



March 2025

A Limited Liability Partnership is bound by the arbitration clause in a Limited Liability Partnership Agreement despite not being a signatory to it

A single judge of the Bombay High Court (“**Bombay HC**”) has in *Kartik Radia vs. M/s. BDO India LLP and Anr.*¹ held that disputes between the partners of a Limited Liability Partnership (“**LLP**”) and the LLP are covered by the arbitration clause contained in the LLP Agreement (“**LLP Agreement**”) to which the LLP itself is not a signatory.

Brief facts

Kartik Radia (“**Applicant**”), a former partner of BDO India LLP (“**Respondent No. 1**”) was expelled from Respondent No. 1 by Mr. Milind Kothari (“**Respondent No. 2**” and together with Respondent No. 1 referred to as “**Respondents**”), the managing partner of Respondent No. 1. The Applicant’s grievance was regarding his treatment, and misconduct by the Respondents in effecting the expulsion. The Applicant issued an arbitration invocation notice nominating an arbitrator. The Respondents refused to appoint their nominee arbitrator. Given the same, the Applicant filed an application under Section 11 of Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) seeking appointment of an arbitrator (“**Application**”).

The Applicant *inter alia* contended that disputes between an LLP and its partners are covered by the arbitration agreement contained in the LLP Agreement even when the LLP is not a signatory to the LLP Agreement. Further: (a) Section 26 of the LLP Act, 2008 (“**LLP Act**”) provides that every partner is an agent of the LLP; and (b) Section 27 of the LLP Act provides that the LLP is liable for the acts of its partners.

Respondent No. 1 *inter alia* contended that: (a) the Applicant seeks to initiate arbitration proceedings against the LLP, which is not a party to the arbitration agreement; (b) the arbitration clause only covers disputes between the partners. The jurisdiction of the arbitral tribunal cannot be extended to cover disputes between a partner and the LLP; (c) the present dispute is not arbitrable given that the dispute is between the Applicant and Respondent No. 1, who is not a signatory to the arbitration agreement; and (d) every LLP has 2 (two) options i.e., having an agreement only amongst the partners and having an agreement between the LLP and its partners. The exclusion of the Respondent No. 1 from the LLP Agreement is a conscious choice of leaving the LLP out of the mix of rights and duties, thereby suggesting exclusion from arbitration.

Respondent No. 2 *inter alia* contended that the: (a) arbitration invocation notice was addressed to Respondent No. 2 and contained allegations and grievances that were personal in nature; and (b) Applicant made reference to the injury of his image and to his defamation at the hands of the Respondents, and defamation is not arbitrable.

¹ Commercial Arbitration Application No. 31 of 2022

Issue

Whether disputes between partners of an LLP and the LLP would be covered by the arbitration agreement contained in the LLP Agreement to which the LLP is not a signatory?

Findings and analysis

The Bombay HC disposed of the Application and *inter alia* held as follows:

1. an LLP is not a third party to an LLP Agreement in the manner that the concept of ‘third parties’ is conventionally understood. The LLP Agreement is the charter document that gives agency to the partners to operate the LLP. An LLP is duty-bound to act in accordance with the LLP Agreement. To argue that there is no privity to the very document governing the body corporate is not a sustainable argument;
2. in the present case, the subject matter of arbitration would *inter alia* include any construction or application of the LLP Agreement, matters relating to the business and affairs of Respondent No. 1 and the rights, duties or liabilities of its partners. This would necessarily entail Respondent No. 1 being a necessary party to the dispute;
3. whether a non-signatory has accorded implicit consent to the arbitration agreement is a matter to be inferred through the acts, conduct, and circumstances including relationship between the contracting parties, the commonality of the subject matter and the involvement of such party in the performance of the contract containing the arbitration clause. The operation of the LLP during its existence is the common commercial objective of the parties to the LLP Agreement. Therefore, there is no merit in the argument that despite the LLP being the subject matter of the LLP Agreement, the LLP itself is extraneous to it;
4. the contention that the LLP is an alien to the LLP Agreement is untenable from the scheme of the LLP Act *inter alia* since: (a) Section 2(1)(o) of the LLP Act, which defines ‘limited liability partnership agreement’ makes it clear that the subject matter of an LLP Agreement is the determination of mutual rights and duties of the partners, and their rights and duties in relation to the LLP; (b) in terms of Section 2(1)(q) of the LLP Act which defines ‘partner’, the entry and exit of a partner from an LLP is governed by the LLP Agreement; and (c) Section 23(4) of the LLP Act provides that if there is no agreement on any matter, then the mutual rights and duties of the partners and the LLP would be governed by the First Schedule of the LLP Act, which provides that disputes arising therefrom would necessarily be referred to arbitration. This would necessarily render the LLP a necessary party to the arbitration proceedings relating to its operation and governance, despite not being a signatory to the LLP Agreement;
5. the scope of a Section 11 of the Arbitration Act is to examine the existence of an arbitration agreement, which the Respondents have submitted does not exist. The LLP Agreement contains an arbitration clause. The dispute relating to the expulsion of a partner being the subject matter of merits, whether Respondent No. 1 is a necessary party is for the Arbitral Tribunal to decide and cannot be rejected at this stage;
6. the arbitration invocation notice was issued to Respondent No. 2 in his capacity as the managing partner of Respondent No. 1. Therefore, to read it as a personal dispute of the Applicant with Respondent No. 2 in his individual capacity is a misconceived contention. Further, under Section 26 of the LLP Act, every partner is an agent of the LLP, and under Section 27(2), the LLP is liable for the acts of its partners; and
7. in the present case, the question whether a part of the claim and the approach to be taken in respect of alleged injury of the Applicant’s image squarely falls within the domain of the Arbitral Tribunal, which has the power to rule on its own jurisdiction under Section 16 of the Arbitration Act.

In view of the above, the Application was disposed and a nominee arbitrator on behalf of the Respondents was appointed by the court.

Conclusion

By this significant judgement, the Bombay HC has held that an LLP cannot avoid arbitration proceedings on the basis that the LLP itself is not a signatory to the LLP Agreement. A non-signatory LLP to the LLP Agreement may be impleaded in arbitration proceedings *inter alia* on the ground that an LLP is not a third party to the LLP Agreement and there is privity between a partner of the LLP and the LLP under the document that governs it, i.e., the LLP Agreement to which the LLP is albeit not a signatory.

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