *Principles of Natural Justice*. The rights of the Claimant did not end with the Legal Notice dated 01.08.2005 since many of the Claims were unexplained and unclarified which, however, have been taken into consideration one-sidedly in favour of the respondents and the relevant material on these aspects, has been overlooked and not considered.

31. The petitioner has asserted that number of Claims have been decided by the learned Arbitrator by drawing adverse inference against him on the ground that Mr. Hari Om Sharma, Accountant, who was maintaining the Books of Accounts of the Partnership Firm in question, was introduced by the Claimant. There is no ground for drawing any adverse inference against the petitioner on this ground, especially in the absence of any evidence to the contrary. Merely because Mr. Hari Om Sharma had been introduced by the petitioner, cannot lead to any conclusion of adverse inference against the petitioner.

32. The ***Issue No.3*** was in regard to the payment of interest.



33. **Clause No. 6 of the Partnership Deed of M/s Ashika Textiles and M/s Classic Processors provided for interest @18% p.a. on the capital amount,** which could be *Nil* or lower than 18% as may be agreed and decided amongst the partners. The rate of interest @12% p.a. on the Capital amount of the claimant has been allowed by the learned Arbitrator, keeping in view the documents of the alleged Audited Balance Sheet dated 08.10.2003 and 20.10.2003 for the Accounting Year 2002-2003 of the two Partnership Firms. The Balance Sheet of Financial Year 2002-2003 of M/s Ashika Textiles has been shown to be audited, which is not correct as they were prepared falsely on 08.10.2003 by the Chartered Accountant of the respondents. The documents of alleged Final Accounts and Balance Sheets were falsely prepared and finalised by the Chartered Accountant, after the illegal closure of the Partnership Businesses while the petitioner was hospitalised in Bhiwani (Haryana) from 29.09.2003 to 15.10.2003.

34. It is asserted that the business of both the Firms, was not in losses and the Claimant had never in any way agreed to reduce the interest Rate on Capital Amount nor the respondents had any lawful authority to reduce the Interest Rate on Capital amount of the partners, after the illegal Closure. The decision of the learned Arbitrator allowing the interest @12% p.a. on Capital Amount of the partners in the case of two Partnership Firms, is against the Terms of the Agreement and the applicable Law. *The petitioner is in fact entitled to compound interest on the Capital @18% p.a.* Furthermore, considering that the factory had been closed and consequent damages were caused to the Claimant for a long period of more than 14 years by the respondents because of the misconduct, *allowing simple interest @9% p.a. for the Claims only wherever applicable for pre-Reference Period*



or the post-Reference Period is much too less, not justified and against the settled Principles of Natural Justice.

35. The impugned Award has thus, been challenged as being based on no evidence or the conclusions being contrary to the evidence as well as to the documents in the Partnership Deeds. The Awards are, therefore, claimed to be liable to be set-aside.

36. The ***Respondents, Mr. Saumen Kumar Chatterjee and Mr. Sunil Kumar Malhotra have contested the Petition under Section 34 of the Act, as well as have filed their Cross-objections Vide OMP (COMM) 433/2017.***

37. ***In their reply*** as well as in their own Objections, the respondents have asserted that the two Claims filed by the petitioner, had been decided after more than 10 years. The delay was occasioned due to multiple amendments (three to four) of the Statement of Claim at various stages and inclusion of various Claims which were not raised or included in the Arbitration Notice. That apart, huge time was consumed in recording of evidence and passing of the detailed Award.

38. The respondents have asserted that the Arbitration proceedings at the inception were not maintainable since the ‘dispute’ as raised by the Claimant in the Notice, related to unpaid share upon dissolution of Partnerships but subsequently, it was expanded to dissolution of both the Partnership Firms and for distribution of the assets in the Statement of Claim. He also made a Claim that the respondents had committed fraud of the Accounts of both the Firms and challenged the expenses incurred by the Partnership Concerns purportedly to reduce the profits without any challenge to the receivables for the period commencing from January 2001.



