IN THE HIGH COURT AT CALCUTTA

COMMERCIAL APPELLATE DIVISION

ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

AD-COM/7/2026

C.S. (COM) No. 56 of 2024

SOUTH EAST CENTRAL RAILWAY AND ANOTHER
VS
RAHEE-GPT (JV) AND ORS.

For the Appellants	: Mr. Pramod Kumar Drolia, Adv. Mr. Santosh Kumar Pandey, Adv.
For the Respondents Nos. 1, 2 and 3	: Mr. Samrat Sen, Sr. Adv. Mr. Nirmalya Dasgupta, Adv. Mr. R. L. Mitra, Adv. Ms. Priyanka Dhar, Adv.
Hearing Concluded on	: October 12, 2026
Judgement on	: November 13, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and decree dated March 10, 2026 passed in CS (COM) No. 56 of 2024.

2. By the impugned judgment and decree dated March 10, 2026, learned Single Judge has directed the appellant to refund the security and earnest money deposit along with bank guarantee amount and the bill amount together with

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interest to the respondent. Learned Single Judge has also directed that a sum of Rs. 1,00,000/- be paid by the appellant to the respondent as costs. Learned Single Judge has dismissed the counter claims filed by the appellants.

3. At the hearing of the appeal, finding the nature of the plaintiffs who are the respondents herein, particularly the respondent no. 1 as the plaintiff no. 1 in the suit, we have raised the query as to whether or not the suit is barred under Section 69 of the Indian Partnership Act, 1932.

4. Learned Counsel for the parties have addressed us on such an issue.

5. Learned Advocate appearing for the appellant has contended that, the Railways had floated a tender. Railways had allowed a Joint Venture entity to participate in such a tender. Respondent No. 1 herein had participated in the tender as a Joint Venture of the respondent No. 2 and 3.

6. Learned Advocate appearing for the appellant has contended that, the respondent No. 1 is essentially a partnership firm of the respondent nos. 2 and 3. The respondent No. 1 being unregistered, the suit filed by the respondents has attracted the mischief of Section 69 of the

Act of 1932. Consequently, the suit not being maintainable, learned Single Judge has erred in passing the impugned judgment and decree.

7. In support of such contention that the respondent no. 1 is a partnership firm, learned advocate appearing for the appellant has relied upon ***AIR 2006 AP 169 (GVPREL-MEE (J.V) Vs. Government of Andhra Pradesh & Anr)***

8. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, the railways had floated a tender which permitted participation of a Joint Venture. Respondent Nos. 2 and 3 had constituted a Joint Venture for such purpose which is the respondent no. 1. Respondent No. 1 had participated in such tender process and became successful. Railways had granted the tender in favour of the respondent no. 1.

9. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, the Railways had prevented his clients from executing the contract and discharging their obligations under the contract subsequent to the contract being awarded. Respondents had assailed several notices issued by the Railways including the notice of

termination dated March 5, 2014, invocation of the bank guarantee and forfeiture of the security deposit in the suit.

10. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, the tender notice dated February 23, 2010 permitted a Joint Venture firm to participate in the bidding process. He has referred to the Special Conditions of Contract in connection with the tender and contended that, the same specified the model format of the Joint Venture for bidders desiring to participate in the tender as a Joint Venture. He has contended that, the respondent nos. 2 and 3 did not have the luxury of formulating the terms of the Joint Venture at their discretion.

11. Learned Senior Advocate appearing for the respondents has contended that, the respondent no. 2 and 3 being desirous of participating in the tender entered into the Memorandum of Understating dated February 20, 2010 in terms of the prescribed format. They had created the respondent no. 1 as a Joint Venture. Railways had issued the letter of acceptance on April 10, 2010 in name of the respondent no. 1. He has pointed out that in terms of Clause 12 of the Guidelines in the Special Condition of Contract read

with Clause 4 of the Memorandum of Understanding, respondents no. 2 and 3 as Members of the joint venture entered into the agreement on similar terms and got the same registered under the Registration Act, 1908.

12. On the quality of the formulation of the respondent no. 1, as a legal entity, learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, respondent no. 1 is an unincorporated association of persons. According to him, an unincorporated association of persons not being a legal personality is nothing but the aggregation of its members, and therefore, legal proceedings can therefore be instituted only if all members of the associations have joined in the proceedings. In support of such contention, he has relied on ***AIR 1969 Cal 149 (Director General Ordnance Factories Employees Association Vs. Union of India and Director General Ordnance Factories).***

13. Relying upon **2008 SCC OnLine Cal 680** ***(Gandhabanik Mahasabha Vs. Gandhabanik Mahasabha, Bardhaman Sakha Samity,*** learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, an unincorporated association cannot sue in its own

name alone. In the present case, the two members of the Joint Venture have joined as the plaintiffs. Therefore, the suit cannot be faulted on the basis of Order I Rule VIII of the Code of Civil Procedure, 1908.

14. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, a Joint Venture per se is not a juristic entity. In support of such contention, he has relied upon the decision of the Bombay High Court dated September 1, 2026 passed in Commercial Suit No. 585 of 2017 ***(BPL-BBC Joint Venture Vs. Mumbai Metropolitan Region Development Authority).***

15. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, a Joint Venture and a partnership firm are distinct and separate. He has referred to the provisions of the Commercial Courts Act, 2015 namely, Section 2(1)(c)(xi) and 2(1)(c)(xv) to emphasise that the two entities are different.

16. Learned Senior Advocate appearing for the respondent nos. 1, 2 and 3 has contended that, a Joint Venture can be converted into a Partnership under the Act of 1932 or a limited liability partnership (LLP) under the Limited Liability

Partnership Act, 2008 or Joint Venture Company under the Companies Act, 2013. He has contended that no such transition took place as, clauses 8 to 10 of the guidelines of the Special Condition of Contract and clause 4 of the Joint Venture agreement prohibited any such modification/alteration.

17. Referring to Section 6 of the Act of 1932, learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, sharing of profits is not determinative of the real relationship between the parties. He has contended that, the terminology and nomenclature used in the agreement is irrelevant and that, the Court has to consider substance rather than the form. According to him the test to determine as to whether the entity is a Joint Venture or not is not on the basis of the legal entity or on the basis whether such legal entity is a partnership. He has contended that, incorporation of the clause that, the members of the Joint Venture are jointly and severally liable establishes that the Joint Venture is not a partnership. In support of such contention, he has relied upon ***2026 SCC OnLine Bombay***

217 (Hindustan Petroleum Corpn. Ltd. Vs. Om Construction)

18. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, clause 5 of the Joint Venture agreement read with Clause 12(a) of the Guidelines in the Special Condition of the Contract would establish that, respondent no. 1 is not a legal entity.

19. Relying upon the decision rendered in CRP (MD) No. 200 of 2024 and CMP (MD) No. 855 of 2024 ***(Jagatheesh Vs. Chandrasekharapillai)*** dated October 4, 2024 passed by the Madras High Court, learned Senior Advocate appearing for the respondents has contended that, Joint Venture is a Consortium of Members agreeing to sharing profits without entering into a partnership. He has contended that, the test laid down therein applied to the facts and circumstances of the present case, and would establish that the respondent no. 1 is not a partnership but a Joint Venture.

20. Relying upon ***AIR 2005 Bom 57 (Sanjay Kanubhai Patel Vs. Chief Controlling Revenue Authority)*** and ***Jagatheesh (supra),*** learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, the

respondent no. 2 is the lead partner who was empowered to represent the Joint Venture and therefore, no partnership was entered into.

21. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, Section 9 of the Act of 1932 requires the partners to render true accounts and full information of all things affecting the firm to any partner or his legal representative which is not the case in respect of the Joint Venture. Dissolution proceeding of the partnership firm is also under the Act of 1932 while, dissolution of a Joint Venture is governed by the agreement entered into between the parties. In support of such contention, he has relied upon ***Jagatheesh (supra).***

22. Relying upon ***1985 SCC Online Guj 316 (Asia Foundation & Constructions Ltd. Vs. State)*** learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, the difference between the partnership in the nature of Joint Venture and a partnership is that, in a Joint Venture partners incurs no responsibilities beyond the limits of the particular adventure or business and therefore, their rights and liabilities are less extensive.

23. Learned Senior Advocate appearing for the respondents no. 1, 2 and 3 has contended that, respondent no. 1 is not a partnership within the meaning of the Act of 1932. At best, it may be an informal partnership as held in ***2005 SCC Online AP 531*** (***GVPREL-MEE (J.V.), Hyderabad Vs. Government of A.P.),*** and a quasi partnership as held in ***2023 SCC Online Del 1391 (ITD Cementation India Ltd. Vs. SSJV-ZVS Joint Venture).***

24. Learned Senior Advocate appearing for the respondents has contended that, Karnataka High Court in 2018:KHC:8653-DB ***(C. Prakash Vs. State of Karnataka & Ors.)*** applied the ratio of ***AIR 1967 Cal 429 (Ganga Metal Refining Co. Pr. Ltd. Vs. Commissioner of Income Tax, West Bengal)***

25. Relying upon ***2020 SCC Online Ker 5017 (Nortrans Marine Services (P) Ltd. Vs. Cargo Care International)*** learned Senior Advocate appearing for the respondents has contended that, the issue that the respondent no. 1 was not registered was not raised in the written statement. No specific issue had been framed by the Trial Court on such score. The

Memorandum of Appeal does not contain any such ground. Such ground cannot be canvassed in the appeal.

