IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 11, 2022

\+ ARB.P. 842/2019

SIMRAN SODHI ..... Petitioner

Through: Mr. Vikas Arora and Mr. Mohit Dagar, Advs.

versus

SANDEEP SINGH ..... Respondent

Through: Mr. Samrat Nigam, Mr. Abhimanyu A. Walia, Mr. Rishabh Gupa, Mr. Amit Punj and Mr. Karambir Singh, Advs.

AND

\+ ARB.P. 199/2022

SANDEEP SINGH ..... Petitioner

Through: Mr. Samrat Nigam, Mr. Abhimanyu A. Walia, Mr. Rishabh Gupa, Mr. Amit Punj and Mr. Karambir Singh, Advs.

versus

SIMRAN SODHI & ORS. ..... Respondents

Through: Mr. Vikas Arora and Mr. Mohit Dagar, Advs. for R1.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. As the captioned petitions arise from the same factual matrix, seeking appointment of an arbitrator, I shall proceed to decide both the

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petitions together.

ARB.P. 842/2019

2. The petitioner herein, Simran Sodhi, and the respondent Sandeep Singh entered into a Partnership Deed on March 10, 2014, for carrying out manufacturing and trading of plastics, electronics and electrical items under the name of S.S. Manufacturing ('the Firm', hereinafter). In terms of the Partnership Deed, it was agreed that the profit/loss incurred by the resultant Partnership Firm shall be borne in the ratio of 67% (by the petitioner) and 33% (by the respondent). However, the said ratio was subsequently altered to 60% (by the petitioner) and 40% (by the respondent).

3. It is submitted by Mr. Vikas Arora, learned counsel for the petitioner that due to poor market conditions and various actions, breaches and omissions on the part of the respondent, including misbehavior with the Firm's suppliers/vendors, the Firm suffered substantial losses. In view of the losses suffered by the Firm, it became impossible for the petitioner to continue with and sustain the Firm any longer. Resultantly, the petitioner and the respondent decided to amicably dissolve the partnership. Pursuant thereto, the petitioner, the respondent and several other persons/representatives had a meeting on June 21, 2019 wherein it was discussed that there are irrecoverable losses caused to the Firm and both parties need to come up with an exit plan to close down the Firm completely. As agreed by the respondent in the said meeting, it was decided that both partners i.e. the petitioner and the respondent, individually, would evaluate the total assets and liabilities of the Firm and mutually prepare and agree upon an exit

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plan. Subsequently, the petitioner and the respondent met again on June 25, 2019, where the petitioner had hoped that the respondent would discuss the exit plan with a positive frame of mind in order to dissolve the Firm. The losses as reflected in the balance sheet of the partnership Firm as on that day was ₹4,90,52,569.91/- .

4. However, no action was taken by the respondent on the exit plan offered by the petitioner, i.e. offering to liquidate the stocks, plants and machinery of the Firm immediately and close down the factory to stop any further losses and running expenses. Rather, the respondent kept delaying the matter on one pretext or the other. It is stated that in the middle of such important events, the respondent went on a 10 days' vacation and refused to respond to the queries/ communications from the petitioner.

5. In the meantime, the customers from whom various orders were taken and even advances were obtained started complaining and even refused to release payment for goods already supplied until their orders are completed. As such, the father-in-law and brother-in-law of the petitioner were requested to help. They permitted manufacturing and supply of the pending orders in the name of their company M/s Rugs Enterprises Private Limited. Accordingly, all the pending orders were transferred to the name of M/s Rugs Enterprises Private Limited, who invested money, purchased raw materials and completed the supply. They also supplied goods free of cost to cover up the advances received by SS Manufacturing, enabling SS Manufacturing to recover about ₹1.25 crore from the market.

6. Though the Firm was clearly struggling with mounting losses,

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on July 22, 2019, the respondent withdrew a sum of ₹ 7,33,000/- unilaterally from the account of the Firm and misappropriated the same for his personal benefit without the consent of the petitioner.

7. Mr. Arora further submitted that on July 23, 2019, the respondent and his brother Karan Singh attacked the petitioner and his wife at the factory of the Firm at NOIDA, pursuant to which an FIR bearing No. 534/2019 was filed at the Police Station, Phase-2, Gautam Budh Nagar, NOIDA, and the case is pending adjudication before the competent court in NOIDA.

8. On July 25, 2019, the respondent transferred a sum of ₹4,50,000/- from the account of the Firm unilaterally without the consent of the petitioner after which the petitioner had to issue directions to the Bank to freeze debit transactions of the account of the Firm in order to stop the respondent from further misappropriating the money of the Firm.

9. Subsequently, the petitioner terminated the partnership and issued a legal notice dated July 29, 2019 to the respondent for dissolution of the Partnership Deed as per clause 13 therein, to which the respondent failed to reply, despite service.

10. He also stated that the respondent, misusing the powers of his father Ishwar Singh, who is an officer in Delhi Police, filed a false complaint against the petitioner, his father, his father-in-law and his brother-in-law. Approximately ₹40 lakh of M/s Rugs Enterprises has been stuck in the market as the production/business has stopped due to the police action.

11. It is the case of the petitioner that no payment has been made

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by respondent either towards losses incurred by the Firm or towards GST and other tax liabilities of the Firm or towards the return of the unilateral withdrawals made by the respondent. The respondent is also not willing to amicably work out a solution by finalising the books of accounts, figure out the profit/loss of each partner, dispose of the assets/stocks of the Firm, negotiate with the bank to reduce liability, vacate the factory premises etc. Therefore it is clear that a dispute has arisen between the parties. Clause 16 of the Partnership Deed provides for arbitration, which reads as under:-

> *"16. That in case of any dispute or differences which may arise in the ordinary course of business between the parties or their authorized representative as regard the constitution, meaning and effect of this deed or any part thereof or profits and losses of the business or their rights and liabilities under this deed or the dissolution or winding up of the business, any other matter relating to the Firm not provided hereinbefore, shall be referred to Arbitrator Sh. Saranjit Singh Sodhi S/o Sh. Raghbir Singh Sodhi R/O R-12A, First Floor, Hauz Khas Enclave, New Delhi-110016 or as provided for Indian Arbitration Act, as in force. In case of death of Mr. S.S. Sodhi, partner can mutually appoint any other person as Arbitrator. In case of disagreement for appointing arbitrator, case will be referred to the Court falling in the Delhi Jurisdiction"*

12. Mr. Arora submitted that accordingly, the petitioner issued a notice invoking arbitration on December 04, 2019. Though the arbitration clause provides for Saranjit Singh Sodhi, the father of the petitioner to be the Arbitrator, with a view to avoid any objections, the petitioner recommended the name of Justice AD Singh (Retd.) to act as the Arbitrator and adjudicate all disputes between the parties, and

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sought consent of the respondent for his appointment, or in the alternative, to suggest another name. The respondent, *vide* reply dated December 10, 2019, refused to participate in the process of arbitration. Aggrieved by the same, the petitioner filed the instant petition. He has sought prayers as made in the petition.

