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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/888/2025
KARAN GOEL
VS
UPASANA JHUNJHUNWALA GOEL

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 2nd December, 2025.

Appearance:
Mr. Farhan Ghaffar, Adv.
Md. Zafar Jilani, Adv. …for petitioner.
Mr. Sayantan Basu, Adv.
Mr. Tanmoy Roy, Adv. …for respondent.

The Court: This is an application for appointment of an Arbitrator in terms of clause 14 of the Deed of Partnership dated November 28, 2023. The clause provides that all disputes and differences between the partners shall be resolved by arbitration, as per the prevailing law, and the decision of the Arbitrator shall be binding on the parties.

Mr. Gaffar submits that the respondent sent an e-mail on February 25, 2025 informing the petitioner that she had invoked clause 13 of the Partnership Deed and dissolved the partnership. He contends that even if the partnership was at will, the dissolution would precede mutual agreement between the parties. He further urged that, the respondent had the option of resigning under clause 11, but she did not do so. She also did not leave any option for the petitioner to continue the partnership business. The notice invoking arbitration and the reply thereto have been referred to.

It appears that, even after the dissolution, there were disputes between the parties which are still unresolved. There are allegations and counter allegations, which are narrated below. The notice under Section 21 issued through learned Advocate of the petitioner states as follows:-

> "**8.**You are also aware that the Firm had made an application in the Punjab National Bank for the purpose of availing Credit Facility of 9.5 lakhs. Such application was allowed and the credit facility was

sanctioned by the Bank by a letter dated 21st February, 2024. In terms of the same, the Partnership Firm is paying interest RILR @1.4% (spread includes BSP of 0.20%). The said sanction was obtained by hypothecation of the stocks and other assets of the Partnership Firm. The said Partnership Firm continues to make payment of interest till date, alongwith insurance and other allied charges. A copy of the sanction letter and the terms and conditions thereof is annexed hereto and marked 'B'.

9. Notwithstanding the aforesaid, you neglected to discharge your official duties with regard to the said Partnership Firm. Thereafter by an e-mail dated 25th February, 2025, you have allegedly invoked Clause 13 of the Partnership Deed and stated that the said Partnership Business has stood closed/dissolved. A copy of the print-out of the said e-mail dated 25th February, 2025 is annexed hereto and marked as annexure "C"."

Learned Advocate on behalf of respondent replied to the notice and denied such allegations by stating as follows:-

"**11.** With reference to paragraph 9 of the said notice, I vehemently deny and dispute that my client had neglected to discharge her official duties with regard to the partnership firm. I say that my client had all along since the date of entering into the partnership on 28th November, 2023 diligently acted as a medical practitioner in the interest of the patients who had been examined by my client and your allegation as above is nothing but an attempt to malign my above client in the light of domestic violence and criminal acts which has been committed by your client for which my client has taken appropriate action as per the law and in the light of aforesaid, your present notice on behalf of your client is nothing but an attempt to twist the facts for the purpose of defending your client against the domestic violence and other criminal activities carried on by your client.

12. With reference to paragraph 10 of the said notice, I say that while the partnership was in existence, medicines were being purchased from one M/s. Ghanashyam Agencies, Kolkata and last such medicines were purchased from the said M/s. Ghanashyam Agencies, Kolkata on 9th December, 2024 vide Bill No. GA2425/01424 (while the partnership was still continuing) and the said party was to be paid for such medicines and inspite of reminders for payment being made by such party, your client refused to pay for such medicines and directed the said party to recover the payment from my client. In view of the above, my client, as a responsible citizen was constrained to make the said payment of Rs. 10,700/- to M/s. Ghanashyam Agencies, Kolkata, in their Kotak Mahindra Bank Account, by using the internet banking on 29th March, 2025, in order to settle the accounts of the partnership post dissolution vide notice dated 25th February, 2025, for dissolution of partnership AT WILL as referred to hereinabove. Save and except the aforesaid, my client denies and disputes all other averments to the contrary. I further said that you have mentioned in the said notice that you have attached the details of the transaction marked as "Annexure D", but no such annexure has been received. Therefore, all your claims in this regard are denied and disputed.

