IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 297 OF 2015

Mr. Sanjeev Khandelwal .....Petitioner

: V/S :

Mr. Naresh Sanghi (Agarwal) & Ors. .....Respondents

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Mr. S.C. Naidu i/by. Mr. Sunil M. Kadam, Advocate for the plaintiff.

Mr. Atul Rajyadaksha, Senior Advocate a/w. Mr. Nikhil Jayekar, Mr. Vagish Mishra, Mr. N. Tripathi i/by. M. Tripathi & Co., Advocate for respondent no.3.

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Coram :- Smt. R.P. SondurBaldota, J.

23rd November, 2015.

P.C. :-

1). This application filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeks three interim reliefs at prayer clauses (a), (b) and (c). Mr. Naidu, the learned Advocate appearing for the petitioner does not press for the reliefs at prayers (a) and (c). Even prayer clause (b), he limits to injunction against respondent no.3 alone. Prayer clause

(b) reads as under :-

> "b. That this Hon'ble Court be pleased to pass appropriate orders and direction to restrain the Respondents from dealing and/or alienating and/or transferring and/or creating third party rights in properties of M/s. Mineral Trading Syndicate till the disputes are adjudicated by the Sole Arbitrator in the proposed arbitration proceedings."

This prayer clause is vague, in as much as, it does not specify the properties in respect of which the injunction is sought. The petition is, in that case, liable to be dismissed on that ground alone.

2). Respondents no.1, 2 and 4 have been served and are absent despite service. The petition is opposed by respondent no.3 on merit, as well as, on the ground that there is no arbitration agreement between the parties.

3). According to the petitioner, the arbitration agreement is contained in the minutes of the meeting dated 5th September, 2015 described as Memorandum of Understanding (MOU). Respondent no.3 alleges that, the MOU relied upon by the petitioner is not a concluded contract.

4). The signatories to the MOU relied upon by the petitioner are six persons. They are the 5 parties to the present proceedings and one, Rajneesh Agarwal who has been named as an Arbitrator in the MOU. The MOU makes an extremely interesting reading. It carries the date without the year. The first two paras of it, are in the form of recitals in which it is stated that, about four years back, respondent no.3 and two more persons who are not signatories to the MOU have given loan of Rs.38 crores to one, Sanjay Makharia who is also not a party to the MOU. Towards security of the loan, Mr. Sanjay Makharia had inducted respondent no.3 and the other two persons as partners in the partnership firm by name, M/s. Mineral Trading Syndicate with share percentage of 25%, 8% and 12.5% respectively. Similarly, certain shares of a company by name, S.Y. Minerals had been provided as security. The recitals further state that, the partnership firm has "in its books a mine" located in Orissa admeasuring 154 acres which has not been working since 4 years. All the "aforesaid" parties, had requested the petitioner to get himself inducted as a partner with the partnership firm and invest amounts that may be required in order to make the mine operational.

5). The next paras-3 to 9, are purported to contain the terms of the agreement between the parties. Para-3 refers to the decision for transfer by all the existing partners of the firm of 50% of their shareholdings in favour of the petitioner with Sanjay Makharia transferring 1% of his shareholding. As a result, the petitioner would hold 51% share in the partnership firm and the remaining partners together would hold 49% shares. Admittedly, all the partners of the partnership firm are not parties to the MOU. Out of six partners, only one i.e. respondent no.3, who has 25% share in the partnership, alone is the signatory to the MOU. Respondent no.3 and two other persons i.e. B.B. Agarwal and Naresh Sanghi (not parties to the MOU) were to ensure that all existing partners co-operated in execution of a partnership deed for inducting the petitioner into the firm with 51% share therein. It further provides that, any monies if required to be paid to any existing partners, the same shall be paid by respondent no.3 and B.B. Agarwal and Naresh Sanghi. Under Clause-4, upon execution of the deed of partnership, the petitioner was to invest money to ensure that the mines are made operative but the expenses were to be incurred on consultation and certification by one, Sanjay Tulshiyan (not a signatory to the MOU). Under Clause-5, the petitioner agreed to organise total funds not only towards his contribution but also towards contribution of 49% partners. The MOU does not refer to the exact amount of contribution of the petitioner and contribution of the other partners. Under Clause-6 after the mines started operating, the petitioner was to ensure that the entire profit generated from the mine operations is paid on monthly basis to respondent no.3, Chandulalji G. Agarwal and Naresh Sanghi in proportion of their shareholding upto the extent of Rs.40 crores. As per Clause-7, upon receiving Rs.40 crores, the three partners i.e. Chandulalji

Agarwal, Naresh Sanghi and respondent no.3 were to transfer their shareholding to the petitioner. Clause-8, provided an option to the petitioner to sell off the partnership interest of all the three persons i.e. respondent no.3, Chandulalji Agarwal and Naresh Sanghi and thereafter pay Rs.40 crores to the three persons. Under Clause-9, all the parties were to endeavour together to obtain balance shares of Shri. Rahim and Shri. Ashok at appropriate cost. Clause-10 relates to the Arbitrator. It provides for his fees at 7% without specifying the amount of which the percentage is to be given. Further, according to this clause, the initial amount and methodology was to be discussed in the next meeting.

6). Bare reading of the MOU is sufficient to note that, there was no concluded contract arrived at between the parties therein. There were several steps to be taken by the parties depending upon several events happening or the actions taken by persons who are not the parties to the MOU. In all probability, it is a mere record of the discussions that had taken place during the course of some negotiations between the parties present. It appears that some persons concerned with the partnership firm, and some with the Private Limited Company, had met together for the purpose of getting over the difficulties faced by the partnership firm and the Company and to chart a course of action which involved not just themselves but also other persons concerned with the two entities. In the circumstances, no case is made out by the petitioner for grant of interim reliefs. Hence, the Arbitration Petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)