

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

% *Judgment pronounced on: May 10, 2013*

+ **O.M.P. 777/2011 & I.A.No.2987/2012, I.A.No.12405/2012,
I.A.No.549/2013 and I.A.No.19232/2012**

SANJEEV GOYAL & ORS Petitioners
Through Mr.Suhail Dutt, Sr.Adv. with
Mr.Virender Goswami, Ms.Soni
Singh & Mr.Abhinay Sharma, Advs.
versus

RAJIV GOYAL & ORS Respondents
Through Mr.Mohit D.Ram, Adv. for R-1 to
R-5.
Mr.Rakesh Khanna, Adv. with
Ms.Rachna Dogra, Adv. for R-6 to
R-14.
Ms.Manisha T.Karia, Adv. for
R-15 to R-17.

AND

+ **OMP No.473/2012 & I.A.No.1757/2013**

SANJEEV GOYAL & ORS Petitioners
Through Mr.Suhail Dutt, Sr.Adv. with
Mr.Virener Goswami, Ms.Soni Singh
and Mr.Abhinay, Advs.
versus

RAJIV GOYAL & ORS Respondents
Through Ms.Meenakshi Arora, Adv. with
Mr.Mohit D. Ram, Adv. for R-1 to
R-5.

Mr.Rakesh Khanna, Adv. with
Mr.Rakesh Ojha and Ms.Rachna
Dogra, Adv. for R-6 to R-14.
Ms.Manisha T.Karia, Adv. for
R-15 to R-17.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this common order, I propose to decide main two petitions filed by the petitioners along with pending applications filed by the parties in which they addressed their respective submissions.
2. The petitioners consist of the SG Group, which includes Mr.Sanjeev Goyal, Mrs.Saloni Goyal (W/o Mr.Sanjeev Goyal), Mr.Aditya Goyal (S/o Mr.Sanjeev Goyal), Ms.Sanya Goyal (D/o Mr.Sanjeev Goyal) and the HUF of Mr.Sanjeev Goyal (consisting of himself, his wife, his son and his daughter), represented by its Karta Mr.Sanjeev Goyal.
3. Respondents No.1 to 5 are of the RG Group, which includes Mr.Rajiv Goyal, Mrs.Deepa Goyal (W/o Mr.Rajiv Goyal), Ms.Rhea Goyal (D/o Mr.Rajiv Goyal), Master Armaan Goyal (S/o Mr.Rajiv Goyal) and the HUF of Mr.Rajiv Goyal (consisting of himself, his wife, his son and his daughter) represented by its Karta, Mr.Rajiv Goyal.
4. Respondents No.6 to 14 are of the Garg Group, which includes Mr.Suresh Garg, Mrs.Rani Garg (W/o Mr.Suresh Garg), Mr.Anish Garg (S/o Mr.Suresh Garg), Ms.Yashna Garg (D/o Mr.Suresh Garg), the HUF of Mr.Suresh Garg (consisting of himself, his wife, his son and his daughter) represented by its Karta, Mr.Suresh Garg, Mr.Dalip Chand Garg (S/o Sh.Gopi Ram), Mrs.Sita Devi (W/o Mr.Dalip Chand Garg), the HUF of Mr.Dalip Chand Garg (consisting of himself, his wife, his sons, his

daughters and their branches of the family) represented by its Karta, Mr.Dalip Chand Garg, and French Foods Private Limited, a company incorporated under the provisions of the Companies Act, 1956.

5. The respondents No.15 to 17 consist of the ANG Group, which includes Mr.A.N.Goyal, Mrs.Shashi Rani Goyal (W/o Mr.A.N.Goyal) and HUF of Mr.A.N.Goyal (consisting of himself, his wife, his sons and his daughter and their branches of the family) represented by its Karta, Mr.A.N.Goyal.

6. The business of Mahaan Group of Companies was originally started by Mr.A.N.Goyal, respondent No.15 and Mr.Suresh Garg, respondent No.6 since the year 1987 with equal contribution and participation.

7. With the passage of time, certain disputes and differences arose between the said four groups and in order to settle and resolve such disputes and differences, it was decided to re-arrange the ownership and control of the Mahaan Group and divide the assets. The management and control of the Mahaan Group has been divided amongst the four above mentioned groups as follows:-

- (i) Mahaan Proteins Ltd. (MPL) was run by the SG Group till 30th April, 2009 and thereafter was jointly run by the RG Group and the ANG Group till April, 2010. Thereafter, it is being independently run by the RG Group, after the constitution of partnership on 1st April, 2009.
- (ii) Zion Life Sciences (ZLL) was run by the SG Group and the Garg Group till 2nd May, 2010 and thereafter, it is being run independently by the Garg Group.
- (iii) Mahaan Food Limited (MFL) was jointly run by the RG Group and the Garg Group till 26th May, 2010. The Garg Group is

presently in charge and control of the Mahaan Biosys (MB) and Mahaan Nutrition (MN) divisions of MFL and the SG Group is presently in charge and control of the Dairy Division of MFL.

- (iv) Ace was originally run by Smt. Saloni Goyal, Smt. Shashi Rani Goyal, Smt. Deepa Goyal and Smt. Rani Garg till 31st March, 2009. From 1st April, 2009, the exclusive ownership and control of Ace was transferred to the SG Group.

Facts as per pleading of the parties:

8. Mahaan Proteins Limited (MPL). MPL was initially incorporated in the name and style of “Lacto Proteins Limited” on 11th June, 1992 and changed to MPL on 2nd February, 1996. MPL is engaged in the business of manufacturing milk products such as milk casein, whey protein concentrate, lactose and pure ghee. MPS’s manufacturing facility is located at Vill.Behrana, Tumehra Road, Kosi Kalan, UP.

9. Zeon Life Sciences Limited (ZLL). ZLL was originally incorporated in the name and style of “Himachal Milk Specialties Limited” on 13th March, 1987. Its name was changed to “Mahaan Dairies Limited” on 14th December, 1995 and finally changed to ZLL on 9th April, 2007. ZLL was initially engaged in the business of manufacture of Dairy products such as Pure Ghee and Skimmed Milk from its manufacturing facility at Vill.Kunja, Rampur Road, Paonta Sahib, HP. After the Government announcement of a concessions package for new industrial undertakings in Himachal Pradesh and other States in June, 2003. ZLL set up a new business division for the contract manufacturing of Pharmaceuticals and Nutritional branded formulations.

10. Mahaan Foods Limited (MFL). MFL was initially incorporated in the name and style of “Himachal Milk Products Pvt. Ltd.” on 13th March, 1987

and changed to MFL on 10th May, 1994. In 1994-95, MFL came out with its maiden IPO and its shares are presently listed *inter alia* on the Bombay Stock Exchange. MFL was initially engaged in the business of manufacture of dairy products such as Skimmed Milk Powder and Dairy Whitener from its manufacturing facility at Vill.Kunja, Rampur Road, Paonta Sahib, H.P. MFL is presently engaged in the manufacture of Glucon-D, Spray Dried Nutritional Premix Base's and Maltodextrine.