26. Appellants had issued a tender notice dated February 23, 2010 in connection with the work of designing and construction of the foundation, sub structure, approaches including allied and miscellaneous works of Bridge No. 182 between IB and Brajraj Nagar Railway Station in the Champa - Jharsuguda section. Special Condition of Contract of such tender notice had permitted a Joint Venture to participate in such tender process. Such Special Conditions of Contract have also specified the guidelines to be followed by the participating Joint Venture. Special Condition of Contract had been admitted in the evidence in appeal by consent of the parties in course of hearing of the appeal.

27. Respondent Nos. 2 and 3 had formed a Joint Venture namely, the respondent No. 1 on the basis of a memorandum of understanding being Exhibit Y dated February 20, 2010. Respondent Nos. 2 and 3 had executed a Joint Venture agreement dated November 29, 2010 being Exhibit Z series.

28. Appellants had issued a letter of acceptance dated July 28, 2010 in favour of the respondent No. 1.

29. The issues that have fallen for consideration in the present appeal are:-

i. Is the respondent No. 1 a partnership firm?

ii. If the answer to the first issue is in the affirmative then is the respondent No. 1 duly registered under the Indian Partnership Act, 1932?

iii. If the answer to issue No. 2 is in the negative, then, is the suit filed by the respondents maintainable?

iv. If the answer to the issue No. 3 is in the negative, then, is the impugned judgment and decree sustainable?

30. In ***Director General Ordnance Factories Employees Association (supra)*** a Division Bench of the Calcutta High Court in a litigation between two labour unions, held that, in case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. However, an unincorporated association has no legal personality as it is nothing but an

aggregation of its members who can only bring legal proceedings in their individual capacity.

31. A Single Judge of the Bombay High Court in ***BPL-BBC Joint Venture (supra)*** has held that, the Joint Venture per se is not a juristic entity and an unincorporated association cannot sue in its own name alone. It has observed that, if the plaint contained only the name of the Joint Venture, such defect could be cured by impleading the constituent members of the Joint Venture.

32. In ***Hindustan Petroleum Corpn. Ltd. (supra)*** a Single Judge of the Bombay High Court has held in the facts of that case that, the Joint Venture formed for securing contract and for execution of the works was never a legal entity by itself. It has observed that, only those Joint Ventures who are incorporated become legal entities.

33. A Single Judge of the Madras High Court in ***Jagatheesh (supra)*** has noted the distinction between a Joint Venture and a partnership firm. It has noted that, in a partnership firm every partner is both an agent and principal. Each partner in the partnership firm can therefore act as an agent and is also bound by the actions of the other partners

as a principal. It has noted that such is not the case of a Joint Venture. It has also noted that the exercise of determining whether the entity is a partnership firm or a Joint Venture has to be based on the terms and conditions of the contract and the appreciation of evidence.

34. The decision of the learned Single Judge of the Andhra Pradesh High Court in ***GVPREL-MEE (J.V.) (supra)*** cited on behalf of the respondents has been reversed on appeal by the Division Bench in ***GVPREL-MEE (J.V) (supra).***

35. A Single Judge of the Delhi High Court in ***ITD Cementation India Ltd (supra)*** has termed a Joint Venture to be a quasi partnership.

36. A Division Bench of the Karnataka High Court in ***C. Prakash (supra)*** in the facts of that case has held that, two limited liability companies coming together for the purpose of permitting the business and avoiding competition was not a partnership firm within the meaning of the Act of 1932. It has considered ***Ganga Metal Refining Co. Pr. Ltd.(supra).***

37. A Coordinate Bench of this Hon'ble Court in ***Ganga Metal Refining Co. Pvt. Ltd.(supra)*** has answered two issues raised in an income tax reference. In the facts of that case, the

limited liability company had entered into a Joint Venture with two other companies for the purchase and sale of certain quantity of white metal slab. Before the Revenue authorities, the assessee company had claimed that, the accounts of the Joint Venture were maintained in the books of one of the constituent companies. On the basis of such accounts, the final result of the Joint Venture was a loss and that, the assessee was entitled to set off one third of such loss. In such factual matrix, it has held that, the Joint Venture between the assessee and the two other limited companies was not an income tax entity of an unregistered firm or a partnership under the Income Tax Act, 1961 and therefore the three limited companies would only be regarded as an association of persons under Section 3 of the Income Tax Act, 1961 and in which event, Section 24 (1) of the Income Tax Act, 1961 would not be applicable. It has held that, the assesse was not entitled to set off against its other income the loss suffered by the Joint Venture with the two other limited companies.

