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

+ **ARB.P. 1790/2024**

PREETI JAIN AND ORS

.....Petitioners

Through: Ms. Aishna Jain, Mr. Aditya Maheshwari and Ms. Kravti Kawdia, Advocates.

versus

SUNITA JAIN AND ANR

.....Respondents

Through: Ms. Niyati Kohli, Ms. Aayushi S. Khazanchi and Ms. Aditi Kukreja, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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23.03.2026

1. The present petition has been filed by the petitioners under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, 'Act of 1996') for appointment of an Arbitrator to adjudicate the disputes which have arisen between the parties under the partnership deed dated 10.02.1998.
2. Clause 16 of the Partnership Deed provides for resorting to arbitration in case disputes arise between the parties. The said clause reads thus:

“That all the disputes or differences arising between the parties whatsoever touching the affairs in the partnership or the intents of these presents or their construction or application or division of assets and all other matters connected with the same shall be referred to the Arbitration, in accordance with the provisions of the Arbitration Act 1940 and any other statutory modification therein for the time being in force, whose decision shall be final and binding on all parties and their legal representatives.”



3. The disputes having arisen between the parties, a legal notice dated 17.02.2024 was given by the petitioners which did not elicit any response. The petitioners had, therefore, approached this court under Section 11 of the Act of 1996.

4. Notice in the petition was issued by this Court *vide* order dated 19.11.2024.

5. Ms. Niyati Kohli, learned counsel appears on behalf of the respondents submits that reply to the petition has been filed. She contends that partnership deed dated 10.02.1998 was between Sh. Prabhash Jain and his mother Smt. Sunita Jain (respondent no.1). She contends that the petitioners are wife and children of Late Sh. Prabhash Jain, who passed away on 27.04.2021. After the death of Late Sh. Prabhash Jain, the partnership deed ceased to exist. She further contends that the petitioners are not party to the partnership deed or the arbitration agreement. Therefore, they cannot invoke the arbitration clause.

6. She further contends that by way of the present petition, petitioners are seeking reference not only against petitioner no.1, who was partner in the partnership deed dated 10.02.1998, but also against Sh. Suresh Jain, the father of the Late Sh. Prabhash Jain, who was not a partner in the firm that was constituted *vide* partnership deed dated 10.02.1998.

7. She further contends that oral family settlement was arrived at between the petitioners and the respondents in terms of which the petitioners have already received amounts under the partnership firm.

8. She submits that the respondents have filed a suit for declaration and partition with regard to the estate left behind by Late Sh. Prabhash Jain being CS (OS) No. 1023/2024 and in the said suit; the petitioners have not



filed any application under Section 8 of the Act of 1996. Therefore, they have submitted to the jurisdiction of the Civil Court, therefore, they are estopped from invoking the arbitration clause.

9. On the other hand, Ms. Aishna Jain learned counsel appearing on behalf of the petitioners submits that after the death of a partner, the legal representatives of the deceased partner are entitled to invoke the arbitration clause. In support of her submission, she has placed reliance on the decision of the Hon'ble Supreme Court in ***Rahul Verma and Others v. Rampat Lal Verma and Ors.***, 2025 SCC OnLine SC 578.

10. As regards the submission that in the suit filed by the respondents, the petitioners have not filed an application under Section 8 of the Act of 1996, she submits that at the time of filing the written statement, the petitioners have taken a categorical objection to the effect that there is an arbitration clause in terms of Section 8 of the Act of 1996. Further, in the written statement, it has also been averred that present petition under Section 11 of the Act of 1996 has been filed by the petitioners and the same is pending.

11. As regards petitioners' submission that respondent no.2 is not a party to the partnership deed dated 10.02.1998, she places reliance on the decision of the Coordinate Bench of this Court ***Paradise Plastic Enterprises Limited v. JRG Automotive Industries India Pvt. Ltd. and Ors.***, [Arb.P. 655/2025; DOD 27.05.2025] to contend that the Court under Section 11 of the Act of 1996 will not enter into exercise of determining whether the respondents as non-signatories are bound by the arbitration agreement or not.

12. I have heard the learned counsel for the parties.

13. At the stage of deciding a petition under Section 11 of the Act of 1996, the Court is only required to satisfy itself, *prima facie*, as to the



existence of the arbitration clause. All other questions are to be left open for the determination of the learned Arbitrator.

14. The partnership deed dated 10.02.1998 demonstrates, *prima facie*, that an arbitration agreement exists in the said partnership deed.

15. Insofar as submission of learned counsel for the petitioners, that present petitioners are not entitled to invoke the arbitration clause, suffice it to observe that the Hon'ble Supreme Court in **Rahul Verma** (supra) has clearly laid down that arbitration agreement does not cease to exist on the death of any party and the arbitration agreement can be enforced by or against the legal representatives of the deceased. The relevant extracts from the said decision reads thus:

*“8. The decision in the case of Ravi Prakash Goel v. Chandra Prakash Goel, (2008) 13 SCC 667, squarely covers the facts of the present case. **This Court held that an arbitration agreement does not cease to exist on the death of any party and the arbitration agreement can be enforced by or against the legal representatives of the deceased. The Court emphasized on the definition of a ‘legal representative’ under Section 2(1)(g) of the Act of 1996 to hold that an arbitral agreement and the award is enforceable by or against the legal representatives of the deceased. The relevant observations are reproduced hereinbelow:—***

‘18. It is clear from Section 40 of the Arbitration Act that an arbitration agreement is not discharged by the death of any party thereto and on such death it is enforceable by or against the legal representatives of the deceased, nor is the authority of the arbitrator revoked by the death of the party appointing him, subject to the operation of any law by virtue of which the death of a person extinguishes the right of action of that person.

