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

\+ W.P.(C) 468/2018

M/S R. N. SOIN & SONS & ORS. ..... Petitioners

Through: Mr Sanat Kumar, Sr. Advocate with Mr Anish Chawla, Advocates.

versus

INDIAN OIL CORPORATION LTD. AND ANR. ..... Respondents

Through: Ms Mala Narayan and Ms Neha Dawar, Advocates for R-1/IOCL.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **18.01.2018**

<u>CM No.2017/2018</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 468/2018 & CM No.2016/2018</u>

2. Issue notice. Learned counsel for the respondents accepts notice.

3. The petitioners have filed the present petition, *inter alia,* praying as under:-

> "(a) Issue writ in the nature of a mandamus or any other appropriate writ and declare that insistence of Respondent no. 1 for fresh signature of respondent no. 2 in the presence of respondent no. 1 for purpose of reconstitution of partnership deed is illegal, unreasonable and contrary to the spirit of the extant reconstitution policies of the respondent no.l.

(b) Issue writ in the nature of a mandamus or any other appropriate writ directing the Respondent No. 1 to reconstitute the dealership of the Petitioner No. 1 firm, M/s RN Soin & Sons, at Netaji Subhash Marg, Opp. Subhash Park, Darya Ganj, New Delhi-110002 in accordance with its extant reconstitution policies (Annexure P-4 and Annexure-P-10), and

(c) Permit the Petitioner No. 1 firm, M/s RN Soin & Sons to run and operate the Retail Outlet at Netaji Subhash Marg, Opp. Subhash Park, Darya Ganj, New Delhi-110002 and resume the supplies of the same."

4. The principal grievance of the petitioners is that respondent no.1 (hereafter 'the IOCL') is not accepting the reconstitution of the petitioner no.1 firm (hereafter 'the firm') for continuing its dealership of a retail outlet at Netaji Subhash Marg, Opposite Subhash Park, Darya Ganj, New Delhi-110002 (hereafter 'the retail outlet').

5. Briefly stated, the relevant facts necessary to address the controversy in the present petition are as under:-

5.1 In the year 1953, petitioner no.2 (hereafter also referred to as 'the father') was appointed as a dealer by the IOCL to run the retail outlet. Thereafter, on 01.04.1998, a partnership was constituted between the father, his wife (since deceased) and his three sons (petitioner no.3, petitioner no.4 and respondent no.2 - hereafter collectively referred to 'the sons').

5.2 Late Smt. Rattan Soin (wife of petitioner no.2 – the father) expired on 18.03.2012 and was survived by the father and the sons.

5.3 In terms of the partnership deed dated 01.04.1998, in the event of demise of a partner, the firm would not be dissolved; it would continue with the remaining partners with the share of the deceased partners being apportioned between the surviving partners. Clause 14 of the partnership deed dated 01.04.1998 is set out below:

> "That in the case of death of any of the partners the partnership will not be dissolved and the share of the deceased partner will be taken over by the remaining partners in equal proportion. And that in the case of death or retirement of any of the partners no good will be attached or valued in respect of shares of the deceased or outgoing partners."

5.4 It is stated that on 27.03.2012, the surviving partners – the father and the sons – executed a partnership deed, whereby the share of each partner in the asset and the business of the firm was agreed to be one fourth (25%).

5.5 It appears that certain disputes have arisen between the petitioners (the father and two of the sons) on one hand and the respondent no. 2 (one of the sons) on the other.

5.6 The petitioners further state that a proposal for reconstitution of the firm was also sent to the IOCL. However, IOCL did not accept the same as the said proposal was not signed by respondent no.2 (one of the sons). Nonetheless, IOCL approved running of the retail outlet by the firm till 31.05.2016 on the condition that all the partners would resolve their disputes *inter se* within the said period.

5.7 It appears that the father and the sons could not resolve their *inter-se* disputes and the petitioners could not secure the signatures of respondent no.2 on the proposal forwarded to IOCL.

6. The petitioners state that IOCL stopped sales and supplies of the retail outlet and froze the SAP account of the firm on 31.05.2016. There is some

controversy in this regard as Ms Narayan, learned counsel who appears for IOCL on advance notice, states that the petitioner firm had stopped lifting supplies in April, 2016 and had effectively closed down the retail outlet. On the other hand, the petitioners claim that they sent several letters to respondent no.1 for seeking permission to allow them to start the operation of the retail outlet and lift supplies but their requests were not acceded to.

