

A FIRM ASHOK TRADERS AND ANR. ETC.
v.
GURUMUKH DAS SALUJA AND ORS. ETC.

JANUARY 9, 2004

B [R.C. LAHOTI AND ASHOK BHAN, JJ.]

Arbitration and Conciliation Act, 1996:

C s. 9—Application for interim measures by court—Unregistered
partnership firm in liquor trade—Application by one of the partners for
appointment of receiver to take charge of business of the firm—Trial court
dismissing the application on the ground that name of the applicant does not
figure in the register of firms as partner of the firm—High Court allowed the
D application u/s 9 of the Act—High Court further directed that the partners
who were running the business would run the business as receivers till
31.12.2003 and from 1.1.2004 to 31.3.2004 the applicant and two other
partners of his group would run the business as receivers—Held, order passed
E by court should fall within the meaning of expression 'an interim measure of
protection' as distinguished from an all time of permanent protection—It is a
serious matter to appoint a receiver on a running business—This is not a case
of oppression of minority by majority—A better course would have been to
allow the conduct of the business continuing in the hands of the persons who
were doing so but at the same time issuing such directions and/or devising
F such arrangement as would protect and take care of the interest of those who
are not actually running the business—Purpose of enacting s. 9 is to provide
'interim measures of protection'—Though order of High Court appointing a
receiver on the partnership business is maintained, the rest of the order is set
aside—Directions given *inter alia*, for running the business by the group of
partners who were running it prior to interim order of High Court under their
control but as receivers, and for appointment of an official as observer—
G Interim order—Partnership Act, 1932—s.69(3).

s.9—Unregistered partnership firm—Application by one of the partners
for directions to appoint receiver—Maintainability of—Held, Court u/s 9 is
only formulating interim measures so as to protect the right under adjudication
before the arbitral tribunal from being frustrated—Prima facie, the bar enacted

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by s.69 of Partnership Act does not affect the maintainability of an application under s.9 of the Act—s. 69 of Partnership Act has no bearing on the right of a party to an arbitration clause to file an application under s.9 of the Act. A

s. 9—“party”—Invoking s.9—An application u/s. 9 is not a suit—‘Parity’ is defined in s. 2(1)(h) to mean a party to an arbitration agreement—So right conferred by s.9 is on a party to an arbitration agreement—Right conferred by s.9 cannot be said to be one arising out of a contract—Filing of an application u/s 9 by a party by virtue of its being a party to, an arbitration agreement is for securing a relief which the court has power to grant before, during or after arbitral proceedings by virtue of s.9 of the Act—The relief sought for in an application u/s 9 is neither in a suit nor a right arising from a contract—Party invoking s.9 may not have actually commenced arbitral proceedings but must be able to satisfy the court that the arbitral proceedings are actually contemplated or manifestly intended. B
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M/s. Sundaram Finance Ltd. v. M/s. NEPC India Ltd., AIR 1999 SC 565, relied on. D

Kamal Pushpa Enterprises v. DR Construction Company, AIR (2000) SC 2676; *Jagdish Chandra v. Kajaria Traders (Ind.) Ltd.*, AIR (1964) SC 1882 and *Delhi Development Authority v. Kochhar Construction Work and Anr.*, [1998] 8 SCC 559, referred to. E

M/s. Shreeram Finance Corporation Ltd. v. Yasin Khan and Ors., [1989] 3 SCC 476, cited.

Words and phrases: Word ‘before’ in s.9 of Arbitration and Conciliation Act, 1996—Connotation of. F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 132 and 131 of 2004.

From the Judgment and Order dated 18.12.2003 of the Madhya Pradesh High Court in M.A. No.2484 of 2003. G

Harish N. Salve, Dr. A.M. Singhvi, Kapil Sibal, P. Chidambaram, R.F. Nariman, Vivek Tankha, Rohit Arya, C. Mukhopadhyaya, Manu Nair, Ms. Shalini, Rakesh K. Khanna, Aseem Mehrotra, Kanahaya Singh, Rajeev Singh, Rajesh Prasad Singh, Akshay Arora, P.K. Bansal, Pankaj Kr. Singh, K.L. Janjani and Ms. Abha R. Sharma for the appearing parties. H

A The following Order of the Court was delivered :

Leave granted in both the SLPs.

