ARBITRATION BY UNREGISTERED PARTNERSHIP FIRMS: PROHIBITED OR POSSIBLE?

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Section 69 of the Indian Partnership Act, 1932 ("**Partnership Act**") disables an unregistered firm and a partner not shown in the register of firms from instituting a suit to enforce a contractual right. Since registration remains optional and a large share of Indian partnerships continue to operate unregistered, the question of whether this bar extends beyond civil suits to arbitration, which is the dominant mode of resolving commercial disputes, carries practical weight. Can an unregistered firm invoke Section 8 or Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**")? Can it seek interim relief under Section 9 of the Arbitration Act? Can it raise a claim or counterclaim before an arbitral tribunal or enforce an award in its favour?

Statutory Bar

Section 69(1) of the Partnership Act bars a suit by a partner against the firm or a co-partner to enforce a right arising from a contract or conferred by the Partnership Act unless the firm is registered and the person suing is shown in the Register of Firms as a partner in the firm. Section 69(2) of the Partnership Act imposes a parallel bar on a suit by an unregistered firm against a third party. Section 69(3) of the Partnership Act extends both the bars to a claim of set-off or other proceeding to enforce a right arising from a contract, subject to the exceptions in Section 69(3) (a) and (b) and Section 69(4), which preserve dissolution suits, accounts of a dissolved firm, insolvency proceedings and small-value claims. The central question is whether the phrase "*other proceeding*" in Section 69(3) of the Partnership Act extends to arbitration.

Position under the Pre 1996 Regime

The pre-1996 regime supplied an early and restrictive answer. In ***Jagdish Chander Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1882***, the parties to an unregistered partnership disputed a reference to arbitration under Section 8(2) of the Indian Arbitration Act, 1940 ("**1940 Act**"). It was contended that "*other proceeding*" should be construed *ejusdem generis* with "*a claim of set-off*". The Court rejected this contention, holding that "*claim of set-off*" does not disclose a category or genus with reference to which the general words could be restricted. The Court held that the words "*other proceeding*" must receive their full meaning untrammelled by the words "*a claim of set-off*" and cover "*other proceedings of any kind*" for the enforcement of any right arising from contract, except those expressly mentioned as exceptions in Section 69(3) and (4) of the Partnership Act. Since the proceeding under Section 8 of the 1940 Act had its genesis in the arbitration clause, which was part of the agreement constituting the partnership, it was held that it was a proceeding to enforce a right arising from a contract.

The situation shifted with the growth of arbitration as a mode of commercial dispute resolution. In ***Kamal Pushp Enterprises v. D.R. Construction Co., (2000) 6 SCC 659***, the question was whether post-award proceedings, where the arbitrator had himself filed the award before the civil court, were barred at the instance of an unregistered firm. The Court held that they were not. The reference had been initiated by the appellant, not by the unregistered firm, which had remained only on the defence and had not itself instituted any proceeding to enforce a right of the nature prohibited under Section 69 of the Partnership Act. The Court held that the prohibition contained in Section 69 had no application to proceedings before an arbitrator. At the stage of enforcement of the award, what was enforced was the award itself, which crystallised the rights of the parties and not a right arising only from the underlying contract.

The 2004 Conflict

In ***Firm Ashok Traders v. Gurumukh Das Saluja, (2004) 3 SCC 155***, a partner of an unregistered firm sought appointment of a receiver under Section 9 of the Arbitration Act. The trial court dismissed the application as barred by Section 69(3) of the Partnership Act, while the High Court reversed the decision relying on *Kamal Pushp Enterprises* (supra). On appeal, the Supreme Court, stating that its view was only prima facie and without going in-depth into the issue, held that the bar under Section 69 of the Partnership Act does not affect the maintainability of an application under Section 9 of the Arbitration Act. The Court reasoned that the right conferred by Section 9 of the Arbitration Act is the right of a party to an arbitration agreement and cannot be said to be one arising out of a contract. The Court under Section 9 of the Arbitration Act merely formulates interim measures to protect the right being adjudicated before the arbitral tribunal.

