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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(I) CWP-6931-2023 (O&M)
Date of decision:01.09.2023

M/S HARYANA MINING COMPANY
...Petitioner
Versus
STATE OF HARYANA AND OTHERS
...Respondents

(II) CWP-7545-2023
M/S HARYANA MINING COMPANY
...Petitioner
Versus
STATE OF HARYANA AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Lovneesh Kanwar, Sr. Advocate assisted by
Mr. Abhiraj Singh Thakur, Advocate and
Mr. Tejeshwar Singh, Advocate
for the petitioner in both cases.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Rana Gurtej Singh, Advocate
for respondents No.5, 6 and 8 in CWP-7545-2023

Mr. Anshul Mangla, Advocate
for respondent No.7 in CWP-7545-2023

SURESHWAR THAKUR, J. (ORAL)

1. Learned State counsel has placed on record the speaking order
of 31.08.2023, as, passed by Director, Mines & Geology Department,
Haryana, in the Court today, which is taken on record.

2. This Court, on 10.08.2023, had passed the hereinafter extracted order.

“1. In response to the hereinafter extracted directions being made upon the learned Additional Advocate General, Haryana, the latter has submitted, on instructions imparted to him by the official concerned, his consent to the said directions, but, subject to, even with respect to the contested or disputed period, the petitioner being encumbered with the discharging liability qua the department concerned.

“2. The learned counsel appearing for the applicant-petitioner submits that irrespective of the schedule drawn in the impugned order relating to liquidation of the demands made upon the present petitioner, he has been instructed by the petitioner to state before this Court that the petitioner is ready and willing to within a period of two weeks from today deposit a sum of Rs. 6 crores before the authority concerned. Furthermore, he also states on instructions that the petitioner is ready and willing to also within a period of 4 months from today liquidate the remaining uncontested and undisputed liability comprised in a sum of Rs. 5 crores before the authority concerned.

3. In the wake of the above, the learned Additional Advocate General is directed to also seek instructions from the department concerned.

4. Further, on request of the learned Additional Advocate General, the main case i.e. CWP-6931-2023 as well as the connected writ petition CWP-7545-2023, in which the counsel appearing for the petitioner is the same as in the instant writ petition, are preponed and to be taken up for hearing on the date already fixed today i.e. 10.08.2023.

5. Notice to the respondents concerned in CWP-7545-2023 for the date so fixed today.

6. On the said date, it is expected by the learned Additional Advocate General, that apart from purveying to

the Court intimation about the above instructions from the department concerned, he shall also file a detailed reply to the averments made in the writ petitions (supra). ”

2. *Mr. Akshay Jindal, Advocate, appearing for the respondent No.7 (in CWP-7545-2023), has yet made a vehement before this Court, that the document carving the reconstituted partnership firm, is a legally infirm drawn document, as the exclusion therein of the apposite partner(s) could be done, thus only after approval being granted in terms of Rule 16 sub-rule (1) of The Mines and Minerals (Development and Regulation) Act, 1957.*

3. *Be that as it may, since it is fairly stated at the bar, by Mr.Akshay Jindal, Advocate appearing for the respondent No.7 (in CWP-7545-2023), that a civil suit claiming an injunction decree, restraining his exclusion from the firm, besides also no leave becoming granted to the apposite application for incorporating therein the relief for quashing of the apposite exclusion, thus has resulted in the said civil suit becoming dismissed as withdrawn. Therefore prima facie, at this stage, the said made argument before this Court, does not require its becoming validated by this Court.*

4. *Now the reconstituted partnership firm, thus excluding the retired partner(s), of whom co-respondent No.6 was also a retired partner, and, thereby may be he became incapacitated, for reason (supra), to challenge the reconstituted firm. Nonetheless, the authority concerned was required to grant approval to the reconstituted partnership firm, but the said approval has been submitted by the learned Additional Advocate General, Haryana, to yet not become accorded by the authority concerned.*

5. *Therefore, irrespective of the above, consensus ad idem submission, subject to the above reservations being portrayed before this Court, by the learned Additional Advocate General, Haryana, yet this Court would not proceed to direct the petitioner(s) to make the apposite liquidations to*

the department concerned, rather this Court deems it fit and appropriate to defer the hearing of the instant petition, upto the requisite approval is granted to the reconstituted partnership firm, thus by the authority concerned. The said decision shall be made through a valid speaking order, but positively within a period of two weeks, and, after hearing all concerned.

