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

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Date of decision: 26.09.2019

+ O.M.P.(I) (COMM.) 177/2019

ASHEESH CHAUDHARY

..... Petitioner

versus

SUNIT SURI & ORS.

..... Respondents

+ O.M.P.(I) (COMM.) 264/2019

MR. SUNIT SURI

..... Petitioner

versus

SDU TRAVELS PVT. LTD. & ORS.

..... Respondents

Counsel for the petitioner:

Mr. Jayant Mehta, Mr. Surendra Dube, Mr. S.
Chakraborty, Ms. Harshita Verma, Advocates (Item 35)
Mr. B.B. Gupta, Senior Advocate with Mr. Vivek Singh,
Ms. Mayanka Dhawan, Mr. Pranav Gambhir, Advocates
(Item 36)

Counsel for the respondent:

Mr. B.B. Gupta, Senior Advocate with Mr. Vivek Singh,
Ms. Mayanka Dhawan, Mr. Pranav Gambhir, Advocates
Mr. Darpan Wadhwa, Senior Advocate with Mr. Saurabh
Seth, Advocate for respondent No. 2, 3 and 4
Mr. Jayant Mehta, Mr. Surendra Dube, Mr. S.
Chakraborty, Ms. Harshita Verma, Advocates for
respondent No. 11 (Item 36)

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. 13572/2019 (for impleadment)

This is an application filed on behalf of Mrs. Nidhi Suri wife of Mr. Sunit Suri seeking impleadment in the present petition.

With the consent of the parties, the application is allowed.

Ms. Nidhi Suri is impleaded as petitioner No. 2 in O.M.P. (I) (COMM) 264/2019.

The application stands disposed of.

O.M.P.(I) (COMM.) 177/2019 & 264/2019

1. Both these petitions were filed under Section 9 of the Arbitration & Conciliation Act, 1996 ('Act') and arise out of a Shareholders Agreement dated 22.02.2012. Parties to the petitions besides SDU Travels Pvt. Ltd. (Company) are shareholders and/or directors of the Company. The Company is engaged in the business of Travel Agency in India and abroad.

2. Disputes and differences having arisen between the parties in relation to the operation and management of the Company led to the filing of the present petitions seeking, inter alia, protective and preservatory orders.

3. After a few hearings in the matter, the parties and their respective senior counsels, after having several meetings inter se, have agreed to being referred to Arbitration. It is also agreed that Sole Arbitrator be appointed by this Court.

4. As an interim arrangement, till the arbitration proceedings are set in motion and the interlocutory application under Section 17 of the Act is filed, the following terms have been agreed upon:

- (i) Mr. Sandeep Sethi, Senior Advocate is appointed as a Court Commissioner/Observer for a period of six weeks from today, who shall be required to :
 - a. Supervise and monitor the banking transactions and receivables of the Company;
 - b. Supervise and monitor source of receivables
 - c. Supervise and monitor the day to day financial operations and use of funds utilized in ordinary course of business of the Company, inter alia, for payment of dues (loans, statutory or otherwise), salaries and other sundry expenses of the Company;
 - d. Ensure that the amount received, if any, from the Government of India towards Service Exports from India Scheme (SEIS) is not transferred, diverted or withdrawn, except in the manner provided herein;
 - e. Ensure that the financial records of the Company are appropriately maintained, kept and protected.
- (ii) The Company shall be run by its Board of Directors, under the financial supervision of Court Commissioner/Observer.
- (iii) The statutory meetings of the Company will be conducted as per Companies Act, under supervision of the Court Commissioner/Observer.

