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

+ **O.M.P. 865/2013**

OCCPL & ANR

..... Petitioners

Through: Mr. Sachin Chopra, Ms. Aastha
Dhawan and Mr. Prakash Chorodia,
Advocates. (M:9910827777)

versus

SANJAY KUMAR & ANR

..... Respondents

Through: Mr. Ayush Sharma, Advocate.
(M:9899096069)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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28.08.2018

I.A. 14409/2014 and I.A. 3372/2016

1. This is an application seeking recall of order dated 27th May, 2014 on the ground that the counsel who had appeared on the said date was not authorized to make a statement to the effect that the Respondents had received a sum of Rs.15 crores. Learned counsel for the Applicants/Respondents submits that as per the MOU dated 12th August 2011, the amounts were to be paid in favour of only those companies in which one of the individuals from the Respondent's group was be a director or a shareholder. The payments, as is evident from the cheques attached to the MoU were made to companies in which the Respondent's Group had no directors or shareholders, hence the said payment cannot be construed to have been made to the Respondents.

2. A perusal of the MOU reveals that the same has been entered into

between the Petitioners and the Respondents, and has been signed by Mr. Sanjay Kumar Singhania on behalf of the Respondents. The MOU contains the following clauses: -

“11. As per the ‘Terms of Settlement’ dated 27.02.2011, after payment of Rs.1.50 Crores, towards Sale consideration, the remaining balance of Rs. 9.90 Crores was to be paid within a period of 180 days, from 27.2.2011. The said period expires on 26th August 2011. However in view of the delay, which has been caused for reasons beyond control of any of the parties, the parties have agreed to extend such time till 10.10.11. Furthermore to ensure that Second Party does not suffer any monetary loss on account of such extension of time, the First Party has agreed to pay to the Second Party an additional sum of Rs.21 Lakhs. It is clarified that under no circumstance, of any nature whatsoever, there will be or can be any extension of any time after 10.10.2011. It is agreed that the remaining balance sum of Rs.9.9 crores and the additional sum of Rs.21 Lakhs thereby amounting to a total sum amounting to Rs.10.11 Crores are being tendered by way of Post dated Cheque, the photocopy of which is attached as Schedule II, as appended herein or in the manner and mode as may be desired by the First Party. These Cheques of Rs.10.11 Crores are paid herein at the time of signing of this instrument and the first party undertakes that the said post-dated cheques shall be realized on its presentment. The dishonor and/or non encashment for any reason whatsoever, of any of the said cheque(s) of Rs.10.11 Crores would make the Second Party entitle to have the absolute right, title and interest on the said subject property and the First Party will be

obliged to convey the said Property in favour of the Second Party and/or its nominee(s), in terms of this Agreement as detailed herein below.

12. It is confirmed by the Second Party that at least one of the members of SKS Group shall be a Director and Shareholder of all such companies, in favour of whom, cheques, that are detailed in Schedule II, as appended herein, as part of consideration, are being Issued by the First Party.”

3. A perusal of the above clause along with the attached cheques, reveals that the entities in whose favour the cheques are issued are clearly known to the signatories and the details of the cheques are detailed in Schedule-II of the MOU. Thus it cannot be argued today that Mr. Singhania permitted the said cheques to be issued in favour of companies in which none of the individuals of the SKS group was a director or a shareholder. According to the learned counsel for the Petitioners, this is further buttressed from the emails placed on record.

4. This Court, at this stage, is not going into the merits of the dispute. The only limited aspect that needs to be addressed is as to whether the order was passed without instructions from the Respondents. It is seen that the order dated 27th May, 2014 records the appearance of three counsels on behalf of the Respondents, and a perusal of the order also reveals that the name of the mediator was also agreed upon after taking instructions.

5. Further, the submission of the learned counsel for the Respondents, that the entities in whose favour the cheques were issued were those in which the SKS group had no shareholder or director is incorrect, in view of clause 12 of the MOU, which has been admittedly signed by Mr. Singhania.

Clause 12 clearly records that the details of the cheques are in Schedule II. The names of the companies to whom the cheques were issued is also clear from a perusal of the copies of the cheques. The MOU is signed by Mr. Singhanian. Thus the entire premise of the application is bereft of any merit.

6. The further submission of the Respondents is that the agreement is a sham transaction. This aspect shall be only gone into in the arbitration proceedings, and not in a Section 9 petition. I.A.3372/16 has been moved seeking a direction for recording the statement of the Ld. Counsel for the Respondent. In view of the above observations, no orders are called for. Both I.As. are accordingly disposed of.

I.A. 3371/2016

7. By this application the Petitioner seeks a direction to the Respondent to deposit a sum of Rs. 16.5 crores. The Petitioner is permitted to approach the arbitrator for any interim relief before the Ld. Arbitrator as the Tribunal is already constituted. I.A. is disposed of.

I.A. 8133/2015

8. Learned counsel for the Respondents submits that he seeks to withdraw the present application seeking impleadment of the companies in whose favour the cheques have been issued, subject to the condition that liberty may be given to him to move an appropriate application before the Arbitrator. IA is dismissed as withdrawn with liberty as prayed.

9. Learned counsel for the Petitioners is also given liberty to move the Arbitrator for appropriate directions for deposit.

10. I.A. is disposed of.

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11. Parties are permitted to seek any interim orders which they may deem

appropriate before the Arbitrator.

12. Petition stands disposed of.

CCP(O) 106/2014

13. The present contempt petition has been moved seeking action against the Respondents for non-compliance of order dated 27th May 2014. The same was not pressed during the course of arguments. Dismissed as not pressed.

PRATHIBA M. SINGH, J.

AUGUST 28, 2018

Rekha