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

% ***Judgment reserved on: 07.01.2026***
Judgment pronounced on: 15.01.2026

\+ ARB.P. 1115/2025

MR. MOHD. KHALID .....Petitioner

Through: Mr. Mukesh Rana, Ms. Mamta, Mr. Janesh Patherwal, Ms. Bhawna Singh and Ms. Vanshika Rastogi, Advocates.

versus

M/S JAI MATA DI PACKAGING THROUGH ITS PARTNERS & ORS. .....Respondents

Through: Mr. Hemant Kothari and Mr. Bharat Gupta, Advocates for R-1, 3 & 4.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. The present Petition, under Section 11 of the **Arbitration and Conciliation Act, 1996**[1], has been filed seeking the appointment of a Sole Arbitrator in terms of **Clause 15**[2] of the **Partnership Deed dated 23.02.2023**[3] for adjudication of disputes *inter se* the parties.

2. **M/s Jai Mata Di Packaging**[4], which is Respondent No. 1 herein, is a Partnership Firm, while the Petitioner, along with Respondent

[1] Act
[2] Arbitration Clause
[3] Partnership Deed/Agreement
[4] Respondent No. 1-Firm

Nos. 2, 3 and 4, are equal partners with 25% equity share in Respondent No.1-Firm.

3. As stated in the Petition, the said partnership was entered into by way of a Partnership Deed dated 23.02.2023. The various important aspects of the Agreement are delineated below:

a. The Partnership Agreement was entered into and registered in New Delhi.

b. Respondent No.1-Firm was formed to carry on the business of Packaging Material and Mining/Excavation of river sand.

c. Clause 2 of the Agreement states that the Principal Place of Business and the Registered Address of Respondent No.1-Firm is at A-31/5, Ground Floor, Gali No. 4, A-Block, Kaithwara, NR Engg. College, Delhi-110053.

d. The said business activities were also to take place through its old Principal Place of Business, i.e., C-80, Shivaji Park, New Delhi, and through its additional place of business in Uttar Pradesh and Himachal Pradesh.

e. Clause 9 of the Agreement recognizes the right of every partner to have access to the books of accounts of the firm and to verify its correctness.

f. Clause 15 of the Agreement provides for the Arbitration Clause for redressal of any difference of opinion or dispute between the partners.

4. It is stated in the Petition that Respondent No. 1-Firm was allotted the Sand/Morram mining project at Yamuna River at Balu Ghat of Dhaurahara, Chitrakoot, Uttar Pradesh, by the State Government *vide*

Lease Agreement dated 11.06.2021[5], for a period of 5 years till 10.06.2026.

5. It is further stated that on 01.05.2024, Respondent No. 2 visited the mining site along with her gang and obstructed the work, hijacked the operations and intimidated the staff as well as the Petitioner, forcing them to leave. This led to being a point of conflict between the Petitioner and Respondent Nos. 2 to 4 and ultimately culminated into the closure of the site.

6. On 09.05.2024, a Show Cause Notice was issued to the Respondent No. 1-Firm by the Office of District Magistrate, Chitrakoot (Mining Section) for depositing the outstanding Royalty of Rs. 6,97,40,914/-, in order to prevent termination of their Lease Agreement for Mining.

7. The Petitioner *vide* letter dated 20.05.2024 expressed his readiness and willingness to pay his proportionate share of dues and called upon Respondent Nos. 2, 3 and 4 to pay their share of the amount with respect to the dues payable to the Mining Section in the interest of Respondent No. 1-Firm to keep the project site operational.

8. However, none of the other partners consented to contributing their share of dues payable, and thereby affected the operations of Respondent No 1-Firm.

9. Further, as stated, since the Petitioner was neither in operational and final control of Respondent No. 1-Firm nor was the authorised signatory to the bank account of it, *vide* letter dated 20.05.2024, he called upon Respondent Nos. 2 to 4 to inform him about the then current financial position of the Firm including details of funds

[5] Lease Agreement

available and received in the bank account and sought reasons for not using such funds to clear the outstanding dues of the Mining Department, Uttar Pradesh.

10. It is alleged that Respondent Nos. 2 to 4 deliberately defaulted in disclosing the Account statements called for by the Petitioner, which is in contravention with Clause 9 of the Partnership Agreement, and further did not take any steps to clear the dues of the Mining Department.

