$~17

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

\+ ARB.P. 1748/2024

VIKAS GOEL .....Petitioner

Through: Mr. Amit Dubey and Mr. Sarthak Dubey, Advs.

versus

SEEMA SEJWAL .....Respondent

Through: Mr. Amitabh Kumar Verma, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **21.03.2025**

1. This is a petition filed under section 11 of Arbitration and Conciliation Act, 1996 ("*1996 Act*") seeking appointment of arbitrator to adjudicate the disputes between the parties.
2. The petitioner and respondent entered into a partnership under the name and style 'VVS Marbles and Stones'. Since there were disputes, the petitioner, on numerous dates, requested the respondents to settle the accounts of partnership from them.
3. On 18.07.2022, Pre-Insitution Mediation was also initiated which did not fructify. Subsequently, the petitioner filed a suit for dissolution of partnership firm, rendition of accounts and consequential relief of permanent injunction on 28.03.2023. The respondent took an objection regarding arbitration clause under the partnership agreement

and the suit was dismissed on 05.12.2023.

4. Thereafter, the petitioner filed a Section 11 petition on 05.02.2024, but since the same was not preceded by a notice under Section 21 of 1996 Act, the same was dismissed as withdrawn with liberty to file the same after issuance of notice.

5. Accordingly, on 18.09.2024, the petitioner served a notice under section 21 of 1996 Act and thereafter, approached this Court by virtue of the present petition.

6. Mr. Verma, learned counsel for the respondent has filed a reply, however, the same is not on record. A copy of the reply has been handed over in the Court today and the same is taken on record.

7. Learned counsel for the respondent *inter alia*, in para 3 has taken an objection regarding the petition being time barred. Admittedly, the disputes arose between the parties in November, 2020. The petitioner could have served the notice under Section 21 of 1996 Act within three years i.e. by the last day of October, 2023.

8. The judgment of Hon'ble Supreme Court in ***Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*** has observed that the period from 15.03.2020 to 28.02.2022 shall be excluded for the purposes of computation of limitation. Further, the Hon'ble Supreme Court in ***Prakash Corporates v. Dee Vee Projects Ltd., (2022) 5 SCC 112***and more particularly in paragraph 28 reads as under:-

> *"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19*

SCC 10 : (2021) 3 SCC (Cri) 801] , this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] , this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [Vide Section 15 of the Limitation Act, 1963.]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."

9. Recently, in ***Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313,*** the Hon'ble Supreme Court, while considering the aforesaid judgments, has observed as under:-

*"**84.** Thus, in ordinary circumstances, the limitation period*

available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27-3-2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 Pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognizance of this unfortunate turn of events, this Court vide order dated 23-3-2020 passed in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] directed the period commencing from 15-3-2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15-3-2020 to 28-2-2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15-3-2020 would become available from 1-3-2022."

10. Assuming the stand of the respondent is correct, the cause of action arose in November, 2020 and to give a notice under section 21 of 1996 Act, limitation period available is 3 years. Hence, in the view of the aforesaid judgments, the limitation period shall end on the last day of February, 2025 whereas the notice served by the petitioner is on 18.09.2024 which is within three years of the limitation period.

11. It is stated by Mr. Verma, learned counsel for the respondent that the

petitioner is seeking rendition of accounts from 01.05.2019 and hence the limitation should begin from 01.05.2019.

12. Even though the petitioner is seeking rending of accounts from 01.05.2019, the petitioner in his plaint in para 21 has stated that the cause of action accrued on 13.12.2020, when the petitioner became aware of unaccounted transfers.

13. For the said reasons, the petition is allowed and the following directions are issued:-

i) Ms. Anjana Gosain, Adv. (Mob. No. 9810100674) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

14. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 21, 2025/pk

Click here to check corrigendum, if any