THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

ARBITRATION APPLICATION No.164 of 2023

ORDER:

Mr. K.R.Raman, learned counsel representing Mr. Rahul Sarella, learned counsel for the applicant.

Mr. R.Sushanth Reddy, learned counsel for respondent Nos.1 and 3 to 6.

2. This application under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed seeking to appoint a sole arbitrator to adjudicate the dispute between the parties as per Clause 19 of the Partnership Deed dated 01.04.1994.

3. Facts giving rise to filing of this application briefly stated are that a Partnership Deed was executed on 01.04.1994 between the applicant and respondent Nos.1 to 6, who are members of the family. Clause 19 of the aforesaid Partnership Deed contains an arbitration clause. The applicant sent a legal notice on 08.11.2022 to

respondent No.3 and M/s.Syed and Syed, Chartered Accountants to provide information, clarification and documents in relation to the firm by e-mail. Thereafter another notice dated 03.01.2023 was issued to each of the respondents by registered post calling upon them to furnish the documents, information and clarification related to the firm. A reply notice on behalf of the respondents was sent on 12.01.2023 wherein the claim of the applicant was denied. The applicant thereupon issued another notice dated 14.03.2023 informing the respondents that the applicant has dissolved the firm under Section 43 of the Indian Partnership Act, 1932 and called upon the respondents to settle her accounts. Respondent No.4 submitted a reply on 12.04.2023 to the aforesaid notice.

4. Thereafter the applicant sent a notice to the respondents and nominated Mr. Chikkam Vijaymohan, a retired District Judge as sole arbitrator. Thereafter the applicant published a notice in “Deccan Chronicle, Eenadu and Sisasat” Daily Newspapers on 11.07.2023 stating that

the firm has been dissolved as required under Section 45 of the Indian Partnership Act, 1932. Thereafter this application has been filed seeking appointment of an arbitrator.

5. Learned counsel for the applicant submits that the respondents have not disputed the execution of the Partnership Deed dated 01.04.1994 and had not denied the existence of the arbitration clause. It is submitted that the dispute has arisen between the parties, which is required to be resolved in the manner agreed to by the parties.

6. On the other hand, learned counsel for respondent Nos.1 and 3 to 6 has submitted that the power of the arbitrator under the Partnership Deed dated 01.04.1994 is circumscribe and the relief to claim settlement of the accounts is outside Clause 19 of the Partnership Deed dated 01.04.1994 executed between the parties. It is further submitted that dispute relating to insolvency and winding up matters is a non-arbitrable dispute. In support of aforesaid submission, reliance has

been placed on decisions of Supreme Court in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.**[1] and **Duro Felguera, S.A. v. Gangavaram Port Limited**[2].

7. I have considered the rival submissions made on both sides and have perused the record.

8. Before proceeding further, it is apposite to mention that the existence of the Partnership Deed dated 01.04.1994 as well as the arbitration clause has not been denied on behalf of contesting respondents.

9. Clause 19 of the Partnership Deed dated 01.04.1994 reads as under:

> "19. Should any dispute or doubt or question arise between the Partners in respect of the Partnership or its affairs in respect of any matter touching the construction or interpretation of any matter of this Deed, the same shall be referred to arbitration in accordance with the Law of Arbitration in force and applicable."

[1] (2011) 5 SCC 532
[2] (2017) 9 SCC 729

10. Section 16(1) of the Arbitration and Conciliation Act, 1996 provides that the arbitral Tribunal may rule on its own jurisdiction. In **Uttarakhand Purv Sainik Kalyan Nigam Limited v. Northern Coal Field Limited**[3], a two-Judge Bench of Supreme Court held that the *doctrine of kompetenz-kompetenz* is intended to minimise judicial intervention, so that the arbitral process is not thwarted at the threshold when a preliminary objection is raised by one of the parties. It was further held that Section 16 of the Arbitration and Conciliation Act, 1996 is an inclusive provision of very wide ambit.

11. A seven-Judge Bench of Supreme Court in **In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899**[4] has comprehensively dealt with the aforesaid issue and in paragraphs 131, 132 and 162 has held as under:

"**131.** In ***Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products*** *[(2018) 2 SCC 534]*, one

[3] (2020) 2 SCC 455
[4] 2023 SCC OnLine SC 1666

of the issues before this Court was whether a decision on the issue of limitation would go to the root of the jurisdiction of the arbitral tribunal, and therefore be covered by Section 16 of the Arbitration Act. This Court referred to Section 16(1) to observe that "*the Arbitral Tribunal may rule on its own jurisdiction, which makes it clear that it refers to whether the Arbitral Tribunal may embark upon an inquiry into the issues raised by the parties to the dispute.*" In ***Bhadra Products*** (supra), it was held that the issue of limitation concerns the jurisdiction of the tribunal which tries the proceedings.

132. In ***Uttarakhand Purv Sainik Kalyan Nigam Ltd.* v. *Northern Coal Field*** *(supra)*, the issue before this Court was whether a referral court at the stage of appointment of arbitrators would be required to decide the issue of limitation or leave it to the arbitral tribunal. A Bench of two Judges of this Court held that the doctrine of competence-competence is "*intended to minimize judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties*." Moreover, this Court held that Section 16 is an inclusive provision of very wide ambit:

> "7.13. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. **Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, "including any objections" with respect to the existence or validity of the arbitration agreement. Section 16 is an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal**. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-

> reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator."
>
> (emphasis supplied)

162. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In ***Duro Felguera, S.A. v. Gangavaram Port Ltd.*** (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in ***Vidya Drolia vs. Durga Trading***

Corporation [(2021) 2 SCC 1] in the context of Section 8 and Section 11 of the Arbitration Act."

12. Applying the aforesaid legal principles to the obtaining factual matrix of the case, it can safely be inferred that all the objections with regard to jurisdiction of the arbitrator to deal with the claim made on behalf of the applicant can be raised and can be urged before the arbitral Tribunal itself. In **Booz Allen & Hamilton Inc.** (supra) in paragraph 36 while referring to well recognized examples of non-arbitrable disputes, the Supreme Court, by way of illustration, referred to insolvency and winding-up of a company, whereas the instant dispute is between the partners under the Indian Partnership Act,1932.

13. For the aforementioned reasons, Mr. Justice L.Nageswara Rao, a former Judge of the Supreme Court (resident of A-402, Jayabheri Orange County, Gachibowli Financial District, Ranga Reddy District, Mobile No.95600 03598, 98100 35984) is appointed as sole arbitrator to adjudicate the dispute between the parties.

14. Needless to state that the respondents shall be at liberty to raise all contentions before the arbitral Tribunal.

15. The parties undertake to appear before the sole arbitrator on 10.05.2024 at 11:00 a.m. along with a copy of this order.

16. Thereupon, the sole arbitrator shall proceed with the arbitral proceedings in accordance with law.

17. Accordingly, the Arbitration Application is allowed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

ALOK ARADHE, CJ

Date: 19.04.2024
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