The dispute is among 12 persons who are, or are alleged to be, or claim to be partners in the firm M/s Ashok Traders, the respondent no.1. These 12 private parties to the litigation can be grouped into three, for the sake of convenience. Gurumukh Das Saluja, Sanjay Chawla and Ajay Arora shall be collectively referred to as Group "A". Bhagwati Prasad Kulhara, Badri Prasad Jaiswal and Harprasad Jaiswal shall be referred to as Group "B". Rajesh Jaiswal Ram Sewak Sharma, Baljeet Singh Bhatia, Rajendra Prasad Jaiswal, Anil Kumar Shrivastava and Sushil Kumar Shrivastava shall be referred to as Group "C".

M/s. Ashok Traders are in liquor trade. In the Deed of Partnership entered into on 27.2.2002 there were 7 partners including Bhagwati Prasad Kulhara and 6 others. The partnership firm was registered with Registrar of Firms. Six partners (i.e. other than Bhagwati Prasad Kulhara) retired from the partnership and a new partnership came to be constituted on 5.3.2002 evidenced by a Deed of the even date wherein all the persons belonging to Groups A, B and C are partners. However, the names of the new partners were not communicated to the Registrar of Firms. The firm was awarded a liquor contract licence for Bhopal for the year 2002-03 at a licence fee of Rs. 66.51 crores. The existence of these two Deeds of Partnership and the factum of the first one being registered and the second one being not registered with the Registrar of Firms are admitted facts. For convenience sake, we would refer to the partnership dated 27.2.2002 as Partnership-I, the Partnership dated 5.3.2002 as Partnership-II and the alleged partnership dated 6.3.2003 as Partnership-III.

The business ran smoothly upto February 2003 and then differences and disputes are alleged to have arisen amongst the partners. Clause 20 of the Partnership Deed-II incorporates an Arbitration Clause. Group "B" alleges the existence of yet another Deed of Partnership which is dated 6.3.2003 wherein the names of the members of Group "A" are not to be found mentioned as partners. The partnership-III is also not registered.

On 6.3.2003 auction for IMFL and country-liquor shops (60 in number) for the year 2003-04 was held at Bhopal. M/s Ashok Traders was declared to be successful bidder for a licence fee of Rs. 73.25 crores. The shops are running and have always remained operational even during the present

litigation.

Disputes arose giving rise to complaints by the members of Group "A" complaining of the violation of their rights as partners at the hands of Group "B", Group "A" complained of their being denied access to accounts, of Group "B" indulging into mismanagement of affairs and siphoning off of the funds and so on. Ajay Arora (of Group "A") filed a civil suit which was held to be not-maintainable in view of Section 69 (3) of the Indian Partnership Act, 1932; the name of Ajay Arora having not been shown in the Register of Firms as a partner of the firm. According to Group "A", a notice was issued on 2.6.2003 to the other partners invoking the arbitration clause and calling upon them to join in the appointment of arbitrator/s consistently with the arbitration clause so as to adjudicate upon the disputes between the partners. The contesting respondents do not admit the receipt of the notice. On 22.7.2003, Gurumukh Das Saluja of Group "A" filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 wherein the principal relief sought for is the appointment of a receiver under Section 9(ii)(d) of the Act to take charge of the entire business of the firm. Other incidental injunctions are also sought for. Group "B" contested the application on very many grounds and mainly by submitting that the application was not maintainable in view of the bar enacted by Section 69(3) of the Partnership Act as the name of the applicant does not figure in the Register of Firms as partner of the firm. The plea has prevailed with the learned Additional District Judge resulting in dismissal of the application. Gurumukh Das Saluja preferred an appeal before the High Court under Section 37(1)(a) of the A & C Act. During the pendency of the appeal an application under Section 9 pleading similar facts and seeking similar reliefs, as was done before the Trial Court, was filed. Group "B" contested the application on all possible grounds. The factum of Group "A" being partners of the firm so far as the contract for the year 2003-04 is concerned was vehemently denied. It was reiterated that the application was hit by Section 69(3) of the Partnership Act and hence was liable to be dismissed. The High Court has allowed the appeal. It has held that the applicability of Section 69(3) is not attracted to an application under Section 9 of A & C Act. But on merits the High Court has found substance in the grievance raised by Group "A". The High Court has also held that the business in the year 2003-04 was continuing under the Partnership Deed dated 5.3.2002, i.e., Partnership-II; and that *prima facie* the existence of the Partnership Deed dated 6.3.2003 (Partnership-III) was doubtful and accompanied by suspicious circumstances raising doubts about the genuineness of any new partnership having come into existence on 6.3.2003 superseding