39. The respondents further asserted that the *Claims were all barred under Section 69 of the Partnership Act, as well as under the Limitation Act.* Section 69 is a mandatory provision, and the bar engrafted therein, cannot be ignored. In this regard, reliance has been placed on Krishna Motor Service vs HB Vittala Kamath, AIR (1996) SC 2209 and Jagdish Chander Gupta vs. Kajaria Traders (India) Ltd., (1964) 8 SCR 50.

40. The respondents from the stage of exchange of Legal Notices and commencement of the Arbitration proceedings had taken a stand that both the Firms were dissolved on 31.07.2003, with the consent of all the partners. The accounts of the Partnership Firms amongst the partners were also settled after meeting all the liabilities and the remaining proceeds had been evenly distributed amongst all the three partners and there remained no further disputes. The petitioner himself had claimed that the business of the Firms had stopped on and from 01.08.2003, which means that there was cessation of the business. It is an undisputed fact that the premises from where the business was being conducted, was handed over to the landlord and a new tenant has already occupied the premises from 01.08.2003. The electricity connection was surrendered and communication in respect of closure of businesses to the Sales Tax Department, Labour Department and other statutory Authorities, had been issued. It is asserted that the petitioner is trying to take advantage of the absence of written documents in respect of the dissolution of Partnership Firm and the money received after the dissolution. However, it is contrary to law, and in this regard, reliance has been placed on Bajinath vs Chottelal, AIR (1958) All 56 wherein the court held that “*cessation of business coupled with other circumstances might legitimately lead to the inference that the partnership had been dissolved.*”



The circumstances upon which the finding of dissolution can be based should be of an unequivocal character and the inference of dissolution should be irresistible.”

41. The **respondents in the Reply** have explained that the claimant had signed the audited Accounts of the Firms for the period 2002-2003 and thus, cannot raise any dispute for the preceding years. Both the Firms had been dissolved on 31.07.2003 and the proceeds were distributed equally amongst the partners, after settling the liabilities, a fact which is admitted by the petitioner. The respondents had asserted that it was the claimant who was maintaining the books of accounts and financial statements, as is evident from the Audited Balance Sheets of the Firm, which have been signed by all the three partners. The respondents claimed that both the Firms were running into heavy losses or on meagre profit, which was not commensurate with their time, efforts and investments. Moreover, because of the differences amongst the partners, the business became unworkable. It was also asserted that the Claimant by producing bogus bills of the Proprietorship concerns without delivery of the materials induced the respondents to release the payments. The Claimant was also allegedly signing the cheques particularly the payments made to the Proprietorship concerns of the petitioner.

42. It was further asserted that there was no Clause in the Partnership Deeds, which restrained any of the partners from starting the separate business in the same line of business. It was explained that difference between the partners got further crystalised on account of alleged allegations of misappropriation of alleged amount of Rs.10.8 Lakhs by respondent No.



1, in regard to the sale of land in the joint name of the wife of the Claimant and the wife of the respondent No. 2.

43. The respondents specifically denied that they had been using the Goodwill or the same customers or their raw are material and skilled workers of the dissolved Partnership Firm. It is asserted that the respondent No. 2 had been doing the business in the related trade since 1976. Respondent No. 1 is a Textile Technical person in the trade since 1975. Furthermore, M/s Ashika Textiles was already running in the name of M/s Ashika Prints since 1992 and the petitioner had been inducted in 1995. After the dissolution of the Firms, the workers were paid off, the factory was closed, and the site was handed over to the landlord. The new businesses opened by the respondents and the petitioner respectively, were independent, without any connection whatsoever with the dissolved Partnership Firms.