6. The hearing to be made by the authority concerned, in respect of the above decision making process, is ordered to be conducted on 16.08.2023.

7. An intimation, in the above regard, be made to this Court, by the learned Additional Advocate General, Haryana, on the subsequent date of hearing.

8. List on 01.09.2023.”

2. In pursuance to the above order made by this Court, the respondent concerned, has passed a speaking decision on the lis. In the operative part of the order passed by the Director, Mines and Geology, Haryana, operative part whereof becomes extracted hereinafter, unfoldments occur qua changes in the composition or the constitution of the partnership firm, were but consensual as of date on the relevant executions respectively taking place on 31.07.2017, and, on 23.08.2021. However, it has been stated in the hereinafter extracted operative part, that *de hors* the consensual reconstitution of the partnership firm, yet there is a necessity, upon, the extant partnership entity concerned, to thus liquidate rather jointly or severally the liability as determined in Annexure P-5.

“After giving thoughtful consideration to the fact, office record and the contentions submitted by the partners of M/s Haryana Mining Company and in light of the orders dated 10.08.2023 of Hon’ble Punjab and Haryana High Court, it is made out that all the changes in constitution of their firm were consensual among all the partners as

on date of their execution i.e. 31.07.2017 and 23.08.2021. Both the reconstitutions were not considered due to pending dues thus if the partners either jointly or severally clears the dues, the reconstiution will be recommended to the State Government and the record would be amended accordingly.”

3. The learned Senior counsel appearing for the petitioner argues, that the unquestioned or undisputed liability is in only in a quantum of Rs.11 crores, qua amount whereof he had earlier submitted before this Court, that the petitioner is ready, and, willing to liquidate the same to the respondent concerned.

4. Nonetheless, the learned State counsel argues, that the petitioner firm cannot be permitted to excavate the minor mineral concerned, from the leased lands, unless the entire liability, as determined through Annexure P-5 is liquidated.

5. Since it appears, that there is a dispute with respect to the validity of assessment, as, made qua the relevant dues to be legally fastenable, upon the present petitioner. Nonetheless, for ensuring that the eruption of the said dispute, does not yet result in the petitioner firm, to become forestalled from engaging itself in mining activities. Consequently, apart from the undertakings made before this Court earlier by the learned counsel, for the petitioner, the latter also acquiesces to within 7 months from today, liquidate the further sum of Rs.6 crores, to the respondent concerned. The learned State counsel on instructions imparted to him submits, that if the said statement as made, at the bar thus is complied with by the petitioner, thereupon the respondent concerned, has no objection to the writ lands being forthwith subjected to mining activities at the instance of the petitioner firm.

6. Furthermore, it is also directed that for ensuring the petitioner firm becomes enabled to lay a sound challenge qua the imposition of all the said assessments or dues upon it, that the Director concerned, may proceed to assign a hearing to the present petitioner, so as to facilitate the petitioner to contest the said finding(s) assessment. However, the makings available to the present petitioner, the above hearing before the Director concerned, shall not at all be construed to be a liberty to the petitioner to, as stated on its behalf by the learned Senior counsel, for the petitioner thus to not liquidate, the dues in the manner mentioned above. However, in case there is acceptance of the relevant contest, thus by the Director concerned, thereupon excess amounts, as become deposited by the petitioner, may be considered, to be adjusted against the dues in future to be fastenable, upon, the petitioner entity.

7. Learned counsel appearing for respondent No.7 contests, the finding recorded in the speaking order made by the Director concerned, wherein there is a reference about the change or alteration(s) in the composition of the partnership firm concerned, being consensual. In the above regard, this Court in para 3 of the earlier made verdict, had deemed it fit to not accept the said argument, therefore, the making of the said argument again before this Court, thus cannot become assigned any aura of any validity.

8. Nonetheless, permissible remedies only before the Civil Court concerned, are amenable to be recoured, at the instance of respondent No.7. Entitlements, if any, relating to profits, as arise from the mining activity(ies) done by the changed composition of the partnership firm, shall be subject, to the decision made on the civil suit concerned.

9. Both the writ petitions are disposed of with abovesaid observations.
10. Pending miscellaneous application(s), if any, stand(s), disposed of.
11. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

01.09.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No