A the Partnership-II. The High Court seems to have made efforts at resolving the controversy and finding out at least some such solution as would take care of the disputes for the moment and protect the interests of all the parties and then concluded as under:-

B “Various options were explored at the time of hearing of the appeal. It was suggested that the Excise Commissioner may be appointed as a receiver. But that does not appear to be feasible. Further, the running of liquor business requires an expertise of its own and as such it would not be proper to entrust the management of the business to third person who might not be aware of its intricacies. Therefore, it would be proper that the partners themselves should manage the business as receivers. It is found that the contesting respondents No.2, 6 and 7 have run this business in March, 2003 and also from 1.4.2003 and they are still doing so. The present liquor contract is upto 31.3.2004. It would be proper to appoint the respondents No.2, 6 and 7 to continue to run this business as receivers subject to their complying with the provisions given in Order 40 rules 1 to 4 CPC. They shall submit their accounts the court in which the application under section 9 of the Act was considered i.e. Court of Vth Additional District Judge, Bhopal. Further, from 1.1.2004 it would be just and equitable to entrust the management and running of the business by the appellant* and the respondents No.8 and 9* who together have 20% share in the firm. Therefore, they are appointed as receivers from 1.1.2004 to 31.3.2004 and they will take over the management of the business of this firm as receivers from that date. The other respondents will hand over the management of the business of this firm to them from 1.1.2004. The appellant and respondents No.8 and 9 will submit full accounts to the court of Vth Additional District, Judge Bhopal every month and will abide by the Order 40 Rules 1 to 4 CPC. In case of any difficulty the parties will be free to approach the court of Vth Additional District Judge, Bhopal for necessary orders. The Court of Vth Additional District Judge, Bhopal will monitor the functioning of the receivers and issue necessary directions from time to time. This direction is as per decision of the Supreme Court in *V.T. Slpahimalani v. Kanta*, AIR (2000) SC 1848. The Applicant will take steps for the appointment of arbitrator as early as possible. This directions is being given as

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per decision of Supreme court in *M/s Sundaram Finance Ltd. v. M/s NEPC India Ltd.*, AIR (1999) SC 565. A

*(N.B.-'Appellant' in High Court was Gurumukh Das Saluja and respondent nos. 8 and 9 were Sanjay Chawla and Ajay Arora; Hence Group "A")

We have heard all the learned counsel appearing for Groups "A", "B" and "C". The submissions made by the learned counsel for the parties have centered around two questions: one, effect of the bar created by Section 69(3) of the Partnership Act on maintainability of an application under Section 9 of the A & C Act, 1996; and two, in the event of the question of maintainability being decided for Group "A", what interim arrangement, whether by way of appointment of receiver or otherwise, would meet the ends of justice? B C

On the question of maintainability of application under Section 9 of A & C Act ever by a partner of an unregistered firm or by a person not shown as a partner in the Register of Firms, the High Court has, for upholding the maintainability, relied on the decision of this Court in *Kamal Pushpa Enterprises v. Dr. Construction Company*, AIR (2000) SC 2676. The learned counsel for Group "B" have placed forceful reliance on *Jagdish Chandra v. Kajaria Traders (Ind.) Ltd.*, AIR (1964) SC 1882. The decision of this Court in *M/s. Shreeram Finance Corporation Ltd. v. Vasin Khan and Ors.*, [1989] 3 SCC and *Delhi Development Authority v. Kochhar Construction Work and Anr.*, [1998] 8 SCC 559 were also referred to. D E

Section 9 of A & C Act, 1966 and Section 69 of Partnership Act, 1932 (relevant part thereof) provide as under:

Arbitration and Conciliation Act, 1996 F

9. *Interim measures by Court etc.*—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court— G

- (I) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
- (II) for an interim measure of protection in respect of any of the following matters, namely:- H

- A (a) the preservation interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
- (b) securing the amount in dispute in the arbitration;
- B (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
- C (d) interim injunction or the appointment of a receiver;
- (e) such other interim measure of protection as may appear to the court to be just and convenient,

D and the Court shall have the same power for making orders as it has for the purpose of and in relation to, any proceedings before it.