11. Ace International (Ace). Ace was originally set up as a partnership firm having partners Smt.Saloni Goyal, Smt.Shashi Rani Goyal, Smt.Deepa Goyal, Smt.Rani Garg having equal shares. The equal partnership was dissolved on 31st March, 2009 and reconstituted on 1st April, 2009 with Mr.Sanjeev Goyal and Mrs.Saloni Goyal as partners in the ratio of 70:30. Ace International is presently engaged in the business of Export as well as Imports of Dairy, Food Products and many other items.

12. In fact, all groups i.e. MFL and ZLL, the SG Group, the RG Group and the Garg Group participated in bidding process under the supervision and guidance of Mr.H.C.Gandhi (Consultant) and mediators Sh.Shyam Lal Goyal and Sh.Harinder Singh (Mediators). For this purpose, a final bidding was held on 5th April, 2009 at New Delhi. The Consultant proceeded with the process of allocation of ZLL and MFL in accordance with the bidding process. MPL was allocated to the ANG Group and kept outside the bidding process with the payout only to be made to the Garg Group.

13. Despite of division, certain disputes arose between the parties over implementation of the settlement and the RG Group approached the Company Law Board, New Delhi Bench (CLB) and filed petitions under Sections 397 and 398 of the Companies Act, 1956 involving each of MFL and ZLL being Company Petition Nos.48 & 49 of 2009. The SG Group and

the Garg Group also filed petitions before the CLB involving ZLL before the CLB being Company Petition No.52 of 2009.

14. During the course of hearings of the above Company Petitions, the CLB directed the RG Group, the SG Group and the Garg Group to amicably resolve their disputes involving MFL and ZLL. Since in implementation of the Previous Settlement, ACE International was already allocated and transferred to the SG Group, the ownership of MFL and ZLL remained to be implemented and settled between the members of the family. In order to resolve all matters, it was agreed that the ANG Group shall also be included in the settlement and hence, the ownership of MPL shall be rearranged and settled within the family. The four Groups mutually appointed Mr.Harbans Goyal as the Mediator (hereinafter, the Medaitor-1) in August, 2009 for arriving at an amicable settlement.

15. The entire process of mediation was conducted over a period of 8-9 weeks in the months of August and October, 2009. As the four groups could not arrive at a settlement, the RG Group, the Garg Group and the ANG Group tried to resolve their inter-se disputes and differences and arrived at an amicable settlement in terms of a Memorandum of Family Settlement (hereinafter "Previous MOFS") dated 22nd December, 2009. The previous MOFS was filed before the CLB in January, 2010. However, immediately after filing, the Garg Group withdrew the same on the very first hearing before the CLB.

16. In the meantime, the ANG Group gifted its MPL shareholding to the RG Group, to save the company from being sold by the Investor. Subsequently, dispute arose over the ownership of MPL, and the RG Group approached the CLB and filed petitions under Sections 397 & 398 of the Companies Act, 1956 involving MPL being Company Petition No.43 of

2010.

17. During the subsequent course of hearings of the above Company Petitions, the CLB again directed the four groups to amicably resolve their disputes and after receiving consent of all the groups, appointed Mr. Mukesh Sharma as Mediator. As a result of this fresh mediation before the Mediator, an oral Settlement was arrived at between all groups on 2nd May, 2010 (hereinafter the “Settlement Date”).

18. Later on, the MOFS records the division and distribution of ownership, management and control of the Mahaan Group of Companies.

19. As a part of the settlement, it was agreed to allocate the various constituent companies of the Mahaan Group as under:-

- (i) The ownership, management and control of ZLL and the MB and MN Divisions of MFL located at Paonta Sahib was decided to be accorded to the Garg Group.
- (ii) The ownership, management and control of MPL were decided to be accorded to the RG Group.
- (iii) The ownership, management and control of the Dairy division of MFL including all the Mahaan brand names and all other brand names as specified in the list attached under Mahaan Group other than Super Mahaan, Zeon, and other brand names with Prefix as “Pro” like Prolac, Procas, Prowep, Procon etc. (whether belonging to MFL, ZLL, MPL, Mahaan Dairies Ltd. & Lactomalt Foods Pvt. Ltd.) was decided to be accorded to be SG Group. It was also agreed that the SG Group would continue to retain complete control of Ace, as allocated and handed over in the Previous Settlement.
- (iv) The ANG Group expressed its desire to retire from active business.

20. In furtherance of this agreement, as alleged, the four groups initiated the following actions as per the details supplied by the petitioners' counsel:

- (i) The consideration amounts amongst all groups were crystallized and accepted by consensus. To mark the finalization of the amicable family settlement and to initiate substantive implementation of the same, an initial payment in cash of ₹10,000/- to each group was made by the Garg Group on 5th May, 2010.
- (ii) The RG Group withdrew from the management of MFL and ZLL.
- (iii) The Garg Group withdrew from the management of MFL other than the MB and MN Divisions of MFL.
- (iv) The ANG Group withdrew from the management of MPL.
- (v) As a result of family settlement by consensus, the SG Group was given full authority as a single signatory on all financial affairs of the Dairy Division of MFL for 6 months to the exclusion of the remaining groups as ordered by the CLB on 26th May, 2010.
- (vi) ₹2,00,00,000/- was deposited by the Garg Group in the Escrow Account held by Mediator to facilitate the payment to all parties.
- (vii) All Groups deposited the written resignation of Directors exiting from the Boards of ZLL, MFL and MPL respectively to allow for reconstitution of their respective Board of Directors.
- (viii) The RG Group and the Garg Group deposited with Mediator, all their original Share forms (Certificates) and signed Share Transfer Deeds.
- (ix) The Mediator agreed to discharge the role of an Escrow to finalize the full implementation of the settlement.
- (x) The four Groups executed the MOFS on 31st August, 2011.

21. The petitioners not being satisfied with the various acts of the respondents filed O.M.P. No.777/2011 on 17th October, 2011 against

seventeen respondents i.e. RG Group, Garg Group and ANG Group under petition under Section 9 of Arbitration and Conciliation Act, 1996 alleging non-compliance of MOFS obligations by RG Group and Garg Group only. SG Group states that it's in the process of invoking the arbitration clause and due to imminent threat, various interim reliefs sought, *inter alia*, following reliefs against RG Group, i.e. respondents No.1 to 5:

- i) Restrain on effecting any resolution at EGM of Mahaan Proteins which may result in diluting shareholding of SG
- ii) Restrain on use of brand name 'Mahaan' absolutely and 'Super Mahaan' in a manner deceptively similar to 'Mahaan' or create any third party right in the brand 'Mahaan'.

22. The Court on 18th October, 2011 by ex-parte order restrained RG from using 'Mahaan' absolutely and 'Super Mahaan' in a manner deceptively similar to the logo, colour style and design of the brand 'Mahaan' and restrained RG from giving effect to the resolution, which may be passed in the Extraordinary General Meeting, scheduled to be held on 19th October, 2011 for increase of authorized capital of MPL.

