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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.3477 OF 2024
WITH
INTERIM APPLICATION (L) NO.10199 OF 2025
IN
COMM EXECUTION APPLICATION NO.25 OF 2024

Capacit'e Infraprojects Ltd.

...Applicant /
Petitioner

Versus

Patel Group and Co.

...Judg. Debtor

And

Hasmukh G. Patel and Ors.

...Proposed
Respondents

Mr. Rohan Savant with Ms. Kavita Brid Chavan with Mr. Mithlesh Chalke i/b. Rajani Associates for the Applicant.

Mr. Rahul Pande, for the Respondent No.3.

CORAM : R.I. CHAGLA J.
DATE : 17TH APRIL, 2025.

ORDER :

1. Mr. Rohan Savant, the learned Counsel appearing for the Applicant / Plaintiff has referred to the Order dated 27th January, 2025, wherein the Proposed Respondent No.3 who had appeared had sought time to file Affidavit in Reply to the Interim Application. Accordingly, the proposed Respondent No.3 had been directed to file

the Affidavit in Reply to the Interim Application within a period of two weeks from the date of the Order.

2. The learned Counsel appearing for the proposed Respondent No.3 has sought for extension of time to file Affidavit in Reply. The Proposed Respondent Nos.1 and 2 whose impleadment has been sought have not made appearance.

3. Mr. Savant has referred to the documents on record including the Consent Terms dated 9th February, 2018 forming part of the arbitral award passed by the learned Arbitrator of which execution has been sought. The proposed Respondent No.2 has signed the said Consent Terms as partner of the Respondent firm. The proposed Respondent No.2 had been authorised by Respondent No.1 to sign the Consent Terms on behalf of the Respondent – Firm and which is apparent from the Memo of Authorisation dated 5th February, 2018. He has accordingly submitted that the proposed Respondent Nos.1 and 2 were the partners of the Respondent firm at the relevant point of time when the cause of action accrued.

4. Mr. Savant has further submitted that the proposed

Respondent No.3 had also appeared during the arbitral proceedings and this is apparent from the minutes of meeting held on 5th June, 2017 recorded by the learned Arbitrator wherein the appearance of proposed Respondent No.3 had been shown as partner of the Respondent – Firm.

5. Mr. Savant has referred to the decision of the Supreme Court in ***Gambhir Mal Pandya (Since deceased) and Ors. Vs. J.K. Jute Mills Co. Ltd.***¹, wherein the Supreme Court has considered that the Plaintiff can sue the Firm through, two or more persons who are liable as partners of the Firm, or those who were partners when the cause of action accrued. The Plaintiff may also apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accrual of the cause of action, partners of the firm. He has submitted that in the present case the relief sought in the Interim Application (L) No.10199 of 2025 is for a similar statement / disclosure from the Respondent - Firm of the names and addresses of all the partners of the Respondent Firm along with the relevant verified partnership deeds, including the verified records of the Registrar of Firms as on February, 2016, until present. He has

1 1962 SCC OnLine SC 279

submitted that such disclosure is necessary for carrying out amendment in the above Commercial Execution Application by joining the partner/s erstwhile partner/s of the Respondent Firm who were partners at the relevant point of time i.e. when the cause of action accrued.

6. Mr. Savant has also referred to the Interim Application No.3477 of 2024 wherein the relief sought is for amendment in the cause title of the Execution Application by joining the proposed Respondent Nos.1 to 3 who were partners at the relevant point of time i.e. when the cause of action accrued. He has sought for grant of prayer Clause (a) in Interim Application No.3477 of 2024 i.e. for joining the proposed Respondent Nos.1 to 3 by amendment of the Execution Application as per schedule at Exhibit C to the Interim Application.

7. Mr. Savant has also sought for interim relief in terms of prayer Clauses (b) and (c) of the Interim Application No.3477 of 2024 which is for a disclosure and injunction against the Respondent Firm and proposed Respondent Nos. 1 to 3 who have been allowed to be joined as party Respondents in the Execution Application.

8. Mr. Savant has further sought for grant of prayer Clause (a) in Interim Application (L) No.10199 of 2025 which is for disclosure of the partners of the Respondent firm as on February, 2016 when the cause of action accrued.

9. Considering the above submissions of Mr. Savant, a case is made out for grant of relief in terms of prayer Clause (a) of the Interim Application (L) No.10199 of 2025. In the decision cited by Mr. Savant, the Supreme Court has held that right to sue the Firm and make the partners of the firm liable would apply to the persons who were partners when the cause of action accrued i.e. the relevant point of time for considering the liability of the partners of the Firm.

10. The proposed Respondent Nos.1 to 3 are undoubtedly partners of the Respondent Firm at the relevant point of time i.e. when the cause of action accrued. This is apparent from the documents which are annexed to the Interim Application (L) No.10199 of 2024 and which includes the Memo of Authorization dated 5th February, 2018 and the Consent Terms as recorded by the learned Arbitrator in the Arbitral Award dated 26th February, 2018 as both the proposed Respondent Nos.1 and 2 have signed in their

capacity as partners of the Respondent Firm. The minutes of the meeting held on 5th June, 2017 also makes it clear that the proposed Respondent No.3 was a partner of the firm when the cause of action accrued.

11. In view thereof, prayer Clause (a) of the Interim Application No.3744 of 2024 is granted. The Applicant shall amend the cause title of Commercial Execution Application by joining the proposed Respondent Nos.1 to 3 and which amendment shall be carried out in terms of schedule at Exhibit C to the Interim Application within a period of one week from today. Re-verification is dispensed with.

12. In so far as prayer clauses (b) and (c) of the Interim Application No.3477 of 2024 are concerned, the same shall be considered on the next date.

13. Prayer Clause (a) of the Interim Application (L) No.10199 of 2025 is also granted.

14. The Respondent Firm and the Proposed Respondent

Nos.1 to 3 who are joined as Respondents by this Order are directed to disclose by filing Affidavit of Disclosure on oath, the verified statement of names and addresses of all the partners of the Respondent Firm along with the relevant verified partnership deeds, including the verified records of the Registrar of Firms as on February, 2016, until present, within a period of two weeks from the date of this Order.

15. Considering that proposed Respondent Nos.1 and 2 have failed to make an appearance, notice shall be issued to Proposed Respondent Nos.1 and 2 upon the amendment being carried out by the Applicants and they being made parties to the above commercial Execution Application, returnable on 7th May, 2025.

16. The Proposed Respondent No.3 who is being joined as party Respondent shall file Affidavit in Reply to the Commercial Execution Application within a period of two weeks from today.

17. Stand over to 7th May, 2025.

[R.I. CHAGLA J.]