ARB. P. 199/2022

13. The petitioner herein, Sandeep Singh, i.e., the respondent in Arb. P. 842/2019, has filed this petition seeking *inter alia*, appointment of an arbitrator to adjudicate the disputes that have arisen between the parties. The respondent no. 1 herein is Simran Sodhi, i.e., the petitioner in Arb. P. 842/2019, respondent No. 2 is SS Manufacturing, i.e., the Partnership Firm, and respondent No. 3 is M/s Rugs Enterprise Private Limited, which, according to the petitioner, is being operated to carry out an illegal shadow business from the factory of the respondent No. 2 Firm at D-14, Sector 80, NOIDA.

14. It is the contention of the petitioner that the respondent No. 1, who is the majority partner holding 67% stake in the Firm, has been misappropriating funds and goods/products belonging to the Firm for his personal use and otherwise, that has caused the Firm to suffer heavy losses and eventually shut down.

15. According to Mr. Samrat Nigam, learned counsel for the petitioner, the respondent No. 2 was set up by the parties by virtue of the Partnership Deed dated March 10, 2014, with capital infused into the Firm in an equal ratio by both the petitioner and the respondent No. 1. However, the profit/loss arising out of the Firm was to be divided in the ratio 33:67 between the petitioner and the respondent No. 1

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respectively. However, after the commencement of the business of the Firm, in 2016, the respondent No.1 asked the petitioner to infuse additional funds to the Firm, to be used as working capital, failing which, the purchase orders of the Firm will have to be transferred to LIT India Private Limited, the company of the father of respondent No. 1. The Firm procured a loan of ₹ 2 crore from TATA Capital Finance Services Limited, through its partners. The primary guarantor of the loan was the respondent No.2 Firm and the petitioner's father Ishwar Singh mortgaged a property bearing No. 6517, C-6, Vasant Kunj, New Delhi, as collateral for the said loan.

16. On March 17, 2017, Andhra Bank (now Union Bank of India, hereinafter referred to as such) took over the loan from TATA Capital Finance Services and extended a loan of ₹ 3 crore to the Firm with an additional release of ₹ 1 crore. The guarantors for this loan were the petitioner, the respondent, petitioner's father Ishwar Singh and corporate guarantee was executed by LIT India Pvt. Ltd.

17. On March 31, 2017, a Lease Agreement was executed between the Firm and and M/s Kamal Fashions Private Limited and the Firm moved its manufacturing unit to a newly constructed building situated at D-14, Sector 80, NOIDA, Uttar Pradesh. As per the terms of the Lease Agreement, the lease between the Firm and M/s Kamal Fashions Private Limited was for a term of nine (9) years between the period from April 1, 2017 to March 31, 2026. Funds to the tune of ₹1 crore was infused from the corpus of the Firm towards investment in the said factory, owing to which, the Firm was able to meet the factory audit requirements of several big companies.

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18. Mr. Nigam stated that in the latter half of 2016, the respondent No. 1 started diverting funds and withdrawing huge sums of monies for his personal use, as reflected in the books of accounts of the Firm. Monies were misappropriated by the respondent No. 1 for purposes ranging from making payment for his household expenses, payment of house help's salaries, house rent of the property where he was staying etc. Respondent No. 1 further made personal investments in various mutual funds and schemes such as Franklin Templeton and ICICI Prudential in his own name by misusing the moneys of the Firm to the tune of ₹17,50,000/- (Rupees Seventeen Lakh and Fifty Thousand only).

19. Thereafter in January 2019, the respondent No. 1 got married to one Saloni Goenka (authorised signatory of respondent No. 3). Saloni Goenka's father and brother are the Directors and shareholders of respondent No. 3. Respondent No. 1 with Saloni Goenka went on a luxury holiday in June 2018 to Europe entirely on the accounts of the Firm, travelling to cities like Amsterdam, Berlin, Nice, Vienna and Budapest, staying in expensive hotels and flying business class. The cost of accommodation and travel alone for this holiday is reflected in the books of the Firm to the tune of ₹6,37,059/- . It is stated that a collation of the expenditures made by respondent No. 1 at the expense of the Firm, taken from its bank account is more than ₹ 1,33,25,724/-. A detailed list of the monies taken out of the Firm by respondent No. 1, total whereof amounts to ₹ 63,02,500/-, has been set out in a tabular form in page No. 23 of the petition.

20. On July 23, 2019, the petitioner discovered that the respondent

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No.3 was operating from the factory of the Firm located at D-14, Sector 80, NOIDA. Goods worth crores of rupees were siphoned off through respondent No.3, which obtained a GST Number at the factory of the Firm, through a forged rent agreement. It is stated that relatives of respondent No. 1 were the directors of respondent No. 3, which was merely a shell company, lying dormant since inception and got activated in the month of May 2019 at the behest of respondent No. 1 and his wife who was the authorised representative, who are liable for misappropriating and diverting funds from the Firm for their own personal wrongful gain. The *modus operandi* employed by the respondent No. l was that the at the time of dispatch, goods belonging to the Firm, which were supposed to be sold on invoices of 'SS Manufacturing' were instead shipped on invoices of 'Rugs Enterprises'. Goods which were produced using raw material, machinery, employees and factory of the Firm were illegally sold as goods belonging to respondent No. 3. Such finished products were thereafter be sold to customers of the Firm under the name of respondent No. 3, the receivables therefrom were wrongfully misappropriated by respondent No. 1 and his relatives as payments were credited in the account of respondent No.3. In other words, the invoices were being raised in the name of respondent No. 3 and payments that should have been credited to the Firm were being redirected to respondent No. 3. A schedule of the goods belonging to the Firm, but were illegally sold through respondent No. 3 is provided in page No. 27 of the petition in Arb. P. 199/2022.