23. RG group i.e. respondents No.1 to 5 filed an application being I.A. No.2987/2012 for inter alia seeking of (i) vacation of stay order dated 18th October, 2011; (ii) permission to give effect to resolution dated 19th October, 2011 passed in EGM of Mahaan Proteins Limited and increase share capital of Mahaan Proteins; amongst other prayers for execution of various other terms of the MOFS.

24. By order dated 13th December, 2011 petitioner was asked to hand over share certificates and transfer deeds to the Mediator. Mediator was requested to complete all formalities within 3 weeks.

25. By order dated 23rd March, 2012, the issue regarding the brand stood resolved between the petitioner and RG Group, as under:

“5. Petitioner and respondent Nos.1-5 have agreed on the carton for sale of ghee under the brand Super Mahaan. Agreed carton duly signed by the parties was taken on record.”

26. On 30th May, 2012 the Court in order to facilitate settlement between RG and Garg Group and RG and ANG Group as RG Group and ANG Group had complied with their respective obligations under MOFS passed an order on the following terms:

- RG Group was paid ₹161.95 lac as net payment instead of ₹2.15 crores as per MOFS.
- Sum of ₹44.31 lac (being RG liability to SG/MFL) retained by Suresh Garg Group to be paid to SG Group upon final settlement between all parties inter-se.
- ₹8.74 lac retained by Suresh Garg towards payment made by Garg Group on behalf of RG for 2 Cards after the execution of MOFS.
- Garg Group undertook to release personal guarantee of RG Group and indemnify in case of any proceedings.
- Garg Group undertook to release the pledged shares of MPL and also indemnify in case of any proceedings.

27. The statements of relevant parties were also recorded on that date. It is necessary to reproduce the relevant part of order passed on 30th May, 2012 which reads as under :

“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.”

28. Learned counsel for the parties have informed that most of the main inter-se disputes between respondents No.6 to 14 and 15 to 17 have already been settled under the MOFS and substantial disputes between respondents No.1 to 5 and respondents No.6 to 14 are also resolved. But, few disputes for compliance of terms and conditions of MOFS between the petitioners and respondents No.6 to 14 are still to be resolved with regard to compliances of their respective obligations as per final settlement. During pendency, three applications are also filed by respondents No.1 to 5 who are seeking directions to permit them to give effect to resolution dated 19th October, 2011 in view of the Extraordinary General Meeting.

29. As far as the inter-se disputes between the petitioner and respondents No.6 to 14 are concerned, Mr.Suhail Dutt, learned Senior counsel appearing on behalf of the petitioners submits that after passing the order dated 30th May, 2012, the Garg Group has failed to comply their obligations. He has supplied the chart which contains the details of obligations under the clauses on MOFS by the respondents No.6 to 14. The same reads as under:

S. No.	Obligation	
1.	Of Garg Group to pay ₹6.27 crore out of which ₹2.12 cr. To be paid to SG Group	Clause 6, para 1 @ 39

2.	ZLL to also pay to MFL 7.75 cr. For clearing working capital of ₹7.75 cr. alongwith interest and penalty and for guarantees and security to be released/discharge; Also to take over loan liability to 2.51 cr. of the Two Units/Specified Divisions alongwith interest.	Clause 6, para 3 Clause 2.2.9 Also Clause 1 h Clause 3.1f.
3.	Till takeover of the loan liabilities, obligation of servicing interest including penalty was of Garg Group/ZLL which was the consideration for ZLL and the MB and MN Units possession and control over which already being enjoyed by Garg Group Since prior to execution of MOFS/Appointed Date	Clause 6, para 3 Para 4 Clause 3.1 j. b. Clause 3.1 j. e. Clause 3.1 j.e.e. Clause 3.1 h. Clause 3.1 a. to e.
	Also agreed unconditionally to pay interest & takeover liabilities in Mediator Note on 15.02.2012 with only condition of renewing limits which has been done.	

30. Mr.Rakesh Khanna, learned counsel appearing on behalf of respondent Nos.6 to 14 has informed the court that in terms of clause 6 of the MOFS, the Garg Group was to make a net payment of ₹6.27 crores, towards inter-se transfer of shares, to the three parties as under:

S. No.	Recipient of the Payment for Share Transfer	Rs. (In Lacs)
1.	SG Group (Petitioners)	212.00
2.	RG Group (Respondents 1 to 5)	215.00
3.	ANG Group (Respondents 15 to 17)	200.00
	Total	627.00

31. He further submits that as recorded in the order dated 30th May, 2012 of this court, the Garg Group has already settled with the RG Group and the ANG Group and made the above payments to them. Inter-se transfer of

shares has also been competed between the Garg Group, RG Group and the ANG Group. His clients have also made substantial payments to SG Group for the inter-se transfer of shares as follows:

Particulars	Rs. (In lacs)
Amount payable to SG Group as per the MOFS (A)	212.00
Add – 1/3 of shared liability Rs.133.23 lacs Rs.44.41 lacs of Garg Group and Rs.44.41 lacs of RG Group (B)	88.82
Total payment to be made (A) + (B)	
Less payments already made and acknowledged by MFL Group (C)	98.11
Plus: Amount debited to SG Group for not providing the transfer documents of the MN and MB Units (As agreed in the Mediator Report dated 15 th February, 2012) (D)	
Plus: TDS amount of MB MN units upto Dec 2012 (E)	22.16
Total amount already paid to the SG Group – (C)+(D)+(E)	180.27
Net outstanding payment that remains to be paid by the Garg Group	120.55
Excluding the amount already deposited by Garg Group with the Hon'ble Court for payment against share transfer.	100.00
Net balance payment to be paid by Garg Group	20.55

32. He submits that as against the above payment of ₹180.27 lac already made by the Garg Group, not even a single share has been transferred by the SG Group. In addition to the above and undisputedly, the Garg Group has also made substantial payments against the Loan Liabilities of the Dairy Division of MFL as under:

Particulars of payments made by the Garg Group	Rs. (In Lacs)
HPFC Principal	117.30
HPFC Interest	60.54

SBOP Interest	335.33
Total	513.17

33. The grievance of respondents No.6 to 14 is that despite of above payment of ₹513.17 lac already made by the Garg Group, no significant action relating to and for transfer of the two units have yet been done by the SG Group. There is no cooperation from the SG Group side to comply obligations except the lip service and by raising technical objections. Since the petitioners are in physical possession of two units which have come to the share of respondent No.6-14, the petitioners avoiding to complete their obligations on one reason for the other, counsel has also referred various paras of petition as well as prayer. His further submission is that since, they are in control of two units and are in better footing, therefore, they are dictating their terms without any valid reasons and without any cooperation.

