



Delhi High Court reiterates limited scope for examining validity of arbitration agreement under Section 11(6) of Arbitration Act¹

Brief Facts

The Petitioner held a 40 per cent profit share and Respondent Nos. 2 to 4 (“**Respondents**”) held a combined share of 60 per cent in M/S. Jugal Kishore Shyam Prakash & Co. (“**Respondent No. 1**”/“**Firm**”), a partnership firm. The Petitioner contended, *inter alia*, that the Respondents had not acted in accordance with the terms of the partnership deed dated 18 May 1992 (“**1992 Deed**”) entered into between the parties since 2009.

As per the Petitioner, the 1992 Deed contained an arbitration clause. In furtherance of her contentions, the Petitioner issued a notice invoking arbitration for peaceful and amicable dissolution of the partnership and rendition of accounts. Since an arbitrator could not be appointed by the consent of the parties, the Petitioner approached the Delhi High Court (“**Court**”) under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“**Act**”) seeking the appointment.

The Respondents, *inter alia*, contended that: (i) there is no existing and valid arbitration agreement between the parties as the Petitioner concealed that the 1992 Deed was novated and superseded by a partnership deed dated 1 April 2006 (“**2006 Deed**”) between the parties, which does not contain an arbitration clause; (ii) even if the 1992 Deed is valid and subsists, the Court lacks the territorial jurisdiction to entertain the petition as the relevant clause does not provide New Delhi to be the seat or venue of the arbitration. Further, the 1992 Deed was executed and signed at Coimbatore, Tamil Nadu and the stamp papers were also purchased there. Additionally, the 1992 Deed clearly specifies that the principal place of business would be Coimbatore while only the branch office is at Delhi; and (iii) the reliefs sought by the Petitioner date back to 2009 and are therefore, time barred.

Issues

Issue (i): Whether a case has been made out for the Court to appoint an arbitrator under Section 11(6) of the Act?

Issue (ii): Whether the Court has territorial jurisdiction in the matter?

Issue (iii): Whether the Court can examine the question of claims being time barred while appointing an arbitrator?

Judgment

Issue (i): By relying on the Supreme Court’s decision in *M/s. Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman*,² the Court reiterated that it is settled law that in a petition under Section 11(6) the Act, the Court only has to decide whether a valid and subsisting arbitration agreement exists between the parties. On facts, the Court noted that the 2006 Deed did not novate or otherwise alter the 1992 Deed, as far as the arbitration clause was concerned. Accordingly, the Court concluded that the arbitration clause subsisted and a case was made out for appointment of an arbitrator.

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Issue (ii): The Court noted that the arbitration clause does not mention the seat or venue of arbitration. In the absence of the parties' agreement on this point, the Court noted that the registration of the Firm in Delhi would be a relevant factor to determine its territorial jurisdiction, more particularly looking at the nature of disputes sought to be referred. Therefore, the Court concluded that it would have territorial jurisdiction.

Issue (iii): The Court relied on the Supreme Court's decisions in *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.*³ and *NTPC Ltd. v. Siemens Atkeingesellschaft*⁴ to hold that the dispute with regard to the claims being time barred would be in the domain of the arbitral tribunal and not of the Court under Section 11(6) of the Act.

Analysis

As rightly noted by Court, in view of the settled position regarding the scope of judicial examination under Section 11(6) of the Act, the only issue before a court in such a petition is whether the arbitration agreement is valid and subsisting. Upon such a finding being rendered, all other issues, including that of claims being time barred, are to be adjudicated by the arbitral tribunal.

The present case also delved into the issue of the Court's territorial jurisdiction for appointment of the arbitrator. While Tamil Nadu was the site of execution of the 1992 Deed, purchase of the stamp papers and the Firm's principal place of business, the Court placed emphasis on the registration of the Firm in Delhi. Since Sections 58 to 60 of the Indian Partnership Act, 1932 envisage the registration of a partnership firm at the place where the principal business of the firm takes place, the Court drew a presumption that the Registrar would have verified the principal place of the Firm to be Delhi before according registration. In view of the same, the Court concluded that it would have territorial jurisdiction. The decision therefore provides an interesting insight into various factors that may be considered while determining the territorial jurisdiction of a court under Section 11(6) of the Act.

1 Authored by Smarika Singh, Partner and Yashna Mehta, Associate; *Mrs. Madhu Devi Fatehpuria v. M/s Jugal Kishore Shyam Prakash*, Arbitration Petition No. 339 of 2019, Delhi High Court, judgment dated 13 March 2020.

Quorum: Jyoti Singh, J.

2 (2019) 8 SCC 714.

3 (2020) 2 SCC 455.

4 (2007) 4 SCC 451.

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