

IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 246 of 2012

RAJINDER NATH

..... Petitioner

Through: Mr. P.V. Kapoor, Senior Advocate
with Ms. Geetika Panwar and
Ms. Rashmi Gogoi, Advocates

versus

PREM NATH MOTORS LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Mehra, Senior Advocate with
Mr. Sanjay S. Chhabra, Advocate for
R-1 & 2.
Mr. N.K. Vohra, Advocate for R-3.
Mr. Atul Nanda, Senior Advocate with
Mr. Balaji Subramanian and Mr. Samar
Bansal, Advocates for R-4A & 4B.
Mr. Sudhir Chandra, Senior Advocate
with Mr. Jitender Vohra, Advocate
for R-5.

CORAM: JUSTICE S. MURALIDHAR

ORDER
25.05.2012

IA No. 9790 of 2012 (for taking on record the amended memo of parties)

For the reasons stated therein, this application is allowed. The amended memo of parties is taken on record.

The application is disposed of.

OMP No. 246 of 2012

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') by Mr. Rajinder Nath seeks interim measures in relation to the disputes between the Petitioner and the Respondents arising out of a Partial

Settlement Agreement entered into between the Petitioner and Respondents 2, 3 and 4 for division of the family businesses and assets.

2. The background to the present petition is that late Mr. Prem Nath Bhel together with his sons Mr. Surender Nath, (Respondent No. 2) late Mr. Narender Nath represented by his wife Mrs. Vijay Bhel, (Respondent No. 3), late Mr. Devinder Nath represented by his wife Mrs. Surendri Bhel and his son Mr. Shivinder Bhel (Respondent Nos. 4A and 4B) and the Petitioner Mr. Rajinder Nath conducted business through various companies. Initially, late Mr. Prem Nath Bhel had set up a business of motor car agency and repair. Later, the family floated several companies including Prem Nath Motors Limited ('PNML'), Respondent No. 1, Prem Nath Diesels Private Limited ('PNDPL'), Prem Nath Motors Workshop Private Limited ('PNMWPL'), and four other companies. It is stated that all the family members held shares in the companies and had a direct and legal interest in the assets of the companies.

3. The present dispute concerns the premises owned by PNML and leased to it at Mandir Marg which comprised a large contiguous area consisting of entrance and parking, two storey administrative block, two sheds of about 5000 sq.ft. each and a large shed in the rear of about 35000 sq.ft. The said premises at Mandir Marg has been sub-leased to PNMWPL.

4. The Petitioner claims that his group, which comprises his wife and children, hold 28.4% shares in PNML. The rest of the shares are held by the other three branches of the family of late Mr. Prem Nath Bhel who died on 2nd October 1959. After disputes arose between the four branches of the family in 1988, several proceedings came to be instituted by the family members. In a petition heard by this Court an order was passed on 22nd

September 1999 referring the disputes to the sole arbitration of Mr. Justice P.K. Bahri (retired). The learned Arbitrator was requested to decide by way of an interim Award the question of division of assets of the companies so that the parties could receive their respective shares.

5. During the pendency of the arbitration proceedings a compromise was arrived at between the parties in the form of a Partial Settlement and an application was filed under Order XXIII Rule 3 CPC before the learned Arbitrator for taking the said Partial Settlement on record.

6. On 31st January 2001 the learned Arbitrator passed the following order in the arbitration proceedings:

“31.1.2001

Yesterday again efforts were made for bringing about conciliation between the parties and fortunately efforts have succeeded and draft compromise petition has been prepared by the parties and they have agreed to sign the same today and the matter has been taken up. The compromise petition has been signed by all the Groups including their respective counsel. Powers of attorney of Mrs. Mohini Bhel, Mrs. Kiran Aggarwal, Mrs. Meenu Sehgal, Mrs. Gita Dutt and Mrs. Devika Bhel in favour of Shri Surender Nath, already stand filed on record. He has signed as attorney on behalf of them. Shri S.C. Dhanda has the power of attorney on behalf of all members of the said group except Mrs. Kiran Aggarwal who is abroad and he undertakes to file her power of attorney in his favour as soon as he receives the same.

All the aforesaid parties have now stated before me that they will voluntarily and willingly signed the compromise petition and they want that the terms of the said compromise be implemented. I thus take the said compromise petition on record and pass orders in terms of the said compromise petition as agreed.

For further proceedings, the hearing shall take place on 3rd February 2001 at 5 pm.