Three months later, in ***U.P. State Sugar Corporation Ltd. v. Jain Construction Co., (2004) 7 SCC 332,*** the Supreme Court considered the maintainability of proceedings initiated by an unregistered firm under Section 20 of the 1940 Act. The Court observed that "*the arbitral proceedings would not be maintainable at the instance of an unregistered firm*" having regard to the mandatory provisions of Section 69 of the Partnership Act, following *Jagdish Chandra Gupta* (supra). The Court also held that, since the arbitral proceedings had commenced in 1991, the 1940 Act continued to apply by virtue of Section 85(2)(a) of the Arbitration Act.

Subsequent Judgments

In ***Umesh Goel v. H.P. Coop. Group Housing Society Ltd., (2016) 11 SCC 313***, an award in favour of an unregistered firm, including a counterclaim, had been set aside by the High Court on the ground that Section 69(3) of the Partnership Act barred the firm from raising a counterclaim in arbitration. The Supreme Court reversed the decision and did so on a structural basis rather than by distinguishing the facts. It held, first, that arbitral proceedings do not fall within "*other proceedings*" in Section 69(3) of the Partnership Act because the provisions of sub-sections (1) and (2) are incorporated into sub-section (3), making the initiation of a suit in a Court a condition precedent to the operation of the bar.

Second, and more consequentially, the Court directly confronted *Jagdish Chander Gupta* (supra) rather than sidestepping it. It held that the earlier decision was decided under the 1940 Act, a regime in which arbitral proceedings were subject to far more extensive judicial control and intervention at every stage, unlike the Arbitration Act. In view of this "*sea change*" in the nature of arbitral proceedings under the Arbitration Act, the Court held that the ratio in *Jagdish Chander Gupta* (supra) could have application to the special facts of that case but "*can have no application*" to proceedings emanating under the Arbitration Act. The Court accordingly held that the Section 69 bar has no application to arbitral proceedings or to the resulting award.

The Supreme Court applied this reasoning the following year in ***Ananthesh Bhakta v. Nayana S. Bhakta, (2017) 5 SCC 185,*** upholding a reference under Section 8(1) of the Arbitration Act arising from a partnership retirement deed, notwithstanding that the firm was unregistered. The Delhi High Court, in ***THDC India Ltd. v. PCL-Intertech Lenhydro Consortium JV (2023) 4 HCC (Del) 227***, held that an unregistered firm was not barred from raising a claim in arbitration under Section 69 of the Partnership Act. The Delhi High Court reaffirmed the same position in ***Saumen Kumar Chatterjee v. Hari Om Sharma, 2024 SCC OnLine Del 7494*** in the context of a challenge to an arbitral award concerning claims between partners of unregistered firms.

Conclusion

The law has moved from a suit equivalent, restrictive reading of Section 69(3) of the Partnership Act in *Jagdish Chander Gupta* (supra), through the divergent approaches reflected in the 2004 decisions of *Firm Ashok Traders* (supra) and *U.P. State Sugar Corporation Ltd.* (supra) to a reasoned resolution in *Umesh Goel* (supra), reaffirmed in *Ananthesh Bhakta* (supra) and followed in subsequent pronouncements. The settled position that emerges from these decisions is that Section 69 of the Partnership Act does not bar an unregistered firm from pursuing claims or counterclaims in arbitral proceedings merely because the underlying contractual right could not have been enforced by an ordinary civil suit. Subsequent decisions have applied this position to applications under Sections 9 and 11 of the Arbitration Act and to references under Section 8, while *Umesh Goel* (supra) expressly held that the Section 69 bar has no application to arbitral proceedings or the resulting arbitral award. The distinction is therefore between the proceedings that Section 69 expressly prohibits and those that fall outside its statutory reach. An unregistered firm may accordingly be unable to approach a civil court to enforce a contractual right yet remain entitled to pursue that same dispute through the arbitral mechanism to which the parties have agreed.