38. A Division Bench of the Kerala High Court in ***Nortrans Marine Services (P) Ltd.*** has held that, objection under Section 69(2) of the Act of 1932 is required to be taken in

written statement. It has held that, in the absence of specific and categorical plea of Section 69(2) of the Act of 1932 being taken, neither the Court is expected to consider the maintainability of the suit in the background of the non-compliance with the requirement of Section 69(2) of the Act of 1932 nor is the plaintiff expected to place on record the proof in support of its assertion that it is an registered partnership firm. Moreover, in the facts of that case it has held that, the plaintiff therein was enforcing a statutory right for which, requirement under Section 69 of the Act of 1932 could not be insisted upon.

39. The Division Bench of the Calcutta High Court in ***Gandhabanik Mahasabha and Anr. (supra)*** has held that, an unregistered society could not by itself bring a suit nor could it be represented by the Secretary to sue in the common interest of all the members unless and until either all the members of the Committee individually joined as the plaintiffs or leave of the Court under Order I Rule 8 of the Code of Civil Procedure, 1908 was taken.

40. The Division Bench of the Gujarat High Court in ***Asia Foundation & Constructions Ltd. & Ors. (supra)*** has held

that, a person can become a partner with another person in a particular adventure or undertaking in terms of Section 8 of the Act of 1932. However, three elements of partnership, namely, agreement, business and mutual urgency must exist as a matter of course. It has noted that, the only difference between such a partnership in the nature of Joint Venture and an ordinary partnership is that, a Joint Venture partners incur no responsibility beyond the limits of the particular adventure or business or undertaking and their rights and obligations are, therefore, less extensive than those of partners in ordinary partnership.

41. In order to arrive at a decision as to whether an association of persons is a partnership or not, the Court has to find, whether there was an agreement between such persons for such purpose and that, the agreement was to share profits of the business and that such agreement created agencies between the concerned persons binding each other of acts done by the other. These three ingredients must exist simultaneously for the association to be considered as a partnership. Nomenclature is of no consequence. Substance garnered from the facts established govern the relationship.

42. In order to determine whether, a particular group of persons constitute a partnership or not, the Court has to consider the intention of such persons, as garnered from the facts established at the trial. Agreement to share profits may in circumstances be a strong indication of partnership, however, not conclusive evidence thereof.

43. Under the Income Tax Act, 1961, on the basis of the authorities cited before us, it can be deduced that a partnership firm is an independent and distinct juristic person for the purpose of assessment as well as for the recovery of tax as it is a person within the meaning of Section 2(31) of the Act of 1961 having its own entity and personality.

44. A Joint Venture has been defined by Black's Law Dictionary as under :-

> *"Joint venture. A business undertaking by two or more persons engaged in a single defined project. The necessary elements are: (1) an express or implied agree-ment; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project."*

45. As the name suggests, a Joint Venture is necessarily between two or more persons with the object of achieving a

particular goal. A Joint Venture may be project specific or object specific.

46. A Joint Venture entity may be a partnership firm. All partnerships may not be a Joint Venture. A partnership firm can be created for the purpose of executing an object or a project. Section 8 of the Act of 1932 permits a partnership for a particular adventure or undertaking. A partnership firm therefore can be created for a joint venture of the partners to achieve an object or to execute a project.

47. Section 2(1)(c) of the Commercial Courts Act, 2015 has defined commercial dispute to mean amongst other, anything to do with the partnership agreement or a Joint Venture. Recognition of a partnership agreement and a Joint Venture as separate items under Section 2(1)(c) of the Act of 2015 does not mean that, a Joint Venture cannot be a partnership firm under the Act of 2015. As the definition stands, any dispute relating to a Joint Venture will be construed to be a commercial dispute as also a dispute relating to any partnership agreement. Segregating a partnership agreement and a Joint Venture under the Act of 2015 does not mean that, a Joint Venture cannot be a

partnership firm or that, a joint venture cannot be a partnership firm to execute a particular project or achieve an object.

