In the Court of LXXXIV Additional City Civil and Sessions Judge (CCH-85) (Commercial Court), Bengaluru

Dated this the 4th day of October 2021

Present: Smt.H.R.Radha B.A.L., LL.M.
LXXXIV Addl. City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

Com.A.A. No.61 of 2020

Applicant:	Smt.Malavikadevi Daggubati W/o Bharath Krishna Rao P, Aged about 31 Years, No.319/147-48, Inner Circi Whitefield, Bangalore – 560066, Represented by her SPA Holder Vaddi Markandeyudu, Aged 59 Years **(By Sri.A. Mahesh Chowdhary, Advocate)**

Vs

Respondents:	1. M/s Primus Fasteners LLP, LLP No.AA0 - 3788, Having its registered address at 54/11, Nethravathi Extension, K.R.Purm, Bangalore – 560 036 2. Mr. Venkataramana Reddy S/o Chinta Yedula Narasimha Reddy, Aged about 55 Years, R/at 54/11, Nethravathi Extension, K.R.Purm, Bangalore – 560 036 3. Mrs. Chamala Sumalatha D/o Yedula Reddy Ramachandra, Aged about 43 Years, R/at 54/11, Nethravathi Extension, K.R.Purm, Bangalore – 560 036 4. Mr. Potluri Sathyaprasad S/o Venkata Subbarao Potluri, 8-3-168/E/50 & 51/406, Venkateshwara Residency, F.No.406, Rajiv Nagar, Yousuf Guda, Hyderabad – 500 045 **(R1 to R3 Rep. by Sri.Abhijit Atur, Advocate & R4 Rep. by Smt.Sowmya Sridhar, Advocate)**

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Date of institution	11-08-2020
Nature of the petition	For interim injunction U/s 9 of the Arbitration and Conciliation Act
Date on which judgment pronounced	04-10-2021
Total duration	**Years** **Months** **Days** **01** **01** **23**

LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

O R D E R S

This petition U/s 9 of the Arbitration and Conciliation Act ('The Act' for short) is filed for an order of injunction restraining respondents 2 and 3 or their men or agents or anyone claiming through them from -

(i) Acting on or implementing the resolution dated 13-07-2020; or

(ii) Operating the bank account in the name of the 1st respondent towards their personal expenses; or

(iii) Dealing with any fixtures, furniture or deal with any movable and immovable property belonging to the 1st respondent.

2. The applicant's case in brief is that the respondents 2 and 3 who were the initial subscribers to as well as the founding and

designated partners of the 1st respondent inducted her and the 4th respondent as partners to bring in capital, as the LLP was under loss. Pursuant thereto, a supplementary agreement was entered into on 20-03-2019; she and the 4th respondent contributed Rs.44,10,000/- and Rs.90,000/- respectively towards 49% and 1% of the share capital, while the remaining 50% is owned by the respondents 2 and 3 in equal ratio. The 2nd respondent who is wholly responsible for the business of the 1st respondent is required to duly communicate the decisions taken with regard to management of the LLP to the other three partners, as per Clause 9 of the Supplementary agreement. Contrary to the terms of supplementary agreement and without quorum, the respondents 2 and 3 convened a meeting and passed resolution dated 13-07-2020 to include Rs.3,78,73,151/- towards the 2nd respondent's share capital and also to execute a new supplementary agreement. This resolution is illegal and catastrophic to the development of LLP. The minutes of the meeting includes the issue of salary drawn by the 1st respondent, which is contravention of Clause 6 of Schedule I of the Limited Liability Partnership Act. The respondents 2 and 3 have failed to provide the information about financial status of the 1st respondent. Any alteration in the partnership agreement would reduce her 49% shareholding to 14.77% and increase the

2nd respondent's shareholding to 77.40% from 25%. She has a good prima facie case and the balance of convenience lies in her favour. If the relief as prayed is not granted, she would suffer irreparable loss, harm and injury, which cannot be compensated in terms of money.

3. The respondents 2and 3 have not filed the statement of objections; respondents 1 and 4 are arrayed as formal parties, and no relief is sought against them.

4. Heard arguments and perused the records.

5. The points that arise for the consideration of the court are:

1. Whether the applicant has made out a prima facie case?

2. Whether the balance of convenience lies in the applicant's favour?

3. Has the applicant shown that she would be put to irreparable loss and injury if an order of injunction as prayed is not granted?

4. What order?

6. My findings on the above points are

Point No.1: In the affirmative
Point No.2: In the affirmative
Point No.3: In the affirmative
Point No.4: As per the final order for following

REASONS

7. POINTS 1 to 3: This petition was transferred from CCH–83, Bengaluru (Commercial Court) to this court by notification No.ADM I(A) 596/2021 dated 07-08-20121 and exparte interim injunction order dated 14-08-2020 is in force.