21. It is contended that the respondent No. 3, conspiring with

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respondent No. 1 created a false and forged rent agreement dated June 01, 2019 purported to have been executed between respondent No. 3 and M/s Kamal Fashions Pvt. Ltd., through Sachin Jain, its authorised signatory, for the property situated at D-14, Sector 80, NOIDA. However, Sachin Jain has stated before the police that the signature on the photo of the forged rent agreement dated June 01, 2019 did not belong to him and has in fact filed a complaint in that regard. The photo and signatures of the person posing to be Sachin Jain were entirely different from the actual photo/signature of Sachin Jain. An independent enquiry was conducted by the GST Department regarding this, and the GST Registration of the respondent No. 3 was cancelled w.e.f. June 15, 2019 thereby making all sales and purchase of respondent No. 3 null, void and illegal.

22. Mr. Nigam stated that emails were sent to customers by the respondent No. l and his wife Saloni Goenka, falsely stating that respondent No.3 had legitimately acquired the assets and business operation of the Firm, whereas, no such agreement had even been discussed between the Firm and respondent No.3, as is evident by the need to forge the rent agreement to obtain GST Number for respondent No. 3 at the factory of the Firm.

23. Following the disputes between the partners, the business of the Firm came to a halt and all operations were ceased. Union Bank of India took over possession of the factory along with all stocks and machinery which were hypothecated to them.

24. He further averred that several complaints and FIRs have been registered against the directors of respondent No. 3 under various

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provisions of the Indian Penal Code (IPC) for nefarious activities.

25. Subsequently, on July 24, 2019, in order to deflect attention from the conspiracy that the petitioner had discovered, the respondent No. 1 registered an FIR being No. 534/2019 against the petitioner and his brother at Gautam Budh Nagar Police Station under Sections 323, 325, 504 of the IPC. On July 28, 2019, the petitioner addressed a complaint to the Station House Officer, Vasant Kunj Police Station against the unlawful activities of the respondent Nos. 1 and 3. An FIR bearing No.170/2019 was registered on July 31, 2019 under Sections 380, 406, 506, 120B, 467, 468 and 471 of the IPC based on the complaint.

26. On November 22, 2019, the premises of the Firm were re-opened in the presence of a Chartered Accountant appointed by the Delhi Police, the petitioner, respondent No. 1, the Manager of Union Bank of India and certain officials of GST Department. The Chartered Accountant prepared a report dated November 29, 2019, wherein it was observed that (a) there was a variation in stocks worth ₹2.41 crore of the Firm; (b) the arbitration clause contained in the Partnership Deed is *per se* biased in favour of respondent No. 1 and in violation of Section 12(5) of the Arbitration and Conciliation Act, 1996; (c) respondent No. 1 threatened the Chartered Accountant to prepare a favourable report and refused to cooperate with the investigation.

27. On July 29, 2019 the respondent No. 1 served the petitioner with a notice for Dissolution of Partnership and Termination of the Partnership Deed. On October 24, 2019, the petitioner replied to the Notice for Dissolution of Partnership and Termination of the

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Partnership Deed refuting allegations contained therein and demanding withdrawal of said notice and denying the dissolution of the Partnership.

28. On November 05, 2019, Union Bank of India issued a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for non-payment of monthly installments. The notice was issued to the Firm who was the primary borrower, to the partners and to the guarantors, and took over the hypothecated goods of the Firm. Further on December 23, 2019, it declared the account of the Firm as a Non-Performing Asset on account of not having made any payments towards the loan.

29. On December 12, 2019, the respondent No. 1 filed Arb. P. 842/2019.

30. It is stated that Union Bank of India has commenced proceedings for auctioning off the property of the petitioner's father being 6517, C-6, Vasant Kunj, New Delhi, and a Receiver has been appointed to take physical possession of the house.

31. On November 11, 2021, upon refusal of the respondent No. 1 to pay off the debts of Union Bank of India and other creditors, the petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996. Further, on November 15, 2021, the petitioner sent a notice under Section 21 of the Arbitration and Conciliation Act, 1996 seeking commencement of arbitral proceedings for the claims against the respondent Nos. 1 and 3 to the amount of ₹6,20,32,721/-, and an additional claim of ₹2,41,32,905/- from the respondent No. 1

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for the stock that went missing from the godown of the Firm. The total amount for which claims have been made, thus amounts to ₹ 8,61,65,626/-.

32. Mr. Nigam has also contended that it is trite law that even parties who are not signatories to an arbitration agreement can be referred to arbitration. To buttress his argument, he has placed reliance on the judgments of the Supreme Court in the cases of ***Cheran Properties Ltd. v. Kasturi and Sons Ltd. and Ors., (2018) 16 SCC 413, Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. and Ors., (2013) 1 SCC 641, Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd. 2022 SCC OnLine SC 522, Mahanagar Telephone Nigam Ltd. v. Canara Bank and Ors., (2020) 12 SCC 767, Ameet Lalchand Shah and Ors. v. Rishabh Enterprises and Anr., (2018) 15 SCC 678***; of this Court in the case of ***Vistrat Real Estates Pvt. Ltd. v. Asian Hotels North Ltd., 2022 SCC OnLine Del 1139***; and of the High Court of Madras in the case of ***Embassy Property Developments Ltd. v. Jumbo World Holdings Ltd. and connected matter, 2013 (4) CTC 154***. He seeks prayers as made in the petition.

33. A reply has been filed by the respondent No. 3 /Rugs Enterprise Private Limited in Arb. P. 199/2021, wherein it has been stated that the reference of respondent No. 3 to the proposed arbitration is beyond the scope of arbitration clause contained in clause 16 of the Partnership Deed between the petitioner and respondent No. 1, as it has no role in the *inter-se* dispute between the petitioner and the respondent Nos. 1 and 2. It is nowhere involved in pre-negotiations

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between the petitioner and the respondent No.1 pertaining to their partnership business and execution of Partnership Deed dated March 10, 2014. From March 2014 till June 2019, there has been no allegation that the respondent no.3 had any role in the negotiations, operations and management of the Firm which constituted any cause of action in favour of the petitioner to force the respondent No.3 to join the arbitration agreement, particularly when there has been no agreement executed between the parties. It also had no role/relationship with the parties when the loan was availed by the Firm and the father of the petitioner stood guarantor while availing the loan from Union Bank of India for business requirement, and as such, there is no legal justification to implead the respondent No.3 to repay the alleged liabilities towards the Bank.