48. On the anvil of law as discussed above, we have to assess whether or not, respondent no. 1 is a partnership firm. The respondent nos. 1, 2 and 3 have claimed that, the respondent no. 1 is a Joint Venture between the respondent nos. 2 and 3. They have claimed that, the respondent no. 1 was brought into existence in order to permit the respondent nos. 2 and 3 to participate in the subject Tender process. According to them, respondent no. 2 has certain qualifications while the respondent no. 3 has certain other qualifications and conjointly, they have requisite qualifications to participate in the tender process. Moreover, the tender process itself has permitted a Joint Venture entity to participate. Consequently, the respondent nos. 2 and 3 had constituted the respondent no. 1 as a Joint Venture entity to participate in the tender process.

49. Respondent nos. 2 and 3 had entered into the Memorandum of Understanding dated February 20, 2010 for

the purpose of creating the respondent no. 1. Relevant clauses of such Memorandum of Understanding are as follows:-

> *01. That under this MOU, the work will be done jointly and severally by the parties under the name and style of RAHEE-OPT (JV), a joint venture between RAHEE INDUSTRIES LIMITED & OPT. INFRAPROJECTS LIMITED.*
>
> *02. That all the parties to this JV, shall be jointly and severally be liable to the Railway for the execution of the tender project/works in accordance with the General and Special Conditions of Contract and also for the loss, damages caused to the Railways during the course of execution of the contract or due to the non-execution of the contract or part thereof.*
> *03. That the role of cash constituent of this JV shall be as under;-*
>
> *a. The first party shall be responsible for the Technical, Financial and all other obligations related to this tender project and shall hold 70% of capital contribution and ratio of profit*
> *b. The other party shall be responsible for the Technical and Managerial jobs related to this tender project and shall hold 30% of capital contribution and ratio of profit.*
> *04. That if Letter of Acceptance is issued in the name of this JV, an agreement among the parties to the J.V. shall be executed and got registered before the Registrar of Companies under the Companies Act or before the Registrar/Sub-Registrar under the Registration Act 1908 and this agreement shall be submitted to the Railways.*
>
> *05. That all parties to this Joint Venture shall not have the right to assign or transfer the Interest right or liability in the contract without written consent of the other parties to this JV and also of the Railways in respect of the said tender/contract.*

06. That the RAHEE INDUSTRIES LIMITED mentioned here as the first party whose share of interest in this JV indicates as 70%, being one of the members of this JV, shall be the lead member of this JV, who is having a major share of interest in this JV and who shall be prime contractor and responsible for timely completion of work and to co-ordinate with the Railways to receive payments and also to make all sorts of correspondences on behalf of this Joint Venture with the Railways, whose name and address will be M/s. Rahee Industries Limited, "Century Towers", 5th Floor, 45, Shakespeare Sarani, Kolkata-700017. That all notices/correspondences with respect to the Tender would be sent only to this authorised member of JV.

07. That the above said party as lead partner is authorised by the other party of this JV to deal with the tender, sign the agreement or enter into the contract in respect of the said tender, to receive payments, to witness joint measurement of work done, to sign measurement books and similar such works in respect of this said tender.

09. That the Joint Venture shall be valid during the currency of the contract including the period of extension if any and the maintenance period after the work is completed.

50. The respondent nos. 2 and 3 have also entered into the Joint Venture agreement on November 29, 2010. Relevant clauses of such Joint Venture agreement are as follows:-

2.1 The Parties have studied the documents, JV guidelines and have agreed to participate in submitting the Tender jointly; signed the JV MOU and submitted the bid accordingly.
2.2 M/S RAHEE INFRATECH LIMITED, the Lead Partner, shall be the lead member of the JV for all

intents and purposes and shall represent the Joint Venture in its dealing with the Employer. The lead member shall be authorized to sign and submit all documents and subsequent clarifications, if any, to the Employer. However, he will not submit any such proposals, clarifications or commitments before securing the written clearance of the other partner(s) which shall be expeditiously given by M/s GPT INFRAPROJECTS LIMITED to M/ RAHEE INFRATECH LIMITED.

2.3 The lead member shall sign the agreement or enter into contract in respect of the work awarded, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said contract. All notices/correspondences with respect to the contract would be sent only to the lead member of the JV-firm.

3. The Parties have resolved that the distribution of share, responsibilities, profits, losses and remuneration shall be as under

a) Lead Partner's share: 70%; Name RAHEE INFRATECH LIMITED

Responsibilities:

(Technical, Financial & other obligations)

i) Technical

ii) Financial

iii) Managerial

iv)Other obligation

b) Second Joint Venture Partner's share: 30%; Name GPT Infraprojects Limited.