Indian Partnership Act, 1932

E 69. *Effect of non-registration.*—(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

F (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

G (3) The provisions of sub-sections (1) and (2) shall apply also to claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(a) xxx xxx xxx

(b) xxx xxx xxx

H (4) xxx xxx xxx

To begin with, for the controversy centering around the abovesaid two provisions we told the learned counsel for the parties that we are not inclined to go in-depth in the issue inasmuch as a prolonged hearing on the issue and decision thereon may take time and that would have devastating effect on the rights of the parties. The learned counsel for the parties agreed that *de hors* the issue, the Court may proceed to determine the appeal on merits. Yet, we feel duty-bound to record at least our *prima facie* opinion on the issue, lest we should be misunderstood as having side-tracked the same.

Sub-Sections (1) and (2) of Section 69 of Partnership Act strike at the very root of the jurisdiction of the Court to entertain a suit to enforce a right arising from a contract, if the applicability of Section 69 is attracted. By virtue of sub-Section (3), the bar enacted by sub-Sections (1) and (2) applies also to a claim of set-off or 'other proceedings to enforce a right arising from a contract' which, in the submission made by the learned counsel for Groups "B" and "C", includes a proceeding commencing on an application under Section 9 of the A & C Act.

In our opinion, which we would term as *prima facie*, the bar enacted by Section 69 of the Partnership Act does not affect the maintainability of an application under Section 9 of A & C Act.

A & C Act, 1996 is a long leap in the direction of alternate dispute resolution systems. It is based on UNCITRAL Model. The decided cases under the preceding Act of 1940 have to be applied with caution for determining the issues arising for decision under the new Act. An application under Section 9 under the scheme of A & C Act is to a suit. Undoubtedly, such application results in initiation of civil proceedings but can it be said that a party filling an application under Section 9 of the Act is enforcing a right arising from a contract? "Party" is defined in Clause (h) of sub-Section (1) of Section 2 of A & C Act to mean 'a party to an arbitration agreement'. So, the right conferred by Section 9 is on 'a party to an arbitration agreement'. The time or the stage for invoking the jurisdiction of Court under Section 9 can be (i) before, or (ii) during arbitral proceeding, or (iii) at any time after the making of the arbitral award but before it is enforced in accordance with Section 36. With the pronouncement of this Court in *M/s Sundaram Finance Ltd. v. M/s NEPC India Ltd.*, AIR (1999) SC 565 the doubts stand cleared and set at rest and it is not necessary that arbitral proceeding must be pending or at least a notice invoking arbitration clause must have been issued before an application under Section 9 is filed. A little later we will revert again to