11. In view of the Non-payment of the outstanding Royalty by the Respondent No. 1-Firm, the office of District Magistrate, Chitrakoot (Mining Section), *vide* letter dated 31.05.2024, terminated the Lease Agreement and Respondent No. 1-Firm was blacklisted, with dues amounting to Rs.5,35,77,598, after adjusting the security amount of Rs. 1,61,63,316/-.

12. In view of the said breach of the Partnership Agreement by Respondent Nos. 2 to 4, cancellation of the project, non-payment of royalty, loss of Goodwill and ousting the Petitioner from the operations of Respondent No. 1-Firm, disputes arose between the Petitioner and the Respondents.

13. The Petitioner, in order to seek adjudication upon the said disputes, served a **Legal Notice dated 17.06.2024 under Section 21 of the Act**[6] upon the Respondents seeking appointment of a sole Arbitrator as according to Clause 15 of the Partnership Agreement. The Legal Notice was duly served and delivered to the Respondents, however, the Respondents did not agree for appointment of an Arbitrator even after the statutory period of 30 days had elapsed.

[6] Section 21 Notice

14. In the meantime, on 31.05.2024, Respondent No.1 filed a Petition **bearing No. Misc. Civil Cases 16/2024**[7] under Section 9 of the Act before the learned **District and Sessions Court, Chitrakoot**[8]**,** seeking an injunction against the Petitioner and Respondent No. 2 from interfering in the mining work and related business of the mining site.

15. The Petitioner, thereafter, on 20.08.2024, filed a Petition before this Court bearing number **ARB .P. 1338/2024**[9] under Section 11 of the Act seeking appointment of a sole Arbitrator. However, the same was dismissed *vide* Order dated 06.05.2025 for being in contravention of Section 42 of the Act for want of jurisdiction. At that point in time, and as is apparent, the said dismissal was occasioned by the pendency of the Section 9 Petition before the learned Chitrakoot Court, and therefore, rendering it the Court having jurisdiction over the applications arising out of the same agreement.

16. The said petition under Section 9 of the Act was, thereafter, disposed of as uncontested and not pressed by the Respondent herein, by the learned Chitrakoot Court *vide* Order dated 10.05.2025.

17. The present Petition under Section 11 of the Act was then filed by the Petitioner on 04.07.2025 seeking appointment of the sole Arbitrator, in terms of Clause 15 of the Partnership Agreement.

18. It is pertinent to note that on the very next day, Respondent No. 1 filed an Application, under Section 151 of the **Civil Procedure Code, 1908**[10], on 05.07.2025 before the learned Chitrakoot Court, seeking recall of the Order dated 10.05.2025 passed in Misc. Civil Cases 16/2024, thereby seeking restoration of the same.

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[7] Section 9 Petition
[8] Chitrakoot Court
[9] First Section 11 Petition
[10] CPC

19. The preliminary and the only ground of challenge that the learned counsel for the Respondents has sought to orally raise is that the present Petition under Section 11 of the Act is not maintainable since a Section 9 application was first filed before the learned Chitrakoot Court, and therefore, as per the provisions of Section 42 of the Act, even though the said Application came to be dismissed as withdrawn, the learned Chitrakoot Court was the Court before which the Application first came to be filed and resultantly all and any other proceedings preferred under the Act, more specifically Part I, would have to be held to be maintainable only before the learned Court in Chitrakoot, Uttar Pradesh, and that the present Petition was not maintainable in Delhi.

20. Learned counsel for the Respondents would further place his reliance on ***General Manager East Coast Railway Rail Sadan and Anr. Vs. Hindustan Construction Co. Ltd.***[11] and ***BGS SGS SOMA JV Vs. NHPC LIMITED***[12], to state that the first application was preferred by the Respondents under Section 9 of the Act, and that, consequently, the learned Court in Chitrakoot, Uttar Pradesh, would have exclusive jurisdiction.

