

\$~2.

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

+ **W.P.(C) 1909/2016**

RABINDRA KUMAR WALIA

..... Petitioner

Through Mr. Sanjeev Sabharwal, Sr. Advocate
with Mr. Nar Hari Singh, Advocate for petitioner
No. 1.

Mr. Atul Nanda, Sr. Advocate with Ms. Purti
Marwaha, Advocate for petitioner No. 2.

Ms. Hetu Arora Sethi & Mr. Shravan Sahay,
Advocates for petitioner No. 3.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms. Bharathi Raju, CGSC for
respondent No. 1-UOI.

Mr. Amit S. Chaddha, Sr. Advocate with Mr.
Atanu Mukherjee, Adv. for respondent No. 4.

Mr. Abhinav Vasisht, Sr. Advocate with Ms.
Indrani Mukherjee, Advocate for the applicant-
Agarpara Co. Ltd. in CM No.15138/2016.

Mr. Neeraj Chaudhry, Advocate for National
Union of Jute Workers.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

04.05.2016

We have heard counsel for the parties at some length, including the two set of counsel, who claim to be representing Agarpara Company Limited. We have been informed that the shareholding and control of Agarpara Company Limited is subject matter of proceedings before the Company Law Board.

2. During the course of hearing, it is brought to our notice that

Appellate Authority for Industrial and Financial Reconstruction (AAIFR) is likely to function from this week as required coram to constitute a Bench is now in place.

3. The petitioner had approached this Court by way of this writ petition relying upon order dated 28th August, 2015 passed in Writ Petition (C) No. 8268/2015 and then order dated 30th November, 2015 passed in Writ Petition (C) No. 11151/2015. It is submitted that the specific directions for timely disposal of the applications and the appeal by the AAIFR were given in the latter order. Subsequently, on 4th December, 2015 AAIFR had reserved the orders on the applications seeking inspection and preservation of the assets of Agarpara Jute Mills Limited. However, before order could be passed, one of the Members of the AAIFR demitted office on 23rd January, 2016 and the Members in the AAIFR fell below the coram prescribed by law.

4. On 4th March, 2016, after hearing learned counsel for the parties, the following order was passed:-

“CM No.8165/2016(exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

WP(C) No.1909 /2016 & CM No.8164 /2016

Amended memo of parties impleading M/s Agarara Company Ltd. and Mahendra Kumar Sharma as co-petitioners will be filed within three days from today with a copy to the counsel for the respondents. We clarify that it will be open to the respondents to question the locus standi of the petitioner as well as the newly pleaded petitioners.

We have heard the counsel for the parties. Learned counsel appearing for Agarpara Jute Mills Ltd (respondent No.3) will file an affidavit of the Managing Director/authorized director giving the following details/particular/enclosures:-

- i) The leases in favour of third parties/tenants as they existed on 1st January, 2013 and any lease deed executed thereafter including renewals made after 1st January, 2013. The rent will be indicated and specified.

- ii) Copy of the site plan along with demarcation of the areas given on lease to the respective tenants. Area/portion in occupation of each tenant will be specified and demarcated.
- iii) Construction, if any, being undertaken in the property. It will be indicated whether the construction is being undertaken by the company itself, by the tenants/lessees or by a third party.

We record that during the course of the hearing, learned counsel for the respondents have stated that they have no objection to the filing of affidavit with the said particulars/details, as there is nothing to hide and conceal.

It is, however, stated that a copy of the said affidavit should not be furnished to the counsel appearing for the petitioners as there have been instances where information has been misused.

At this stage, the affidavit be filed in a sealed cover, without a copy to the other side. Affidavit will be filed within three weeks from today.

Mr. Abhinav Vasisht, learned Senior Advocate states that he has been instructed to appear for Agarara Company Ltd. and that the company would be moving an appropriate application.

Mr. Sanjeev Sabharwal, Senior Advocate states that he has been instructed to appear for the same company. This dispute is not being decided at this stage.

List on 27th April, 2016.”

- 5. Affidavit along with the documents in terms of the directions in the said order have been filed in the sealed covers.
- 6. We have opened the sealed covers and examined the affidavit and documents.
- 7. One of the contentions raised before us by the respondents is that the petitioners do not have any *locus standi* as they are neither shareholders nor are they in control of M/s Agarpara Company Limited. This aspect is subjudice before the AAIFR and also before the Company Law Board. Perhaps, this aspect is one of the core disputes and issues, which will have to be decided by the authorities under the Companies Act. This aspect may have to be examined by the AAIFR.
- 8. Keeping in view the limited controversy before us, we are inclined to

pass the following order:-

- (i) The respondents will furnish to the petitioners, without prejudice to their rights and contentions, a site plan of the property located at Barrackpore Trunk Road in Kolkatta clearly demarcating the areas in occupation of the tenants/licensees and the rent received by them without specifying the name and particulars of the tenants/licensees. The date on which the initial lease/licence deed was executed in favour of the said tenant/licensee and the date of current renewal and the initial and the present rent/license fee will be stated. The area in occupation in square feet (if it is constructed) and in square metres (Open area) will be indicated.

The site plan with details will be furnished within 15 days.

9. At this stage, we are not passing or issuing any direction with regard to name of the tenants/licensees, as apprehension has been expressed by the counsel for the respondents that this would be misused. It is also urged that these details should not be furnished without the issue with regard to *locus standi* being decided.

10. As noticed above, we are not deciding the issue of *locus standi* in the present writ petition as we are informed that the regular bench of AAIFR is likely to function shortly.

11. We have passed this order with the consent of the counsel for the respondents, who however clarifies that this order would not prejudice their rights and contentions to claim that the petitioners do not have any *locus standi*.

12. Mr. Amit S. Chaddha, learned senior counsel, on instructions, states that they would be moving an appropriate application before AAIFR/ BIFR seeking post facto approval for giving property of the company on

rent/licence. Mr.Sanjeev Sabharwal, learned senior counsel, on instructions, states that they will be filing an application as interim orders have been violated. We have recorded the said statements by the learned senior counsel, on instructions, without expressing any opinion on merits or maintainability.

13. The affidavit along with documents will be put back under seal cover. They will be transmitted to the AAIFR. Whether the said documents should be kept in the open file and should be furnished to the petitioners herein would be decided by the AAIFR.

14. It will be open to the petitioners and the respondents to highlight the earlier order dated 30th November, 2015 passed by this Court in Writ Petition (C) No. 11153/2015 before the AAIFR and make a request for early hearing.

15. With the aforesaid directions, we dispose of the present writ petition.

16. To cut short the delay, we direct the parties to appear before the AAIFR on 16th May, 2016, when a date of hearing will be fixed.

17. Parties are also given liberty to approach this Court by way of an application, in case there is any difficulty. We clarify that this order will not be construed as expression of binding opinion of this Court on any aspect and issues.

Copy of this order will be given dasti to the learned counsel for the parties under signature of the Court Master.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 04, 2016 VKR