34. Mr.Dutt has refuted the argument of Mr.Khanna, learned counsel appearing on behalf of respondent Nos.6 to 14. He states that his clients have taken all necessary steps to implement the MOFS and are already complying with any direction if issued by this court. He has given the following details of compliance by his client:

- i. Possession of running and operative MB and MN Units along with all statutory records handed over to Garg Group, continued since 30th April, 2010/appointed date under the MOFS.
- ii. Authorization to operate bank accounts of the MB and MN Units in their control and possession given by way of resolutions dated 25th October, 2010.
- iii. Shareholders' approval by postal ballot for slump sale of two units passed on 25th June, 2011, recorded in ROC.
- iv. Sent Letter of Intent dated 4th July, 2012 @ 41 A with Rejoinder

in I.A. No.19232 of 2012 to SBOP along with approved formats of documents, including

- (a) BTA,
 - (b) Authority Letter in favour of Bank for collecting Title Deeds from HPFC,
 - (c) Form of Undertaking to execute Mortgage in favour of the Bank required by SBOP from ZLL at the request of Garg Group to facilitate.
- v. Renewed credit limits of State Bank of Patiala at the request of Garg Group on 31.3.2011 and 31.3.2012.
- vi. Provide Signed BTA and Special Power of Attorney to the Garg Group again in the Court as recorded in proceedings of 30.5.2012.

35. He states that his clients are ready and willing to provide executed documents for facilitating loan transfer, without prejudice and cooperate fully in this regard, provided service of interest is continued.

36. The petitioners also filed an application, being I.A.No.22139/2012, by alleging that respondents No.6 to 14 since July, 2012 have stopped paying interest to the financial institutions, who have now issued the SARFAESI notice dated 3rd December, 2012.

37. The suggestion is made by the petitioner that the amount of ₹1 crore deposited by Garg Group with the Registrar General of this Court be utilized for paying interest to the financial institution to enable the parties to overcome the notice under Section 13(2) of the SARFAESI Act, and after adjustment, the respondents No.6 to 14 be directed to pay the interest in future to the financial institutions of the companies which has fallen in the share of respondents No.6 to 14 till the full compliance of transfer of the

said two companies as well as loan are cleared by them. Mr.Khanna, on the other hand, made a counter suggestion that after adjustment of ₹1 crore already deposited with the Registrar General of this Court, the interest for subsequent period be paid by the petitioners and respondent Nos.6 to 14 in equal proportion until the process of compliance for transfer of the respective properties is completed. However, both proposals given by the petitioners and respondents No.6 to 14 are not acceptable to respondents No.1 to 5, as according to them, they have yet to receive part payment from the petitioner as per the Settlement Agreement. Therefore, the amount lying be not utilized, as it would be difficult to receive the same in view of ongoing disputes between the petitioners and the respondents No.6 to 14, rather the prayer is pressed by the counsel for respondents No.1 to 5 made in the three applications being I.A.Nos.2987/2012, 12405/2012 and 549/2013.

38. It is averred by the said respondents in the three applications that the petitioners have no locus to seek such a relief restraining them from giving effect to the resolution passed on 19th October, 2011 and have no right in any of the shares of the MPL. Their right is only to transfer of shares of MFL by way of gift. The RG Group has already deposited the share of MFL together with Share Transfer Form with the Mediator and has also completed all other formalities including dematerialization of the MFL shares, submission of delivery instruction slip, etc. in accordance with the MOFS. On the other hand, the petitioners have failed to comply with the terms of the settlement and have not deposited shares held by their group of MPL to the mediator till date. As far as respondent No.6 is concerned, it is admitted that respondent No.6 has already deposited an amount of ₹2 crores in an escrow account with the mediator in July, 2010. Apart from that, the

Garg Group has also made a payment of ₹98.11 lacs for meeting the pressing liabilities of MFL, to be set off against payments to be made by the Garg Group in terms of the MOFS. As far as respondents No.1 to 5 are concerned, it is specifically mentioned that all obligations have been fully discharged and this Court should immediately pass the order to the effect of transfer of physical shares from all other three groups to the RG Group. As far as the inter-se dispute between the petitioners and respondents No.6 to 14 is concerned, the same may continue as they are not in a mood to resolve their disputes and such delay would harm the business of RG Group.

39. It is also stated by respondents No.1 to 5 that although in compliance with the order dated 30th May, 2012, the respondents No.6 to 14 have paid the net amount due and payable to respondents No.1 to 5 under the MOFS, however, respondents No.6 to 14 and the petitioners have not completed all the obligations under MOFS which are required for the purpose of implementation of settlement. The obligations pending on behalf of the petitioners to square off the entries in the books of accounts of respective companies, H-Form from Ace International, audited balance sheet of Ace International for Financial Year 2008-2009, transfer of shares of MPL from the petitioners SG Group to the respondents No.1 to 5 and to execute the corrigendum to MOFS. The obligations are also pending on behalf of respondents No.6 to 14, such as, to complete the transaction matrix in order to square off the entries in the books of accounts of respective companies, Forms C, F and H to be provided to MPL and to execute the corrigendum to MOFS. It is also stated that the said compliance is not made by the Groups despite of various reminders. Therefore, various directions are sought by respondents No.1 to 5.

40. In the third application, being I.A.No.549/2013, the direction is sought by respondents No.1 to 5 that the Registrar General of this Court be directed to release an amount of ₹53.05 lacs from the amount of ₹1 crore lying deposited with this Court to the respondents No.1 to 5 and direct the petitioners and respondents No.6 to 14 to substitute the personal guarantees of the respondents No.1 to 5 given to the State Bank of Patiala in the credit facility of MFL with immediate effect with their personal guarantee or any other appropriate security and they be also directed to substitute with immediate effect the pledged shares of MPL lying pledged with State Bank of Patiala with any other appropriate security.

41. In reply to argument addressed by respondent Nos.1 to 5, Mr. Dutt submits that three applications have been moved by them with mala fide intention in order to scuttle the process, in collusion with respondent Nos.6 to 14. He submits that respondents No.1 to 5 have no justification to oppose the prayer for utilizing the amount of ₹1 crore deposited with Registrar General of the High Court to enable the parties to overcome the notice under Section 13(2) of the SARFAESI Act. It is evident from the fact that the settlement between RG Group and Garg Group as recorded by this Court in order dated 30th May, 2012, it was clearly agreed between them that –

- a. ₹44.41 lac to be paid by RG Group to the petitioners under Clause 2.2.13 (Existing liabilities of MFL under Clause 2.2.13 to be shared equally by Garg Group, SG Group and RG Group decided by the Mediator to be ₹133.23, i.e. 44.41 lacs per Group) would be paid by Garg Group on behalf of RG Group to the SG Group/petitioners. (Refer para 2 of order dated 30.5.2012: “....subject to a claim of ₹44.31 lac (typographical error, actual figure is 44.41 lacs, i.e. 133.23 lac divided by 3), which will paid by Suresh Garg Group to

petitioners on behalf of Rajiv Goyal Group...”)

- b. Payments in respect of two cars quantified in the application in question in para 10 of the application as ₹8.74 lacs was also to be made by Garg Group to petitioners on behalf of the RG Group. (Refer para 2 of order dated 30.05.2012: “...and subject to adjustment with regard to the cars...”)

