

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

% Judgment delivered on: 16.08.2011

OMP No.41/2011 & IA No.10730/2011

M/S KOLMET ENTERPRISES & ORS. Petitioners
Through: Mr S.K. Maniktala, Adv. with
Mr Pratyush Sahay, Adv.

versus

MR SURJIT SINGH KOHLI & ORS Respondents
Through: Mr M.M.Kashyap, Adv. for R-1.

CORAM:-

HON'BLE MR JUSTICE MANMOHAN SINGH

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

yes

MANMOHAN SINGH, J

1. By this order I shall dispose of the main petition as well as application filed by respondent No.1 under section 151 of CPC seeking vacation of interim order dated 18.01.2011.

2. The petitioners have filed the instant petition under section 9 of the Arbitration and Conciliation Act, 1996 read with section 151 of CPC. Brief facts of the case are that the petitioner Nos.2 to 7 and the respondents had been carrying on their business in partnership under the name and style of M/s Kolmet Enterprises under the partnership deed

Signature Not Verified

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By:AMULYA

OMP No. 41/2011

Page No.1 of 8

dated 07.05.1991 having its head office at 1408, Chiranjeev Towers, Nehru Place, New delhi-110019. M/s Kolmet Enterprises (hereinafter referred to as petitioner No.1) is a duly registered firm with the Registrar of Firms, Delhi and is engaged in the business of running a restaurant under the name and style of "The Host" at F-8, Cannaught Place, New Delhi for the last more than 30 years.

3. It is averred in the petition, that Petitioner Nos. 2 to 7 and respondent No.2 collectively hold 86% share in the petitioner No.1 firm whereas respondent No.1 holds 14% share in the petitioner No.1 firm. The partnership deed dated 07.05.1991 provides that petitioner Nos.2 & 3 and are to act as Managing Partners of the petitioner No.1 firm, and thus the said petitioners have been managing the affairs of the petitioner No.1 firm.

4. The grievance of the petitioners is that recently respondent No.1 issued separate letters/notice of revocation dated 09.12.2010 to the petitioner No.5 and notice dated 19.12.2010 to the petitioner Nos.2 & 3 asking them to withdraw from the position of Managing Partners of the petitioner No.1 firm and revoking the powers of the said Managing Partners to operate the bank accounts of the petitioner No.1 firm. Acting upon the said notices of respondent No.1, the respondent No.3 suspended the operations of bank account of petitioner No.1 firm on 22.12.2010, as

a result of which the entire banking operation of the petitioner No.1 firm has been stopped, thereby seriously affecting its business.

5. It is stated by the petitioners that due to such conduct of the respondent No.1, serious differences have cropped up between the parties. Therefore, the petitioners have invoked the Arbitration Clause, as enshrined under clause 15 of the partnership deed dated 07.05.1991. The clause 15 reads as follows:

"Any dispute or difference which may arise between the partners or between partners and the legal heirs and successors of a deceased partner with regard to the construction, meaning or effects of this Deed or any part thereof or respecting the accounts, profits or losses of the business of the rights and liabilities of the partners under a Deed of Dissolution or any matter relating to the firm shall be referred to Arbitration and the provisions of the Arbitration Act, 1940 shall apply thereto."

6. The petitioners have nominated their respective nominee arbitrator and have also called upon the respondent to do the same at earliest so as to avoid any delay in the adjudication of their disputes. Petitioner No.2 has nominated Mr. Krishan Narang, Advocate as his nominee, petitioner Nos. 5, 6, and 7 have nominated Mr. P.L. Singla, Additional District Judge, Delhi (Retd) as their nominee arbitrator and petitioner Nos. 3 & 4 have nominated Mr. Rajeev Mago, Chartered Accountant as their nominee arbitrator. But, the respondents are yet to

take steps in this regard so that the arbitral tribunal can be complete, thus, the constitution of the Arbitral Tribunal is likely to take some time.

7. It is further stated in the petition, that due to the present disputes and the acts of respondents, the petitioner No.1 firm has already suffered immense pecuniary loss as well as loss of goodwill and reputation. The petitioner No.1 firm at present has about 100 employees who need to be paid, but, the petitioner No.1 firm could not do so because of the suspension of its bank account. Therefore the petitioners filed the instant petition on 13.01.2011.

8. On 18.01.2011 this court passed interim order allowing the existing arrangement of operation of accounts of the petitioner no.1 firm with the respondent No.3 to continue till the next date of hearing but the said order continued on account of adjournments. Therefore, the respondent No.1 filed the instant application seeking vacation of stay of order dated 18.01.2011 mainly on the following reasons :

(a) That by the arrangement continued between the parties the respondent No.1 already suffered a loss of Rs. 1,58,33,610.69/- and the petitioners still want to continue the arrangement without initiation of arbitration.

(b) No effective steps have been taken by the petitioner to convene the arbitration proceedings, therefore, in failure to do so, the

interim order passed on 18.01.2011 be vacated in view of the settled law on this point.

9. In the reply to the petition, filed on behalf of the respondent No.1, it is stated that the petitioners are committing various acts in violation of the partnership deed dated 07.05.1991. In August 2010 the respondent No.1 came to know that the petitioners have given loans to various companies without the knowledge of respondent No.1 and this is in violation of clause 10 of the partnership deed dated 07.05.1991.