44. It was further explained by the respondents that though the petitioner *vide* his Letter dated 19.07.2004, had stopped the operation of the Firm's Bank Account by writing a Letter dated 19.07.2004 to the Bank, he himself restarted the operation of the Bank Accounts of the Partnership Firms to withdraw the amount which became payable to him on receipt of a cheque from the respondents, pursuant to the dissolution of the Partnership Firms and settlement of accounts. The officials of the bank had told the respondents that the Bank operation had been restarted on account of the Letter received from the petitioner.

45. The respondents in the ***cross-objections to the Award*** further claimed that the *interest awarded under the impugned Award is excessive and is more than the principal amount determined by the Arbitral Arbitrator*. In regard to ***M/s Ashika Textiles***, the principal amount has been determined as



Rs.8,14,833/- while the interest calculated on the principal amount is Rs.10,79,907/-. Likewise, in the case of **Classic Processors**, the principal amount is determined as Rs.3,67,074/- while the interest has been calculated as Rs.5,01,119/-. The period of interest has also been calculated wrongly from the date of cause of action instead of date of commencement of arbitral proceedings. The petitioners cannot be permitted to take benefit of their own wrong.

46. The ***pendente lite and future interest*** as granted by the learned Arbitrator is substantially high without there being any reasons given for grant of such high rate of interest. It is the petitioner who himself delayed the proceedings by incorporating unnecessary and time-barred Claims. The learned Arbitrator himself observed in Paragraph 54 of the Award that the petitioner has not placed true facts and has tried to conceal material facts. The learned Arbitrator had also come to the finding that the Claims made by the petitioner, were highly inflated and consequently, the Claim of the petitioner towards costs, was rejected. In this perspective, ***the Award of interest as such high rate is patently illegal.***

47. Moreover, the findings have been given contrary to the evidence on record. The Arbitrator by refusing to allow the recording of evidence of Mr. Kiran Pal Singh Chauhan in whose presence and at whose instance, the parties had amicably resolved all their disputes on 15.08.2004, which has resulted in grave prejudice to the respondents. The rejection of such evidence by Order dated 06.08.2014 is contrary to Law, resulting in serious prejudice to the respondents. It is therefore, asserted that the impugned Award dated 28.04.2017 (corrected on 01.07.2017), granting the amounts to the petitioner, is liable to be set aside.



48. It was further asserted by the respondents in their Cross Objections that the learned Arbitrator has given contrary findings in regard to the *Section 69 of the Partnership Act*, which bars unregistered Partnership Firm, to institute the proceedings by or against the partners for dissolution of the Firm. It is claimed that the impugned Award is contrary to the settled law as laid down by the Apex Court in *Krishna Motor Service vs. H.B. Vittala Kamath*. Section 69 of the Partnership Act is mandatory, and the bar contained therein, cannot be rendered *otiose* or ignored to grant the benefit to the petitioner. In view of Section 69, the present Arbitration proceedings for dissolution of the Firm and for the alleged recovery of dues of the petitioner in respect of the unregistered Firm, was clearly not maintainable. The learned Arbitrator having rendered a finding in regard to the dissolution of the unregistered Firms, has committed error and apparent illegality and thus, the impugned Award is perverse and is contrary to Law. Section 69 is mandatory in nature and the bar contained therein, cannot be overlooked, as has been held by the Apex Court in the case of *Krishna Motor Service vs. H.B. Vittala Kamat*, AIR (1996) SC 2209 and *Jagdish Chander Gupta vs. Kajaria Traders (India) Ltd.*, (1964) 8 SCR 50.

49. The respondents have asserted that the learned Arbitrator as by misconstruction of the Judgment of the Apex Court in *V. Subramaniam vs. Rajesh Raghuvandra Rao*, (2009) 5 SCC 608, has taken a contrary view, which is perverse.