Apart from the above, and question of interest, which was kept open, inter-se between RG Group and Garg Group there was full and final settlement on 30/05.2012, as recorded in para 2 of the order and a separate statement of Mr.Rajiv Garg.

42. It is also submitted by Mr.Dutt that by way of these applications, the respondent Nos.1 to 5 in collusion with Garg Group are trying to scuttle the process of any relief being granted to SG Group in the application. Though the respondent Nos.1-5 are in any event admitting that the ₹53.05 lac that they are now claiming from Garg Group, to be released from amount deposited in Court is to be ultimately “to be paid to the petitioners as also the payment of ₹53.05 lac is not contingent to the pending issues of the MB and MN divisions, due to which respondent Nos.6-14 have not settled their under MOFS.” In para 17 of I.A. No.549/2013 respondent Nos.1 to 5 have undertaken that “the applicants will forthwith utilize the amount of ₹53.05 lac to pay the amount due and payable by them to the petitioners for effective implementation of the pending issues under the MOFS.” In I.A. No.549/2013 none of the prayers are directed in the application against the petitioners, the same are referred as under:

- a. Prayer (a) is for release of the aforesaid sum to respondent Nos.1-5 from amount deposited in Court for utilization for payment to petitioners upon inter-se implementation of MOFS terms between

respondent Nos.1-5 and petitioners.

- b. Prayer (b) and (c) are directed against respondents No.6-14 for substitution of personal guarantees and pledged shares of Mahaan Proteins Ltd. which was liability of respondent Nos.6-14 even under MOFS.

43. In case, the MOFS dated 31st August, 2010 is read in a meaningful manner, it is evident that various terms and conditions have been inserted by the parties in order to provide mechanism whereby all the four groups may get their respective shares as per settlement. It goes without saying that all the parties have to comply with the terms and conditions mentioned therein. However, it appears to the Court that the petitioners as well as the respondents have their respective grievances against each other for the purpose of equally implementation of certain clauses which were agreed by them at the time of execution of the MOFS.

44. The predecessor Court as well as this Court have made various attempts in order to resolve their disputes but somehow both sets of groups have not reached on the consensus despite of various meetings. They have their own versions for such compliances. After hearing them many times, even this Court feels that some meetings are required either before expert mediator or before the arbitrator for the purpose of execution of various relevant documents for facilitating loan transfer in favour of respondent Nos.6 to 14 and share certificates as well as issue of servicing interest and penalty of the loan liability of the dairy divisions. Under the scheme of Section 9, it is not necessary for the Court to decide all the disputes raised by the parties which are even not mentioned in the prayer clause. The Court while considering the petition under Section 9 of the Act for interim protection has to strike the balance between the parties in order to preserve

the property in the interest of the parties which are of urgent in nature, till the same are decided by the Arbitrator on merit after hearing the parties. Therefore, at this stage, I am inclined to decide issues which are urgent; rest of the reliefs and disputes raised by the parties have to be considered by the Arbitrator who has been appointed by the parties themselves.

45. The first urgent relief sought by the respondents No.1 to 5 is that in the interim order passed on 18th October, 2011, the respondents were restrained from giving effect to the Resolution of the Extraordinary General Meeting to be held on 19th October, 2011. Though the respondents No.1 to 5 have sought other reliefs also but I feel that the same be considered by the Arbitrator after hearing of the parties as the same is linked with the disputes and differences between the petitioners and respondents No.6 to 14. However, liberty is granted to respondents No.1 to 5 to move a petition in this regard before the Arbitrator who shall consider the same while exercising his own discretion as to whether such reliefs are to be granted or not.

46. With regard to vacation of the stay order dated 18th October, 2011, the submission of Ms.Meenakshi Arora, learned counsel appearing on behalf of respondents No.1 to 5/RG Group is that her clients are battling survival of their company MPL when the RG Group took over the management of the MPL and in order to overcome the financial survival, they tried to raise share capital by passing resolution on 19th October, 2011 but the petitioners by misrepresenting have obtained the order dated 18th October, 2011 restraining them from giving effect to such resolution. As per MOFS dated 31st August, 2010, the ownership, management and control of Mahaan Proteins Ltd. (MPL) was to be transferred to RG Group and against that, the RG Group was to give up shares in other two Mahaan Group Companies,

namely, Zeon Lifesciences Limited (ZLL) and Mahaan Food Limited (MFL). It was agreed between the parties that the ownership and control of ZLL would vest with the Garg Group (respondents No.6 to 14) while that of MFL would be held by the SG Group (the petitioners). It is alleged that MFL had accumulated losses over ₹18 crores and has been in urgent need of infusion of funds who has approached various banks for financial accommodation. Since the MPL became a sick company and was referred to BIFR and operating agency, IDBI submitted its report which seriously indicted the management of the company. The Banks also declined the financial assistance and accommodation as MPL had been shown in the RBI list of wilful defaulters. Respondents No.1 to 5 were able to get the name deleted from the list of RBI but other Banks/ Financial Institutions have continued MPL on their list of wilful defaulters and thus, the said company has been finding it extremely difficult to raise working capital for its rehabilitation.

47. It is also argued by her that as far as inter-se disputes between the respondents No.1 to 5 and other parties are concerned, the same have been resolved substantially. The respondents No.1 to 5 have to receive the balance amount and the petitioners and respondents No.6 to 14 have to substitute the personal guarantees of respondents No.1 to 5 given to the State Bank of Patiala in the credit facility of MFL which are pledged shares of MPL.

48. I find force in the submission of learned counsel appearing on behalf of the respondents No.1 to 5 in view of statement made by the respondents No.1 to 5 as far as the interim order is concerned. For the reasons stated in the application for vacation of said interim order, I allow the prayer of the respondents No.1 to 5 by vacating the order dated 18th October, 2011. The

said respondents are allowed to give effect to the resolution if passed in the Extraordinary General Meeting.

49. With regard to other reliefs sought by the said respondents for release of the amount as well as to substitute the personal guarantees of respondents No.1 to 5 given to the State Bank of Patiala, as mentioned earlier, the same have to be considered before the Arbitrator who will decide the same as per their own merits after hearing the parties.

50. All the three applications filed by the respondents No.1 to 5 are accordingly disposed of.

51. With regard to direction sought by the petitioners in their application, I.A.No.19232/2012, which is of an urgent nature, it is alleged by the petitioners that as per clause 6 of MOFS, the respondents No.6 to 14 are obliged to service the interest and penalty in relation to the dairy division of MFL and therefore, the interest is to be paid and serviced by respondents No.6 to 14. According to them, as per Clauses 3 and 6 of MOFS, the respondents No.6 to 14 have to service interest of the loan liability of ₹775 lac of the dairy divisions of MFL towards the consideration of acquiring MB and MN divisions from MFL to ZLL along with other payment till the time the loan and MB and MN divisions are taken over by the respondents No.6 to 14.