34. According to Mr. Amit Bhatia, learned counsel for the respondent No. 3, the petitioner has failed to make out a case wherein the respondent No. 3, being a non-signatory to the arbitration agreement, can be impleaded as party in the arbitration proceedings. He submitted that the respondent No.3 does not come within the Doctrine of Group of Companies, which postulates that when an arbitration agreement is entered into by one of the companies in a group, the signatory affiliate or sister/parent concern is held to be bound by the arbitration agreement if the facts and circumstances of the case demonstrate that it was the mutual intention of all parties to bind both signatories and non-signatory affiliates in the group. Respondent No.3 was totally alien to the petitioner and respondent No.1 till the marriage of respondent No.1 with Saloni Goenka

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(daughter and sister of Directors of respondent No.3) on January 29, 2019. In any case, respondent No.3 never participated in the business of the respondent No.2 in any manner whatsoever. Any reference of respondent No.3 to arbitration would be against the established principles of independent party autonomy.

35. He contested the reliance placed by the petitioner on ***Chloro Controls (supra)***, by stating that in ***Cox and Kings Limited v. SAP India Private Limited and Anr., Arbitration Petition (Civil) No. 38/2020***, the Supreme Court has doubted the correctness of the decision in ***Chloro Controls (supra)*** and referred the same to a larger bench. In any case, the application of the Doctrine of Group of Companies in ***Chloro Controls (supra)*** relies upon the intent of the parties to include a non-signatory in the arbitral proceedings. It is an admitted fact that the Partnership Deed including the arbitration clause was executed on March 10, 2014. The averments regarding the role of respondent No. 3 came up only in June 2019 when the respondent No. 3 received GST Number on the address mentioned in various invoices and in July 2019 when the petitioner lodged the FIR at Vasant Kunj Police Station. He stated that the respondent No. 3 is not a subsidiary of respondent Nos. 1 or 2, and respondent No. 1 is neither a signatory nor holding any position in respondent No. 3. The Directors of respondent Nos.2 and 3 did not even know each other at the time of execution of the contract. Respondent No.3 is not a third party beneficiary in any manner in the Partnership Deed entered into between the petitioner and the respondent No.1. As such, the contention of the petitioner to implead the respondent No.3 as a party

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in the proposed arbitration to seek the relief in the form of an award and to enforce it jointly and severally, is not sustainable in the eyes of law.

36. He also submitted that the respondent No. 3 never gave any consent- express or implied, or any ratification for participating in any dispute *inter-se* between the petitioner and the respondent No. 1. The Supreme Court in ***Cox and Kings (supra)*** has held that a non-signatory or a third party could be subjected to arbitration without their consent, but only in exceptional cases. The court has to examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject matter and the agreement between the parties being in the form of a composite transaction, where the performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreement.

37. Reliance has also been placed on the judgment of the Supreme Court in the case of ***Reckitt Beckensier (India) Private Limited v. Reynders Label Printing (India) Private Limited and Anr., MANU/SC/1758/2019,*** wherein the Supreme Court, while acknowledging the Doctrine of Group of Companies, refused to allow the joinder of a non-signatory, as it could not be proved that the non-signatory had negotiated the contract on behalf of the signatory.

38. He has also referred to the decision of the Supreme Court in ***Sukanya Holding Pvt. Ltd. v. Jayesh H. Pandya, Civil Appeal No. 1174/2002,*** wherein it was held that the person who is not a party to the arbitration agreement cannot be roped into the arbitration

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proceedings. Reference is also made to the decision of the Supreme Court in the case of ***SN Prasad v. Monnet Finance Ltd., and Ors., (2011) 1 SCC 320***, wherein it was held that a guarantor of loan cannot be made a party to arbitration agreement regarding dispute related to payment of loan unless there is a specific agreement to that effect.

39. Mr. Bhatia stated that the judgment in ***Mahanagar Telephone Nigam Ltd. (supra)*** relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case, as in that case, CANFINA, which was a non-signatory to the agreement was allowed to join arbitration proceedings as the same was a wholly owned subsidiary of the respondent Canara Bank. In the present case, the respondent No.3 is a separate legal entity incorporated in the year 2013 and has no role in the affairs of respondent No.2 in any manner whatsoever. The respondent No. 3 has independently secured the purchase orders for various consignments, had purchased raw material independently to fulfill the said orders which further proves that the respondent No. 3 has nothing to do with the petitioner and respondent Nos. 1 and 2.

40. He has also contested the reliance placed by Mr. Nigam on the judgment in the case of ***Cheran Properties (supra)*** claiming that the said judgment will not be applicable to the facts of the present case, as the issue therein was execution of an arbitral award against a non-signatory. He stated that in any case, the respondent No. 3 has no nexus with the respondent No. 2 Firm and no document has been placed on record to prove that any money has been transferred from the accounts of the Firm to the accounts of respondent No. 3.

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41. He has also submitted that the petitioner, with intent to cause harassment and to put pressure upon the respondent No.3 to settle all the outstanding liabilities of the Firm, has initiated vexatious litigations against the respondent No.3, including the FIR lodged at Vasant Kunj Police Station.

42. As regards the allegation of the offence of fraud and misrepresentation raised by the petitioner against the respondent No.3, he submitted the same does not come under the purview of arbitration as per the ratio laid down by the Supreme Court in ***A. Ayyasamy v. A. Paramasavaim & Ors., (2016) 10 SCC 386,*** wherein the Apex Court after considering the issue as to whether the allegations of fraud can be referred to arbitration, held that fraud is a category where the dispute would be considered non arbitrable, particularly when an FIR was lodged. He also placed reliance upon the judgment in the case of ***Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, AIR 1962 SC 406,*** to contend that serious allegations of fraud were found by the Court to be a sufficient ground for not making a reference to arbitration. In ***Abdul Kadir Shamsuddin Bubere (supra)*** the Supreme Court had also referred to a decision of the Chancery Division of the High Court of England and Wales in ***Russel v. Russel, 1980 LR 14 Ch D 471***, wherein a notice for dissolution of partnership was issued by one of the partners upon which the other partner brought an action alleging various charges of fraud and sought a declaration that the notice of dissolution was void. The partner who was charged with fraud sought reference of the dispute to arbitration. The Court held that in a case where fraud is charged, it will, in general, refuse to send the

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dispute to arbitration, more so when the objection is made by the party being charged with fraud.

