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

+ **CrI. MA 13887/2020 in ARB.P.261/2020**

**DAULAT SINGH CONSULTING
PRIVATE LIMITED AND ORS.**

..... Petitioners

Through: **Mr. Amitabh Chaturvedi and
Mr. Sangeeth Mohan, Advs.**

versus

**GATEWAY RAIL FREIGHT
LIMITED AND ANR.**

.... Respondents

Through: **Mr. Sanjeev Singh, Adv. for
Respondent No. 1**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

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08.10.2020

(Video-Conferencing)

CrI. MA 13887/2020 in ARB.P.261/2020

1. This is an application, preferred by Respondent No. 1, seeking initiation of criminal proceedings, against the petitioners, under Section 340 of the Code of Criminal Procedure, 1973 (Cr PC), for having committed offences under Sections 191, 193 and 209 of the Indian Penal Code, 1860 (IPC).

2. Mr. Sanjeev Singh, learned counsel appearing for the Respondent No. 1, submits that the petitioners are liable to suffer criminal proceedings against them, under the aforesaid provisions, owing to the averments contained in the italicized part of para VII(o)

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of the petition, which is reproduced, for ready reference, thus:

“o) Then on 22.05.2020, the petitioners received another Notice dated 19.05.2020 from the respondents intimating that they would be vacating the said Property as on 31.07.2020 (the expiry date of the existing Lease Agreement) and accepting service of the Notice of Breach/Default dated 08.05.2020 served by the petitioners on both the respondents. No satisfactory response was received by the petitioners from either of the respondents concerning their detailed last Notice of Breach/Default dated 08.05.2020 and as the respondents Notice dated 19.05.2020 contained a gross misrepresentation of the facts and totally contrary to the terms and conditions of the duly executed and registered Lease Agreement, Deed of Adherence read along with the Amendment to the Lease Agreement No. 4, applicable/contract law and both the respondents were continuing to be in breach/default of the Lease Agreement, Deed of Adherence and Amendment to the Lease Agreement No. 4 despite the one (1) week remedy period (expiring on 16.05.2020) extended by the petitioners vide their Notice of Breach/Default dated 08.05.2020, *the petitioners (through their appointed legal counsel) sent detailed Legal Notice cum Reply dated 03.06.2020 to both the respondents setting the record straight and also invoking arbitration under the aforesaid Lease Agreement dated 23.06.2011, Deed of Adherence dated 25.08.2011 (read with Assignment Deed dated 24.08.2011) and Amendment to the Lease Agreement No. 4 dated 01.08.2019 and in terms of Section 11 of the 1996 Act, nominated Justice (Retd.) Manju Goel, Former Judge of Hon'ble Delhi High Court, as the petitioners' nominated arbitrator and called upon the respondents to either accept the above nomination or suggest any other independent sole arbitrator for approval by the petitioners within a maximum period of thirty (30) days of expiry of the seven (7) days final remedy period (which expired on 13.07.2020). This notice was served through e-mail on 03.06.2020 and through speed post on 04.06.2020 (received on 12.06.2020).*

3. Mr. Sanjeev Singh submits that a juxtaposed reading of the

above averment, with the legal notice, dated 3rd June, 2020, sent by the petitioners to the respondents (which the petitioners have themselves placed on record) in these proceedings, would reveal that the petitioners have resorted to misstatement, as has rendered them liable to criminal action under Sections 191, 193 and 209 IPC. He has invited my attention to paragraph 18 of the legal notice, dated 3rd June, 2020, which reads thus:

“18. If the Addressees (i.e. the Lessee and the Assignee) do not comply with the above contractual obligations of the Lease Agreement read along with the Deed of Assignment, Deed of Adherence and Amendment to Lease Agreement No. 4 within the seven (7) days final remedy period in order to resolve the dispute, arbitration in terms of the arbitration clause contained in the Lease Agreement would stand automatically invoked by our Clients and Justice (Retd.) Manju Goel, a retired Judge of Hon’ble Delhi High Court would automatically be nominated as the sole arbitrator. In the event of you (the Addressees) not agreeing to the said nomination, our Clients would be agreeable to any other independent sole arbitrator mutually appointed by the Lessee/Assignee and the Combined Lessors. Please convey your acceptance to the above proposal or in the alternate, suggest any other independent sole arbitrator within a maximum period of thirty (30) days of expiry of the seven (7) days final remedy period as mentioned above, failing which, our Clients shall be constrained to take recourse to the appropriate legal remedies available to them in this regard.”

4. Mr. Sanjeev Singh submits that a comparison of the sentences in para VII(o) of the petition (as italicized in the extract hereinabove) with para 18 of the notice, dated 3rd June, 2020, clearly highlights the misstatements, to which the petitioners have resorted. These, according to him, are the following:

(i) While the petition avers that the petitioners had invoked the arbitration clause in the Lease Agreement, dated 23rd June, 2011 as well as the Deed of Adherence, dated 25th August, 2011, para 18 of the notice, dated 3rd June, 2020, reflects that the arbitration clause, in the Lease Agreement, alone was invoked.

