

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

Reserved on: 18.07.2013
Pronounced on: 22.07.2013

+ **FAO (OS) 295/2013, C.M. NO. 9523/2013**

RAJEEV GOYAL AND ORS. Appellants

Through: Ms. Meenakshi Arora with Sh.
Mohit. D. Ram, Advocates.

versus

SANJEEV GOYAL AND ORS. Respondents

Through: Sh. Virender Goswami with Ms.
Soni Singh, Advocates, for Resp. Nos. 1-5.
Sh. Rakesh Khanna with Sh. Rakesh Ojha
and Sh. Pradyuman Sewar, Advocates, for
Resp. Nos. 6-14.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S. RAVINDRA BHAT**

1. The present arbitration appeal is directed against an order dated 10.05.2013 of the learned Single Judge made under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter “the Act”) in OMP No.777 of 2011, originally preferred by the first five Respondents (hereafter “SG group”). The Appellants claim to be aggrieved by the said order to the extent the learned Single Judge has declined to make orders on their applications (I.A. No.12405 of 2012 and I.A. No. 549 of 2013).

2. The facts of the case are that the parties to the present appeal are promoter/shareholders of the Mahaan Group of Companies; they are also parties to a Memorandum of Family Settlement dated 31.08.2010, (“MOFS”) by which the assets of Mahaan Group of companies were divided settling their *inter se* disputes. The appellants (hereinafter referred to as “RG Group”), first five Respondents (hereinafter referred to as “SG Group”) Respondent Nos. 6- 14 (hereinafter referred to as “ the Garg Group”) and Respondent Nos. 15 to 17 (hereinafter referred to as “ANG Group”) were part of the unified Mahaan Group, established in 1987 by the Respondent Nos.6 and 15. Certain disputes arose with the passage of time, and in 2009 the parties resolved to re-arrange the ownership of the group companies and divide the assets and liabilities to put quietus to the disputes. The Mahaan Group concern that were agreed to be divided amongst the parties were (i) Ace International (a partnership firm); (ii) Mahaan Foods Limited; (iii) Mahaan Proteins Limited and (iv) Zeon Life Sciences Limited

3. Apparently various attempts for settlement of disputes between the parties (i.e. members of Mahaan Group) were undertaken in January, 2009 by Mr. Shyam Lal Goyal and Shri Harinder Singh. This included mediation by third parties, a process of *inter se* bidding for the holdings, etc. Feeling aggrieved for reasons which are now not relevant, the present appellants, i.e the RG Group approached the Company Law Board through Company Petition No.48 of 2009 and Company Petition No. 49 of 2009. A cross Company Petition involving Zeon Life Sciences Limited was filed by Garg Group and SG Group as Petitioners. Subsequently, in 2009-10, the parties went

through a second exercise for resolution of disputes. Eventually, one Mr. Mukesh Sharma, was appointed as Mediator. Pursuant to the efforts of the Mediator and co-operation of the parties, a Memorandum of Family Settlement, dated 31.08.2010 (hereinafter referred to as “MOFS”) was executed. The MOFS brought about the division of the Mahaan Group Companies in the following manner:

- (1) The ownership, management and control of Mahaan Proteins Limited (MPL) was accorded to be given to the RG Group.
- (2) The ownership, management and control of MFL (Diary Business including brand names except “Super Mahaan”) was given to SG Group, along with the ownership, management and control of Ace International, which was already with SG Group by virtue of previous settlement process.
- (3) The ownership, management and control of Zeon Life Sciences Limited (ZLL) along with Mahaan Biosys (MB) and Mahaan Nutrition (MN), both units of Mahaan Foods Limited (MFL) was accorded to the Garg Group.
- (4) Mr. A.N. Goyal expressed his desire to retire from active business of Mahaan Group, which was agreed by other parties. In lieu of retirement ANG Group from the Mahaan Group Companies, he was given ₹2 Crores.