43. He has also relied upon the judgment of the Supreme Court in ***N. Radhakrishnan v. Maestro Engineers and Ors., (2010) 1 SCC 72,*** wherein it was held that when there are serious allegations against the respondent alleging him to have committed malpractices in the accounts and finances of the partnership firm, the same cannot be properly dealt with by an arbitrator. This decision was followed by this Court in the case of ***K.R. Impex v. Punj Lloyd Ltd., CS (COMM) 646/2016***, decided on January 08, 2019, while declining an application under Section 8 of the Arbitration and Conciliation Act, 1996 of the defendant to refer the dispute to arbitration.

44. He further stated that the respondent No.3 has nothing to do with the affairs of the Firm and since the Directors of respondent No.3 are the relatives of respondent No.1, they have been falsely implicated in the FIR lodged at Vasant Kunj Police Station to arm-twist and extort money. From March 2014 till June 2019, the respondent No.3 was not in the picture, and the business of respondent No.2 Firm was being carried out exclusively by the petitioner and the respondent No.1. It is in 2019 that it was brought to the notice of the Directors of respondent No.3 that the respondent No. 2 Firm has suffered heavy business losses and needs immediate capital infusion. Further, the petitioner and his father met with the Directors of respondent No.3 for taking steps to settle the loan of Union Bank of India. Various meetings in this regard had taken place but no fruitful result arose, as the petitioner and his father did not want to share the losses as per their decided ratio in the

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partnership. He stated that this petition is yet another attempt to pressurise respondent No.3 and its Directors into paying the outstanding loan amount.

45. As regards the allegation of the petitioner regarding the alleged misappropriation of moulds of the Firm and misuse of the funds, he stated that the same is the subject matter of investigation in the FIR bearing No.170/2019 dated July 31, 2019 lodged at Vasant Kunj Police Station. It is an admitted case that there is no arbitration agreement between the petitioner and the respondent No.3. According to him, this petition is a futile exercise to implead respondent No.3 so that it can be fastened with some liability and to compel them to pay the outstanding loan amount taken by the father of the petitioner. The respondent No. 3 and petitioner were not *ad-idem* at any point to refer any dispute to arbitration.

46. Mr. Bhatia has also refuted the allegations of obtaining gains/money in the account of respondent No.3 from the respondent No.2 Firm. He stated that the same is being investigated in the said FIR and a Chartered Accountant was also appointed by this Court for conducting a forensic audit of the accounts of the Firm. Further, the bank statement of respondent No.3 for the relevant period from June 11, 2019 till August 09, 2019 was submitted to the investigating officer to rebut the false allegations as alleged by the petitioner in the present petition. According to him, from the investigation carried out so far nothing incriminating has come up against the respondent No.3 and the petitioner is only repeating the same allegation in the present petition in order to secure the impleadment of respondent No.3 in the proposed

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arbitration between the petitioner and respondent No.1. He seeks dismissal of the present petition.

ANALYSIS:

47. Having heard the learned counsel for the parties and perused the record, at the outset, I may state that both the petitions have been filed with identical prayers, i.e., for appointment of an Arbitrator. ARB.P. 842/2019 is filed by Simran Sodhi, who is respondent No.1 in ARB.P. 199/2022 filed by Sandeep Singh.

48. For the sake of convenience, Simran Sodhi shall be referred to as 'respondent No. 1' and Sandeep Singh shall be referred to as 'petitioner', hereinafter.

49. These petitions have been filed on the basis of the Partnership Deed dated March 10, 2014 through which the respondent No. 1 and the petitioner had formed the respondent No. 2 partnership Firm. So, in that sense, their request for appointment of an Arbitrator in these petitions, is for adjudication of their *inter se* disputes. Both of them have invoked the arbitration clause by issuing notices to each other.

50. The claims of the respondent No.1 primarily are the following:

(i) Towards loss incurred by the Firm due to the actions of the petitioner including his unilateral withdrawals;

(ii) Towards finalising the books of accounts, figuring out the profit/loss of each partners, disposing of the assets/stocks of the Firm etc.;

(iii) Towards GST and other liabilities to be paid to various government agencies

51. *Per contra,* the claims of the petitioner are primarily the

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following:

i. Amount of ₹1,40,06,457/- that the respondent No. 1 have misappropriated through respondent No. 3 (M/s Rugs Enterprises Private Limited) which should have been credited to the Firm.

ii. Amount of ₹78,74,279/-, i.e. 67% out of ₹1,17,52,656/- the Firm still owes to the creditors.

iii. Amount of ₹2,05,23,762/- being 67% of respondent No.1's share of the debt from the amount of ₹3,06,324,84/- that is owed to Union Bank of India.

iv. Amount of ₹1,96,28,223/-, i.e. the sum total of ₹ 63,02,500/- and ₹1,33,25,723/- which were wrongfully siphoned off by respondent No.1.

v. Amount of ₹2,41,32,905/- for the stock which went missing from the godown of the Firm, which was siphoned off by respondent No. 1.

52. During the course of hearing, it was submitted by Mr. Arora that the respondent No. 1 has no objection to the appointment of an Arbitrator for adjudicating disputes *inter se* him and the petitioner. The same is also reflected in the order of this Court dated May 19, 2022. That apart, I find that even in the order of this Court dated December 14, 2021 in OMP (I) (COMM) 362/2021 which is a petition initiated by the petitioner herein under Section 9 of the Arbitration and Conciliation Act, 1996, it has been recorded that the counsel for the petitioner had stated that the petitioner has no objection to appointment

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of an Arbitrator in this present petition. So, the prayers to the extent of appointment of an Arbitrator, insofar as the dispute between the petitioner and the respondent No.1 is concerned, need to be granted.