- A this topic. For the moment suffice it to say that the right conferred by Section 9 cannot be said to be one arising out of a contract. The qualification which the person invoking jurisdiction of the Court under Section 9 must possess is of being a party to an arbitration agreement. A person not party to an arbitration agreement cannot enter the Court for protection under Section 9.
- B This has relevance only to his locus standi as an applicant. This has nothing to do with the relief which is sought for from the Court or the right which is sought to be canvassed in support of the relief. The reliefs which the Court may allow to a party under clauses (i) and (ii) of Section 9 flow from the power vesting in the Court exercisable by reference to 'contemplated', 'pending' or 'completed' arbitral proceedings. The Court is conferred with the same power for making the specified orders as it has for the purpose of
- C and in relation to any proceedings before it though the venue of the proceedings in relation to which the power under Section 9 is sought to be exercised is the arbitral tribunal. Under the scheme of A & C Act, the arbitration clause is separable from other clauses of the Partnership Deed. The arbitration clause constitutes an agreement by itself. In short, filing of an application by a party
- D by virtue of its being a party to an arbitration agreement is for securing a relief which the Court has power to grant before, during or after arbitral proceedings by virtue of Section 9 of the A & C Act. The relief sought for in an application under Section 9 of A & C Act is neither in a suit nor a right arising from a contract. The right arising from the partnership deed or conferred
- E by the Partnership Act is being enforced in the arbitral tribunal; the Court under Section 9 is only formulating interim measures so as to protect the right under adjudication before the arbitral tribunal from being frustrated. Section 69 of the Partnership Act has no bearing on the right of a party to an arbitration clause to file an application under Section 9 of A & C Act.
- F In *Jagdish Chandra Gupta's* case (supra) Constitution Bench approved of a liberal and full meaning being assigned to the phrase 'other proceedings' in sub-Section (3) of Section 69 of the Partnership Act untrammelled by the preceding words 'a claim of set-off'. The Court refused to countenance the plea for interpreting the words 'other proceedings' *ejusdem generis* with the
- G preceding words 'a claim of set-off'. *M/s. Shreeram Finance Corporation*, (supra) calls for the effect of bar created by Section 69 being determined by reference to the date of institution of the suit and not by reference to any subsequent event. In *Delhi Development Authority's* case, this Court held Section 69 of Partnership Act applicable to an application under Section 20
- H Act) would be included within the meaning of 'other proceedings' in Section

69(3) of Partnership Act. In *Kamal Pushpa Enterprises*, this Court held that the bar under Section 69 of Partnership Act is not applicable at the stage of enforcement of the award by passing a decree in terms thereof because the award crystallises the rights of the parties and what is being enforced at that stage is not any right arising from the objectionable contract. None of the cases throws any direct light on the issue at hand. Rather, the undercurrent of dictum in *Kamal Pushpa Enterprises* lends support to the view we are tentatively taking herein. We leave the matter at that and proceed to examine the merits of the appeal as agreed to by all the learned counsel appearing.

The most basic principle governing the discretion of the Court in appointing a receiver is whether it is 'just and convenient' to do so. A few factors are of relevance which we proceed to record dispensing with the need of delving into any detailed discussion. On the own showing of Group "A", they have 20% share in the partnership business and Group "B" has 18% share. The stand taken by Group 'C', which according to Group "A" holds 62% share, was not known before the High Court, and therefore, so far as the High Court is concerned the tussle was between the holders of 20% interest (Group "A") and holders of 18% interest (Group "B"). In this appeal, Group 'C' is represented and has vocally supported Group "B" standing by its side. Before us it is a case of holders of 20% interest claiming against the holders of 80% interest.

The finding recorded by the High Court is that it was Group "B" which was running business upto the date of passing of the order by it and was found entitled to continue the same upto 31.12.2003, meaning thereby, for nine months out of the total twelve months' period for which the business is to run, it is Group "B" which has been running the business. Excepting bald and general allegations of mismanagement and siphoning off of the fund nothing concrete has been alleged muchless demonstrated to give real colour to the averments made. The High Court has thought it proper to appoint Group "A" as captain of the ship, which is the running business, to sail for the remaining period of three months. We fail to understand the logic behind such a change. It is a serious matter to appoint a receiver, on a running business. The High Court in spite of having formed an opinion in favour of directing the appointment or receiver has rightly observed that retail liquor trade is an intricate and tricky trade and hence cannot be entrusted to a third party. If that be so, we fail to appreciate the justification behind turning out the persons in actual management of business and passing on the reins in the hands of those who were not holding the same for nine months out of the

A twelve. We do not say that such a course has any prohibition in law on being followed. But we do not think a case oppression of minority by majority—the sense in which their term is understood in law—having been made out on the material available in the present case. A better course would have been to allow the conduct of the business continuing in the hands of persons who were doing so still now but at the same time issuing such directions and/or
B devising such arrangement as would protect and take care of the interest of those who are not actually running the business and that is what we propose to do.