10. Further, it is stated that the managing partners in partnership with the other partners are running the business of Host Inn on the first floor above the Host restaurant and after the August 2010 the respondent No.1 came to know that one of the employee of the said Host Inn namely Om Prakash had been receiving his salary from the account of the petitioner No.1 firm and when he retired in September 2010, he was paid a sum of Rs. 2 lac also from the account of petitioner No.1 firm. Similarly another employee of Host Inn namely Prem Singh Bisht also has been paid from the account of petitioner No.1 and one Mr. S.P Kakkar working for R.S. Avtar & Co. was also paid a sum of Rs. 2 lac on his retirement from petitioner No.1's account.

11. Further it is stated that the petitioners have acted in haste by appointing three arbitrators when the present disputes should be

adjudicated upon by only one retired Judge of this Court or the High Court of Punjab & Haryana.

12. During the course of hearing of the petition as well as the application filed by the respondent No.1 for vacation of the order dated 18.01.2011, it is stated by the counsel that there is no delay on the part of the petitioners and in fact the order dated 18.01.2011 was passed with the consent of the parties. The learned counsel for the petitioners has specifically made a statement that the petitioners have no objection if the sole arbitrator is appointed by this Court to adjudicate the disputes between the parties as suggested by the respondent No.1. He further says that this court may fix the schedule for the said adjudication and the petitioners would not take adjournment in the matter and the said proceedings be decided within a period of 3-4 months from first date of sitting. Lastly he submits that the interim arrangement as agreed by the parties as mentioned in the order dated 18.01.2011 be continued unless it is modified/vacated.

13. The learned counsel for the petitioners also denied the allegations made by the respondent No.1 in its pleadings by saying that the petitioners have no objection if the respondent No.1 inspects the accounts of the firm at any point of time and the petitioners would provide the full assistance to access the same and after doing so he can raise his claim before the sole Arbitrator.

14. The learned counsel for the respondent No.1 is agreeable for all the suggestions given by the learned counsel for the petitioners provided the interim order passed on 18.01.2011 is vacated. He has referred the following decisions in support of his submissions:

(a) *Newage Fincorp (India) Ltd. v. Asia Corp. Securities Limited* 2001 (1) RAJ 170 (Bom);

(b) *National Building Construction Corpn. Ltd. (NBCC) v. IRCON International Ltd.* 2005 (1) RAJ 540 (Delhi);

15. After hearing the parties, this Court is not inclined to accept the prayer made in the application for vacation of the order passed on 18.01.2011, rather to dispose of the main petition itself by appointing Mr. Ajay Verma, Adv. Phone No.23263307/95120-2512387/2512390 as sole Arbitrator to adjudicate the disputes between the parties. The learned sole Arbitrator is requested to decide the disputes between the parties within a period of 4-6 months from the date of first meeting. The interim arrangement already made between the parties shall continue till the time such order is modified/vacated by the arbitrator. In case any application is filed by the respondent No.1 for vacating the said orders, the same be disposed of within four weeks from the date of filing as agreed by the petitioner also. The same would be decided by the sole arbitrator as per its own merit and without any influence of order dated 18.01.2011.

16. Though, none of the parties has filed the application under Section 11 of the Act for appointment of sole arbitrator. As both the parties are agreeable for the same, the request is therefore allowed, however, the petitioner is directed to deposit a sum of Rs. 10,000/- before the Registrar General of this court as fixed fee on filing such application within two weeks from today.

17. The learned Arbitrator would conduct the proceedings as per rules of Delhi High Court Arbitration Centre and his fee also be paid by the parties in equal shares as per the schedule thereof.

18. No further orders are required, the present petition is disposed of.

19. Order be given Dasti to the parties and a copy of the same be also sent to the sole Arbitrator who shall fix the next date after issuance of notice to the parties.

MANMOHAN SINGH
MANMOHAN SINGH, J

AUGUST 16, 2011

jk/dp

- From R.A. 544/11 filed by R-1 v/o XLVII,
R-1 & 3 v/o Sec 114 CPC)

- From I.A. 15551/11 filed by R-1 v/s 151 CPC
for exemption)

- Petition is already disposed of

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

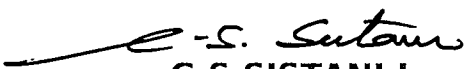
+ O.M.P. 41/2011

M/S KOLMET ENTERPRISES & OTHERS Petitioners
Through : Mr. S.K. Maniktala, Adv.

versus

SURJIT SINGH KOHLI & OTHERS Respondents
Through : Mr. Shiv P. Pandey, Ms. Rashmi Pandey
and Mr. Raghav Pandey, Adv. for
respondent no.1.**CORAM:****HON'BLE MR. JUSTICE G.S.SISTANI****ORDER**% **03.11.2011****I.A.NO.16336/2011.**

1. This is an application filed by the petitioners seeking clarification of the order dated 16.8.2011, by which, while appointing the Arbitrator this Court had directed that Arbitrator would conduct the proceedings as per Rules of Delhi High Court Arbitration Centre and his fee would also be paid by the parties equally as per Delhi High Court Arbitration Schedule.
2. It is clarified that Arbitration would be conducted under the aegis of Delhi High Court Arbitration Centre and its Rules and the parties will appear before Delhi High Court Arbitration Centre on 22.11.2011 at 4.00 p.m.
3. Application stands disposed of.
4. Let a copy of this order be given DASTI to counsel for the parties to enable them to bring it to the notice of learned Arbitrator.


G.S.SISTANI, J.
NOVEMBER 03, 2011

msr