53. The next issue that needs to be decided, is the stand of the petitioner that even respondent No. 3, i.e., Rugs Enterprises Private Limited needs to be referred to arbitration. The submission of Mr. Nigam in this regard is primarily that even parties which are not signatories to an arbitration agreement can be referred to arbitration. In support of his submission, he has relied upon the various judgments which I have referred to in paragraph 32 above. Suffice to state, I have considered most of the judgments referred to by Mr. Nigam in my earlier decision in the case of ***KKR India Private Financial Services Limited & Anr. v. Williamson Magor & Co. Limited & Ors., 2020 SCC OnLine Del 2413,*** wherein I have culled out the following principles with regard to the Doctrine of Group of Companies:-

> *"1. Section 9 cannot be confined only to the parties to the arbitration agreement.*
> 2. *'Group Companies Doctrine', is an exception whereby arbitration agreement binds a non-party or a non-signatory as well;*
> 3. *The arbitration agreement entered into by one of the companies in the group and the non-signatory affiliate, or sister, or parent concern is held to be bound by the arbitration agreement, if the facts and circumstances of the case indicate a mutual intention of all parties to bind both the signatories and non-signatory affiliates in the group, or;*
> 4. *This Doctrine gets attracted when a non-signatory entity on the Group, was engaged in the negotiation or performance of the commercial contract, or made statements indicating its intention to be bound by the*

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contract, or;

5. *In cases where there is a tight group structure with strong organizational and financial links, so as to constitute a single economic unit, or a single economic reality, especially when funds of one company is used to financially support or re-structure other members of the group, or;*
6. *Doctrine can be invoked to bind non-signatory affiliate of a parent company or inclusion of a third party to arbitration, where there is a direct relationship between the party which is a signatory to the arbitration agreement or there is direct commonality of the subject matter*
7. *Even if all parties to the lis were not signatory to all the agreements, but none of the Companies was a stranger to these transactions; parties intended, executed and implemented a composite transaction."*

54. Having noted the position of law, I must state that the Doctrine of Group of Companies shall not be applicable to the facts of this case. The doctrine can be invoked in certain circumstances, to bind non-signatory affiliates to an arbitration agreement. However, here the petitioner was a partner in a partnership firm and is trying to bind a company, i.e., respondent No.3 to the arbitration agreement between him and respondent No.1, which is clearly impermissible as a partnership in its very nature cannot be equated with a company to invoke the Doctrine. As the name suggests, the Doctrine of Group of Companies is applicable in cases where the arbitration agreement is entered into by one of the companies in a group and the non-signatory affiliate, or sister/parent company is held to be bound by the arbitration agreement when the facts indicate the mutual intension of all the parties to bind the non-signatory affiliate to the agreement. It is not

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such a case. It is also not the case of the petitioner that the respondent No.3 was engaged in any negotiations or performance of commercial obligations, indicating its intention to bind itself to the arbitration agreement. Hence, the respondent No.3 cannot be referred to arbitration along with the petitioner and the respondent No.1.

55. One of the allegations of the petitioner is that fraud / forgery has been committed by respondent No.1 in connivance with respondent No.3, whose Directors are the brother-in-law and father-in-law of the respondent No.1.

56. In fact, it is the case of the petitioner himself that he had lodged an FIR at Vasant Kunj Police Station against respondent Nos.1 and 3 for their nefarious activities under Sections 380, 406, 506, 120B, 467, 468 and 471 of the IPC, which includes allegations of fraud / forgery. I must also state that the respondent No.1 has also filed an FIR against the petitioner and his brother at Phase-II Police Station, Gautam Budh Nagar, NOIDA, under Sections 323, 325 and 504 of the IPC wherein allegations have been made that the petitioner had attacked the respondent No.1 and his wife at the factory of the Firm in NOIDA.

57. It is noted that the claims of the respondent No.1 against the petitioner are with regard to disputes that have arisen from the partnership agreement. There is no allegation of fraud raised by the respondent No.1, either in his FIR or before this Court.

58. In the above background, I shall now examine the law with regard to whether the claims based on allegations of fraud / forgery can be referred to arbitration. In ***Ayyasamy (supra),*** a division Bench of

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their Lordships of the Supreme Court while being seized of an issue involving an application under Section 8 of the Arbitration and Conciliation Act, 1996, considered the judgment in ***N. Radhakrishnan (supra)*** (of which reliance has been sought to be made by the petitioner herein). A.K. Sikri, J., while referring to the 246th Law Commission Report held as under:-

> *"14……..Notwithstanding the above, the Courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The Courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. Following categories of disputes are generally treated as non-arbitrable :*
>
> *(i) patent, trademarks and copyright;*
> *(ii) anti-trust/competition laws;*
> *(iii) insolvency/winding up;*
> *(iv) bribery/corruption;*
> *(v) fraud;*
> *(vi) criminal matters.*
>
> *Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable.*
>
> *15. 'Fraud' is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment. Fraud can be of different forms and hues. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. The Black's Law Dictionary defines 'fraud' as a concealment or false representation through a statement or conduct that injures another who relies on it . However, the moot question here which has to be addressed would be as to whether mere allegation of fraud by one party against the other would be sufficient to exclude the subject matter of dispute from arbitration and decision thereof necessary by the*

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civil court.

16. In Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak , serious allegations of fraud were held by the Court to be a sufficient ground for not making a reference to arbitration. Reliance in that regard was placed by the Court on a decision of the Chancery Division in Russell v. Russell. That was a case where a notice for the dissolution of a partnership was issued by one of the partners, upon which the other partner brought an action alleging various charges of fraud, and sought a declaration that the notice of dissolution was void. The partner who was charged with fraud sought reference of the disputes to arbitration. The Court held that in a case where fraud is charged, the Court will in general refuse to send the dispute to arbitration. But where the objection to arbitration is by a party charging the fraud, the Court will not necessarily accede to it and would never do so unless a prima facie case of fraud is proved.

17. The aforesaid judgment was followed by this Court in N. Radhakrishnan while considering the matter under the present Act. In that case, the respondent had instituted a suit against the appellant, upon which the appellant filed an application under Section 8 of the Act. The applicant made serious allegations against the respondents of having committed malpractices in the account books, and manipulation of the finances of the partnership firm. This Court held that such a case cannot be properly dealt with by the arbitrator, and ought to be settled by the Court, through detailed evidence led by both parties.

18. When the case involves serious allegations of fraud, the dicta contained in the aforesaid judgments would be understandable. However, at the same time, mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court. The allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence, they are also complex in nature and the decision on these issues demand extensive evidence for

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which civil court should appear to be more appropriate forum than the Arbitral Tribunal……..

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25. In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not

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> *capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public fora, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected."*
>
> *(emphasis supplied)*

D.Y. Chandrachud, J., (as his Lordship then was), concurring with the above, held as under:-

> *"35. Ordinarily every civil or commercial dispute whether based on contract or otherwise which is capable of being decided by a civil court is in principle capable of being adjudicated upon and resolved by arbitration "subject to the dispute being governed by the arbitration agreement" unless the jurisdiction of the Arbitral Tribunal is excluded either expressly or by necessary implication. In Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. [Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 : (2011) 2 SCC (Civ) 781] , this Court held that (at SCC p. 546, para 35) adjudication of certain categories of proceedings is reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not exclusively reserved for adjudication by courts and tribunals may by necessary implication stand excluded from the purview of private fora. This Court set down certain examples of non-arbitrable disputes such as: (SCC pp. 546-47,*

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para 36)

(i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;

(ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights and child custody;

(iii) matters of guardianship;

(iv) insolvency and winding up;

(v) testamentary matters, such as the grant of probate, letters of administration and succession certificates; and

(vi) eviction or tenancy matters governed by special statutes where a tenant enjoys special protection against eviction and specific courts are conferred with the exclusive jurisdiction to deal with the dispute.