19. Section 2(1)(g) defines “legal representative” which reads thus:



“2. (1)(g) ‘legal representative’ means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;”

20. The definition of “legal representative” became necessary because such representatives are bound by and also entitled to enforce an arbitration agreement. Section 40 clearly says that an arbitration agreement is not discharged by the death of a party. The agreement remains enforceable by or against the legal representatives of the deceased. In our opinion, a person who has the right to represent the estate of the deceased person occupies the status of a legal person (sic representative). Section 35 of the 1996 Act which imparts the touch of finality to an arbitral award says that the award shall have binding effect on the “parties and persons claiming under them”. Persons claiming under the rights of a deceased person are the personal representatives of the deceased party and they have the right to enforce the award and are also bound by it. The arbitration agreement is enforceable by or against the legal representative of a deceased party provided the right to sue in respect of the cause of action survives.

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27. We are of the opinion that in view of the provisions of Section 46 read with Section 48 of the Partnership Act as well as Section 40 of the Arbitration and Conciliation Act, 1996, the application for appointment of an arbitrator under the arbitration clause of the partnership deed was liable to be allowed and the learned Chief Justice has erred in overlooking the said provisions. While right to sue for rendition of accounts of partnership firm survives on the legal representative of a deceased partner, he is also entitled to invoke the arbitration clause contained in the partnership deed.



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29. As already stated, it was not legally essential to specifically make a mention that the partners included their legal heirs, representatives, assigns or legatees, etc. and the arbitration clause could be invoked by the appellant as the legatee as well as the legal heir/legal representative of the deceased Dulari Devi particularly where the dispute had arisen during her lifetime. The appellant's claim in the instant case is based on the will as well as being a legal heir of the deceased Dulari Devi. The appellant, in our opinion, possessed a legal and enforceable right to invoke arbitration clause and move application under Section 11 of the Arbitration Act before the High Court for appointment of arbitrator. The word "party" as used in the partnership deed does not exclude inclusion of legal heirs, legal representatives, etc. as being canvassed by the respondents. **Thus, in our opinion, in view of the provisions of Sections 40 and 46 of the Partnership Act read with Section 40 of the Arbitration Act, the appellant has a legal right to commence arbitration by moving an application under Section 11 of the Arbitration Act in the High Court as in our view, the right to sue survives on him as legal representative of the deceased Dulari Devi and he is entitled to invoke Clause 13 of the partnership deed. Moreover, the dispute referable to arbitration had already arisen during the lifetime of Dulari Devi which is also well settled that where a dispute is referable to arbitration, the parties cannot be compelled to take recourse to in the civil courts."**

(Emphasis supplied)

10. It is a well-established position of law that the term 'partners' extends to and would include their legal heirs, representatives, assigns or legatees, etc. Persons claiming under the rights of a deceased person are the representatives of the deceased party, and therefore, both the parties to the agreement and their legal heirs are entitled to enforce an arbitral award and are bound by it. In light of Section 40 of the



Act of 1996 the existence of an arbitration agreement is not affected by the death of a party to the arbitration agreement. As a consequence, the right to sue for rendition of account also survives, ensuring that the legal representatives can assert or defend claims arising from the partnership agreement.”

(emphasis supplied)

16. Insofar as the contention of the learned counsel for the respondents that respondent no.2 is not a signatory to the partnership deed dated 10.02.1998, this Court notes that a Coordinate Bench of this Court relying upon the decision of the Hon’ble Supreme Court in **ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited, (2025) SCC OnLine SC 1016**, has laid down that the Court under Section 11 must not enter into the exercise of determining whether the respondents as non-signatories are bound by the arbitration agreement or not. Such an exercise is to be left to the arbitral tribunal for decision in the first instance.

17. As regards the objection that the petitioners have submitted to the jurisdiction of civil court in a suit filed by the respondents, in as much as no application under section 8 of the Act was filed by the petitioner, it is to be noted that the learned counsel for the petitioners has articulated that an objection in terms of section 8 was taken by the petitioners on the first instance at the time of filing of their written statement, which fact has not been disputed by the respondents. It is trite law that objection taken in written statement relating to existence of arbitration clause, is sufficient compliance of section 8 of the Act. Therefore, this Court is of the view that the petitioners have not waived their right to object nor have they submitted to the jurisdiction of a civil court.

18. In view of the above, this Court finds no merit in the objections raised



by the learned counsel for the respondents.

19. The petition is therefore allowed. Accordingly, the dispute between the parties is referred to arbitration of Mr. Shiven Khurana, Advocate [Mob. 9958981505].

20. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi – 110003 [“DIAC”] and shall be governed by the Rules of DIAC including as to the remuneration of the learned Arbitrator.

21. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act prior to entering upon the reference.

22. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

23. Petition stands disposed of in above terms.

VIKAS MAHAJAN, J

MARCH 23, 2026/jg