21. Heard learned counsel for the parties and, with their able assistance, perused the paperbook and material on record.

22. This Court is cognizant of the scope of interference at the stage of a Section 11 Petition. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. A Coordinate bench of this Court, in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***[13]**,** has

[11] (2022) SCC OnLine SC 907
[12] (2020) 4 SCC 234
[13] 2025 SCC OnLine Del 3022

extensively dealt with the scope of interference at the stage of Section 11. The Court held as under:-

> **"9.** The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of *SBI General Insurance Co. Ltd.* v. *Krish Spinning*,[1] while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, In *re*[2] has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of *prima facie* existence of the arbitration agreement and nothing else.
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> **10.** It has unequivocally been held in paragraph no. 114 in the case of *SBI General Insurance Co. Ltd.* that observations made in *Vidya Drolia* v. *Durga Trading Corpn.*,[3] and adopted in *NTPC Ltd.* v. *SPML Infra Ltd.*,[4] that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out *ex-facie*non-arbitrable and frivolous disputes would not apply after the decision of *Re : Interplay*. The abovenoted paragraph no. 114 in the case of *SBI General Insurance Co. Ltd.* reads as under:—
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> > *"114. In view of the observations made by this Court in* In Re : Interplay *(supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in* Vidya Drolia *(supra) and adopted in* NTPC *v.* SPML *(supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in* In Re : Interplay *(supra)."*
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> **11.** *Ex-facie* frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of *Goqii Technologies (P) Ltd.* v. *Sokrati Technologies (P) Ltd.*,[5] however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and *malafide* claim through

arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and *malafide* claims from the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of *Goqii Technologies (P) Ltd.* reads as under:—

> ***"20.*** *As observed in* Krish Spg. [SBI General Insurance Co. Ltd. *v.* Krish Spg., *(2024) 12 SCC 1 : 2024 INSC 532]*, *frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.*
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> ***21.*** *Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.*
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> ***22.*** *With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine."*

13. In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a *prima facie* existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a *prima facie* examination of the existence of an

> arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of *Ajay Madhusudan Patel* v. *Jyotrindra S. Patel*[6]."

23. At the outset, we deem it appropriate to extract the Arbitration Clause as envisaged under the Agreement, which reads as follows:

> "*15. ARBITRATION*
> *Whenever there by any difference of opinion or any dispute between the partners the partners shall refer the same to an arbitration of one person. The decision of the arbitrator so nominated shall be final and binding on all partners. such arbitration proceedings shall be governed by Indian Arbitration Act, which is in force.*"

24. This Court finds itself unable to agree with the objections raised by the learned counsel for the Respondents. The objections raised by the Respondents fail on the following two grounds:

a. Section 11 would not attract the bar under Section 42 of the Act;

b. The Section 9 Petition, having been disposed of on the ground that the Respondent chose not to press the same, ceased to exist in the eyes of law and therefore, cannot be considered to be the 'first application made' before a court of competent jurisdiction.

25. A Division Bench of this Court in ***CP Rama Rao Sole Proprietor v. National Highways Authority of India***[14], while relying upon the judgment of the Hon'ble Supreme Court in ***State of W.B. v. Associated Contractors***[15]**,** has held the following:

> **"13.** The issue of whether a Section 11 petition would fall within the ambit of Section 42 is no longer res integra. We in this regard bear in mind the following enunciation of the legal position found in *State of West Bengal.* v. *Associated Contractors*[9]:
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> > **"16.** Similar is the position with regard to applications made under Section 11 of the Arbitration Act. In *Rodemadan India Ltd.* v. *International Trade Expo Centre Ltd.* [(2006) 11 SCC 651], a Designated Judge of this Hon'ble Court following the seven-Judge Bench in *SBP and Co.* v. *Patel Engg. Ltd.* [(2005) 8 SCC 618], held that instead of the court, the power to appoint arbitrators contained in Section 11 is conferred on the Chief Justice or his delegate. In fact, the seven-Judge Bench held : (*SBP and Co. case* [(2005) 8 SCC 618], SCC pp. 644-45 & 648, paras 13 & 18)
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> > > "*13*. It is common ground that the Act has adopted the Uncitral Model Law on International Commercial Arbitration. But at the same time, it has made some departures from the Model Law. Section 11 is in the place of Article 11 of the Model Law. The Model Law provides for the making of a request under Article 11 to 'the court or other authority specified in Article 6 to take the necessary measure'. The words in Section 11 of the Act are 'the Chief Justice or the person or institution designated by him'. The fact that instead of the court, the powers are conferred on the Chief Justice, has to be appreciated in the context of the statute. 'Court' is defined in the Act to be the Principal Civil Court of Original Jurisdiction of the district and includes the High Court in exercise of its ordinary original civil jurisdiction. The Principal Civil Court of Original Jurisdiction is normally the District Court. The High Courts in India exercising ordinary original