7. On 03.01.2017, IOCL issued a policy for reconstitution of the retail outlet dealership on the death of the proprietor/partner of a dealer. Mr Kumar, the learned senior counsel for the petitioners has drawn the attention of this Court to the said policy, which provides that in case of a death of proprietor, temporary arrangements are to made through legal heirs to continue the dealership till the formal reconstitution. The policy provides that in case of dispute "on share-out" between legal heirs of the deceased proprietor/partner(s), his/her shares would be divided between the willing incoming legal heirs. In substance, IOCL's stated policy is that in the event of the demise of a partner/proprietor of a dealer and in case of disputes regarding his/her shares, the firm reconstituted by willing heirs of the deceased will be accepted by IOCL as its dealer. This is subject to the necessary indemnity being provided by the wiling heirs.

8. In view of the above, the father and petitioner nos.3 & 4 submitted a proposal for reconstitution of the firm, whereby the father was shown as retired and his share was transferred to petitioner no.3. In other words, the proposal envisaged that petitioner no.3 would hold 50% share; petitioner no.4 would hold 25% share; and respondent no.2 would hold 25% share in the reconstituted firm. Concededly, this proposal was also not signed by

respondent no.2 and, therefore, IOCL rejected the same.

6. It is apparent from the above that there are certain disputes between family members and it is for this reason that the parties have been unable to concur on the reconstitution of the firm.

7. Plainly, the proposal of the petitioners to accept a proposal of a reconstituted firm without any of the erstwhile partners being included is not covered under the IOCL's policy issued on 03.01.2017. This is so because the said policy only refers to reconstitution of the firm by including some of the willing heirs of the deceased partner in the reconstituted firm and does not contemplate a situation where an existing partner of the firm is excluded.

8. In the aforesaid view, Mr Sanat Kumar, the learned senior counsel for the petitioners has restricted the relief in the present case. In their petition, the petitioners had also claimed that in terms of the revised policy dated 03.01.2017, IOCL was obliged to accept the reconstituted firm as proposed. However, during the course of arguments, Mr Sanat Kumar, has abandoned the petitioners' claim under the revised policy and has limited his contentions to recognition of the partnership firm as per the original partnership deed. He contends that IOCL be directed to accept that the firm as constituted under the partnership deed dated 01.04.1998 continues with the surviving partners without insisting on any further proposals. He states that since, in terms of the partnership deed, the firm was not to dissolve on demise of any partner but to continue with the remaining partners; IOCL should accept the same as that partnership deed had been approved by IOCL.

9. Mr Kumar also contends that the above proposal was submitted

earlier but had not been accepted. However, it is seen from the record that no such proposal has been insisted upon by the petitioners. On the contrary, the letter dated 12.06.2017 sent by the petitioners expressly states the reconstitution of the firm as envisaged in the proposal dated 13.02.2017 - which provided for reconstitution of the firm with only the three sons being partners be accepted. The relevant extract of the said letter is set out below:-

> "4. Para-4: In response to text of the policy of the Corporation quoted in Para 3 and your advise in Para 4 we would once again like to submit as under:-
>
> (a) Reconstitution Proposal dated 13th Feb. 2017 may be treated as final from our side (Surinder Kumar Soin, Rajesh Soin & Rajiv Soin) as willing partners in which we had offered due share to Shri Sanjeev Soin i.e. 25% (20% of his existing share 5% share out of share of Late Smt. Ratan Soin).
>
> (b) In case no willingness is received from Shri Sanjeev Soin and Corporation seeks a fresh proposal from us for 100% share to be shared amongst the willing partners/legal heirs (Surinder Kumar Soin, Rajesh Soin & Rajiv Soin), we are ready for the same and are also willing to account for legal share of Shri Sanjeev Soin.
>
> (c) We may please be allowed to operate the RO and uplift the supplies. We assure that instructions of the Corporation in this regard shall be complied by us and we shall immediately uplift the supplies after it is unblocked in SAP by Corporation."

10. Since the petitioners are no longer pursuing the aforesaid proposal and do not seek to rely on the IOCL's revised policy, this Court considers it apposite to permit the petitioners to make a representation to the IOCL to persuade it to accept that the firm be continued in terms of the partnership

deed dated 01.04.1998 and the shares of the father and the sons be recognised as 25% each in terms of the said deed.

11. IOCL may consider the same within a period of four weeks from today and communicate its decision to the petitioners.

12. It is also averred in the petition that petitioner no.4 is a foreign national and according to IOCL, a firm having a foreign partner cannot be appointed as a dealer. The petitioners had responded to the said objection by stating that although petitioner no.4 is a US citizen, he also holds an OCI card. This aspect be also considered by the IOCL while taking an informed decision in respect of the petitioners' representation.

13. The petition and the pending application are disposed of with the aforesaid observations.

14. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JANUARY 18, 2018
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