The MOFS also provided the following:

- (5) The payment of ₹6.27 Crores by Garg Group- (a) to the RG Group -₹2.15 Crores, (b) to the SG Group -₹2.12 Crores and (ii) to the ANG Group- ₹2 Crores.

(6) The liability of MFL as decided by Mediator with a cap of ₹160 Lakhs was to be shared between RG Group, SG Group and Garg Group, which was actually adjudicated as ₹133 Lakhs.

(7) The shareholding of the respective Companies was to be transferred to their respective Groups.

(8) The parties would resign from the management of the companies apart from the Company which came to their respective share under MOFS.

(9) The personal guarantees of the outgoing group would be discharged by the respective Group which takes over the management.

4. On 03.09.2010, the pending company petitions were disposed of by the Company Law Board by consent decree, making the MOFS a part of the decree. The appellants argue that in furtherance and implementation of the MOFS, they (i) submitted original share forms and signed transfer deeds, (ii) resigned from the entities of the other groups, (iii) handed over the corporate and statutory records. In this background, the first five respondents, i.e SG group, filed a Petition under Section 9 of the Act (OMP No.777 of 2011) alleging, *inter alia*, that the other parties were not cooperating in the implementation process and claimed for two relief (s) against the appellant group, i.e., restraint on the Appellants from changing the shareholding pattern of MPL and thus restraint from implementation of resolution at EGM dated 19.10.2011 for increase in the authorized share capital of MPL; and restraint against the appellant from using trade mark “Mahaan” absolutely and “super Mahaan” in any manner deceptively similar to

“Mahaan”. Respondent Nos. 1-5 also sought several other relief (s) against Respondent Nos. 6-14 including but not limited to return of the MB and MN division of Mahaan Foods Limited.

5. By order dated 18.10.2011, a Learned Single Judge of this Court granted the following interim relief to the Respondent Nos.1-5:

“9. Having heard counsel for the petitioners and having perused the Memorandum of Family Settlement, till the next date of hearing, respondents, their servants, agents, employees or distributors are restrained from selling or using the brand name MAHAAN absolutely and the brand SUPER MAHAAN, in any manner, which is deceptively similar to the logo, colour, style and design of the brand MAHAAN and packaging of the products manufactured by the petitioners. I also deem it appropriate to direct that till the next date of hearing respondents shall not give effect to the Resolution, which may be passed in the Extra Ordinary General Meeting, which is scheduled to be held on 19.10.2011.”

6. It is alleged that the appellant entered appearance and contested SG’s petition. On 23.03.2012, by an order, the disputes between the Appellant and the SG group with respect to trade mark were settled. On 30.05.2012, an order was made by this Court, which, the appellant states, resulted in a partial settlement of issues between the Appellants and Respondent Nos. 6-14 (Garg group) facilitating the transfer of shares *inter se* amongst groups and consequent upon that, the Appellants were paid an amount of ₹161.95 lakhs. The order of the Court also facilitated the settlement between the Respondent Nos.6-14 and Respondent Nos.15-17, which consequently also brought a settlement between Respondent Nos.1-5 and Respondent Nos.15-17. It is submitted that the said settlement was recorded in the order dated

30.05.2012. Consequent to order dated 30.05.2012, the partial settlement between the Respondent Nos. 6-14 and the Appellants have arrived and an amount of ₹161.95 lakhs have been paid by Respondent Nos.6-14 to the Appellants. The order assumes some importance in these proceedings; it is extracted below:

“1. Statement of Mr.Rajiv Goyal, (respondent no.1) has been recorded separately, wherein he has accepted the six cheques in the name and on behalf of Mahaan Proteins Ltd., Mrs.Deepa Goyal and Mr.Rajiv Goyal from Mr.Suresh Garg Group. Mr.Suresh Garg, who is present in court undertakes to the court that the aforesaid cheques shall be encashed on presentation. Mr.Suresh Garg, has been explained the consequences of breach of undertaking given to court. It is also made clear that any of the cheque dishonoured, the Court will view the same seriously.