14. With reference to paragraph 14 of the said notice, I vehemently deny and dispute that my client neglected in discharging her duties and/or purported non-usage of the medicines ordered by her for which the firm suffered a loss of Rs. 5,50,000/-as alleged. The aforesaid contention is nothing but an attempt to make false and frivolous allegation against my client by twisting the facts and is only speculative, baseless and a counter claim in order to delay the dissolution so that your client can unilaterally continue to run the business notwithstanding the fact that the firm is already dissolved on 25th February, 2025. I say that during my client's association with the said partnership firm, my client was instrumental in patients' relationship and records regarding the same are available with your client in the office of the partnership firm under your client's possession. I deny and dispute that there has been any loss of goodwill and/or your client has suffered immense loss of reputation and goodwill and your client is entitled to any compensation, damage or loss or goodwill which is reasonably assessed at Rs. 10,00,000/- and your client's aforesaid act is nothing but an attempt to siphon off of the money of the partnership business by making false and frivolous allegations and my client reserves right to make a counter claim for defamation and touching the modesty of a woman in accordance with law. Save and except what has been stated by me, I deny and dispute all other contents of paragraph 14 as above.

15. With reference to paragraph 15 of the said notice, I deny and dispute that my client having served the notice of dissolution on 25th February, 2025, the same can be subjected to arbitration as per clause 14 of the partnership deed. I say that when the firm is constituted of two partners, the service of notice of dissolution by one of the partners brings the partnership to an end and any attempt by other partner to keep the partnership continuing with the partner having served the notice of dissolution is absolutely against the partnership law. My client has already in good faith requested your client to continue the said business in proprietorship if your client intend to do so for which my client does not have any objection. However, your client instead of taking action in accordance with law has been instrumental in delaying the dissolution by making false and frivolous allegations as above and all other averments to the contrary are denied and disputed."

Mr. Basu, learned advocate for the respondent submits that, once the partnership was dissolved, the arbitration clause lost its force. The dispute resolution clause was restricted to the disputes arising out of the partnership business and not thereafter. He refers to a decision of the Gujarat High Court in the case of ***Mohanlal Sajandas vs. Hareshkumar Narandas, reported in MANU/GJ/0363/2000*** and submits that once dissolution had taken effect, the parties ceased to be partners and, as such, the arbitration clause would not be binding upon them. He further submits that, only upon death of one of the partners, the surviving partner could invite the legal heirs of the deceased partner to join the partnership and the partnership could have been reconstituted. The business could have continued.

Having considered the rival contentions of the parties, this Court finds that there are surviving disputes. The notice invoking arbitration as also the reply thereto clearly indicate that the parties have unresolved disputes which arose out of the accounts of the said partnership business. Even if the deed permits the respondent to dissolve the partnership firm, the accounts, are to be closed, the statutory compliances are to be met and profit and loss, etc. are to be shared. Moreover, the petitioner also raises the question of validity of the dissolution at the instance of the respondent.

Thus, in my view, such dispute should be decided by the Arbitrator as per clause 14 of the Deed of Partnership. The arbitration agreement continues even after termination of the partnership business, in my prima facie view.

In the decision of ***WEATHERFORD OIL TOOL MIDDLE EAST LIMITED vs BAKER HUGHES SINGAPORE PTE*** reported in ***(2022) 15 SCC 729,*** the Hon'ble Apex Court held as follows:-