Responsibilities:

(Technical, Financial & other obligations)

i) Technical

ii) Managerial

4. The constitution of JV firm shall not be altered during the currency of the contract except when modification become inevitable due to succession laws etc. provided that the minimum eligibility criteria are-not got vitiated. Failure to observe this stipulation shall be deemed to be breach of

contract, which will entitle the employer. The South Eastern Railway Administration to take all consequential action as per contract conditions.

5. JOINT AND SEVERAL RESPONSIBILITY
The parties undertake that they shall be jointly and severally liable to the South East Central Railway acting through Chief Engineer/ Con. South East Central Railway, Bilaspur or his assignees, for satisfactory execution and completion of the Project work In accordance with General and Special conditions of contract. The JV members shall also be liable jointly and severally for the loss, damages that may be caused to the South East Central Railway Administration, acting through Chief Engineer/Con, South East Central Railway, Bilaspur and during the course of execution of the contract or due to non-execution of the contract or part thereof. The parties solemnly affirm and declare that every possible care will be taken by them for ensuring satisfactory execution and completion of the work awarded under the contract.

6. ASSIGNMENT AND THIRD PARTIES
No member of the Joint Venture firm shall, have the right to assign or transfer the Interest, right or liability in the contract without the written consent of the other members and that of the Employer (South East Central Railway) in respect of-the said tender/contract.

7. GUARANTEES AND BONDS
The lead partner shall furnish all bonds/guarantees to the South East Central Railway Administration in the name of J.V. and on behalf of the J.V, which shall be legally binding on all the partners of the J.V.

8. USE OF MACHINERY, INSTRUMENT, LABOUR FORCE etc. For the execution of the respective portions of works, the parties shall make full arrangements, to bring the required finance, plants and equipment, materials, manpower and other

resources. However, the parties here to undertake that whatever anpow the machinery, Instruments, labour force, (Including unskilled, skilled, inspectors, Engineer etc.) they possess at the time of entering into Joint Venture Agreement or which subsequently shall come in their possession and if such machinery, Instruments, labour force is required for the speedy and efficient execution of any portion of the work, the party/parties having the control over the said machinery, instruments, labour force etc., without having any regard to their share of profit and loss agreed to between the parties in-Joint Venture Agreement shall hand over the same which shall be placed at the disposal of the other party actually executing that portion of the work at mutually agreed terms for the purpose of execution of the contract without any hindrance and obstacle.

9. DURATION OF JOINT VENTURE AGREEMENT
It shall be valid during the entire currency of the contract including the period of extension if any and the maintenance period after the work is completed and Security Deposit is released.

51. Special Terms and Conditions of the contract, which have been marked as Exhibit in appeal, has prescribed the format for the Joint Venture agreement. The Joint Venture agreement dated November 29, 2010 which the respondent nos. 2 and 3 have executed are in terms of such prescribed format.

52. The Memorandum of Understanding dated February 20, 2010 specifies that, the respondent nos. 2 and 3 who are the parties to such Memorandum of Understanding shall be

jointly and severally liable to the Railways for the execution of the project. The Memorandum of Understanding has delineated the role of the respondent nos. 2 and 3 in the Joint Venture. Clause 7 of the Memorandum of Understanding has identified the respondent no. 2 as the lead partner. The Memorandum of Understanding however, does not specify that, the two parties to the Joint Venture would not be able to bind the other by its actions.

53. The Joint Venture agreement dated November 29, 2010 has specified that, the respondent no. 2 would be the lead partner. It has authorized the respondent no. 2 to sign all agreements and enter into contract with the Railways on behalf of the Joint Venture entity. Clause 3 has specified share of profits, responsibilities and remuneration. Clause 5 has specified the joint and several liabilities for both the respondent nos. 2 and 3 with regard to the Joint Venture.

54. Clause 2 of the Memorandum of Understanding and Clause 5 of the Joint Venture agreement have created joint and several liabilities in respect of the Joint Venture for the respondent nos. 2 and 3. Clause 6 of the Memorandum of Understanding and Clause 3 of the Joint Venture agreement

have specified the ratio of sharing of profits and liabilities. Clause 1 of the Memorandum of Understanding has specified that, it would be the joint and several responsibility of the respondent nos. 2 and 3 to execute the project.

55. Clause 7 of the Memorandum of Understanding and Clause 2.2 of the Joint Venture agreement have identified respondent no. 2 as the lead partner of the Joint Venture.

