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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 24, 2009

Date of Order: October 26, 2009

+OMP 398/2009

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26.10.2009

Ms. Pooja Gambhir & Ors.

...Petitioners

Through: Mr. Harish Malhotra, Sr. Advocate with Mr. Naveen R. Nath,
Advocates

Versus

Mr. Parveen Jain & Ors.

...Respondents

Through: Mr. Ashish Aggarwal with Mr. Rajesh Rattan, Advocates

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?

JUDGMENT

1. Petitioners had earlier made a petition/ application under Section 9 of the Arbitration & Conciliation Act, 1996 ("the Act", for short) being OMP 74 of 2009 which was disposed of by this Court vide order dated 19th May, 2009. This is a second petition/ application preferred by petitioners under Section 9 of the Act with following prayers:

"a) appoint a court receiver with the directions to take possession of the entire assets, movable and immovables, plants and machinery and factory premises of company M/s TI Steels Pvt. Ltd. situated at Plot No.15 Gondpur Industrial Area, Phase-III, Poanta Sahib, H.P. and to make inventories thereof and to preserve the same till the arbitrators decide the disputes amongst the parties and make their award;

b) issues an ad interim injunction in favour of the petitioners and

against the respondents thereby directing the respondents to deposit the sum of Rs.2,39,00,000/- which is due upto 15th July, 2009 and thereafter to keep on depositing @ Rs.22 lac p.m. by 15th of every month till the disposal of the matter by the arbitrators;

- c) cost of the application be also awarded in favour of the petitioners and against the respondents."*

2. While disposing off the earlier application/petition this Court had restrained respondents from selling or disposing of their property bearing number B-317, Saraswati Vihar, Pitam Pura, Delhi and immovable property situated at D-8 & Swarn Park, Mundka till respondents do not substitute the security furnished by petitioners to Vijaya Bank and settle the accounts of petitioners. Respondents were also restrained from selling movable assets of M/s T.I. Steel Pvt. Ltd. This injunction continues. Petitioners have stated in the present petition that they have come to know that despite passing of injunction order, respondents sold away the properties situated at D-8 & Swarn Park, Mundka measuring 1000 sq. yards approximately and at B-46 Swarn Park, Mundka measuring 1000 sq yards on 26th February 2009 and 15th April, 2009.

3. Clause 13 of the agreement as entered into between the parties provides that in case of default in payment of the monthly amount as reserved in the MOU, the second party shall pay interest @ 2% per month till the payment is made and in case second party remains defaulter for a continuous period of four months, the right to carry on business by the second party will be stopped and all rights of business including full control will go in favour of the first party. In case of such default first party has been

given right to recover money as stated in clause 13 regarding closure of unit, except of 65 lac shares which are to be encashed @ Rs.15 per share instead of Rs.10/-.

4. It is noteworthy that petitioners had not exercised the option of termination of the agreement because of the default and had also not sought control of business from respondents. What is stated by the petitioners in the present petition is for appointment of a receiver to take possession of the entire immovable assets and movable assets and machinery etc and also directions to respondents to deposit Rs.2,39,00,000/-.

5. Respondents on the other hand in reply to this petition/ application have taken the stand that it were the petitioners who had failed to fulfill their part of obligations under the MOU. It is submitted by respondent that it was the liability of petitioners to discharge all debts of the company prior to 1st April 2007. It is submitted by respondent that several creditors of the company, taken over by respondents, emerged after signing of MOU between the parties. These creditors were not brought to the notice of respondents. These creditors have been filing cases against respondents' company and the liabilities of the respondents to these creditors is much more than the liability to the petitioners under the MOU. Thus, in view of this situation, nothing was payable to the petitioners and respondent would have to pay to creditors and, therefore, the instant application/ petition was misconceived. The respondents have filed documents showing total liability amounting to Rs.4,88,58,920/- towards the creditors.

6. Considering the terms of MOU as agreed between the parties, I

consider that it is not appropriate for this Court to appoint a court receiver of the properties, more so when the petitioners who had the option to terminate the agreement, did not chose the option and did not take over the factory. I also consider that this Court cannot ask respondents to deposit Rs.2,39,00,000/- in the Court since this Court cannot go into the merits of the matter and find out as to what were the liabilities payable by the petitioners and what were the liabilities payable by respondents. I, therefore, find no force in this petition/ application. The petition is hereby dismissed. No orders as to costs.

October 26, 2009
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SHIV NARAYAN DHINGRA J.