[14] 2024 SCC OnLine Del 7342
[15] (2015) 1 SCC 32

civil jurisdiction are not too many. So in most of the States the court concerned would be the District Court. Obviously, Parliament did not want to confer the power on the District Court, to entertain a request for appointing an arbitrator or for constituting an Arbitral Tribunal under Section 11 of the Act. It has to be noted that under Section 9 of the Act, the District Court or the High Court exercising original jurisdiction, has the power to make interim orders prior to, during or even post arbitration. It has also the power to entertain a challenge to the award that may ultimately be made. The framers of the statute must certainly be taken to have been conscious of the definition of 'court' in the Act. It is easily possible to contemplate that they did not want the power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention apparently was to confer the power on the highest judicial authority in the State and in the country, on the Chief Justices of High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process. The argument that the power thus conferred on the Chief Justice could not even be delegated to any other Judge of the High Court or of the Supreme Court, stands negatived only because of the power given to designate another. The intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act was exercised by the highest judicial authority in the State or in the country concerned. This is to ensure the utmost authority to the process of constituting the Arbitral Tribunal.

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18. It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be

> governed by the normal procedure of that Court, including the right of appeal and Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as persona designata. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial power."

It is obvious that Section 11 applications are not to be moved before the "court" as defined but before the Chief Justice either of the High Court or of the Supreme Court, as the case may be, or their delegates. This is despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively. Again, Section 42 would not apply to applications made before the Chief Justice or his delegate for the simple reason that the Chief Justice or his delegate is not "court" as defined by Section 2(1)(*e*).

The said view was reiterated somewhat differently in *Pandey & Co. Builders (P) Ltd.* v. *State of Bihar* [(2007) 1 SCC 467], SCC at pp. 470 & 473, Paras 9 & 23-26.

> **17.** That the Chief Justice does not represent the High Court or Supreme Court as the case may be is also clear from Section 11(10):
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> > "**11. (10)** The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by subsection (4) or sub-section (5) or sub-section (6) to him."
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> > The scheme referred to in this sub-section is a scheme by which the Chief Justice may provide for the procedure to be followed in cases dealt with by him under Section 11. This again shows that it is not the High Court or the Supreme Court Rules that are to be followed but a separate set of rules made by the Chief Justice for the purposes of Section 11. Sub-section (12) of Section 11 reads as follows:

> "**11. (12)(*a*)** Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to 'Chief Justice' in those subsections shall be construed as a reference to the 'Chief Justice of India'.
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> **(*b*)** Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to 'Chief Justice' in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in clause (*e*) of sub-section (1) of Section 2 is situate and, where the High Court itself is the court referred to in that clause, to the Chief Justice of that High Court."

It is obvious that Section 11(12)(*b*) was necessitated in order that it be clear that the Chief Justice of "the High Court" will only be such Chief Justice within whose local limits the Principal Civil Court referred to in Section 2(1)(*e*) is situate and the Chief Justice of that High Court which is referred to in the inclusive part of the definition contained in Section 2(1)(*e*). This sub-section also does not in any manner make the Chief Justice or his designate "court" for the purpose of Section 42. Again, the decision of the Chief Justice or his designate, not being the decision of the Supreme Court or the High Court, as the case may be, has no precedential value being a decision of a judicial authority which is not a Court of Record.

xxxx xxxx xxxx

25. Our conclusions therefore on Section 2(1)(*e*) and Section 42 of the Arbitration Act, 1996 are as follows:

(*a*) Section 2(1)(*e*) contains an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part I of the Arbitration Act, 1996.

(*b*) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an award is pronounced under Part I of the 1996 Act.

(*c*) However, Section 42 only applies to applications made under Part I if they are made to a court as defined. Since applications made under Section 8

are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(*d*) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(*e*) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(*e*), and whether the Supreme Court does or does not retain seisin after appointing an arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil Court having original jurisdiction in the district, as the case may be.

(*f*) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part I.

(*g*) If a first application is made to a court which is neither a Principal Court of Original Jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject-matter jurisdiction would be outside Section 42.

The reference is answered accordingly."

14. It is thus manifest that the District Judge has clearly taken an erroneous view in holding that a petition under Section 11 is one made to a court and which would consequently attract Section 42 of the Act. As has been unequivocally held by the Supreme Court, a petition under Section 11 for the constitution of an arbitral tribunal cannot be recognised as an application made to a court. The provisions of Section 42 would consequently be inapplicable. Viewed in that light, it is manifest that the District Judge clearly erred in returning the petition for presentation before the High Court and that too on a wholly unsustainable construction of Section 42. That error, if not corrected, would clearly result in manifest injustice and clearly merits the legal position which would flow from Section 42 being clearly enunciated."

