

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

O.M.P. 594/2007 with CCP (O) 5/2008

Reserved on : 11th January, 2008
Date of decision : 23rd January, 2008

Smt. Kum Kum Mittal

.... Petitioner

Through : Mr. A.K. Thakur, Mr. R.K. Mishra,
Mr. Bharat Gupta, Advocates

versus

Shri Sandeep Mittal & Anr.

..... Respondents

Through: Mr. C.K. Rai, Advocate for
Respondent No.2 Mr. Ratan Kumar Singh, Advocates
for Respondent No1.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

MR. JUSTICE S. RAVINDRA BHAT

1. In this application under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner claims orders for restraining the first respondent from carrying out changes in the cold storage and Chamber No.3 which has allegedly become in-operational, and a

further direction to the said respondent to deposit 50% income from the Delhi Cold Storage w.e.f. 27.7.2005.

2. Disputes arose between the heirs of Late Shri S.K. Mittal, who died on 14.12.1986 regarding the share in his estate and business. The petitioner is his widow, and the respondents, his sons. The disputes were apparently sought to be settled through documents, however since a further differences arose, the parties agreed to, and referred them for arbitration by Justice P.K. Bahri (Retired) – hereafter called “the Arbitrator”.

3. The agreements/settlement executed by parties, were dated 01.10.2001 (family settlement) and implementation Agreement (dated 22.03.2001). The Arbitrator made his award on 27.07.2003 and are order dated 31.1.2007 under Section 33 of the Act, on application of all parties. According to the award, the following directions were issued :

“156. I, thus make the award as follows :

- (1) That the terms of the Family Settlement and Implementation agreement are binding on the parties.*
- (2) That the reports of the valuer of not current current assets of DCS & SACL are binding.*
- (3) That Group No.3 (Sh. Sandeep Mittal) is directed to*

pay to Group No.2 (Sh. Ravi) Rs.57,49,064/- (Fifty-seven lac, Forty-Nine thousand and Sixty-Four) within three months from the date of this award.

- (4) That Group No.3 (Sh. Sandeep) shall pay Rs.91,934/- to Group No.1 (Smt. Kum Kum Mittal) within three months of the date of this award and continue to pay monthly payment of Rs.73,205/- with annual increase of 10%.*
- (5) That the transfer of shares of DCS in favour of wife of Sh. Sandeep or any one else is illegal and void.*
- (6) That the parties shall take steps to sell SIL and on failure to do so, the executing court will make appropriate orders so that SIL is sold or dealt with appropriately.*
- (7) That the Group NO.2 & Group No.3 will take steps jointly/individually to revive SACL and expenses for the same shall be shared equally by Group No.2 and 3. In case of failure to do so, the executing court will deal with matter as appropriate. Steps will be taken to separate and vest the Paper division in Group No.3 and the Fertilizer division in Group No.2.*
- (8) That the parties shall take steps to separate and vest the Cold Storage at Roshanara Road in favour of Group No.2 failing the executing court will get the needful done. The Group No.3 shall be responsible to bear necessary expenses in that regard.*
- (9) That the Group No.2 and Group No.3 shall take steps to sell the Chandpur properties & sale proceeds shall be shared equally between them. On*

failure to do so, the executing court may take steps to sell the same or make any other appropriate order.

- (10) That the parties shall within three months make disclosure to each other of remaining mutual funds and liquid assets and the executing court will deal with the same as appropriate.*
- (11) That on Group No.3 (Sh. Sandeep) making the aforesaid payments and taking all steps in transfer all the shares of DCS standing in names of Group No.1 & 2 in favour of Group No.3 or its nominee.*
- (12) That Sh. Ravi shall transfer his share as partner in the firm M/s. Sahu Basheshher Dyal Bankers in favour of any nominee of Sh. Sandeep.*
- (13) That all claims of the parties inter-se stand determined.*
- (14) That till Group No.3 (Sh. Sandeep) makes the payments as per above, Group No.3 is restrained from alienating transferring or creating any encumbrance on the assets belonging to it.*
- (15) That in case Group No.3 (Sh. Sandeep) falls to make the payments as mentioned above, interest at the rate of 10% p.a. on the outstanding payments would be payable from the date of death till payment.*
- (16) That the parties shall bear their own costs of these proceedings.”*

4. A reading of paras 136-145 of the award shows that the respondent's pleas

regarding invalidity or ineffectiveness of the family settlement was rejected. The arbitrator, however accepted that plea so far as it concerned the petitioner's entitlement to 50% profits of Delhi Cold Storage (P) Ltd., and ruled that such a condition was unenforceable. The rival averments of the parties in these proceedings show that each of them has challenged the award on separate grounds.

5. It is urged on behalf of the petitioner that the first respondent is mismanaging the affairs of the Delhi Cold Storage and seeking to make substantial alterations, undermining its effectiveness. This is term would affect her share in the profits. It was urged that removal of the insulation of Chamber No.3 would materially threaten the economic viability of the Cold Storage. It was urged, in addition, by placing reliance on CCP 5/2008 that the first respondent, despite the status quo order of Court, willfully sought to install equipments brought from Bangalore. Counsel urged that besides passing the orders under Section 9, the respondent should be dealt with the indicted for violation of this Court's orders, under order 39, Rule 2-A, Code of Civil Procedure.

6. The proceedings were resisted on behalf of the first respondent; it was

submitted that the award had adequately protected the interests of the petitioner; she was granted immovable properties; in addition she was awarded about Rs.92 lakhs and held entitled to Rs.73,205/- per month with annual increase of 10%. The objections for not awarding 50% share in profits of the company are as yet unadjudicated. In the circumstances, the Petitioner cannot claim that renovation of the property and assets falling to the share of the first respondent constituted a violation of her rights, or that installation of insulation equipment, and renovation of the premises, to ensure its better maintenance infringed this Court's status quo order.

7. A careful examination of the Arbitrators award shows that the entitlements of the parties were worked out and dealt with in detail. The petitioner's rights have been spelt out in para 156(4). Similarly, the respondent No.1 has to pay the second respondent amounts directed under para 156 (3). As a measure of protection to secure the amounts, and entitlements, the first respondent, till discharge of those liabilities, has been restrained from alienating or transferring, or encumbering the assets falling to him. In these circumstances, the petitioner, to the extent, is entitled to an injunctive order in tune with the award.

8. As far as the question of injuncting the first respondent from carrying on renovation or making changes in the insulation Chamber No.3 is concerned, it has to be kept in mind that the property and assets in that item belong to him. So long as he does sell, transfer or encumber it, the petitioner cannot, without first succeeding in her objection regarding incorrectness of the award denying 50% of the share in the company, object to such moves. After all, being entitled to the asset – and a commercial one at that – the first respondent is entitled to deal with it to reasonably maintain it for legitimately enhancing its income generating abilities. This Court therefore does not see any reason to extend the injunctive relief beyond what was given in the award; for the same reason, it finds no merits in CCP 5/2008.

9. In the light of the above discussion, an order restraining the first respondent from transferring, alienating, or in any manner encumbering the assets which are subject matter of the award, in para 156 (14), till disposal of objections to the award, under section 34 of the Act, is issued. OMP No.594/2007 is allowed to the above extent. CCP No.5/2008 is dismissed, for the reasons discussed in the preceding paragraph. In the circumstances, the parties are left to bear their costs.

(S. RAVINDRA BHAT)
JUDGE

Dated : 23rd January,2008