(ii) While the petition avers that the petitioners had nominated Justice Manju Goel (Retd.) as the petitioners' nominated arbitrator, para 18 of the notice, dated 3rd June, 2020, states that, if the respondents did not comply with their contractual obligations, arbitration, in terms of the arbitration clause contained in the Lease Agreement would stand invoked and "Justice (Retd.) Manju Goel, a retired Judge of Hon'ble Delhi High Court would automatically be nominated as the sole arbitrator" – which, according to Mr. Sanjeev Singh, does not amount to a nomination, by the petitioners, of Hon'ble Ms. Justice Manju Goel (Retd.) as their nominated arbitrator.

5. To a query, from the Bench, as to whether there was any other misstatement, by the petitioners, Mr. Sanjeev Singh submits that the aforesaid two misstatements would stand doubled, as they amount to misstatements in respect of the Lease Agreement as well as the Deed of Adherence. In other words, it appears that Mr. Sanjeev Singh would seek to create these two purported alleged misstatements as not two but four misstatements.

6. In my view, this application is an abuse of the process of the

Court. In order to be fair to the Respondent No. 1-applicant, I deemed it appropriate to query, of Mr. Sanjeev Singh, learned counsel, as to whether he desires to press this application or was willing to withdraw it. He submits, on instructions, that his client was pressing the application and desired an order thereon.

7. Institution of criminal proceedings is not a trifling matter, to be resorted to, at the drop of a hat. This Court has, unfortunately, been noticing that, in civil and commercial matters, the parties are filing applications for instituting proceedings, against the opposite parties, under Section 340, Cr.P.C., without any substantial grounds justifying such institution. At times, these applications are attempts to pressurize the opposite parties and, at others, to protract the proceedings.

8. It cannot be said, by the any stretch of imagination, that, by the averments in para VII(o) of the petition, italicized in the paragraph as extracted hereinabove, the petitioners have committed any such offence as would render them liable to be tried under Section 340 Cr.P.C. In the first place, the petitioners have, with due forthrightness, placed the legal notice, dated 3rd June, 2020 on record, so that it would be, *prima facie*, facile to contend that they sought to make any misrepresentation with respect to the contents thereof. The submission of Mr. Sanjeev Singh, in fact proceeds on a premise that the Court, while hearing the matter, would go merely by the averments in the petition without perusing the relevant documents.

9. That apart, even *arguendo*, the averments, in para VII(o), with

which Mr. Sanjeev Singh is aggrieved, cannot be said to constitute any misstatement on the part of the petitioners. Para 18 of the legal notice, dated 3rd June, 2020, states that “if the addresses (i.e. the lessee and the assignee) do not comply with the above *contractual obligations of the Lease Agreement read along with the Deed of Assignment, Deed of Adherence and Amendment to Lease Agreement No. 4*, within the 7 days final remedy period in order to resolve the dispute, arbitration in terms of the arbitration clause contained in the Lease Agreement would automatically stand invoked”. This averment, clearly, is to be read as a whole, and specifically makes reference to the Deed of Assignment, Deed of Adherence and the Lease Agreement. As such, the contention, of Mr. Sanjeev Singh, that the assertion, in para VII(o) of the petition, to the effect that the petitioners had invoked arbitration under the Lease Agreement, Deed of Adherence and Amendment to the Lease Agreement, was a misstatement, is clearly not sustainable.

10. The second alleged misstatement, to which the petitioners, as per Mr. Sanjeev Singh, have resorted, is relatable to the averment, in para VII(o), that the petitioners had nominated Hon’ble Ms. Manju Goel (Retd.) “as the petitioners’ nominated arbitrator”. Mr. Singh submits that para 18 of the legal notice-cum-reply, dated 3rd June, 2020, does not reflect any such nomination. He submits that this misstatement has been resorted to, by the petitioners, only so as to make this Court believe that the petitioners had exhausted the exercise required to be undertaken by the petitioners, as per the arbitration clause of the Agreement between the parties, which required the petitioners to, in the first instance, nominate their arbitrator.

11. The issue of whether the petitioners have, or have not, complied with the arbitration clause, is foreign to the question of whether the petitioner deserves to be tried under S. 340, Cr PC. Clearly, a juxtaposed reading of the above assertion, read with the corresponding averment in para 18 of the legal notice, dated 3rd June, 2020, does not make out the case for institution of criminal proceedings against the petitioners. The petitioners have, in para 18 of the notice, stated that in the event of the respondents failing to comply with the contractual provisions, the arbitration clause would stand automatically invoked and Hon'ble Ms. Manju Goel (Retd.) would automatically be nominated as the sole arbitrator. The mere use of the words "automatically be nominated", *prima facie*, does not indicate that the petitioners had not nominated Hon'ble Ms. Manju Goel (Retd.) as their sole arbitrator; ergo, it cannot be treated as a misstatement, vis-a-vis the averment in para VII(o) of the petitioner, which refers to Hon'ble Ms. Manju Goel (Retd.), as the arbitrator nominated by the petitioner.

12. In my opinion, this application under Section 340 Cr.P.C., seriously lacks *bonafides*. *Ex facie*, it is an attempt to protract the petition, which merely seeks appointment of an arbitrator.

13. Accordingly, the application is dismissed with costs of ₹ 25,000/-, to be paid by the applicant to the petitioners within a period of four weeks from today.

14. Nothing contained in this order shall be read as an expression of opinion, even tentative, on the merits of the Arbitration Petition preferred by the petitioner.

C. HARI SHANKAR, J.

OCTOBER 08, 2020

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