50. ***Submissions have been made by the parties essentially on the same lines as their respective Objections.***

51. ***Arguments Heard and the Arbitral record perused.***



52. At the outset, it may be observed that the scope of a challenge under Section 34 of the Arbitration & Conciliation Act, 1996 is limited to the grounds stipulated in Section 34 of the Act, 1996 as held in MMTC Limited v. Vedanta Ltd., (2019) 4 SCC 163. In MMTC Limited (Supra). It was held that an interference with an Arbitral Award under Section 37 of the Act, 1996 cannot go beyond the boundaries established by Section 34. In other words, the court is not permitted to independently evaluate the merits of the award; instead, it must just confirm that the Court's use of its authority under Section 34 has not gone beyond what is allowed under the statute.

53. The first aspect that was under challenge was whether the two Partnerships stood dissolved w.e.f. 01.08.2003 as claimed by the respondents and the same was considered in issue **No. 4 by the learned Arbitrator, "Whether the two partnership Firms stood dissolved w.e.f. 01.08.2008?"**

54. The learned Arbitrator has extensively considered the respective pleadings of the parties and also to the evidence led by them, to conclude that there is no denial that the business of the two Partnership Firms was closed on 31.07.2003. The factum of closure of the business of the two firms w.e.f. 31.07.2003 has also been accepted by the claimant.

55. While the closure of the business w.e.f. 31.07.2003 was not challenged, but according to the claimant there was no formal dissolution of the Firms that happened. The respondents presumed the Dissolution of the Firm on account of closure of the business and consequently issued letters dated 31.07.2003 Ex.RW-2/3 to Regional Director, ESIC; letter dated 20.08.2004, Exh.RW-2/7 to Income Tax officer; letter dated 23.02.2004,



Exh.RW-2/4 to Joint Director (Factories) Ghaziabad Division; copy of the Survey Report to the Sales Tax Department Exh.RW-2/6; copy of letter dated 08.09.2003 Exh.RW-2/5 to the Electricity Department, indicating that the two Partnership Firms stand closed.

56. The learned Arbitrator referred to the evidence of the claimant wherein he asserted that the two Firms had been illegally shut down without informing the claimant and all assets were sold in violation of the provisions of law. However, the claimant himself gave a suggestion to Respondent No.2 in the cross examination that he received a sum of Rs.1,00,000/- in respect of premises bearing no. 72/11, Rajinder Nagar Industrial Area (Front Portion) pertaining to M/s. Ashika Textiles and another sum of Rs.1,00,000/- in respect of premises No.72/11, Rajinder Nagar Industrial Area (Back Portion) in respect of M/s. Classic Processors which was taken on rent on 31.03.2013 by the firms. Ld. Arbitrator concluded that this suggestion of the claimant suggested that he was aware of the surrender of the tenancy premises on 31.07.2003 to the landlord.

57. It has been rightly concluded by the learned Arbitrator that the business of the two Firms were closed w.e.f. 31.07.2003 about which all the parties were aware and the Notices thereafter about the closure of the business had been sent to the respondents to various agencies.

58. The bone of contention, however, is whether the Firms also stood dissolved from 31.07.2003 when the business was closed, as was claimed by the respondents, but denied by the Petitioner.

59. The learned Arbitrator observed that as per *Clause 10 of the Partnership Deed*, Partner was required to serve one month notice upon the other persons for dissolution of the Firm which admittedly had not been sent



by the respondents to the petitioner. Therefore, it was concluded that there was no dissolution of the firm.

60. Reference be also made to *Section 43 of the Partnership Act* which provides for Dissolution of the *Partnership at will*, which reads as under:

“43: Dissolution by notice of partnership at will.

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.”

61. Thus, Section 43 mandates a prior Notice in writing to all the other partners of the intention of a partner to dissolve the Partnership Firm at will. Clause 10 of the Partnership Deeds was in conformity with this Section.