2. In the statement recorded separately Mr.Rajiv Goyal has stated that he has received the six cheques in full and final settlement of all claims and dues of the RG Group from Suresh Garg Group, subject matter of the family settlement dated 31.08.2010, subject to a claim of Rs.44.31 lacs, which will be paid by Mr.Suresh Garg Group to the petitioner on behalf of the Rajiv Goyal Group, which fact has already been acknowledged by the parties, and subject to adjustment with regard to the two cars. In the statement it has also been stated that the question of interest, is kept open. It is also deposed that he has received one cheque book, belonging to R.G.Group in court today and also agreed that the cheque bearing no.557992 shall only be presented after a sum of Rs.50.0 lacs is released by the Registrar of this Court in favour of Zeon Lifesciences Ltd. Healthcare. Mr.Suresh Garg, who is present in court undertakes to the court that the aforesaid cheques shall be encashed on presentation. Mr.Rajiv Goyal (Respondent No.1) has also handed over to Mr.Rakesh Khanna, counsel for

respondents No.6 to 14, share transfer deeds and the gift deeds, which have been scrutinized by Mr.Rakesh Khanna as also his clients in court today. As agreed, in addition to these documents, respondents No.6 to 14 are entitled to share certificates of R.G.Group, which are lying with the Mediator. Accordingly, learned Mediator is requested to hand over the said share certificates of R.G. Group to respondents No.6-14 through Mr.Rakesh Ojha, counsel for respondents no.6- 14 or upon his authority, forthwith.

3. Respondent nos.6 to 14 also undertakes to release the personal guarantees, which have been made by Mr.Rajiv Goyal and his wife Mrs.Deepa Goyal, after the entire settlement goes through, however, a statement is made that should the financial institutions file any proceedings against Mr.Rajiv Goyal or his wife, respondent no.6-14 and/or Sh.Suresh Garg will indemnify Mr.Rajiv Goyal and his wife Mrs. Deepa Goyal.

4. Ms.Meenakshi Arora, submits that Rajiv Goyal group is entitled to return all their 10.0 lacs shares which have been pledged with State Bank of Patiala. Suresh Garg group will get the shares released after the entire settlement goes through. However, a statement is made that should the financial institutions file any proceedings against the said shares, respondent no.6-14 and/or Sh.Suresh Garg will indemnify Mr.Rajiv Goyal and his wife Mrs.Deepa Goyal.

5. The cheque bearing no.557992 shall only be presented by R.G. Group after a sum of Rs.1.0 crore is released by the Registrar, of this Court in favour of Sh.Suresh Garg.

6. Cheque in the sum of Rs.9.62 lac has been handed over by R.G. Group to respondents No.6-14. Along with the cheque, transfer forms and gift deeds have also been

handed over to respondents No.6-14. Respondents No.6-14 have returned back one cheque book to Mr. Rajiv Goyal, which belongs to him.

7. Share certificates of Rajeev Goyal group shall be handed over by the Mediator to the respondents No.6-14 through Mr.Ojha forthwith and the shares of respondents No.6-14 shall be handed over to Mr.Rajiv Goyal by the Mediator forthwith.

8. Statement of Mr.A.N. Goyal, (respondent no.15) has been recorded separately, wherein he has accepted the six cheques in the name and on behalf of Mahaan Proteins Ltd., Mr.Amar Nath Goyal, M/s.Amar Nath Goyal (HUF) and Mrs.Shashi Rani Goyal. In the statement Mr.A.N.Goyal has stated that he has received the amount of above said six cheques in full and final settlement of all claims and dues of the entire ANG Group, subject matter of the family settlement dated 31.08.2010, except the question of interest which is kept open. Mr.Suresh Garg, who is present in court undertakes to the court that the aforesaid cheques shall be encashed on presentation. Mr.Suresh Garg, has been explained the consequences of breach of undertaking given to court. It is also made clear that any of the cheque dishonoured, the Court will view the same seriously. Mr.A.N.Goyal (Respondent No.15) has also handed over to Mr.Rakesh Khanna, counsel for respondents No.6 to 14, share transfer deeds and the gift deeds, which have been scrutinized by Mr.Rakesh Khanna as also his clients in court today. As agreed, in addition to these documents, respondents No.6 to 14 are entitled to share certificates of ANG Group, which are lying with the Mediator. Accordingly, learned Mediator is requested to hand over the said share certificates of ANG Group to respondents No.6-14 through Mr.Rakesh Ojha, counsel for respondents no.6-14, or upon his authority, forthwith.

