

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

Date of Reserve: 14.7.2009
Date of Order: 15th July, 2009

OMP No. 371/2009

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15.7.2009

Lt. Col. Ratan Singh Gaba & Anr. ... Petitioners
Through: Mr. Sanjeev Anand, Advocate

Versus

S.N.Mishra & Ors. ... Respondents
Through: Ms. Kriti, Advocate for R-1 & R-2
Mr. Sunil Bainsla, Advocate for R-3
Mr. S.Chandra Sr. Advocate for R-5

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER

Notice of the petition was served upon the respondents. Respondents' Counsel appeared and with consent of parties the arguments on the petition have been heard finally.

2. This application under Section 9 of the Arbitration & Conciliation Act, 1996 has been made by the petitioners with a prayer that the Court should

stay the decision dated 16th June 2009 of Board of Directors of respondent no.5 company relating to rights issue and also should stay the operation of letter dated 20th June 2009 issued by respondent no.5 company to shareholders with respect to rights issue.

3. Brief facts relevant for the purpose of deciding this petition are that the petitioners' Group was holding 59% shares in respondent no.5 company. The petitioner no.1 (for self and as power of attorney holder of his family members) entered into a Memorandum of Understanding (MoU) dated 5.7.2008 with Mr. Arun Bhan, respondent no.3. Under this MoU it was agreed that 59% shareholding of the petitioners shall be purchased by respondent no.3 for a total consideration of Rs.3,02,66,073/- The price was net on spot delivery basis. It was also agreed that respondent no. 3 Mr. Arun Bhan may purchase the shares himself or any of his representative may purchase the shares. It was further agreed that in the event of respondent no.3, Mr. Arun Bhan, failing to make the payment against purchasing of these shares on or before 31st December, 2008 as mentioned in the agreement, the petitioner would be free to sell these shares to anyone, in any manner deemed fit by the petitioner, either in the market or by private sale. During currency of this MoU out of 59% shares of the petitioner, 25% of shares of respondent no.5 company were purchased by nominee of Mr. Arun Bhan viz. M/s Jyoti Infrastructure Private Limited (respondent no.4) and the petitioner was left with 34% shareholding in respondent no.5. Another

agreement was entered into between the parties on 31st January, 2009 called as Credit Facility Restructuring-cum-Shareholder Agreement (hereinafter referred to as Shareholders Agreement) in which all shareholders of the company and the company itself were made as a party and it was agreed under this agreement that the remaining 34% shares of the petitioner shall be bought on or before 30th April, 2009 and in the event the sale purchase was not concluded by 30th April, 2009, the earlier MoU and the Shareholders' Agreement shall come to an end and petitioner would be at liberty to dispose of and sell these shares in the market or to any private party at the price to be decided by him. Under the Shareholders' Agreement, the price mutually fixed between the parties was Rs.22.50 per share.

4. It is contended by the petitioner that the Board of Directors of the Company had decided to issue rights shares to the shareholder and a letter has also been received by the petitioner to subscribe to the rights issue by 15th July 2009 failing which shares would be offered to others. It is submitted that under the MoU and under the Shareholders' Agreement, the petitioner was to exit from the company and for that reason only it was agreed between the parties that the entire shareholding of the petitioner would be purchased initially by Mr. Arun Bhan respondent no.3 and later on this agreement was entered into with all the shareholders of the company. It is submitted that in case rights issue is brought out by the company, the petitioner would be compelled to shed more money or

the petitioners' holding in the company would reduce from 34% to a lower level and petitioner's 'say' in the company would accordingly reduce. It is therefore contended that the Board of Directors of respondent no.5 company should be restrained from bringing out rights issue.

5. A perusal of the Shareholders' Agreement relied upon by the petitioner would show that after 30th April, 2009 the petitioner was given liberty to dispose of and sell his shares to anyone. The petitioner cannot say that despite having this liberty of selling the shares to anyone at the price of his choice, the petitioner can still bind the respondents from either purchasing 34% shares or from not conducting the business of the company in normal course. If the company/respondent no.5 considered that it should increase its equity by bringing out rights issue, the Restructuring Agreement/Shareholders' Agreement puts no restrictions on the company on such a move. No dispute can be raised by the petitioner under Shareholders' Agreement in respect of rights issue as neither the rights issue nor the restrictions on the conduct of business by the Board of Directors figure in the Shareholders' Agreement. I, therefore, consider that the application under Section 9 of the Arbitration & Conciliation Act, 1996 made by the petitioner is misconceived. An application under Section 9 can be made only for the purpose of keeping the subject matter of dispute intact. In this case, it is not stated by the petitioner as to what is the dispute sought to be raised by him and how bringing out of right issue by the Board of

Directors/Management of respondent no.5 company was contrary to the agreement even after 30th April, 2009, when the petitioner was at liberty to dispose of his shares as per his own choice. Moreover, the petitioners are shareholders and have Directors on Board of respondent no.5. He can oppose the decision of right issue only in the Board meeting. In absence of any clause in the Shareholders' Agreement regarding conduct of the business of the company, he cannot rack up this dispute of rights issue before the Arbitrator.

I find no force in the application. The application is hereby dismissed.

July 15, 2009
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SHIV NARAYAN DHINGRA, J.