62. *From the above discussion, it is evident that there was closure of the business of the two firms w.e.f. 31.07.2003 though there was no dissolution, has been rightly concluded by the learned Arbitrator.*

63. The learned Arbitral Arbitrator after rightly concluding that the business to close w.e.f. 31.07.2003, further explored the question of when the Partnership Firms shall be held to have dissolved. The reference was made to the judgment in M/S V.H. Patel & Company & Ors vs Hirubhai Himabhai Patel & Ors, (2000) 4 SCC 368, wherein the Apex Court had held that if there is a breach of agreement and conduct is destructive of mutual confidence, certainly such conduct gives rise to a ground for dissolution of the partnership. While mere disagreement or quarrel arising from impropriety of partners is not a sufficient ground for dissolution, interference should not be refused where it is shown to the satisfaction of the



Adjudicating Authority that the conduct of a partner has been such that it is not reasonably practicable for other partners to carry on the business in partnership.

64. Relying on the said judgment, the learned Arbitrator held that Clause 20 of the Partnership Deeds provided for referral of all the disputes pertaining to the partnership to the Arbitrator and that the decision of the Arbitrator shall be binding. Considering that after the closure of the business on 31.07.2003, according to the claimants the conduct of the Respondents who unilaterally sent Notices to various Authorities and disposed of the assets, was destructive of mutual confidence. ***Therefore, the learned Arbitrator held that the date of dissolution of the two Firms shall be from the date of the Award.***

65. As has been rightly held by the learned Arbitral Arbitrator, the date of closure cannot be deemed to be a date of dissolution of partnership since all the assets of the partnership were yet to be distributed. The claimant was right in feeling aggrieved that there was no dissolution of partnership despite which all the assets of the Firms were disposed of. Therefore, the findings of the learned Arbitrator about there being no dissolution and to hold that the partnership firms shall be dissolved w.e.f. the date of Award, does not suffer from any illegality or perversity and does not warrant any interference.

Bar of S.69 Partnership Act in regard to unregistered Partnership Firms.

66. The second objection that has been raised by the Respondents in their counter challenge to the impugned Award, is that because admittedly the Partnership Firms were not registered, the claims of the claimants against the respondents were not maintainable on account of the statutory bar of under Section 69 of the Partnership Act.



67. Clause (1) of Section 69 of the Partnership Act reads as under: -

69. Effect of non-registration. —

(1) *No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.*

...

68. From a bare reading of the Section, it is evident that no claim can be filed in the Civil Court by any of the partner of the unregistered Firm against the other partners of the Firm, in case it is not registered.

69. The Apex Court in M/s Umesh Goel vs Himachal Pradesh Cooperative Group Housing Society Ltd., 2016 (11) SCC 313, held that the bar of Section 69 of Partnership Act does not come within the expression “other proceedings” as used in Section 69(3) of the Partnership Act. Therefore, the ban imposed under Section 69 has no application to the arbitral proceedings.

70. Similar observation has been made in the case of Ananthesh Bhakta v. Nayana S. Bhakta, (2017) 5 SCC 185, wherein the Apex Court referred to Section 69 of the Partnership Act and observed that the bar of Section 69 is limited to the Courts and the Civil Suit and is not attracted where the disputes *inter-se* the partners, are referred to arbitration. So long as the Partnership Deed contains Clause providing for reference of disputes *inter-se* the partners to arbitration, non-registration of the Partnership Firm, is no ground to reject the reference to arbitration.



71. Therefore, the contention of the respondents that the arbitral proceedings were *non-est* being barred under Section 69 of the Partnership Act, is not tenable and is without any merit.

Whether the Claims were barred by Limitation:

72. The issue no.1 as framed by the learned Arbitrator was “*Whether the claims raised on behalf of the claimant are barred by limitation?*”

73. The Claimant and the respondent were *ad idem* that the business of the two firms was closed on 31.07.2003. The rented premises from where the two Firms were functioning were surrendered to the Landlord. The Claimant had admittedly sent a legal notice dated 29.08.2005 Ex. CW-1/7 to the respondents for invoking arbitration.