9. It is agreed between counsel for the parties, in the

presence of parties that Sh.Rajiv Goyal, who is present in court will indemnify respondents No.6-14 in the sum of Rs.1.45 crores which are being paid to him by respondents no.6-14 on behalf of Cyrass Enterprises Pvt. Ltd. It is agreed that a formal indemnity shall be filed by Sh. Rajeev Goyal, as managing Director of M/s.Mahaan Proteins Ltd. The indemnity, as agreed, would also state that although Mr.Rajeev Goyal has no concern with Cyrass, in the interest to resolve the disputes emanating from the MOFS dated 31.08.2010, he has signed the deed of indemnity and provided the same to Garg group.

10. Respondent nos.6 to 14 also undertakes to release the personal guarantees, which have been made by Sh.A.N. Goyal and his wife Smt.Shashi Rani Goyal, after the entire settlement goes through, however, a statement is made that should the financial institutions file any proceedings against Sh.A.N. Goyal or his wife, respondent no.6-14 and/or Sh.Suresh Garg will indemnify Sh.A.N. Goyal and Smt.Shashi Rani Goyal.

11. Out of the sum of Rs.2.0 crores deposited by respondents No.6-14 in this court, as agreed, the Registrar General shall release a sum of Rs.1.0 crore in favour of Sh.Suresh Garg in account No.0005-Y57758-001 with IndusInd Bank, out of which Rs.50.0 lacs, shall be used by Sh.Suresh Garg, to meet the liabilities arising out of ANG group and subject matter of cheque bearing No.557986. The amount so released, shall not be utilized for any other purpose. A request for release of the amount of Rs.1.0 crore shall be made by Sh.Ojha, Advocate to the Registry.

12. Mr.Ojha has also handed over three cheque books, belonging to the A.N.Group which are accepted by him in the court. The cheque bearing no.557986 shall only be presented after a sum of Rs.1.0 crore is released by the Registrar, of this Court in favour of Sh.Suresh Garg.

13. Mr.Khanna also submits that Rs.98.0 lacs already stands paid to the petitioner, and Rs.60.0 lacs is to be

debited in the account of the petitioner with respect to the interest paid by him and it would thus amount to Rs.1.42 crore to be paid to the petitioner. Mr.Khanna also submits that he would require following documents amongst other documents from petitioner: (i) a Board Resolution, authorizing respondents No.6-14 to carry out the business of the unit which have fallen to his share, (ii) documents with regard to bank limits awarded by various banks, (iii) Special Power of Attorney for running the unit as well as the agreement to ensure that the land is transferred by the Himachal Pradesh Government in his favour, (iv) the title documents are required to be mortgaged with the banks, till the title is registered in his favour. Correspondingly Mr.Nayyar, counsel for the petitioner submits that he would also require certain other documents not limited to board resolution and accounts related to certain financial transactions. Parties assure the court that they will make efforts to press out these differences during the intervening holidays. Parties shall append their signatures on the order-sheet, as token of acceptance.

