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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 540/2009

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26.10.2009

Kapoorchand A. Singhvi & Ors.

...Petitioners

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

Versus

Pooja Gambhir & Ors.

...Respondents

Through: Mr. Harish Malhotra, Sr. Advocate with Mr. Naveen R. Nath, 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 have preferred this petition under Section 9 of the Arbitration & Conciliation Act, 1996 consequent to OMP No.398 of 2009. An MOU dated 6th September 2008 was entered into between two groups, one group consisted of Ms. Pooja Gambhir and Ms. Stuti Gambhir and the second group was of four persons viz. Mr. Praveen Jain, Mr. Sanjeev Singhal, Mr. Kapoorchand A. Sanghvi and Mr. Abhay Ram Jain. As per MOU the control of company M/s TI Steel Pvt. Ltd. had to go to Mr. Praveen Jain and other 2nd group on performance of certain obligations as given in the MOU and on payment of amount as reserved in MOU to the first party i.e. Ms. Pooja Gambhir and Ms. Stuti Gambhir. Petitioner in this petition is Mr. Kapoorchand A. Sanghvi son of Shri Ashmal G. Sanghvi and he has made Mr. Praveen Jain, Mr. Abhey Ram Jain, Mr. Sanjeev Singhal as respondents. There are many other names given in the Memo of Parties of this petition who are not parties to the MOU, viz. petitioner no.2, respondent no.4, 7 and 8. Those person who

are not parties to the MOU, cannot be made parties to an application under Section 9 of the Arbitration & Conciliation Act. Their names are therefore struck off. Some disputes seems to have arisen among the members of second group inter se, which are not relevant for purpose of this petition.

2. The contention of petitioners is that after entering into MOU, the petitioner discovered that there were huge dues over TI Steel Company. The dues were of Punjab State Electricity Board, Scrappers Electricals Limited, Hotel Grand Trunk, M/s. Aggarwal Pvt. Ltd., M/s Golden Transport, etc. The petitioners sent a notice dated 16th January 2009 asking respondents no.1 and 2 to clear all liabilities of the company arising up to 31st March, 2009. The respondents no.1 and 2, were to clear the dues as per MOU but did not clear the same. It is submitted that in view of the fact that respondent no.1 and 2 have to pay heavy amount to ICICI Bank and the respondents failed to pay their liabilities under MOU despite notice, the petitioner was apprehensive of a fraud and, therefore, the Court should direct respondents no.1 and 2 to deposit an amount of Rs.14 crore in the form of FDR either in the name of petitioner no.3 company or in the name of the Court. It is also submitted that the Court should grant permission to the petitioners to sell the entire shareholding of respondent no.1 to 4 and their associates worth Rs.6.98 crores in the said company towards liquidation and payment of dues.

3. A perusal of the petition shows that the petitioner has sought to make out a case for recovery of the amount from respondents no.1 to 2 forgetting that Section 9 of Arbitration & Conciliation Act is not meant for recovery of amount. It is also apparent that the present petition is a counterblast to the petition filed by respondents no.1 & 2 under Section 9 of Arbitration & Conciliation Act being OMP No.398 of 2009.

4. The MOU between parties provides that in case of breach of terms and conditions of MOU and MOU can be terminated. Neither the petitioners nor respondents have terminated the MOU. It seems that both side are trying to play a game; without actually discharging their obligations under the MOU. The petitioners in this case along with other persons of Group Two have failed to make payment to respondents no.1 and 2 in accordance with MOU on the plea that they had discovered previous liabilities of company payable by respondents no.1 and 2. The 2nd Group also failed to substitute their own security in place of security furnished by respondents no.1 and 2 for the loan taken for operations of the company and used by the company. Now the petitioner wants permission to sell all the shares of respondents no.1 and 2 as if the company had not been worth at all and the petitioner had taken up the company along with other respondents without it's having any worth. I consider that if the picture had been as grim as painted by the petitioner, the petitioner would have terminated the MOU and sought restoration of the status prior to signing of MOU. Second Group could leave the company to Group One and let Group One manage the company. Instead petitioners are asking this Court to crystallize the liabilities of both sides under Section 9 and to direct respondents no.1 and 2 to make payment or give security of the amount which has not been determined by any process. The present petition filed by petitioner is nothing but a counterblast and the same is hereby dismissed being not maintainable with costs of Rs.25,000/-.

October 26, 2009
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SHIV NARAYAN DHINGRA J.