8. The LLP agreement dated 06-05-2015 goes to show that the respondents 2 and 3 formed Limited liability Partnership by contribution Rs.5000/- each towards share capital to carry on the business as mentioned in para 2. Para 7 provided for further capital contribution to be brought by the partners with mutual consent of all partners; and each partner's contribution to or withdrawal from the LLP to be respectively credited to or debited to the partner's capital account. A partner, however, could only have right to demand and receive cash in return for his capital contribution. Para 12 provided that the remuneration of a partner for taking part in the conduct of the business to be decided by a resolution passed by majority of the partners.

9. Further, Para 14 of the LLP agreement makes it clear that except the designated partners i.e., respondents 2 and 3, all other partners are sleeping partners. As per para 13 transfer of shares was not permitted without the consent in writing of all

the partners. Para 19(d) provides that the remuneration of designated partners for rendering services shall be fixed by majority of the partners. As seen from Para 20, meeting could be convened by a partner and the designated partner had to deliver the notice of the same at least 7 days prior to the date of meeting. The bank account of the 1st respondent had to be operated by the designated partners.

10. In terms of para 32 of the LLP Agreement, supplementary agreement was entered into on 20-03-2019 permitting induction of the petitioner and the 4th respondent as designated partners subject to the terms and conditions of original LLP agreement except in so far as varied by this agreement. By this time the share capital of Respondents 2 and 3 had increased to Rs.22,50,000/- each from Rs.5.000/- each. As such I am unable to accept that the LLP was under loss. As in the earlier case, 7 days notice had to be given to the partners before convening a meeting; and presence of any one of the designated partners from the two groups would complete the quorum. If there is no quorum, the meeting is to be adjourned to same day of the next week or any acceptable day to be decided by the designated partners, as per Para 10 of the supplementary agreement.

11. Para 11 provides that no decision relating to investment, borrowing money or anything that affects the financial position

of the 1st respondent or alteration of LLP agreement, could be taken in a meeting without the presence of designated partners. It is also relevant to note that even increasing/reducing/altering of partner's capital or to pay any fee or remuneration to or any other benefit to Partner, without the consent all the four partners as provided in the same para.

12. The learned counsel for the applicant argues that the respondents 2 and 3 have complied with clause 10 and 11 of the agreement in convening and holding a meeting in the absence of the applicant and 4th respondent and passed resolutions illegally to alter the applicant's share capital to 14.77% from 49%, and increase the 2nd respondent's share capital from 25% to 77.40%.

13. Clause 20(b) of the supplementary agreement provides for resolution of any deadlock on any matter in the meeting of partners and/or any dispute between the partners and LLP, by arbitration under the provisions of the Act. While drawing attention of the court to the emails exchanged between the 4th respondent and the 2nd respondent in this behalf, he submits that the 4th respondent is not arrayed as a petitioner due to his non availability to sign the petition and CMP U/s 11 of the Act is pending before the Hon'ble High Court.

14. The learned counsel for the applicant relies on the decision in ***Subhoda Shetty Vs M/s Bottoms Up Wines & Ors.*** reported in ***ILR 2000 Kar 4714*** in support of the argument that an application for interim order U/s 9 of the Act is held maintainable even before initiation of the arbitration proceedings.

15. As noted earlier, the respondents 1 to 3 have neither filed objection denying the allegations as to the unilateral actions of respondents 2 and 3, so as to affect the rights of the applicant nor addressed arguments. Having regard to the same and considering that the applicant has made out a prima facie case by demonstrating that action on the part of the respondents 2 and 3 has given rise to dispute which needs to referred to arbitration in terms of the Supplementary Agreement, I am of the opinion that the balance of convenience lies in her favour; and directing restraining the respondents 2 and 3 is essential to preserve the assets of LLP and to maintain status quo ante with regard to the share capital, until adjudication of the dispute. Else, the applicant would suffer injury and loss that cannot be compensated in terms of money. Accordingly the points for consideration are answered in the affirmative.

16. Point No.4: In the result, I pass the following

ORDER

The petition U/s 9 of the Arbitration and Conciliation Act is allowed.

The respondents 2 and 3, their men, agents or any others person claiming through them, are hereby restrained by way of injunction from implementing the resolution dated 13-07-2020 and utilizing the funds in the 1st respondent's bank account for their personal expenses or dealing with the movables / fixtures / immovable property of the 1st respondent for a period of three months from this day or till the appointment of the Arbitral Tribunal or whichever is earlier.

However this order shall not come in the way of respondents 2 and 3 repaying the amounts due to the secured creditors of the 1st respondents i.e., the Andhra Pradesh State Financial Corporation (APFC) and the United Bank of India, Hyderabad, utilizing the funds in the 1st respondent's bank account.

(Typed on the laptop, corrected and then pronounced by me in the open court on this the **4th** day of **October 2021**)

(H.R.Radha)

**LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru**

Judgment pronounced in the open court vide separately

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