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7. It is alleged that sometime in July, 2012 – The SG Group and the Garg Group, failed to complete the effective implementation of MOFS. Since the Appellants were being severely constrained in effective running of Mahaan Proteins Ltd. for want of complete global settlement, they filed I.A. No. 12405 of 2012, seeking necessary directions to the Respondents for various compliances and thus giving effect to MOFS in true letter and spirit. It is argued that during July-Oct 2012 despite several rounds of meeting, the SG and Garg groups did not settle their *inter se disputes* and the Learned Single Judge directed the matter to be adjudicated on merits. In this background of

circumstances, on 03.12.2012 an unforeseen circumstance occurred by reason of a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI”), by the State Bank of Patiala (hereafter referred to as “the Bank”) calling upon Mahaan Foods Limited to clear the outstanding amount of the Cash Credit Facilities within 60 days of the receipt of the notice. The Bank also classified the cash credit account of the Mahaan Foods Limited as “Non-Performing Asset”. Under the notice, the Bank also cited the appellants as the guarantors to the Cash Credit Facilities to Mahaan Foods Limited and called upon them to make payment of the amount mentioned in the notice in terms of the alleged guarantee agreement executed by them.

8. The appellant submits that 10.00 Lakh shares of Mahaan Proteins Ltd are lying pledged with the Bank for the cash credit facilities of Mahaan Foods Limited and failure of Mahaan Foods Limited to clear the payment under notice dated 03.12.2012, would result in the Bank taking action/proceeding against such shares of MPL. It is alleged that the inflexible approach of the Garg group with regard to release of the appellants from their obligation as guarantors to the Banks, and the inaction of the SG group in regard to release of their shares, led to the filing of I.A. No. 549 of 2013 seeking the following relief(s):

- (a) Directions to the Registrar General of the Court to release an amount of ₹53.05 lakhs (from the amount of ₹1 crore lying deposited with this Hon’ble Court in the captioned petition) to the Applicants; and

(b) Direct the Petitioner/Respondent No.6-14 to substitute the personal guarantees of the Applicants given to State Bank of Patiala for the credit facilities of Mahaan Foods Limited with immediate effect with their personal guarantee or any other appropriate security; and

(c) Direct the Petitioner/Respondent No.6-14 to substitute with immediate effect the pledged shares of Mahaan Proteins Limited lying pledged with State Bank of Patiala with any other appropriate security.

9. By the impugned judgment the Learned Single Judge disposed of the Section 9 petition filed by the Respondent Nos.1-5. It is argued that even while the Learned Single Judge directed the Respondent Nos.6-14 to pay interest to the Bank for the credit facilities of Mahaan Foods Ltd and for that purpose released ₹1 crore lying deposited with this Court, which included an amount of ₹53.05 lakhs meant for the Appellant, at the same time the Single Judge held that the direction was necessary as Respondent Nos.1-5 would have suffered irreparable loss and injury,

10. Ms. Meenakshi Arora, learned counsel for the appellants submits that the Court failed to appreciate that the aforesaid direction caused irreparable loss and prejudice to the Appellants. She argues that the failure to settle the *inter se* disputes between the Respondent SG and Garg groups and non-payment of interest by the Garg Group has jeopardized the ownership, management and control of Appellants in MPL, as their Appellants shareholding has been put to stake. It is submitted that the Garg Group had undertaken to substitute the

pledged shareholding and personal guarantees of the Appellant and relegation of their applications to the Arbitrator would delay the implementation of the order of this Court. Such adjudication would also not be possible in view of the limited scope and power of the Arbitrator.

11. It is submitted that the ₹1 crore included the amount of ₹53.05 lakhs meant for the appellant to complete its obligations towards the SG group and therefore, could not have been released to Respondent Nos.6-14, i.e. the Garg Group. It is contended that the Garg Group is trying to take advantage of the notice issued by the creditor banks to deprive the appellants of their entitlements, despite the latter's compliance with all their obligations. The impugned judgment, therefore, fell into error in permitting the release of the amounts, which ought to lie in deposit, till the obligation of the respondents had been fulfilled, towards the appellant group.