74. The claimant had asserted that since the Legal Notice had been issued well within the period of three years from 31.07.2003, his Claims were not barred by limitation. However, the learned Arbitrator observed that such part of Claims which pertained to a period of three years prior from 29.08.2005 are barred by limitation. The various claims for amounts which shall be discussed hereinafter have been denied in part which pertained to the period prior to 29.08.2005.

75. Pertinently, the Claims raised by the Petitioner did not pertain to *rendition of accounts after dissolution of Firms*, since it was his own contention that the Firms did not stand dissolved. The Claims which were prior to 28.08.2002 could have been raised only within a period of three years since they were in regard to the dues which had arisen while the Firms were functioning. The Limitation would have to be calculated from the date on which cause of action arose. The Legal Notice was dated 29.08.2005.



Therefore, the Id. Arbitrator rightly held that part Claims which were raised beyond a period of three years, were clearly barred by limitation.

76. There is no infirmity in the findings of the learned Arbitrator about certain portions of the claims which were prior to 28.08.2002 being barred by limitation. *No interference on the findings of the learned Arbitrator on the aspect of limitation is warranted.*

Claims on merits:

77. The Claimant in connection to M/s. Classic Processors had raised 10 Claims for various amounts, totalling to Rs. 1,66,36,128/-.

78. In Claim No.1, he asserted that he was entitled to an amount proportionate to 1/3rd share towards cost of plant and machinery, cost of furniture, goodwill, stores & small articles, cost of colour & chemical stock, and cost of other materials, i.e. 1/3rd share of Rs. 25,10,000/-. The learned Arbitrator after appreciating the evidence in detail has granted Rs. 28,955/- after assessing the value of the plant, machinery, furniture, and fixture at Rs. 86,863/- and further Rs. 2,00,000/- towards the value of colour & chemical stock after tallying the same with the value mentioned in Balance Sheet though has rejected the amounts pertaining to claim of goodwill and value of stores & other articles owing to non-production of documentary evidence in support of the claim. The learned Arbitrator has in detail considered different claims and the conclusions are based on cogent evidence.

79. Likewise, 15 Claims have been made by the claimant in respect of M/s. Ashika Textiles, totalling to Rs. 1,51,22,374/- *Claim Nos.1 to 4* were towards the value of the assets of the Partnership Firm, such as plant & machinery, treatment plant, misprint sarees, aluminium dying frames, and goodwill. *Claim No. 5* pertains to interest on capital amount. *Claim No. 6*



relates to salary loss/damages. *Claim No.8* was pertaining to the share of the claimant in the profit average per year. Likewise, *Claims No.9* was towards the loss/damage on account of surrender of the tenancy rights. *Claims No. 10-15 (except Claim No. 13 which pertains to loss of rent security)* concern interest towards various amounts.

80. The challenge by the Claimant to these amounts was essentially on merits which lie beyond the scope of objections under Section 34 of the Arbitration and Conciliation Act. In the case of *National Highway Authority of India v. M. Hakeem*, (2021) 9 SCC 1 it has been held that there can be no re-appreciation of evidence and unless the findings are based on no evidence, they cannot be said to be perverse or set aside, while deciding the Objections under Section 34 of the Act.

81. In view of the aforesaid, the challenge by the claimant to the various amounts allowed to him by the learned Arbitrator is not tenable.

82. **Issue no.4 was in regard to the grant of interest on the Claims.** The learned Arbitrator in detail considered the rival contentions and gave cogent reasons for grant of interest at the rate of 9% on the amounts/Claims and 12% interest on the Capital Account.