52. It is mentioned in the application that the respondents No.6 to 14 have been servicing the interest from 1st September, 2012 till 30th June, 2012. However, thereafter the said respondents are not servicing interest and the petitioners were forced to make a payment of ₹60 lac as per the direction issued by the Mediator in order to save petitioners' company MFL from becoming an NPA and from MOFS becoming redundant. The said amount was deposited by the petitioners on the written assurance of respondents

No.6 to 14 that they will continue servicing the interest to State Bank of Patiala. The same has been recorded in para 4 of the Mediator's report dated 15th February, 2012.

53. It is the admitted position that the respondents No.6 to 14 had been continuously paying the interest till June 2012. But later on they stopped the said payment despite of enjoying the physical possession of two units transferred to them. The petitioners have received a letter dated 20th September, 2012 stating inter alia that interest on the Cash Credit limit of ₹775 lac for dairy division of MFL has not been paid for the months of July and August 2012. In the event of non-payment of interest for a continuous period of three months, the bank would be constrained to declare petitioners' account as a NPA which would severely be detrimental to the working of business of MFL. Thus the present application has been filed.

54. I agree with the learned counsel for the petitioners that in case, the said amount of interest is not paid the petitioners' account is likely to be declared an NPA, the security for the Cash Credit facility would be revoked and the petitioners will suffer irreparable loss and injury. The respondents No.6 to 14 are already in the possession of MB and MN divisions since 30th April, 2010 and run by them who have not cleared their liability, though the said divisions are still under the books of the petitioners company. Therefore, the said notice was issued to the petitioners by the financial institutions.

55. The petitioners' counsel submits that the petitioners are ready and willing to implement the MOFS. They have taken the positive steps towards the same and they are ready to fulfil their obligation as suggested by this Court or the Arbitrator. The statement has been made on behalf of the petitioners that whatever cooperation is required from the petitioners' side,

they will cooperate in the same for the purpose of transfer of two units in favour of the respondents No.6 to 14 who have to clear the loan as per the terms and conditions of MOFS and till the time said divisions are transferred to the respondents No.6 to 14, they should be directed to continue to service interest to State Bank of Patiala of the loan of MFL.

56. The respondents No.6 to 14 have their version to the effect that the petitioners are not cooperating with the respondents No.6 to 14 for the purpose of transfer of two units in favour of respondents No.6 to 14 so that the transfer is made in peaceful manner. Learned counsel appearing on behalf of the respondents No.6 to 14 also made a statement that in case the petitioners will cooperate in signing the requisite documents with regard to the transfer of loan, the said respondents would continue to service the interest to State Bank of Patiala of the loan of MFL till the time loan, MB and MN divisions are transferred. However, a suggestion is made that till the time full cooperation is provided by the petitioners and the loan is transferred by submitting the requisite documents, service interest should be made by petitioners as well as respondents No.6 to 14 in equal proportion.

57. After having considered the rival submissions of the parties as well as the facts and circumstances of the present case, I am of the view that the respondents No.6 to 14, without prejudice, to pay the interest on the Cash Credit limit of ₹775 lac of MFL to the State Bank of Patiala, Paonta Sahib Branch from the months of July 2012 onward and continue to pay the interest every month till the time said two divisions are transferred in their favour. The respondent Nos.6 to 14 are allowed to withdraw a sum of ₹1 crore which was deposited by them with the Registrar General under the order of this Court and shall deposit the balance amount towards interest

up-to-date and give an undertaking by filing of affidavit to continue to deposit the same every month till the time said two divisions are transferred in their favour.

The said directions are necessary because if the said orders not passed, irreparable harm, grave damage and injury will be caused to the petitioners who will be declared an NPA because the said two units MB and MN are in the books of the petitioners and possession of the same is with the respondents No.6 to 14 which are being run by them and they have not met their loan liability. But at the same time, the petitioners shall provide all their cooperation by execution of requisite papers and execute the documents for facilitating loan without taking technical approach. In case, it is found by the Court or by sole Arbitrator that the petitioners are unnecessarily creating hurdles while taking the shelter of technical approach, the respondents No.6 to 14 would be considered and they would be entitled to move an application for modification of order.

With the abovementioned directions the application filed by the petitioners is also disposed of.

58. Similarly, the main petition being OMP No.777/2011 is also disposed of, with liberty to seek the other prayer if available in law by moving an interim application under Section 17 of the Act before the Arbitrator who will consider the same as per their own merits.

59. Before pronouncement, another petition being OMP No.473/2012 filed by the same petitioners against the respondents as well as respondent No.18 was listed before Court whereby the petitioners seek termination of the mandate of sole Arbitrator who is arrayed as respondent No.18 who is

named sole Arbitrator under Clause 9(d) of MOFS dated 31st August, 2010 executed by and between the four family groups.

60. The respondent No.18 was also appointed as per agreement as Mediator and as Escrow Agent. As the proceedings before him were continuing, the petitioners were pressing interim reliefs as well as hearing of the petition under Section 14 of the Act seeking termination of the mandate of respondent No.18. All the parties were therefore, heard and orders were reserved in this regard also on 19th March, 2013.

The prayer made in OMP No.473/2012 is not opposed by the respondent Nos.15 to 17 with regard to termination of the mandate of the respondent No.18. The following grounds for termination of mandate of respondent No.18 are made in the petition by the petitioners:

- i) The actions of respondent No.18 have disintitiled him to perform his functions as the sole Arbitrator to determine any disputes amongst the parties to the MOFS, his functions as the Mediator, the Escrow Agent and now as the sole Arbitrator in an arbitrary manner at the instance of Garg Group. The respondent No.18 has personal interest in non-implementation of the MOFS since he has been using the amount deposited with him as an Escrow for his personal use.
- ii) The respondent No.18 has personal vengeance against the petitioners. He has appointed his personal lawyers who has been advising him against the petitioners and also represented him in OMP No.777/2011 before this Court on various occasions.
- iii) There were several meetings and discussions before respondent No.18. The parties also agreed that all the parties would cooperate with respondent No.18 in letter and spirit and will comply with the terms of the MOFS. This Court also requested respondent No.18 to

complete all the formalities within a period of three weeks. The Court also directed respondent No.18 to look into the question of release of money to Mr.A.N.Goyal and also that respondent No.18 should ensure that time bound matters are looked into expeditiously and directed him to file a reply before the Court as to which ground or which party or which person is not cooperating in the matter. But respondent No.18 has failed to comply with the above directions of this Court. In the report filed by him dated 15th February, 2012, the respondent No.18 arbitrarily forced the petitioners to agree to pay ₹60,00,000/- towards interest at the time of takeover of the loan of MFL by ZLL.