12. It is submitted that without making any order or direction towards release of the 10 lakh shares pledged with the creditor State Bank of Patiala, the Court should not have permitted release of ₹1 crore to the Group. Learned counsel submitted that even though the previous order dated 30.05.2012 had recorded the appellants' agreement that the sum of ₹53 lakhs payable to them by the Garg Group could be discharged or adjusted against the corresponding liability towards the SG Group, yet neither the parties nor the Court envisioned a situation where one or some of them would deliberately sit over their obligations. It was submitted that even the order of 30.05.2012 had clearly recorded that the Garg Group's undertaking to indemnify the appellants in the event of action towards release of

pending dues, by the secured creditor. The Court, by the impugned order, completely overlooked the reciprocal and mutual obligations which the respondents were bound by and proceeded to make the impugned order.

13. Learned counsel for the Garg Group contended that all obligations towards the appellants have been discharged. He narrated the background of entire dispute and submitted that the complex nature of intertwined shareholding and common obligations towards the secured creditors is such that one or some of the parties cannot work-out without full settlement. It was submitted that the Garg Group had in fact complied with most of the terms imposed upon it under the MOFS and given the sum of ₹1.65 crores to the appellants. Garg Group had also handed over the shares of the appellants' group companies to it and further agreed to indemnify them in the event of any precipitative action, as far as their personal guarantees were concerned in Mahaan Foods. It was submitted that without full discharge of the liabilities towards the secured creditors, it would be impossible for the Garg Group to ensure that the pledged 10 lakh shares are released to the appellants. Learned counsel submitted that the order of 30.05.2012 clearly recorded the appellants' agreement for adjustment of the amounts due to them towards their corresponding liability to the SG Group. Under the circumstances, since the bank had issued a notice under the SARFAESI Act, the impugned order was justified in taking the overall circumstances into consideration and directing release of ₹1 crores in the bank to the Garg Group to first stave off the common threat to the entire Group. Learned counsel submitted that the Garg Group is committed to the statement recorded

on 30.05.2012 that in the event of any action adversely affecting the appellants, on account of the creditors exercising their rights to recover dues, the indemnity and undertaking given to the Court will be fully honoured. Sh. Goswami, learned counsel for the SG Group contended that the impugned order cannot be faulted. It was submitted that even though there are some difference or disputes with the Garg Group, yet, at the same time, the SG Group is conscious that in the overall interests of the family settlement and all groups, it is essential to release ₹1 crores deposited in the Court. Learned counsel adopted the submissions of the Garg Group so far as the question of release of personal guarantees is concerned but at the same time submitted that the SG Group would deposit the shares which would go to the appellant and also furnish the appropriate documents effectuating the transfer. All these would be deposited with the arbitrator.

14. From the above narrative, what emerges is that the SG Group had approached the Court initially under Section 9 seeking a restraint in respect of a company made. It had also sought restraint against the RG Group – the appellants in this case - from using the trademark. All parties agree that the trademark dispute has been resolved to the satisfaction of all parties. The course of the proceedings before the learned Single Judge revealed that at different stages, the settlement of various issues was arrived at. One bone of contention apparently was the liability to be borne by the units of Mahaan Foods falling to the shares of the SG Group. The said settlement envisioned that the liability was in the range of ₹1.6 crores. It evidently worked out to ₹1.33 crores. The parties had agreed that instead of the entire liability being borne by the SG Group, each Group will bear $1/3^{\text{rd}}$, thus the RG

(i.e. the appellants' group) and the Garg Group agreed to bear equally 1/3rd share each of that liability. During the course of the proceedings, the appellant had agreed on 30.05.2013 that the amount to be received by them from the Garg Group could be adjusted towards their corresponding liability to the SG Group. At the same time, Garg Group had undertaken to indemnify the RG Group in the event of an untoward action by the creditors which could jeopardize their rights and entitlements. The Garg Group states that it is committed and would abide by such undertaking.

15. Learned Single Judge by the impugned order relegated the parties to the arbitral tribunal vis-à-vis certain issues sought to be urged by the appellants in this case. The parties concededly have approached the arbitrator. The question is whether the impugned order is not justified to the extent it directs release of ₹1 crore to the Garg Group to be used for satisfying the secured creditors' liability.