C There are two other factors which are weighing heavily with us and which we proceed to record. As per the law laid down by this Court in *M/s. Sundaram Finance Ltd.* an application under Section 9 seeking interim relief is maintainable even before commencement of arbitral proceedings. What does that mean? In *M/s. Sundaram Finance Ltd.*, itself the Court has said—“It is true that when an application under Section 9 is filed before the commencement of the arbitral proceedings there has to be *manifest* intention
D on the part of the applicant to take recourse to the arbitral proceedings”. Section 9 permits application being filed in the Court before the commencement of the arbitral proceedings but the provision does not give any indication of how much before. The word ‘before’ means *inter alia*, ‘ahead of; in presence or sight of; under the consideration or cognizance of’.
E The two events sought to be interconnected by use of the term ‘before’ must have proximity of relationship by reference to occurrence; the later event proximately following the preceding event as a foreseeable or ‘within sight’ certainty. The party invoking Section 9 may not have actually commenced the arbitral proceedings but must be able to satisfy the Court that the arbitral proceedings are actually contemplated or manifestly intended (as *M/s*
F *Sundaram Finance Ltd.* puts it) and are positively going to commence within a reasonable time. What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof. The distance of time must not be such as would destroy the proximity of relationship of the two events between which it exists and elapses. The purposes of enacting Section 9, read in the light of
G the Model Law and UNCITRAL Rules is to provide ‘interim measures of protection’. The order passed by the Court should fall within the meaning of the expression ‘an interim measure of protection’ as distinguished from an all-time or permanent protection.

H Under the A & C Act 1996, unlike the predecessor Act of 1940, the

arbitral tribunal is empowered by Section 17 of the Act to make orders amounting to interim measures. The need for Section 9, in spite of Section 17 having been enacted, is that Section 17 would operate only during the existence of the arbitral tribunal and its being functional. During that period, the power conferred on the arbitral tribunal under Section 17 and the power conferred by the Court under Section 9 may overlap to some extent but so far as the period pre and post the arbitral proceedings is concerned the party requiring an interim measure of protection shall have to approach only the Court. The party having succeeded in securing an interim measure of protection before arbitral proceedings cannot afford to sit and sleep over the relief, conveniently forgetting the 'proximately contemplated' or 'manifestly intended' arbitral proceedings itself. If arbitral proceedings are not commenced within a reasonable time of an order under Section 9, the relationship between the order under Section 9 and the arbitral proceedings would stand snapped and the relief allowed to the party shall cease to be an order made 'before' i.e. in contemplation of arbitral proceedings. The Court, approached by a party with an application under Section 9, is justified in asking the party and being told how and when the party approaching the Court proposes to commence the arbitral proceedings. Rather, the scheme in which Section 9 is placed obligates the Court to do so. The Court may also while passing an order under Section 9 put the party on terms and may recall the order if the party commits breach of the terms.

During the course of hearing, we asked the learned counsel for Group "A" what steps have they taken for initiation of arbitral proceedings ever since 2.6.2003 the date on which they claim to have invoked arbitration clause, or since 22.7.2003 the date on which the application under Section 9 was filed? We were told that Group "A" was awaiting for the orders of the Court under Section 9 of the Act. This is hardly an explanation. Commencement of arbitral proceedings is not dependent on the interim relief being allowed or denied. It was expected of Group "A" to have post-haste sought for the appointment of arbitrator under Section 11 of the Act if the partners noticed had failed to respond to the demand of Group "A" for arbitration. This, by itself, in our opinion would have been enough to deny relief to Group "A". However, in the facts and circumstances of the case, as we find the High court having felt convinced of the need for appointment of receiver and as we are inclined only to suitably modify the order, we do not deem it proper to dismiss the application under Section 9 in its entirety and for this reason alone. We direct the applicant under Section 9, to take steps for appointment of arbitrator/s, without any further loss of time.

A The other factor centers around the very factum of existence of partnership. The Deed dated 5.3.2002 relating to Partnership-II is a fixed term partnership agreed to stand terminate at the close of the year as on 31st March, 2003. The High Court has proceeded on the premises that in spite of the term of the partnership coming to an end by expiry of the contracted term

B if the partners have continued the business beyond the expiry of the terms limited by the contract and without having expressly entered into a partnership agreement afresh, the relationship shall continue to exist and govern the parties so long as the business continues. It is not necessary for us, for the present, to pronounce upon the correctness of the view so taken. Suffice it to observe that in the liquor trade involving heavy investments and heavy stakes