This Court held that this class of actions operates in rem, which is a right exercisable against the world at large as contrasted with a right in personam which is an interest protected against specified individuals. All disputes relating to rights in personam are considered to be amenable to arbitration while rights in rem are required to be adjudicated by courts and public tribunals…….

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38. Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an

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ordinary civil court is excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration.
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43. .....the allegations of criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement."

(emphasis supplied)

59. In ***Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710,*** the Supreme Court reiterated that twin test laid down in paragraph 25 of ***Ayyasamy (supra)*** and held as under:

"The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in paragraph 25 are : (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain. Judged by these two tests, it is clear that this is a case which falls on the side of "simple allegations" as there is no allegation of fraud which would vitiate the partnership deed as a whole or, in particular, the arbitration clause concerned in the said deed. Secondly, all the allegations made which have been relied upon by the learned counsel appearing on behalf of the respondent, pertain to the affairs of the partnership and siphoning of funds therefrom and not to any matter in the public domain."

(emphasis supplied)

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60. In ***Avital Post Studioz Limited and Ors. v. HSBC Pi (Mauritius) Limited, Civil Appeal No.5145/2016*** the Supreme Court after considering the decision in ***Rashid Raza (supra)*** wherein the Supreme Court had referred to A.K. Sikri J.'s, Judgment in ***A. Ayyasamy (supra),*** has in paragraph 14 held as under:-

> *"After these judgments, it is clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or malafide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain."*

The Court examined the law on invocation of 'fraud exceptions' in great detail and held that the decision in ***N. Radhakrishnan (supra)*** as a precedent as no legs to stand on, while observing as under:-

> *"16. In the light of the aforesaid judgments, paragraph 27(vi) of Afcons (supra) and paragraph 36(i) of Booz Allen (supra), must now be read subject to the rider that the same set of facts may lead to civil and criminal proceedings and if it is clear that a civil dispute involves questions of fraud, misrepresentation, etc. which can be the subject matter of such proceeding under section 17 of the Contract Act, and/or the tort of deceit, the mere fact that criminal proceedings can or have been instituted in respect of the same subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so"*

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(emphasis supplied)

61. The Court while interpreting Section 17 of the Indian Contract Act, 1872 held that if the contract itself is obtained by fraud or cheating Section 17 would apply. In such situations, the mere fact that criminal proceedings have been initiated in respect of the subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, would cease to be so. The Court has thereby made a distinction between a contract obtained by fraud and fraud / cheating that arise thereafter. This view has been affirmed subsequently in ***Deccan Paper Mills v. Regency Mahavir, 2020 SCC OnLine SC 655*** and ***Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1.***

62. In ***Ameet Lalchand Shah v. Rishabh Enterprises and Anr., (2018) 15 SCC 678,*** the Supreme Court in a matter dealing with allegation of fraud arising from criminal breach of trust and misrepresentation regarding equipment procured, held that only where the Court is satisfied that the allegations of fraud are serious and complicated in nature, would it be appropriate for the Court to deal with the subject matter of the dispute rather than delegate the parties to arbitration. The Apex Court was of the opinion that it is the duty of the Court to impart a sense of business efficacy to commercial transactions and mere allegations of fraud would not be sufficient to deny reference of disputes to arbitration.

63. In ***N.N. Global Mercantile Private Limited v. Indo Unique Flame Limited & Ors., Civil Appeal No.3802/2020***, the Supreme

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Court after discussing various judgments including those cited above, held that all civil or commercial disputes, contractual or non contractual, which can be adjudicated by a Civil Court, in principle can be adjudicated and resolved through arbitration, unless it is excluded by a statute or by necessary implication. Certain categories of disputes that are reserved by the legislature, as a matter of public policy, to be adjudicated by a Court of law may not be submitted to arbitration, since they lie in the realm of public law. Dispute relating to rights in *rem* are required to be adjudicated by Courts and / or statutory tribunals. A *lis in rem* is not arbitrable by a private tribunal constituted by the consent of the parties. The Court further held as under:

> *"8.12 The civil aspect of fraud is considered to be arbitrable in contemporary arbitration jurisprudence, with the only exception being where the allegation is that the arbitration agreement itself is vitiated by fraud or fraudulent inducement, or the fraud goes to the validity of the underlying contract, and impeaches the arbitration clause itself. Another category of cases is where the substantive contract is "expressly declared to be void" under Section 10 of the Indian Contract Act, 1872 where the agreement is entered into by a minor (without following the procedure prescribed under the Guardian and Wards Act, 1890) or a lunatic, which would be with a party incompetent to enter into a contract.*
>
> *XXX XXX XXX*
>
> *8.16 The ground on which fraud was held to be non arbitrable earlier was that it would entail voluminous and extensive evidence, and would be too complicated to be decided in arbitration. In contemporary arbitration practice, arbitral tribunals are required to traverse through volumes of material in various kinds of disputes such as oil, natural gas, construction industry, etc. The ground that allegations of fraud are not arbitrable is a wholly archaic view, which has become obsolete, and deserves to be discarded. However, the criminal*

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> *aspect of fraud, forgery, or fabrication, which would be visited with penal consequences and criminal sanctions can be adjudicated only by a court of law, since it may result in a conviction, which is in the realm of public law."*
>
> *(emphasis supplied)*

64. That apart, in ***Vidya Drolia (supra)***, the Supreme Court, while overruling the ratio in ***N. Radhakrishnan (supra)***, has laid down a four-fold test for determining whether the subject matter of a dispute in an arbitration agreement would not be arbitrable. The four tests to be satisfied is as below:-

> *"(1) when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.*
> *(2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;*
> *(3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and*
> *(4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s)."*
>
> *(emphasis supplied)*

65. From a perusal of the above judgments, the following would emerge:

i. All civil or commercial disputes which are capable of being decided by a Civil Court are, ordinarily, capable of being adjudicated through arbitration unless the same is excluded by statute or by necessary implication.