16. The documents and materials on record and the contentions of the parties, reveal that on 03.12.2012, the State Bank of Patiala issued notice under Section 13(2) of the SARFAESI. The notice indicates that the sum of Rs.8,21,16,879.82/- was due and payable by M/s. Mahaan Foods. It invoked the personal guarantees of all the parties, i.e. SG Group, RG Group and Sh. A.M. Goyal. The materials further revealed that the RG Group has in fact approached the arbitrator and filed a Statement of Claim on 12.07.2013. RG Group has set-up 17 claims which include all the contentions made in the course of the present proceedings. In these circumstances, this Court is of the opinion that it would be inappropriate to interfere with the impugned Single Judge's determination that such aspects should be left to the

arbitral tribunal for its decision and adjudication.

17. As far as the argument regarding prejudice to the appellants goes, what emerges is that on 30.05.2012, there was a clear agreement that the RG Group's share of liability in respect of the Group companies falling to the share of SG was agreed to be paid directly to the SG Group. No doubt, the RG Group has discharged its obligations in the sense that it has substituted the guarantees of the Garg Group and SG Group and deposited the latter's share in the Group or entities to which they are entitled. At the same time, the Court cannot be oblivious of the fact that the history of the litigation as well as the proceedings before the learned Single Judge indicates that the methodology adopted in unravelling the interconnected holdings of the disputed parties is rather complex. Added to this is the fact that the threat held out by the secured creditors looms large over the settlement and has the potential to derail whatever gains have been achieved. Having regard to these circumstances, the Court is of the opinion that on the insistence of the appellants that the obligations towards them, which are three-fold - release of shares to which they are entitled, release of their personal guarantees and the release of 10 lakh shares pledged with the State Bank of Patiala at this stage would not be practicable except to the extent of release of shares of SG Group in the group companies of the RG Group. This is for the reason that in terms of the settlement, the release of 10 lakh shares in the RG Group companies would be payable only upon satisfaction of the entire liability by the Garg Group. That in turn would depend upon Garg Group's ability to satisfy secured creditors of its good intentions. It is to secure that end that the Garg Group proposes that

the release of ₹1 crore be made and same be used immediately to service the interest due to the bank. Concurrently, the bank proposes to take steps to raise funds to discharge the entire liabilities of the State Bank of Patiala and have the Section 3(2) of the SARFAESI withdrawn. This Court does not see anything illegal or anything wrong in the approach of the Single Judge in this regard. After all, the appellants did agree to the payment into Court by the Garg Group towards discharge of their liabilities (SG Group). This was achieved by in two respects – i.e. withdrawing the sum of Rs.53 lakhs from the total amount of ₹2.51 lakhs payable to the RG Group and simultaneously depositing that deducted amount towards the share of the RG Group to SG Group towards the share of the RG Group. Having agreed to that course, this Court is of the opinion that the appellants cannot now throw a spanner in the works as it were and insist that the amounts be held back until all their entitlements are fulfilled. Family settlements and agreements which involve governing concerns, but also corporate entities with the added complexity of liabilities towards financial institutions, may take careful unravelling. That much is evident from these proceedings. In view of these circumstances, the Court is of the opinion that the undertaking and assurance which the Garg Group (Respondent Nos. 6-14) have indicated, i.e. to indemnify the appellants in the event of any precipitative action by the secured creditor affecting them adversely, will adequately secure the appellants' interest apropos the latters' personal guarantees. At the same time since the SG Group has indicated its willingness, it is hereby directed to deposit the shares of the appellants in their companies owned by it (the SG Group) with the

arbitrator with the corresponding transfer documents.

18. The appeal partly succeeds to the extent indicated in the preceding paragraph with regard to directions and is allowed to the extent indicated in the preceding paragraph, i.e. as regard the indemnity and the undertaking of the Garg Group and with regard to the directions to the SG Group. The challenge to the Single Judge's order so far as the directions for release of ₹ 1,00,00,000/- (Rupees One Crore) is concerned, however, fails. The appeal and pending application are disposed off in these terms.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

JULY 22, 2013