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

\+ CO.A(SB) 51/2015 & CA Nos. 2938/2015 (interim relief) & 179/2016 (for directions)

ANDREA AFTAB PAURO & ANR. ..... Appellants

Through: Mr P. Chidambaram, Sr. Adv. with Mr Arun Kathpalia, Mr Manik Dogra, Mr Uday Walia, Mr Shailendera Singh & Mr A. Robin Frej, Advs.

versus

HARDEV SINGH AKOI & ORS. ..... Respondents

Through: Mr Siddharth Yadav & Mr Ajay Kalia Bhushan, Advs. for R-1 to 27.

Mr .U.K. Chaudhary, Sr. Adv. with Mr Wasim Ashraf & Mr Himanshu Vij., Advs. for R-28.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **27.01.2016**

1. This is an appeal which assails the order dated 24.09.2015. Essentially, the appellants, were aggrieved by the order in as much as it allowed respondent no.28 Company's application for availing a soft loan from the Government. This matter came up before this court for the first time on 28.09.2015 when, notice was issued.

2. The matter on that date as the record would show was heard for a substantial period of time by my predecessor. However, the appellants chose not to seek an injunction against respondent no.28 qua its plea for being allowed to avail the loan, a request which had passed muster with the

Company Law Board (CLB).

2.1 Resultantly, the loan, has been availed by respondent no.28 company.

3. Mr. Chidambaram, who appears for the appellants says that the CLB has not dealt with various contentions raised with regard to the working of respondent no. 28 company by the opposing group, which comprises of respondent no.1 to 27, who hold 56% (approximately) of the equity shareholding in the said respondent.

4. It is submitted that the opposing group has been mismanaging the affairs of respondent no. 28 company in as much as, inter alia, the debts have been taken which are way beyond its equity share capital, which has resulted in a skewed debt equity ratio. There were other allegations also adverted to by Mr. Chidambaram which I need not refer to in view of the agreed directions that I propose to pass in the matter. Before, I proceed to that stage, I must state that counsels for respondents no. 1 to 27 and respondent no. 28 company have refuted the submissions made on behalf of the appellants.

5. Be that as it may, the counsels are agreed that the captioned appeal and the pending applications can be disposed of, with the following directions :-

(i). In case the loan taken by the respondent no. 28 company is not repaid within a period of one year; the period which, admittedly, expires on 30.09.2016, then the said respondent will subject itself to a special audit.

(ii). The special audit will be conducted by an auditor, so named by the court.

(iii). The auditor shall be mandated to conduct the audit for the financial years 2012-2013 to 2015-2016.

(iv). The burden of fee, payable to the auditors, will be borne by the appellants.

(v). In this behalf, the appellants will deposit the fee as may be proposed by the auditors, before the commencement of the audit. Fee will be deposited with respondent No. 28 company.

6. Since, parties are agreed with the disposal of the appeal, and the pending application, the same are also disposed of as indicated by counsels.

7. In so far as the auditor to be appointed in the matter is concerned, I have suggested the name of Thakur Vaidyanath Aiyar & Co., 221, 223, Deen Dayal Upadhyay Marg, Daryaganj, New Delhi (Contract No.23236958-60). Counsel for the parties have no difficulty with the said auditor being named. This is, however, subject to the auditor accepting the assignment. In case the said auditor does not accept the assignment, parties shall move the court for appointment of another auditor. The learned counsel for the parties are free to approach the auditor with the order of this court, the mandate with regard to which will be triggered only on 01.10.2016 subject to the conditions set out hereinabove.

8. Needless to say, both parties will endeavour to have the company petition and all applications pending before CLB decided at the earliest.

9. The captioned appeal and the pending applications are, disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 27, 2016/yg