(emphasis supplied)

26. A perusal of the aforesaid law laid down by the Hon'ble Supreme Court would clearly indicate that the present Petition under Section 11 would not be hit by the bar under Section 42 of the Act.

27. Now, adverting to the second ground on which this Court rejects the objections as raised by the learned counsel for the Respondent.

28. At this juncture, this Court deems it appropriate to extract Section 42 of the Act, which reads as under:

> "**42. Jurisdiction.—**Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

29. In the scheme of the Act, Section 42 is not intended to confer exclusive jurisdiction upon a court merely by reason of the fortuitous filing of an application under Part I of the Act. The legislative intent underlying the provision is to avoid multiplicity of proceedings in various jurisdictions once a competent court has validly assumed jurisdiction over the arbitral process. The assumption of jurisdiction contemplated under Section 42 is, therefore, not illusory or symbolic, but real, effective, and subsisting.

30. For Section 42 to operate, the first application must not only be one referable to Part I of the Act, but must also be entertained by a court of competent jurisdiction, culminating in the court exercising judicial authority over the arbitral proceedings. The Apex Court in ***Associated Contractors*** *(supra)* has made it abundantly clear that the exclusive jurisdiction envisaged under Section 42 arises only when the initial application is made to a court which answers the description

under Section 2(1)(e) and is legally competent to grant the relief sought.

31. In the present case, the Section 9 Petition was admittedly not pressed and consequently came to be disposed of, prior to any adjudication on the merits. Upon such withdrawal, the application ceased to exist in the eyes of the law. The court before which the Section 9 Petition was filed did not render any decision, nor did it exercise its judicial power in a manner that would amount to a determination affecting the arbitral proceedings. The withdrawal thus resulted in the Petition becoming non-subsisting, incapable of anchoring jurisdiction for future proceedings.

32. A withdrawn petition cannot be equated with a decided or pending application. To hold otherwise would be to confer upon an abandoned proceeding a jurisdiction-creating effect, which Section 42 neither contemplates nor permits. Jurisdiction under Section 42 crystallises only when a court validly assumes *seisin*; it does not survive the abandonment of proceedings by the party who invoked the court's jurisdiction in the first place.

33. Moreover, where the arbitration agreement is silent as to the seat or venue of arbitration, jurisdiction under Section 2(1)(e) is determined on the basis of territorial jurisdiction under the Civil Procedure Code, 1908. In such a situation, when multiple courts are otherwise competent, exclusivity under Section 42 can arise only upon the lawful and continued exercise of jurisdiction by one such court. The non-pursuance of the Section 9 Petition, therefore, prevented the crystallisation of exclusive jurisdiction in favour of the court in Uttar Pradesh.

34. Accepting the Respondent's contention would lead to an anomalous situation where a party, by merely filing and abandoning an application, could permanently oust the jurisdiction of all other competent courts. Such an interpretation would be contrary to the object of Section 42, which is facilitative. The provision cannot be used as a tool to foreclose legitimate remedies before otherwise competent courts in the absence of a valid and subsisting prior proceeding.

35. Consequently, in the absence of any valid, subsisting, pending, or adjudicated first application under Part I of the Act, Section 42 cannot be invoked to non-suit the present proceedings. Accordingly, this Court finds no merit in the objections raised by the learned counsel for the Respondents.

36. Consequently and in view of the fact that disputes have arisen between the parties and the Partnership Agreement contains an arbitration clause, more particularly, clause 15 thereof, this Court is inclined to allow the present Petition and appoint an Arbitrator to adjudicate upon the disputes between the parties.

37. As stated in the Petition, the disputed amount comes up to Rs. 11,57,92,656/-.

38. Accordingly, ***Hon'ble Mr. Justice Rajiv Shakdher (Retired) (Mob. No. +919717495004***), is appointed as the Arbitrator to adjudicate the disputes *inter se* the parties.

39. The learned sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act.

40. The learned sole Arbitrator shall be entitled to fees in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned sole Arbitrator.

41. The parties shall share the learned sole Arbitrator's fee and arbitral costs equally.

42. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance with law.

43. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved.

44. Let a copy of the said order be sent to the learned sole Arbitrator through the electronic mode as well.

45. Accordingly, the present Petition, along with pending application(s), is disposed of in the aforesaid terms.

46. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

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