

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

+ **O.M.P. No. 1365/2014**

% **12th October, 2015**

SANJAY GUPTA Petitioner
Through Mr. Sumit Bansal, Advocate with
Mr. Ateev Mathur, Ms. Richa Oberoi
and Mr. A.P.S. Sehgal, Advocates

versus

DEEPAK GUPTA AND ORS. Respondents
Through Mr. Sudeep Chatterjee, Advocate
with Mr. Karan Bajaj, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. On a first reading of the pleadings in the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, it appeared that the respondents were acting unfairly, however, after hearing the counsels for both the parties it is found that whereas the respondents have rectified their mistakes, and it is the petitioner who is however acting in a totally unfair and unacceptable way. What is this unfairness and unreasonableness of the petitioner, I am stating hereinafter.

2. By this petition under Section 9 of the Arbitration and Conciliation Act, 1996, the following reliefs are prayed:-

- “a. By granting ex-parte ad interim injunction restraining the respondents, their agents, representatives, dealers and other persons acting on their behalf from manufacturing, selling or otherwise dealing in PVC electrical wires and cables by describing them to be “from Plaza Group” or “Plaza Group of Companies” or by using the word “Plaza” as part of their trading style on any of the products which has not fallen to the share of the respondents or by deceiving the public at large by highlighting other products manufactured by respondent no.1 through its various companies by stating “Our other Plaza Products”;
- b. By passing ex-parte orders appointing Receiver to inspect the premises of the respondent no.1 including the premises as provided in Annexure P-9 and/or any other premises where the infringing products manufactured and marketed are stored and sold.
- c. cost of proceedings; and
- d. grant any other relief(s) as this Hon’ble Court may deem fit and proper in the facts of the present case.”

3. Both the parties concede that they are bound by various agreements which were entered into for dividing the joint businesses etc between them, and some of the clauses of the second Agreement dated 26.09.2009 which are relevant for the decision of the present petition are Clauses 11 to 14, and which read as under:-

“11. It has been agreed by “DG” that “DG” would not use “Plaza Group” & Logo on wire boxes.

12. It has been agreed between the parties that “SG” shall use the “PLAZA” brand of Trade Mark and its logo in the entire range of electrical wire, cables and other products listed in assignment deed dated 16.4.2009. “SG” shall use the “PLAZA” brand of trademark and its logo in the aforesaid products exclusively and to the exclusion of others and “DG” has no objection.

13. It has been agreed that “DG” shall use the “PLAZA” brand of trademark and its logo only on four products as per assignment deed dated 26.05.2009, i.e (i) PVC conduit Pipes, (ii) Electrical Accessories, (iii) PVC Tapes and (iv) MCBs. “DG” shall use the ‘PLAZA’ brand of Trade Mark and its logo in the aforesaid four products only exclusively and to the exclusion of others and “SG” has no objection.

14. It has been agreed that neither of the parties shall use the word “Plaza group” or “Plaza Group of Companies” on any of its products.”

4. Surely it cannot be disputed in view of the aforesaid Clauses 11 to 14, and is not disputed by the respondents, that respondents will not use the expression “Plaza Group” or “Plaza Group of Companies” on any of their products, but, petitioner further prays for the additional relief that respondents should not even show photographs of the products which are manufactured by them and which they are entitled to do so in terms of the settlement agreements entered into between them. Admittedly, as per the Settlement Agreement/Memorandum of Understanding (MOU) dated 26.5.2009, the respondents were entitled to manufacture four items being:-

a) PVC Conduit Pipes;

- b) Electrical Accessories;
- c) PVT Tapes; and
- d) MCBs

The respondents are putting photos of only such products on the packages.

5. Since the respondents can manufacture the aforesaid four products in terms of the Settlement Agreement/MOU dated 26.5.2009, respondents therefore on their boxes/packaging are putting photographs of the products which they are entitled to manufacture and sell in terms of the agreements between the parties. Petitioner contends that even this the respondents cannot do because that will amount to effectively showing that the respondents are describing themselves as “Plaza Group” or “Plaza Group of Companies”.

6. In my opinion, the petitioner is being less than fair and is acting *mala fide* in taking up the stand that the respondents cannot put photographs of even the products they are entitled to manufacture by their companies though the respondents are admittedly entitled to do so under the Settlement Agreement/MOU dated 26.5.2009.

7. Surely, it is not open to the petitioner to question the actions of the respondents once the respondents are not using the expression “Plaza

Group” or “Plaza Group of Companies” and are simply showing the photographs of the products manufactured by their companies on the boxes/packaging. The agreements between the parties, be it the Agreement dated 26.9.2009, or the earlier Agreement/MOU dated 26.5.2009 cannot prevent the respondents from putting photographs of products being manufactured by the respondents because this right is the legitimate right of the respondents and the contrary stand of the petitioner will lead to an unnecessary strained reading of the agreement between the parties and which is sought to be urged on behalf of the petitioner, and which interpretation the Court categorically rejects. So far as this relief prayed is concerned, the same is dismissed noting that if I allow the prayer of the petitioner in this regard it will amount to restraint of trade against the respondents from fairly carrying out their business by depicting products of the companies under the same management.

8. In view of the above, so far as the objection which pertains to respondents in using the expression “Plaza Group” or “Plaza Group of Companies” on their boxes/packaging is accepted, and which is accepted in view of the statement of the counsel for the respondents that they are not going to use these expressions, however, on account of the fact that the

petitioner is most unfairly seeking further reliefs of preventing the respondents from even using photographs of the products on their boxes which they were entitled to manufacture in terms of the Settlement Agreement/MOU dated 26.5.2009, this relief prayed for is rejected with costs of Rs.1,00,000/- (Rupees One Lakh only). Costs shall be paid within a period of four weeks from today.

9. Petition is disposed of in terms of the aforesaid observations. All pending applications also stand disposed of accordingly.

OCTOBER 12, 2015
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VALMIKI J. MEHTA, J.