56. In the facts and circumstances of the present case, therefore, there is a Memorandum of Understanding dated February 20, 2010 and a Joint Venture agreement dated November 29, 2010 expressing the intention of the respondent nos. 2 and 3 to enter into an agreement to execute a project, share the profits of such project and to create agencies between the respondent nos. 2 and 3. In our view, therefore all ingredients required for formation of partnership have been satisfied. In the facts and circumstances of the present case, respondent nos. 2 and 3 have agreed to create a partnership firm for a particular project, share profits of such project and create agencies between the respondent nos. 2 and 3. Respondent nos. 2 and 3 have agreed to be jointly and severally liable for the execution of the project.

57. There is one more aspect which has to be considered by us. The Special Conditions of Contract of the Railways provide that, the Joint Venture must either be a company incorporated under the Companies Act, 2013 or an existing company or Joint Venture agreement registered. The authorities cited before us have laid down that, an unincorporated body can neither sue nor be sued. Therefore, the clause of the Special Conditions of Contract have to be read and understood to mean that the Railways wanted a Joint Venture entity which is a legal entity capable of suing and being sued.

58. A Joint Venture must be a legal entity which is competent to enter into a contract. In the facts and circumstances of the present case, an authority within the meaning of Article 12 of the Constitution of India is involved as one of the parties to the contract. The appellants floated a tender permitting participation in such tender process by a Joint Venture. Special Conditions of Contract specified that, the Joint Venture may be a limited liability company. It did not rule out participation by a partnership firm also. In any

event, the implied condition is that, the Joint Venture must be an entity legally competent to enter into a contract.

59. The Special Conditions of Contract governing the tender process cannot and should not be construed to mean that, the same permits an Article 12 authority to enter into a contract with an entity which can neither be sued nor sue. Disputes in the working of the contract may arise between the parties. Resolution of such disputes through a process known to law must be made available to either of the contracting parties. Therefore, interpretation of the Special Conditions of Contract and for that matter the terms of the contract must be such that it conforms to the law of India. In the present case, the tender conditions specifically provide for the applicability of the laws of India to the parties to the contract. In any event, the right to approach a Court or an adjudicating forum for the purpose of resolution of such disputes must exist for either of the contracting parties.

60. Viewed in such conspectus where, the anvil is a Joint Venture entity which is capable of being sued as also of suing, in a Court of Law or before an adjudicating authority, the Joint Venture permitted to participate in the tender process

must therefore be a legal entity which possess such characteristics.

61. Consequently, the Joint Venture, under the Special Conditions of Contract must either be a company within the meaning of the Companies Act, 2013 or a company incorporated thereunder or a partnership firm.

62. An unregistered partnership firm suffers the mischief of Section 69(2) of the Act of 1932 while it seeks to sue. However, it can be sued. From the perspective of the appellants therefore, the Joint Venture contemplated under the terms of the tender process particularly the Special Conditions of Contract, is either a company incorporated under the Companies Act, 2013 or an existing company within the meaning of such Act or a partnership firm. No other entity or atleast an entity which is incapable of being sued or suing can validly enter into a contract with the appellants in terms of the Special Conditions of Contract.

63. Materials placed before the learned Trial Judge as also before us does not establish that, respondent no. 1 had caused respondent no. 4 to issue a bank guarantee in favour of the Railways in respect of the project concerned. Therefore,

respondent no. 1 has by the conduct of the parties been recognized to be an entity separate and distinct from the respondent nos. 2 and 3. Contemporaneously, respondent nos. 1, 2 and 3 have recognized that the respondent no. 1 to be separate and distinct from the respondent nos. 2 and 3 while Railways have done so as also the bankers of the respondent nos. 1, 2 and 3.

64. Respondent no. 1 being an entity therefore, the question that has fallen for consideration is whether it is a legal entity in the sense that, is it an existing company within the meaning of the Companies Act, 2013 or a partnership or any other legal entity.

65. No materials have been placed on record to establish that, respondent no. 1 is a company established under the Companies Act, 2013 or is an existing company. To be fair respondent nos. 1, 2 and 3, they have not suggested that the respondent no. 1 is a company. The other option that therefore remains is that, the respondent no. 1 is a partnership firm of the respondent nos. 2 and 3. We have already returned the finding that the respondent no. 1

satisfies all criteria of a partnership firm being the partnership of the respondent nos. 2 and 3.

66. It is trite law that compliance with Section 69 of the Act of 1932 is mandatory. It is also trite law that, registration of the partnership firm must exist on the date when the suit has been presented before the Court.

