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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 241/2019, CM APPL. 43054/2019 (exemption),**
CM APPL. 43055/2019 (stay) & CM APPL. 43056/2019 (for filing
additional documents)
ROHIT BAKSHI & ORS Appellant
Through **Mr. Manik Dogra, Mr. Sandeep Das,**
Ms. Arushi Mishra, Advocates.

versus

ATUL BERI & ORS Respondent
Through **Mr. Jayant Mehta, Mr. Samar S.**
Kachwaha, Mr. Raghavendra M.
Bajaj, Ms. Shivangi Nanda,
Advocates for R1.
Mr. Akshay Makhija, Advocate for
R2.
Ms. Priya Kumar, Mr. Adhish
Srivastava, Mr. Arjun Maheshwari,
Mr. Kunal Dhawan, Mr. Anand
Chichra, Advocates.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 25.09.2019

CM APPL. 43054/2019 (Exemption)

Allowed, subject to all just exceptions.

FAO(OS) (COMM) 241/2019 & CM APPL. 43055/2019 (stay) & CM
APPL. 43056/2019 (by the appellant for filing additional documents)

1. The four appellants herein (respondent Nos. 12, 13, 10 & 24 respectively in O.M.P. (I) (COMM.) No. 396/18) are aggrieved by an order

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dated 20.08.2019, passed by the learned Single Judge, whereunder directions have been issued to the appellants not to press their petition for admission against DBEPL, till the next date of hearing. The next date of hearing in the matter is 23.10.2019.

2. Mr. Dogra, learned counsel for the appellants clarifies that though notice was issued by the NCLT on the Insolvency Petition filed by the appellants No. 2 to 4 against DBEPL on 03.09.2019, the matter is still at the stage of admission and the next date fixed before the NCLT is 15.10.2019. He submits that disputes have arisen between the respondent No.1 and the respondent No.2, both sons of the respondent No.3, in respect of the joint businesses being conducted by them in the name and style of M/s. DB Engineering Pvt. Ltd. (DBEPL), S.K. Beri & Brothers (SKB), D.B. Engineering Company (DBEC) and Banaras Marbles and Granites Ltd. (BMG), and in order to resolve them, a Memorandum of Understanding (MOU) dated 17.02.2016 has been executed by the respondents No.1-3, followed by a Deed of Arrangement (DOA) dated 30.04.2016 and Minutes of Meeting (MOM) dated 14.03.2016. In terms of paras No. 15, 16, 17 & 34 of the MOU dated 17.02.2016, the agreed cut off date for separation of the businesses allocated to the respondents No. 1 & 2 is mentioned as 30.06.2016.

3. Learned counsel clarifies that the appellants were employees of DBEPL and they had exercised their rights to remain in DBEPL in terms of para-24 of the MOU. Subsequently, they have resigned from the employment.

4. We may note that para-25 of the MOU records that the compensation due to employees who are retained in DBEPL will be borne by the party who takes over the said company, who in the instant case is respondent No.1.

5. Mr. Jayant Mehta, learned counsel for the respondent No.1 submits that for the period prior to 30.06.2016, the liability will remain that of DBEPL and post 30.06.2016, the liability would shift to the respondent No.2, in whose share the said units of the company has fallen and the employees have elected to go with the said units.

6. Mr. Makhija, learned counsel for the respondent No.2 states that there is a serious dispute about the cut off date i.e. 30.06.2016, mentioned in the MOU, which is the subject matter of consideration before the learned Single Judge in the execution petition. He further states that his client has already paid a sum of Rs.2 crores to the employees and creditors of the units that have fallen in his share, as ordered on 31.05.2018 and therefore, it cannot be stated that the respondent No.2 is not abiding by the agreed terms and conditions. It is the version of the respondent No.2 that the date, 30.06.2016 does not have any sanctity and other paras of the MOU have to be examined by the learned Single Judge so as to decide the actual date of the separation of the units between the parties.

7. Mr. Dogra, learned counsel for the appellants states that all the appellants are ex-employees of DBEPL and their outstanding salaries are collectively to the tune of Rs.70 Lakhs and in the above circumstances, they have filed individual petitions before the NCLT. He refers to Section 63 & 64(2) and Section 231 of the Insolvency and Bankruptcy Code, 2016, to

urge that the civil court cannot have jurisdiction where NCLT is empowered to pass an order.

8. Mr. Jayant Mehta, learned counsel for the respondent No.1 and Ms. Kumar, learned counsel for the respondent No.3 jointly state that the appellants herein are indulging in a proxy battle for and on behalf of the respondents No. 2 and an off shoot of the said battle has landed at the door of the NCLT and it is in this background that the learned Single Judge has directed the appellants not to press the petitions filed by them before NCLT for admission, till the next date of hearing.

9. Having regard to the fact that the next date of hearing fixed in the matter is in next month itself, which is less than two weeks down the line, there being Dussehra vacations in the month of October, 2019, we see no reason to interfere in the impugned order. Liberty is granted to the appellants to take the pleas that have been urged in the present appeal, before the learned Single Judge on the date fixed.

10. The petition is disposed of alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

SEPTEMBER 25, 2019/MK