- iv) That respondent No.18 cannot now act as an Arbitrator as he has been the beneficiary of the funds deposited in an Escrow Account. The amount of ₹2 crores was deposited by Garg Group on 23rd August, 2010 in a new Escrow Account opened solely for the said purpose. Out of the said amount of ₹2 crores, respondent No.18 withdrew ₹1 crore on 28th October, 2010, ₹34 lacs on 17th June 2011 and ₹20 lacs on 13th August, 2011 for the purpose best known to respondent No.18.
- v) After having misused the funds entrusted to him as an escrow for his personal use cannot now act as an Arbitrator to decide the dispute between the parties. By withdrawing the above amounts from the Escrow Account, the respondent No.18 has enjoyed the amounts as well as deprived the accrual of interest on the amount deposited for the benefit of the parties.
- vi) During the course of hearing of OMP No.777/2011 on 14th March, 2012, this Court directed respondent No.18 to deposit ₹2 crores lying

with him in escrow with the Registrar General of this Court within three days. Since, the respondent No.18 failed to comply with the said order, this Court on 21st March, 2012 again directed him to deposit the money. However, he failed to comply with both the orders, allegedly, on the grounds that in the absence of the certified copy of the orders passed, he will not be in a position to comply with the orders. This Court on 23rd March, 2012 sent the said order directly to respondent No.18 through *dasti*. Even after that, instead of depositing ₹2 crores as directed by this Court, respondent No.18 unilaterally deposited ₹1.60 crores while wrongly and arbitrarily deducting ₹40 lacs from the escrow amount allegedly towards his fees. This Court by order dated 11th April, 2012 directed the respondent No.18 to deposit the remaining amount of ₹40 lacs with the Registrar of this Court. It was only after the directions of this Court that the balance amount was deposited.

- vii) That respondent No.18 has become de jure and de facto unable to perform his functions as the sole Arbitrator due to personal involvement in the dispute between the parties and being a relative of the parties and, therefore, the mandate of respondent No.18 to act as the sole Arbitrator ought to be terminated by this Court. The respondent No.18 by his e-mails dated 1st May and 9th May, 2012 has informed the parties that an arbitration hearing is scheduled on 12th May, 2012. He has also stated that the RG Group has invoked arbitration vide his email dated 5th March, 2012 but the petitioners have never consented for respondent No.18 to act as arbitrator. In fact, the petitioners have vide e-mail dated 11th May, 2012 specifically stated that they do not agree for respondent No.18 to act as the sole

Arbitrator while reserving their right to take appropriate steps as may be advised.

61. Two sets of respondents i.e. respondents No.1 to 5 who are represented by Ms.Meenakshi Arora, Advocate and respondents No.6 to 14 who are represented by Mr.Rakesh Khanna, Advocate, have strongly opposed the prayer made in the petitions. They specifically denied that the respondent No.18 has any personal interest in the non-implementation of the MOFS or that he has used the money deposited in the Escrow Account for his personal use. He has not shown any kind of biasness towards anybody and has conducted the proceedings in fair manner. Whatever delay has happened it is due to the defaults of the petitioners who are not showing any interest in implementation of MOFS. According to them, the respondent No.18 had conducted various meetings but the petitioners have excused themselves from participating in the same. Most of the time, the petitioners are uncooperative and anti-settlement. The allegations of biasness are vague and ambiguous. The respondent No.18 is the neutral person to adjudicate the claims of the respondents. With regard to withdrawal of the amount by the respondent No.18 from the Escrow Account, the only reply is given by the said respondents is that the said amount has been deposited by the respondent No.18 as per orders of the Court.

62. It is also stated by them that in the past also the parties had appointed Sh.Harbans Lal Goel, a common relative, as the Mediator to settle their disputes through mediation. However, the petitioners' reluctant attitude led to Sh.Goel filing a report dated 4th December, 2009 before the CLB wherein he noted that the petitioners were claiming too high valuations and were not agreeable to settlement. Thereafter, the petitioners proposed the change in Mediator and the CLB again directed the ANG Group, RG Group,

SG Group and Garg Group to amicably resolve their disputes and after receiving consent of all the parties appointed Mr.Mukesh Sharma S/o Sh.Vishwanath Sharma as the Mediator vide order dated 8th April, 2010 and fixed a timeframe of 6 weeks for completion of the mediation process.

63. Separate reply has been filed on behalf of respondents No.15 to 17 wherein they have stated that it is quite apparent from the record that the respondent No.18 has failed to perform his responsibility in terms of MOFS. The respondent No.18 has been acting as Mediator as per his whims and fancies ever since his appointment and failed to perform his functions as Mediator completely. He delayed implementation of the MOFS and incited parties against each other due to his personal interest in money deposited with him in the escrow account. They further submitted that on 23rd April, 2012 the respondent No.18 during mediation meeting told respondent No.15 that he has now become sole Arbitrator and forced respondent No.15 to sign a letter stating the A.N.Goyal Group accepts him as Arbitrator. The respondent No.15 has clarified vide his e-mail dated 24th May, 2012 that he has only consented for arbitration for the limited issue as to the interest on delayed payment by Garg Group (respondents No.6 to 14), as the answering respondents have limited role in MOFS and all other claims of A.N.Goyal Group were settled in Court.

64. It is also submitted by respondent Nos.15 to 17 that the orders passed by respondent No.18 on 9th December, 2012 and 20th December, 2012 are self-explanatory and the same are passed only in presence of Garg Group (respondents No.6 to 14) and no other parties were present. Respondents No.15 & 16 are aged 80 and 71 respectively and want to be free from the obligations under the MOFS and retire and have peaceful life. Being senior members of the family, it has been noticed that Mr.Mukesh Sharma,

Arbitrator/Mediator is not letting parties move towards settlement and result of which all these parties are deranged into litigation. Therefore, to resolve the issues between the parties, they seek support of this Court to resolve the issues in Court or by appointing impartial arbitrator through this Court. The respondent No.18 has personal interest in non-implementation of the MOFS. During the meeting of 24th May, 2012 the respondent No.18 used pre-signed blank cheque No.759951 towards his fees from blank signed cheque book of respondent No.15 which was deposited with respondent No.18 for facilitation of settlement between the parties.

65. It is undisputed fact that the concluded MOFS dated 31st August, 2010 lays down the terms and conditions for division of Mahaan Group of Companies amongst the parties.

66. There is an Arbitration Clause 9(d) of MOFS which reads as under:-

“9(d) Arbitration Clause

In pursuance of the terms of this MOFS it is agreed by and between the parties that the Mediator Sh. Mukesh Sharma will oversee the entire process of implementation of this MOFS. Any dispute/differences arising between the Parties with reference to any matter arising out of related to the meaning, interpretation or implementation of any of the terms of this MOFS, the same shall be referred to the Mediator who will act as a Sole Arbitrator and Adjudicate such dispute in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The place of the arbitration shall be New Delhi and the decision of the Sole Arbitrator shall be binding on all the parties.”

67. Pursuant to Clause 9(d) of the MOFS, it is evident that Mr.Mukesh Sharma (respondent No.18) was appointed as the Mediator by the parties to oversee the entire process of implementation of this MOFS and in case of

any disputes/differences between the parties relating to the meaning, interpretation and implementation of the MOFS, the same shall be referred to Mediator who will act as a sole Arbitrator to adjudicate such disputes under the Act. He was appointed as an escrow agent with the mutual consent of the parties.