Sd/-

(Justice P.K. Bahri) (Retd.)
Arbitrator”

7. On the next date of the arbitration hearing, i.e., 7th February 2001 the following order was passed:

“07.02.2001

In pursuance to the agreement recorded in the proceedings on 31st January 2001, it is agreed that following would be Directors of the Board of Directors for Prem Nath Motors Limited, Prem Nath Diesel Private Limited and Prem Nath Workshop Private Limited:

1. Shri Surender Nath
2. Shri Rajinder Nath
3. Mrs. Vijay Bhel
4. Shri Shivindar Bhel

Necessary formalities will be completed within one week by the respective companies. It is also agreed that Shri Surender Nath shall continue to be Chairman of the Board of Directors of Prem Nath Workshop Private Limited and Shri Rajinder Nath shall continue to be Chairman for the Board of Prem Nath Diesel Private Limited and the Chairman shall be elected for each meeting of the Board of Prem Nath Motors Limited.

Parties agree that the first meeting of the Board of Directors shall be held on 19th February 2001 at registered offices of the companies. In respect of Prem Nath Motors, the meeting will be held at 3.00 pm in respect of Prem Nath Diesel at 4.00 pm and Prem Nath Workshop at 5.00 pm. Agenda for the said meetings shall include the proposal to be made by any of the Directors to be circulated within one week from today. Statutory compliance certificate may be given by the respective officer of the company before the first meeting. It is agreed by the parties that the Boards now, constituted of these companies shall supersede any previous Board.

For further proceedings, adjourned to 26th February 2001 at 6.30 pm.”

8. On 5th February 2002 the Petitioner wrote to Respondent No. 2 Mr. Surender Nath asking to notify the Registrar of Companies (‘ROC’) for his

resignation from the Board of Directors of PNML with immediate effect. On 5th September 2002 the Petitioner filed an application before the learned Arbitrator stating as under:

“1. As per Agreement dated 31st January 2001 the applicant has been appointed as Director of Prem Nath Motors Workshop Pvt. Ltd.

2. It is further stated that the Company was required to submit compliance certification before commencement of the meeting of the Board of Directors.

3. It is however noticed that no such authorized certification has been submitted and, under the circumstances, the applicant is not interested in being Director of Prem Nath Workshop Pvt. Ltd. and submits his resignation.

4. A copy of this application is being sent by speed post to Mrs. Vijay Bhel, who is being requested to notify the Registrar of Companies in regard to the resignation of the applicant as Director of Prem Nath Motors Workshop Pvt. Ltd.”

9. On 3rd April 2003 a lease deed was executed by PNML whereby a part of the property at Mandir Marg admeasuring 11,300 sq.ft. was given on lease to Sri Adhikari Brothers Television Network Limited (‘SABTNL’) on a monthly rent of Rs. 2,10,000. On 9th June 2004 Respondent No. 2 Mr. Surender Nath filed his consent before the learned Arbitrator to the above lease. On his part the Petitioner on 12th June 2004 conveyed his consent to the execution of the lease in favour of SABTNL. On 26th March 2008 in the presence of all the parties, the learned Arbitrator passed the following order:

“Arbitration Case No. 156/99
In the matter of Arbitration in respect of
Disputes of Shri Surender Nath Group,

Shri Rajinder Nath Group, Mrs. Vijay Bhel Group and Shri
Devender Nath Group

March 26, 2008

Present: Mr. Chabra, counsel for Sh. Surender Nath for
Surender Nath Group.
Sh. Rajinder Nath, Mrs. Vijay Bhel, Shri Shivinder Bhel
for Devender Nath Group.

Certain matters were discussed and the parties are supposed to now take steps on the basis of discussions which have been held. Meanwhile, there is a proposal to let out remaining areas of workshop and talks are taking place in that connection and it is agreed that before finalizing the deal the matter will be brought before me. The parties should take steps to have the balance sheets of Prem Nath Motors prepared up to date.

Sd/-
(Justice P.K. Bahri (Retd.)
Arbitrator”

10. On 12th November 2009 an application was filed by Mr. Shivinder Bhel before the learned Arbitrator in which it was stated that after intense negotiations, the applicant had arrived at the terms for a Joint venture (‘JV’) partnership to run an automobile workshop at Mandir Marg. The terms of the proposed JV was set out in the application and the financial terms reached with “Mr. G.B.” which admittedly referred to Mr. Gurcharan Singh Bhatia, Respondent No. 5 herein. *Inter alia* it was proposed that money received by JV including the minimum guarantee (‘MG’) could be deposited in a separate account with instructions to the Chartered Accountant that this account/money would be only used on instructions by the learned Arbitrator or by consent in writing from all the groups.