> "**9.** The doctrine of separability and the doctrine of kompetenz-kompetenz encompassed in the arbitration jurisprudence, have been succinctly explained by a three-judge Bench of this Court in the recent case of ***N.N Global Mercantile Unique Pvt. Ltd. Vs. Indo. Unique Flame Ltd. and Others*** reported in ***(2021) 4 SCC 379***:
> "**4.** <u>It is well settled in arbitration jurisprudence that an arbitration agreement is a distinct and separate agreement, which is independent from the substantive commercial contract in which it is embedded</u>. This is based on the premise that when parties enter into a commercial contract containing an arbitration clause, they are entering into two separate agreements viz.: (i) the substantive contract which contains the rights and obligations of the parties arising from the commercial transaction; and (ii) the arbitration agreement which contains the binding obligation of the parties to resolve their disputes through the mode of arbitration.
> **4.1.** <u>The autonomy of the arbitration agreement is based on the twin concepts of separability and kompetenz-kompetenz. The doctrines of separability and kompetenz-kompetenz though</u>

inter-related, are distinct, and play an important role in promoting the autonomy of the arbitral process.

4.2. The doctrine of separability of the arbitration agreement connotes that the invalidity, ineffectiveness, or termination of the substantive commercial contract, would not affect the validity of the arbitration agreement, except if the arbitration agreement itself is directly impeached on the ground that the arbitration agreement is void ab initio.

4.3. The doctrine of kompetenz-kompetenz implies that the Arbitral Tribunal has the competence to determine and rule on its own jurisdiction, including objections with respect to the existence, validity, and scope of the arbitration agreement, in the first instance, which is subject to judicial scrutiny by the courts at a later stage of the proceedings. Under the Arbitration Act, the challenge before the Court is maintainable only after the final award is passed as provided by sub-section (6) of Section 16. The stage at which the order of the tribunal regarding its jurisdiction is amenable to judicial review, varies from jurisdiction to jurisdiction. The doctrine of kompetenzkompetenz has evolved to minimise judicial intervention at the pre-reference stage, and reduce unmeritorious challenges raised on the issue of jurisdiction of the Arbitral Tribunal."

In ***SBI General Insurance Co. Ltd. vs. Krish Spinning, Civil*** decided in ***Appeal No. 7821 Of 2024 (Arising Out of SLP (C) No. 3792 Of 2024),*** it was held as follows :-

"**49.** The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "Model Law") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996: -

i. An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.

ii. A decision by the arbitral tribunal declaring the contract as null and void does not, ipso facto, make the arbitration clause invalid.

50. The doctrine of separability was not part of the legislative scheme under the Arbitration Act, 1940. However, with the enactment of the Act, 1996, the doctrine was expressly incorporated. This Court in ***National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd. reported in (2007) 5 SCC 692***, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.

51. The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract."

In ***National Agricultural Coop. Marketing Federation India Ltd. vs. Gains Trading Ltd.,*** reported in ***(2007) 5 SCC 692***, the Apex Court held as follows :-

"6. The Respondent contends that the contract was abrogated by mutual agreement; and when the contract came to an end, the arbitration agreement which forms part of the contract, also came to an end. Such a contention has never been accepted in law. <u>An arbitration clause is a collateral term in the contract, which relates to resolution disputes, and not performance. Even if the performance of the contract comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract.</u> [Vide : Heymen vs. Darwins Ltd - 1942 (1) All ER 337, Union of India vs. Kishori Lal Gupta & Bros. - AIR 1959 SC 1362 AND The Naihati Jute Mills Ltd VS. Khyaliram Jagannath - AIR 1968 SC 522]. This position is now statutorily recognized. Sub-section (1) of section 16 of the Act makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, an arbitration clause which forms part of the contract, has to be treated as an agreement independent of the other terms of the contract; and a decision that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. The first contention is, therefore, liable to be rejected."

Moreover, the contention of Mr. Basu, on the question of jurisdiction and arbitrability of the disputes, fall within the domain of the learned Arbitrator. The learned Arbitrator shall decide all objections which shall be raised by the respondent.

Under such circumstances, this application is disposed of by appointing Ms. Deblina Lahiri, learned Advocate, Bar Library Club, as the learned Arbitrator. This court has not gone into the allegations made by the parties. The parties are at liberty to raise all the points before the learned Arbitrator.

This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

AP-COM/888/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

pkd.