67. In the facts of the present case, it has been admitted by the respondent nos. 1, 2 and 3 that, the respondent no. 1 was not registered under the Act of 1932. Consequently, the mischief of Section 69(2) of the Act of 1932 stands attracted so far as the plaint that has been filed by the respondent nos. 1, 2 and 3 is concerned. The suit therefore filed by the respondent nos. 1, 2 and 3 is barred under Section 69(2) of the Act of 1932.

68. In the facts obtaining in ***Nortrans Marine Services (P) Ltd. (supra)*** it has been observed that, the bar under Section 69(2) of the Act of 1932 is required to be taken in the written statement. With due respect, we are of the view that, Section 69(2) of the Act of 1932 is a bar on the plaintiff to institute a suit for recovery when, the plaintiff is an unregistered partnership firm. It is for the plaintiff to establish while suing

as a partnership that, the bar under Section 69(2) of the Act of 1932 is not attracted. The burden and onus of such proof lies solely with the plaintiff when it sues as a partnership firm.

69. In the present case, the appellants did not raise objection under Section 69 of the Act of 1932 in its written statement. It reflects on the quality of assistance that the learned Trial Court had received from an Article 12 authority. Before us also the issue was not raised at the first instance by the appellant or in the Memorandum of Appeal. A lot remains to be desired on the quality of assistance that we had received from the appellant which is an Article 12 authority.

70. The respondent Nos. 1, 2 and 3 as plaintiffs, have not claimed that the respondent No. 1 is a partnership firm in so many words. However, the averments made in the plaint as also the reverification of the plaint filed by the respondent Nos. 1, 2 and 3 have established that, the plaintiff No. 1 is a partnership firm. In the reverification, the person re-verifying the plaint has described himself to be a partner.

71. Bar under Section 69(2) of the Act of 1932 cannot be waived even by the consent of the parties to the proceedings. Issue under Section 69(2) of the Act of 1932 resonates on the

jurisdiction of the Court to entertain a suit. Jurisdictional fact of Section 69 of the Act of 1932 must be answered in favour of the plaintiff for the Court to assume jurisdiction over the subject matter of the lis where, the sole plaintiff or one of the plaintiffs is a partnership firm.

72. The issue of bar under Section 69(2) of the Act of 1932 has been raised at the hearing of the appeal. Appeal is a continuation of the original proceedings. It is for the plaintiffs to come with clean hands before the Court. It is trite law that plaintiffs must place all relevant facts on the issue of jurisdiction of the Court to entertain the suit apart from its cause of action.

73. The bar under Section 69 of the Act of 1932 having been raised in the appeal, we had allowed both the parties to address us on such issue including producing any documents in respect of such issue. Respondent Nos. 1, 2 and 3 have produced the Special Conditions of Contract at the hearing of the appeal which we admitted and marked the same as Exhibit. None of the parties in our view, have been prejudiced by the issue being raised and decided in the appeal.

74. The facts and circumstances of the present case as discussed above, have established that, the respondent no. 1 is a partnership of the respondent nos. 2 and 3. It has also been established that the respondent no. 1 is not registered under the Act of 1932. The respondent nos. 1, 2 and 3 as the plaintiff have therefore failed in discharging their burden of proof in establishing that the bar under Section 69(2) of the Act of 1932 is not attracted to the suit filed by them.

75. The respondents as plaintiffs have sued the appellants claiming rights and reliefs emanating out of a contract. Essentially, the contract between the Railways and the respondent no. 1 has formed the subject matter of the suit. The respondents as plaintiff have not sought enforcement of any statutory or common law rights. Bar under Section 69(2) of the Act of 1932 cannot be overcome by impleading all parties to the unregistered partnership firm when such partnership firm has sought remedies relating to a contract.

76. In view of the discussions above, issue No. (i) is answered by holding that the respondent No. 1 is a partnership firm. Issue No. (ii) is answered by holding that, the respondent No. 1 is not registered under the Act of 1932

and admitted to be so by the respondent Nos. 1, 2 and 3. Issue No. (iii) is answered by holding that, the suit filed by the respondent Nos. 1, 2 and 3 is not maintainable in view of the non-registration of the respondent No. 1 under the Act of 1932. Issue No. (iv) is therefore answered by holding that, the impugned judgment and decree is not sustainable.

77. AD-COM 7 of 2026 is allowed by dismissing CS (COM) No. 56 of 2024.

78. Impugned judgment and decree dated March 10, 2026 passed in CS (COM) No. 56 of 2024 is set aside. No orders as to costs.

[DEBANGSU BASAK, J.]

79. I agree.

[ARYAK DUTT, J.]