11. On 20th November 2009 the Petitioner wrote to the applicant Mr. Shivinder Bhel with copies being marked to the learned Arbitrator, Mr. Surender Nath and Mrs. Vijay Bhel, as under:

“Dear Sir,

Reference is made to application dated 12th November 2009.

Prior to giving my comments, request is made on the following:

- (a) Meeting be arranged with the proposed JV partner to arrange assessment of this venture;
- (b) Confirmation that you have arranged extension of the lease agreement for the proposed area for a tenure of 20 years.

I await your reply on the above.

Thanking you,

Yours faithfully,

Sd/-
(Rajinder Nath)”

12. On 17th March 2010 the learned Arbitrator who was hearing the disputes resigned and passed the following order:

“March 17, 2010

Present: Sh. Surender Nath, Sh. Rajinder Nath, Mrs. Vijay Bhel, Mrs. Surinderi Bhel and Sh. Shivindar Bhel.

I have been dealing with the disputes referred to me as Arbitrator more as a Conciliator than as an Arbitrator. Numerous sittings were held by me to resolve the disputes amicably, unfortunately, the disputes could not be resolved. Due to some very personal reasons, I regret my inability to continue to be an Arbitrator in the above matter. I, therefore, resign as an Arbitrator in this matter and the parties are now free to take further steps as may be advised in this matter.

Sd/-
(Justice P.K. Bahri (Retd.)
Arbitrator”

13. It appears that thereafter none of the parties immediately moved this Court for appointment of another Arbitrator. Meanwhile, on 7th December 2010 a JV agreement was executed by PNMPL and PNMWPL in favour of

M/s. S.G.P. Developers (P) Ltd ('SGP') represented by Respondent No. 5 whereby the parties agreed to set up a superstructure and run a modern, world class automobile workshop at the Mandir Marg premises. The two companies (PNMPL and PNMWPL) were to hand over the possession of the premises on 'As is where is basis' to SGP which had to repair, renovate and modernize the existing automobile workshop entirely at its own cost and have a right to make structural additions and raise new constructions in accordance with the applicable laws. It was acknowledged that the premises were in the occupation of M/s. Broadcasting Initiatives Limited ('BIL') and that the said lease period was come to an end on 12th June 2012 when the said premises were to be made available by the two companies to SGP. SGP was also given the right to sub-let/rent the premises to any other party as part of JV business. The other terms and conditions of the JV agreement were set out in the said document.

14. Mrs. Devika Mehra, the daughter of Respondent No. 2 Mr. Surender Nath filed OMP No. 878 of 2011 followed by O.M.P. No. 897 of 2011 inter alia seeking the appointment of an Arbitrator in place of Justice P.K. Bahri. While notice was directed to issue in the said petition, the present petition was filed on 15th March 2012 with the Petitioner alleging that in the second last week of February 2012 he learnt that Respondent Nos. 2, 3 and 4 in connivance with each other and to the detriment of the Petitioner group had without their consent sublet and parted with the possession of the premises at Mandir Marg to the extent of 35000 sq.ft. to Respondent No. 5 and associates. A copy of JV agreement was also placed on record. Notice was directed to issue by this Court in the present petition on 16th March 2012.

15. On 2nd May 2012 this Court disposed of OMP Nos. 878 of 2011 and

897 of 2011 filed by Mrs. Devika Mehra by appointing Mr. Justice A.P. Shah, retired Chief Justice of this Court, as Arbitrator. As far as the present petition is concerned, the following order was passed on 2nd May 2012:

“1. It is stated by Mr. Rajiv Mehra, learned Senior counsel appearing for Respondents 1 and 2 that his client (Respondent No. 2) is indisposed and two weeks’ time may be granted for filing a reply on his behalf. He is permitted to do within two weeks. Rejoinder thereto, if any, be filed before the next date.

2. Mr. Sudhir Chandra, learned Senior counsel appearing for Respondent No. 5 (Mr. Gurcharan Singh Bhatia) informs the Court that pursuant to certain payments made to Respondent No. 1 company M/s. Prem Nath Motors Limited, Respondent No. 5 is operating an automobile workshop in the premises. Mr. Chandra states that Respondent No. 5 is awaiting sanctioning of building plans and as of today has not commenced any construction.

3. It is made clear that any commencement of work by Respondent No. 5 would be at his risk and subject to the orders of the Court.