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ii. Disputes relating to rights *in personam*, i.e., an interest protected against specified individuals, are amenable to arbitration.

iii. Disputes relating to rights *in rem*, i.e., rights exercisable against the world at large, are required to be adjudicated by Courts and statutory tribunals.

iv. When the subject matter of a dispute affects third party rights and has *erga omnes* effect, the same would require adjudication by Courts and statutory tribunals.

v. Mere allegations of fraud would not be a ground to nullify the affect of the arbitration agreement between the parties.

vi. Even complicated allegations of fraud that would require appreciation of voluminous and extensive evidence can be adjudicated in arbitration.

vii. If the allegations contain a criminal aspect of fraud, forgery or fabrication, which would result in penal consequences and criminal sanctions, the same need to be adjudicated by a Court of law, as it may result in conviction which is in the realm of public law.

viii. Mere institution of criminal proceedings in respect of the subject matter would not make the matter which is otherwise arbitrable, non-arbitrable.

ix. However, serious allegations of fraud need to be subjected to a two-fold test-:

a) Do the allegations permeate the entire contract including the arbitration clause, thus rendering it

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void.

b) Do the allegations touch upon the internal affairs of the parties *inter se*, having no implications on public domain.

66. Having noted the position of law, the issue which arises now is which claims of the parties are required to be referred to arbitration. The claims of the petitioner are broadly those relatable to the business of the partnership firm, siphoning off of goods and monies, and fraud / forgery. As regards the claims of the petitioner set out in paragraph 51 above, Claim No. (ii) is towards the amounts owed to the creditors of the Firm and Claim No. (iii) is towards the respondent No. 1's share of the debts owed to Union Bank of India. These claims are with regard to the performance of the partnership deed and arise from the business of the Firm. These come directly under the purview of the arbitration agreement between the petitioner and the respondent No. 1, and as such, need to be referred to arbitration.

67. Now I shall deal with Claim Nos. (i), (iv) and (v) of the petitioner, that are relatable to allegations of misappropriation, siphoning off and fraud/forgery.

(1) <u>The claims relatable to the allegation of siphoning off of goods and monies qua respondent No. 1</u>

In the present case, it is not the case of the petitioner that the partnership deed itself, containing the arbitration agreement has been obtained by fraud, rendering it void. In other words, there is no allegation of fraud which would vitiate the partnership deed as a whole, or even the arbitration agreement therein. The allegations of

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fraud raised against the respondent No. 1 have arisen subsequent to the contract, pertaining to the operations of the partnership. Claim Nos. (iv) and (v) are with regard to allegations of siphoning off of funds and goods therefrom by the respondent No. 1, which would touch upon the internal affairs of the parties *inter se*, and shall have no implications on public domain. These allegations do find mention in the FIR 170/2019 lodged at Vasant Kunj Police Station, and may even give rise to criminal proceedings. However, these are essentially arising out of the civil or contractual relationship between the petitioner and the respondent No. 1 *inter se*, and being a *lis in personam*, cannot be said to detract from the jurisdiction of an arbitral tribunal to resolve the dispute. An arbitral tribunal could very well adjudicate the issue through appreciating facts, evidence and the law.

(2) <u>The claims relatable to the allegations of fraud/forgery qua respondent Nos. 1 and 3.</u>

Now, coming to the allegations of fraud, forgery and siphoning off of goods and monies of the Firm by the respondent Nos. 1 and 3, the issue of forgery raised by the petitioner, as can be seen from paragraph 21, is that a false and forged rent agreement has been executed between the respondent No.3 and M/s. Kamal Fashions Pvt. Ltd. for the property of the Firm situated at D-14, Sector-80, NOIDA. The signature on the said agreement, purportedly of one Sachin Jain, is also said to have been forged. This aspect was considered by the police while investigating the allegations in the FIR, pursuant to which Sections 467, 468 and 477 of the IPC were added to the FIR. If that be so, the allegation raised by the petitioner against respondent Nos. 1 and

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3 is not that of fraud simplicitor. The allegations herein and in the FIR are of a serious nature, and even constitute criminal offences, which, if proved, would be visited upon with penal consequences and criminal sanctions. Any investigation into these allegations would therefore, lie in the realm of public law. It is the case of the petitioner that the respondent No. 3 has obtained a GST Number based on this forged rent agreement and subsequently, in connivance with respondent No. 3, raised false invoices in the name of respondent No. 3, thereby misappropriating the monies that should have flowed to the respondent No. 2 Firm. Claim No. (i) of the petitioner, as set out in paragraph 51, is towards ₹1,40,06,457/-, that the respondent No. 1 has allegedly misappropriated through respondent No. 3, which should have been credited to the Firm. The relief claimed qua Claim No. (i) of the petitioner would impact the rights of a third party, i.e., respondent No.3. I have already held in paragraph 54 that the respondent No. 3 cannot be made party to arbitration between the petitioner and respondent No.1. Any decision which may result in criminal proceedings/sanction, affecting the rights of a third party cannot be rendered by a private forum chosen by the parties to the arbitration agreement in the absence of such third party. In that sense, these allegations of fraud / forgery would not be *lis in personam* and cannot be referred to arbitration.

68. Insofar as the claims of respondent No.1 are concerned, they are detailed in paragraph 50 above, and are also with regard to the partnership agreement.

69. In view of the above, this Court is of the view that Claim Nos.

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(ii) to (v) of the petitioner Sandeep Singh set out in paragraph 51 above, and Claim Nos. (i) to (iii) of the respondent No.1 Simran Sodhi as detailed in paragraph 50 above, insofar as they relate to the relationship of the parties as partners of the partnership firm by the name of 'S.S. Manufacturing', need to be referred to arbitration. The petitioner shall be at liberty to seek such remedy as available in law with regard to Claim No. (i).

70. Accordingly, I appoint Justice Asha Menon (Retd.) (Mobile No. 9910384664), a Former Judge of this Court, as the Arbitrator to adjudicate the disputes between the parties. The fee of the learned Arbitrator shall be in accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall make disclosure in terms of Section 12 of the said Act. A copy of this order be sent to the learned Arbitrator for information.

71. It is made clear that the aforesaid must not be construed as a conclusion on the allegations / submissions / stand of the parties on merits.

72. The petitions are disposed of.

V. KAMESWAR RAO, J

NOVEMBER 11, 2022*/aky*

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