- (iv) The remuneration of the Court Commissioner/Observer will be Rs. 6,00,000/- for six weeks, in addition to the out of pocket expenses. The remuneration shall be paid from the funds available in the Company. If the requisite funds are not available in the Company, the same shall be shared by Mr. Asheesh Chaudhary, Mr. Hemant Golcha, Mr. Umesh Hingorani and Mr. Sanjay Mathema.
- (v) The parties shall co-operate with the Court Commissioner/Observer for effectively carrying out the functions and duties stipulated hereinabove.
- (vi) With respect to arbitration, the parties have agreed that arbitration shall be conducted by Sole Arbitrator, Hon'ble Mr. Justice Manmohan Singh, who shall conduct the proceedings under the aegis of Delhi International Centre ('DIAC'), Delhi High Court, New Delhi. The fees would be as per schedule provided by DIAC. The fee shall be shared by Mr. Asheesh Chaudhary, Mr. Hemant Golcha, Mr. Umesh Hingorani, Mr. Sanjay Mathema, Mr. Sunit Suri and Mrs. Nidhi Suri (as impleaded) in equal proportions, subject to the final outcome of the said arbitration proceedings.
- (vii) All the claims/counter claims of all the parties of any and every nature against one another shall be decided by the afore-named Sole Arbitrator.

5. During the course of hearing, one of the submissions made by Mr. B.B. Gupta, learned Senior Counsel, appearing for Mr. Sunit Suri was regarding a loan of Rs. 2,70,00,000/- taken against the mortgage of Mrs.

Nidhi Suri's (wife of Mr. Sunit Suri) residential property bearing No. N-237, 2nd Floor, Greater Kailash-I, New Delhi-110048. Mr. Gupta submits that out of this amount, a sum of Rs. 2,00,00,000/- was directly given as loan by the Bank to the Company's account, while the balance amount of Rs. 70,00,000/- was disbursed to Mrs. Nidhi Suri's personal account. Mr. Gupta further submits that till February 2019, the installments against the entire loan amount were being paid by the Company as per understanding/agreement between the parties. The Company, according to him, has, however, stop paying the installments w.e.f. March 2019 and Mr. Sunit Suri and/or Mrs. Nidhi Suri have been somehow managing to pay the remaining installments.

6. In the above background, Mr. Gupta prays for urgent orders as according to him, there is a risk of the mortgage being foreclosed and Mrs. Nidhi Suri's property being taken over by the Bank resulting in the family losing a shelter above their head. Mr. Gupta thus strenuously submits that the collateral security earlier furnished by Mrs. Nidhi Suri for the aforesaid loan be replaced by the Company or by other shareholders/Directors of the Company at least to the extent of Rs. 2,00,00,000/- loaned to the Company.

7. Mr. Darpan Wadhwa, Senior Advocate and Mr. Jayant Mehta, Advocate, representing the Company and the present Directors of the Board of Directors and shareholder Mr. Asheesh Chaudhary, respectively, dispute these submissions of Mr. Gupta.

8. This issue is left open to be decided by the learned Arbitrator.

9. In view of the settlement so arrived at between the parties, no further orders are required in both the petitions. The parties shall remain bound by the terms of the settlement aforementioned.

10. The address and mobile number of the learned Arbitrator is as under:

Hon'ble Mr. Justice Manmohan Singh,
Former Judge of Delhi High Court
AB-13, Pandara Road,
New Delhi-110003.
Mobile No. 9717495001

11. The learned Arbitrator appointed above, would give a disclosure under Section 12 of the Act before entering upon reference. The proceedings would be conducted under the aegis of the Delhi International Arbitration Centre ('DIAC'). The venue would be either DIAC or as decided by the learned Arbitrator. The fee of the Arbitrator shall be fixed as per the terms arrived at between the parties.

12. Looking at the urgency of the matter, the learned Arbitrator is requested to make an endeavor to hear the applications for interlocutory reliefs as expeditiously as possible.

13. Mr. Sunit Suri and/or Ms. Nidhi Suri are at liberty to file appropriate applications for appropriate reliefs before the Sole Arbitrator appointed herein.

14. It is made clear that the present order is without prejudice to the rights and contentions of all the parties. The merits of the disputes and all other legal questions are left open. Nothing contained in this order is a reflection in any manner on the merits of the case of either party.

15. Both the petitions are disposed of in the above terms.

JYOTI SINGH, J

SEPTEMBER 26, 2019/pkb/rd/

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