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

Date of Decision: 18.02.2021

+ **FAO(OS) 5/2021 and CM Appl. Nos.4895/2021 (*stay*), 4896/2021 (*Exemption*) and 4897/2021 (*Exemption*)**

DR D K MODI

..... Appellant

Through: Mr. Saurabh Kirpal, Sr. Advocate with
Ms. Jayashree Shukla Dasgupta, Mr. Nilesh
Kumar and Ms. Saloni Chowdhry, Advocates

versus

Y K MODI & ORS.

..... Respondents

Through: Mr. Jayant Mehta, Ms. Deepika Vijay
Sawhney and Mr. Ravi Prakash, Advocates for R-
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Mr. Guru Krishna Kumar, Sr. Advocate with Mr.
Navpreet Singh Ahluwalia and Mr. Salil Seth,
Advocates for R-5

Mr. Atishi Dipankar, Advocate for R-6

Mr. Vijay Gupta and Ms. Vidhi Jain, Adv. For R-8

Mr. Akhil Sibal, Sr. Advocate with Mr. Gaurav
Sharma and Ms. Shantanu Parashar, Advocates for
R-9

Mr. Amit Mahajan and Mr. Gitesh Chopra,
Advocates for R-10

Mr. Sandeep Sethi, Sr. Advocate with Ms. Garima
Sachdeva and Mr. Harsit Khurana, Advocates for
interveners in suit

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. Present appeal has been preferred by the appellant (original plaintiff) against order dated 24.11.2020 passed by the learned Single Judge in IA Nos.8156/2020, 9457/2020, 8233/2020 and 8602/2020 in CS(OS) No.991/2009.

2. We have heard learned counsels for the parties and looked into the facts and circumstances of the case. The learned Single Judge has issued notice in the aforesaid interlocutory applications on 24.11.2020, returnable on 15.01.2021. For ready reference, order dated 24.11.2020 reads as under :-

"This matter is being heard through Video-Conferencing.

lAs 8156/2020 & 9457/2020

1. These two applications have been filed with the following prayers:-

"Prayers in IA 8156/2020

In light of the abovementioned facts and circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) Allow the present application;*
- b) MK. Modi (Defendant No.2) and UK. Modi (Defendant No.5) and/or other concerned Defendants be restrained from including but not limited to giving affects to and/or from implementing any agreement/understanding, with respect to any company which forms part of the MOU of 1989 and not disturb the ownership, control or management of the said Company, till the pendency of the instant suit proceedings; and*
- c) Pass such other or further orders that this Hon 'ble Court deems fit and proper in the facts and circumstances of the instant case and in the interest of justice and equity.*

Prayers in IA 9457/2020

In light of the abovementioned facts and circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) Allow the present application;
- b) Appoint 3 Directors of Group B and 2 Directors of Group A (of whom one should be the Plaintiff), with an Independent Chairman on the Board of Directors of Modi Industries Limited as representative(s) of Group A and Group B, in terms of the MoU of 1989, till the final disposal of the instant suit;
- c) Appoint one each director out of the appointed Directors of Group A and Group B, as Managing Directors, being representative of their respective Group, till the final disposal of the instant suit;
- c) Injunct, UK Modi and Modi Industries Ltd including their nominees/ assignees I representatives from creating any third party rights on the assets of Modi Industries Ltd., till the final disposal of the instant suit; and
- d) Pass such other or further orders that this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case and in the interest of justice and equity. "

2. Notice, counsels as above accept notice on behalf of defendants I nonapplicants. Reply, if any be filed within two weeks from today. Rejoinder within two weeks thereafter.

3. List on 15th January, 2021.

IA 8233/2020 (by Modi ARC Electrode Karamchari Union u/S 151 CPC seeking impleadment)

IA 8602/2020 (by Bhartiya Kisan Union u/S 151 CPC seeking impleadment)

4. Notice, Ms. Jayshree accepts notice on behalf of plaintiff I nonapplicants and Mr. Abhishek Singh accepts notice on behalf of defendant No. 3(b), Mr. Navpreet Ahluwalia accepts notice on behalf of defendant No. 5, Mr. Vijay Gupta accepts notice on behalf of defendant No. 8, Mr. Gaurav Sharma accepts notice on behalf of defendant No.9 and Mr. Amit Mahajan accepts notice on behalf of D-10.

5. Reply to the applications, if any be filed within two weeks from today. Rejoinder within two weeks thereafter.

6. List on date fixed i.e. 15th January, 2021.”

3. Learned counsels for parties jointly submit that the next date of hearing before the learned Single Judge in the aforesaid interlocutory applications in CS(OS) 991/2009 is 24.03.2021. The appellant is aggrieved by the fact that the interim order sought for has not been granted by the learned Single Judge and only notice has been issued.

4. Counsel for the appellant has taken this Court to the family settlement as well as various other documents including the status quo order passed by Hon'ble Supreme Court and the contempt application moved by the appellant before the Supreme Court. The relief sought by the appellant is for appointment of one of the Director from Group A in place of Mr. M.K. Modi, who has resigned from Modi Industries Ltd. and was earlier representing the interest of Group A. It is urged that in the absence of adequate representation on behalf of Group A, the interest of Group A in the Company will be jeopardised.

5. Mr. Akhil Sibal, learned Senior Counsel appearing for Respondent No.9 submits that the appellant is having 0.53% shares in Modi Industries Ltd., whereas about 40% shares are held by public and other Financial Institutions. He further submits that the enumerated units which fall to the share of Group A, as per Annexure A-2 are six units of Modi Industries Ltd. viz– vanaspati, paints, gas, soaps, electrode, lantern and torch and are no longer functional and operational.

6. In view of the aforesaid facts, we see no reason to entertain the present appeal mainly for the following reasons :-

(a). The matter is still pending before the learned Single Judge and the relief sought here can be sought before the learned Single Judge on all the grounds that are being urged here. Learned Single Judge has not declined the interim relief and no rights of the parties have been decided. As stated by Mr. Sibal, the six units enumerated by the appellant, are not operational.

7. Keeping in mind the aforesaid facts, we see no reason to entertain the present appeal. The appellant can always move an application for preponing the hearing of the interlocutory applications, which are pending before the learned Single Judge.

8. With these observations, appeal alongwith the applications filed herewith is hereby dismissed.

CHIEF JUSTICE

JYOTI SINGH, J

FEBRUARY 18, 2021

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