4. List on 22nd May 2012.”

16. This Court has heard the submissions of Mr. P.V. Kapoor, learned Senior counsel for the Petitioner, Mr. Rajiv Mehra, learned Senior counsel for Respondents 1 and 2, Mr. N.K. Vohra, learned counsel for Respondent No. 3, Mr. Atul Nanda, learned Senior counsel for Respondents 4A and 4B and Mr. Sudhir Chandra, learned Senior counsel for the Respondent No. 5.

17. Mr. Kapoor submitted that the execution of the JV agreement was in the teeth of the order passed by the learned Arbitrator on 26th March 2008; the JV agreement entered into on 17th December 2010 was very different from the one placed on record along with the application filed by Mr. Shivinder Bhel before the learned Arbitrator on 12th November 2009 and detrimental to the interests of PNML and PNMWPL, it was contrary to the terms of the

Partial Settlement which required that “no group shall in any manner do any act which would disturb the enjoyment or valuation of assets to be received by the other groups”. He pointed out that although the Petitioner had ceased to be a Director of PNML it was understood that he had to be consulted and in fact he had been consulted and his consent taken earlier when the property was leased to SABTNL. The apprehension of the Petitioner is that the possession of the entire premises would be given to Respondent No. 5 upon vacation of the said premises by the present tenant on 12th June 2012. Mr. Kapoor urged that since the next hearing before the learned Arbitrator was fixed on 28th May 2012, the Respondents should be directed to maintain status quo in relation to the property at Mandir Marg till an interim order in that regard is passed by the learned Arbitrator.

18. Mr. Sudhir Chandra, learned Senior counsel appearing for Respondent No. 5, opposed the prayers of the Petitioner on several grounds. First, it was submitted that since Respondent No. 5 was not a party to the arbitration agreement, no order could be passed in the present petition under Section 9 of the Act restraining Respondent No. 5 in any manner. Secondly, with the Petitioner having resigned as a Director of PNML long back in 2002 and with Clause 11 of the Partial Settlement permitting the Board of Directors of both PNML and PNMWPL to take unanimous decisions in relation to the assets of the companies, the Petitioner had no *locus standi* to question the decision of the companies in relation to the JV agreement dated 7th December 2010. He seriously questioned the bonafides of the Petitioner who was not only part of the negotiations that preceded the signing of the JV Agreement dated 7th December 2010 but kept blackmailing Respondent No. 5 into paying him an exorbitant sum for giving his consent to the JV agreement. He questioned why the Petitioner waited for nearly fifteen months after the signing of the JV agreement to file the present petition. He

claimed that the Petitioner had in fact given oral consent to the said JV agreement. He submitted that no relief ought to be granted to the Petitioner. He submitted that at the highest and without prejudice of the rights and contentions the order passed by this Court on 2nd May 2012 would continue till such time the learned Arbitrator considered the pleas of the parties in regard to the interim relief in accordance with law.

19. Mr. Atul Nanda, learned Senior counsel for Respondent Nos. 4A and 4B submitted that the present petition was not bonafide and that the Petitioner was guilty of suppression of material facts regarding his being part of the negotiations that preceded the execution of the JV agreement dated 7th December 2010. Mr. Rajiv Mehra, learned Senior counsel for Respondent Nos. 1 and 2, pointed out that if any of the interim reliefs sought by the Petitioner were to be granted it would cause irreparable hardship and grave prejudice to Respondent No.2 group. He too opposed the grant of any interim relief to the Petitioner. All of the above submissions were countered by Mr. Kapoor in reply.

20. This Court does not propose to express any view on any of the above submissions for the reason that the learned Arbitrator having fixed the hearing on 28th May 2012, it would be appropriate for the parties to file applications before the learned Arbitrator under Section 17 of the Act to seek interim reliefs. It would be open to them to urge all contentions, including those noted above, before the learned Arbitrator. The order dated 2nd May 2012 of this Court to the extent it records that “any commencement of work by Respondent No. 5 would be at his risk” is continued till and made subject to any order that may be passed by the learned Arbitrator in that behalf in the application filed by any of the parties under Section 17 of the Act. It will be open to the parties to rely on the pleadings in the present

petition as part of their applications under Section 17 of the Act. It is reiterated for removal of doubts that the Court has expressed no opinion on any of the contentions of the parties.

21. The petition is disposed of in the above terms.

IA No. 9788 of 2012 (for appointment of a Local Commissioner)

22. With the disposal of the main petition this application does not survive. The applicant may approach the learned Arbitrator for appropriate interim relief. The application is disposed of.

23. Order be issued dasti to the parties under the signature of the Court Master.

Sd/-
S. MURALIDHAR, J

MAY 25, 2012

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