C it appears highly improbable that the people in trade would continue as partners without entering into a fresh contract though fully aware of the expiry of the term limited by the previous contract, more so, when they are called upon to deal as a partnership firm with the State Government. No reason has been assigned as to why a fresh Deed of Partnership was not entered into. If the members of Group "A" have allowed the liquor business

D to proceed without entering into a formal Deed of Partnership for the year 2003-04 and thereby allowed the members of Groups "B" and "C" to bring into existence a Deed of Partnership excluding the members of Group "A" and filing it on the record of the State Government (or substituting the same, as Group "A" alleges) they have to thank themselves for the misadventure

E which they have indulged into. Their lack of alertness in vigilantly protecting their rights tells adversely on the availability of strong *prima facie* case in their favour which only can persuade the Court to direct appointment of receiver over the business and in particular entrust the actual conduct of business in their hands, may be as receivers.

F During the course of hearing, we asked the learned counsel for the parties of either of them could suggest a practically feasible mechanism which would work and also effectively protect the interest of the parties kept away from the actual running of the business but no concrete suggestion came forward. On behalf of Group "A", a suggestion was mooted that 1/5th

G of the shops may be allowed to be run by them and remaining 4/5th may be allowed to be run by Group "B" and identical precautionary or protective mechanism may be introduced as cross-checks. But, what would be the mechanism, none has been able to propound and project.

H As a result, the order under appeal is modified. Though the order of the High Court appointing a receiver on the partnership business is maintained,

the rest of the order is set aside and substituted by the following directions:- A

- (1) The business shall run as before under the actual management and control of Group "B" but as receivers. B
- (2) The Commissioner of Excise, Madhya Pradesh shall appoint an official who has been associated with the excise department of Madhya Pradesh, preferably a retired person, who shall act as an observer. The observer shall keep a watch on the business of M/s. Ashok Traders generally and in particular to see:
 - (i) that the business is run by receivers without any hindrance by any of the partners; C
 - (ii) that the accounts are properly, truly and correctly maintained. D
 - (iii) that the receipts and payments are properly vouched.
 - (iv) that the sale proceeds are properly accounted for and no part of the proceeds is siphoned off and/or carried away unaccounted by anyone. D
- (3) All the sale proceeds shall be deposited day to day in a bank account to be opened in a nationalised bank in the name of the 'Firms M/s Ashok Traders (under orders of the Court)'. Any amounts to be withdrawn shall be only under the joint signatures of at least one members of Group "B" or "C" and the observer, for the purpose of making payments to the State Government, and on account of rent/licence fee of the shops, salary of the staff, transport charges and other necessary expenses required for running day to day business. E
- (4) Though the conduct of the business is being allowed to be continued by Group "B" but that is in their capacity of receivers as appointed by the Court. They must truly and strictly perform their duties as receivers. Any deviation would be viewed seriously. F
- (5) The members of Group "A" and/or their representative/s, authorized in writing, shall have a reasonable right to visit the shops during business hours and watch the activities going on but without interfering with the business activities run by the receivers. G
- (6) The observer shall be paid such monthly remuneration and H

A reimbursed such expenses, as may be considered reasonable and appointed by the Commissioner of Excise subject to overall directions of the Trial Court.

(7) This arrangement shall continue till 31st March 2004 and also for such further period as may be necessary for winding up of the business as per terms of the license of the State Government (Excise Department).

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(8) On finalization of the accounts duly audited by Chartered Accounts the net profit or loss, if any, shall be distributed in accordance with the award given by the arbitrator or decision by any competent forum.

C

(9) The receivers and observers shall be under the control of the trial Court. In case of any difficulty in carrying out this order, the parties, the observer and the Excise Commissioner of Madhya Pradesh or any officer subordinate to him shall be at liberty to seek directions from the trial Court.

D

Before parting we would like to clarify that whatever has been stated hereinabove in this order is not in any manner intended to be a reflection, much less a finding, on the merits of the case of either party which shall be available to be determined on evidence and material brought on record in any duly constituted legal proceedings, whether before the arbitral tribunal or before the Court or any other forum. All that has been said hereinabove is by way of *prima facie* observations confined to the disposal of the present appeals.

E

The appeals stand disposed of. No order as to the costs.

F

R.P.

Appeals disposed of.