68. It is evident that Clause 9(d) of the MOFS has been inserted by the parties in order to provide the mechanism whereby all the four groups may get their respective shares as per settlement, subject to agreed terms recorded in the MOFS ad for the equal benefit of parties. The mechanism drawn up by the parties themselves provided that first Mediator Mahesh Sharma will oversee the entire process of implementation of MOFS and in case of any disputes/differences between the parties, the same shall be referred to the Mediator who will thereafter act as a sole Arbitrator.

69. It appears from the pleadings of the parties, orders passed by the Court and even as admitted by the petitioners that R.G. Group has invoked arbitration vide e-mail dated 5th March, 2012 to act as an Arbitrator for which the petitioners never given his consent and rather the petitioners by e-mail dated 11th May, 2012 specifically informed about their disagreement to accept him as an Arbitrator.

70. There are no pleadings or positive statement on behalf either of the parties to the effect that till March, 2012 any party accepted him as an Arbitrator. Prior to that, in fact, the respondent No.18 was acting as mediator with regard to disputes/differences relating to meaning, interpretation and implementation of the mutual settlement. Clause 9(d) also speaks that in case of such dispute with regard to terms of MOFS, the same shall be referred to the Mediator who will act as an Arbitrator. So, all the acts done by respondent No.18 prior to raising their disputes as a mediator

and not being Arbitrator. With regard to allegations made by the petitioners, about biasness, personal involvement, vengeance towards the petitioners, are concerned, the said challenge is possible in the form of objections to the final award under Section 34 of the Arbitration and Conciliation Act, 1996 in view of settled proposition of law. The reliance has been placed by the respondents in the case of ***Progressive Career Academy Pvt. Ltd. Vs. FIIT JEE Ltd.***, 2011 (5) R.A.J. 7, Delhi, delivered by the Division Bench of this Court, particularly in paras 20 to 22 which read as under:

“20. A comparison of the provisions dealing with the challenge to the arbitrator’s authority in the A&C Act and the UNCITRAL Model Law discloses that there are unnecessary and cosmetic differences in these provisions, except for one significant and far-reaching difference. The UNCITRAL Model Law, in Article 13(3), explicitly enables the party challenging the decision of the Arbitral Tribunal to approach the Court on the subject of bias or impartiality of the Arbitral Tribunal. However, after making provisions for a challenge to the verdict of Arbitral Tribunal on the aspect of bias, the UNCITRAL Model Law prohibits any further Appeal. It seems to us, therefore, that there is no room for debate that the Indian Parliament did not want curial interference at an interlocutory stage of the arbitral proceedings on perceived grounds of alleged bias. In fact, Section 13(5) of the A&C Act indicates that if a challenge has been made within fifteen days of the concerned party becoming aware of the constitution of the Arbitral Tribunal or within fifteen days from such party becoming aware of any circumstances pointing towards impartiality or independence of the Arbitral Tribunal, a challenge on this score is possible in the form of Objections to the Final Award under Section 34 of the A&C Act. Indeed, this is a significant and sufficient indicator of Parliament’s resolve not to brook any interference by the Court till after the publication of the Award. Indian Law is palpably different also to the English, Australia and

Canadian Arbitration Law. This difference makes the words of Lord Halsbury in *Eastman Photographic Materials Co.* all the more pithy and poignant.

21. In this analysis, we must immediately observe that the approach taken by one of us (Vikramajit Sen, J.) in *Interstate Constructions* is not correct as it transgresses and infracts the provisions of the A&C Act. Learned Single Benches have interfered and removed arbitrators obviously on pragmatic considerations, viz. the futility and idleness of pursuing arbitral proceedings despite lack of faith therein because of justifiable doubts as to the independence or impartiality of the arbitrators. Clearly, Parliament has also proceeded on the compelling expediency and advisability of expeditious conclusion of these proceedings. Relief against possible mischief has been provided by making clarification in Section 13(5) that apart from the challenges enumerated in Section 13(4), an assault on the independence or impartiality of the Arbitral Tribunal is permissible by way of filing Objections on this aspect after the publishing of the Award. We, therefore, affirm the approach in *Pinaki Das Gupta, Neeru Walia, Ahluwalia Contracts (India) Ltd. and Newton Engineering and Chemicals Ltd.* We are of the opinion that the Single Benches who interfered with the progress of the proceedings of the Arbitral Tribunal in the pre-Award stage fell in error. Humans often fall prey to suspicions which may be proved to be ill-founded on the publication of an Award. There is compelling wisdom in Parliament's decision to allow adjudication on grounds of bias, lack of independence or impartiality of the Tribunal only on the culmination of the arbitral proceedings.

22. Having arrived at the conclusion that curial interference is not possible at the pre-Award stage on the allegations of bias or impartiality of the Arbitral Tribunal on the one hand, and our understanding that the Appeals are not maintainable on the other hand, is any further relief to be granted? We think it expedient to abjure from

passing any further orders for several reasons including – firstly, the reality that arbitration proceedings would inevitably have already come to an end in those instances where the arbitrator had been removed by orders of the Court, and secondly the availability of redress under Article 136 of the Constitution of India. All pending applications stand disposed of. The Referral Order is answered by reiterating that the statute does not postulate judicial interference in arbitral proceedings till the Award is published, whereupon Objections can be raised also on the platform of the alleged bias of the Tribunal. This challenge is possible provided the grievance is articulated in consonance with Section 13 of the A&C Act.”

71. As far as the allegation of withdrawing of ₹2 crores from the escrow account is concerned, the said amount (which was deposited by the respondents No.6 to 14) was withdrawn during the period October, 2010 to August, 2011. In fact, said amount was deposited for the purpose of adjustment of amount between the four groups. The respondents No.6 to 14 have denied that the said amount has been misused by him. The same has been deposited by the respondent No.18 in court as per orders. His version is not come on record. It was only on 1st May, 2012 and 9th May, 2012 as admitted by the petitioners, the respondent No.18 by E-mail informed the parties that RG Group has invoked the arbitration clause by E-mail dated 5th March, 2012. It is apparent that parties were trying to settle their disputes and differences before him as Mediator and not as a sole Arbitrator. Therefore, in my view, it is not for the petitioners to enforce Clause 9(d) of the MOFS as an Arbitration Agreement till the time he was acting as Mediator. There was no binding or enforceable arbitration agreement between the parties during the period when respondent No.18 withdrew the said amount from Escrow Account, as during said period he was acting as

Mediator and an Escrow Agent and not as an arbitrator. Once he was not acting as an Arbitrator in view of Clause 9(d) of MOFS his act come within the ambit of provisions of Arbitration and Conciliation Act, 1996 in which the present petition has been filed. However, I still feel that by rendering his award, he has to explain about this controversy of withdrawal of said amount even being a mediator. The petitioners may challenge the objections raised in the petition under Section 34 of the Act after passing the final Award.

72. It is the admitted case of petitioners that the Arbitration proceedings have commenced after filing of the present petitions. The petition under the said facts and circumstances is not maintainable.

73. Accordingly, I dismiss OMP No.473/2012 as not maintainable.

74. Pending I.A. No.1757/2013 is also disposed of in view of order passed in main petition. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 10, 2013