83. The relevant paragraphs of the award are reproduced hereunder: -

“134. From the law laid down by the Hon'ble Supreme Court in the above-mentioned cases it is clear that interest is to be granted keeping in view the overall facts and circumstances of the case. Keeping in view the facts and circumstances in the present case and particularly the lapse of time, this Arbitrator is of the opinion that it would meet the ends of justice if the claimant is awarded simple interest@ 09% per annum. The aforesaid rate of 9% per annum shall be applicable to all the claims except claim no 05. Under claim no 05 the claimant has claimed the



principal amount of Rs. 1,38,203/- towards his capital. Clause 06 of the partnership deed which has been reproduced in para 01 of this Award, provides that the partner who has contributed the capital to the partnership firm shall be entitled to interest @18% per annum on the amount of capital. This clause further provides that in case of loss or lower income, rate of interest can be nil or lower than 18% as may be agreed and decided amongst the partners. Along with the photocopies of the audit report and income tax return for the assessment year 2003-04 (financial year 2002-2003) Exh.R3, photocopy of the audited Balance sheet and photocopy of the capital account have also been annexed. The photocopy of the capital account, which is at page 45 of the documents annexed with the reply of the respondents to the amended claim statement, shows that the capital of the claimant for the earlier year which was carried forward in the financial year 2002-2003 (assessment year 2003-2004) was Rs.1,46,760/- and on this amount, the firm had paid a sum of Rs. 17611/- towards interest. On the basis of these figures, the rate of interest comes to 12% per annum; the said facts show that the rate of interest had been agreed to 12% per annum amongst the partners. In view of these facts, it is held that the claimant shall be entitled to interest @ 12% per annum with regard to the amount awarded under claim no. 05.

135. **As regard the period for which the interest shall become payable to the claimant**, it may be relevant to state that the amount awarded under various claims except claims no 07 & 15, became payable to the claimant on 01.08.2003 after the factory and business of the partnership firm was closed on 31.07.2003. As regards the claims no.07 & 15, it may be noted that against these two claims, the claimant has been awarded only interest on the amount of Rs. 2,00,000/- which was advanced as loan by the claimant to the partnership firm for the period 01.04.2003 to 16.10.2003 which comes to Rs. 9,750/- and on the balance amount of loan of RS.1,50,000/- for the period 17.10.2003 to 15.08.2004 which comes to Rs. 11,250/-. With regard to



interest on the claim no. 05, the interest on the awarded amount of Rs. 1,38,203/- @12% per annum for the period of 164 months (01.08.2003 to 31.03.2017) comes to Rs. 226652/-. The awarded amount under claims no. 01 & 02 is Rs. 5,65,060 /- under claim no. 06 is Rs. 40,000/-, under claim no. 08 is Rs. 10,285/-, under claim no. 11 Rs. 51,285/- and under claim no. 13 is Rs. 10,000/-. The total amount awarded in favour of the claimant under claims no 1 & 2, 06, 08 11 & 13 comes to Rs. 6,76,630/-. The interest on the said amount for the period of 164 months (01. 08.2003 to 31.03.2017) @ 09% per annum comes to Rs. 8,32,255/-. Thus the total amount of interest under claims no. 01 & 02, 05, 06, 07 & 15, 08, 11 & 13 shall come to Rs. 10,79,907/- it may be noted here that since claims no. 03, 04, 09, 10, 12, & 14 have been rejected no amount towards interest is payable in respect of these claims.”

84. There is no ground to interfere in the interest granted for the reason that Ld. Arbitrator has granted interest in his discretion, for cogent reasons which cannot be termed as Arbitrary or capricious. ***The objection in regard to the rate of interest is also not tenable.***

85. To conclude, essentially the challenge to the amounts granted under various Claims is on merits. As already observed, the learned Arbitrator has in detail considered each Claim made by the claimant and has decided the same on the basis of the pleadings and the evidence of the parties.

Conclusion:

86. The parties have not been able to point out if there was any perversity in determination of the Claims, which is based on due appreciation of facts and law. The findings of the Arbitrator cannot be re-appreciated on merits.

87. It is hereby held that there is no perversity, patent illegality or breach of Fundamental policy of India in adjudication of Claims by the Ld. Arbitrator warranting any interference with the Awards.



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88. The objections of the claimants and the cross-objections of the respondents are without merit and are hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 28, 2024/RS