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

\+ O.M.P.(I) (COMM.) 347/2023

HITESH CHHABRA & ANR. .....Petitioners
Through: Mr. Saikumar, Sr. Advocate with Mr. Manishi Pathak, Mr Deepam Rangwani and Ms. Ahona Chatterjee, Advs.

versus

SANDEEP CHHABRA & ORS. .....Respondents
Through: Mr. Rajat Aneja, Ms. Alka Dwivedi, Ms. Garima Saxena and Mr. Aman Kapoor, Advs. for R-1
Mr Sumeet Batra, Mr. Roopanshi Batra and Mr. Rishabh Jain, Advs. for R-2
Mr. R K Sinha, Adv for SBI

\+ O.M.P.(I) (COMM.) 348/2023

HITESH CHHABRA & ANR. .....Petitioners
Through: Mr. Saikumar, Sr. Advocate with Mr. Manishi Pathak, Mr Deepam Rangwani and Ms. Ahona Chatterjee, Advs.

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Mr Sumeet Batra, Mr. Roopanshi Batra and Mr. Rishabh Jain, Advs. for R-2
Mr. R K Sinha, Adv for SBI

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **14.08.2024**

O.M.P.(I) (COMM.) 347/2023 and O.M.P.(I) (COMM.) 348/2023

1. The prayer in these OMPs, preferred under Section 9 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"), is essentially for a direction to Respondent 1 to countersign the cheques issued by the petitioners for making payments to the vendors of M/s Tulip Enterprises and M/s Tulip International, partnership firms of which the petitioners and respondents are partners.

2. This issue had travelled to the Division Bench of this Court in the present proceedings. The Division Bench, by judgment dated 29 November 2023 in FAO (OS) (Comm) 260/2023, put in place the following interim arrangements.

> "9. The interim arrangement agreed to between the parties is as under:
>
> > i. Respondent No. 1 shall continue to countersign the cheques for payment of the equated monthly installments of all loans existing as on 10.07.2023; and
> >
> > ii. Respondent No. 1 shall continue to countersign the cheques without demur of any statutory dues to be paid to the statutory authorities; and
> >
> > iii. Respondent No. 1 shall also, without demur countersign the cheques of payment to be made, to the employees; and
> >
> > iv. Appellants shall send the cheques for payments to

be made to suppliers to Respondent No. 1 and also provide all documents, correspondences and emails in support of the payments to be made covered by the said cheques; and

v. Respondents shall verify the said documents and in case of any objection, communicate the objection to Appellants within three days of receipt of the documents. In case there is no objection to any cheques, Respondent No. 1 shall countersign the cheques without any demur; and

vi. In case there is any objection with regard to any payment to be made as proposed by Appellants or any unreasonable refusal by Respondent No. 1, it would be open to the parties to approach the learned Single Judge in respect of the said cheque (s).

vii. Appellant shall also activate the email addresses *sandeep.chhabra@autokame.co.in* & *sneh.chhabra@autokame.co.in* within two days;

viii. Respondent No. 1 undertakes that neither he nor his daughter shall use the email addresses for sending any negative communication to any buyer, supplier, vendor, customer or employee of the said partnership firms."

3. It is clear from a reading of the particulars of the interim arrangement put in place by the Division Bench that there is no absolute directive to Respondent 1 to sign all cheques, which represent payments to be made to vendors. The Division Bench has consciously retained, with Respondent 1, the right to object to the documents related to the said payments, subject to the condition that the objections would be communicated to the petitioner within three days of receipt of the documents, failing which Respondent 1 has necessarily to countersign the cheques.

4. The grievance of the petitioners in IAs 9146/2024 and

9147/2024 filed in these OMPs is that the respondents are unreasonably refusing to sign the cheques, representing payments to make to the vendors. Accordingly, the petitioners have sought permission to unilaterally issue cheques to the vendors without the countersignature of Respondent 1.

5. I suggested to Mr. Saikumar, learned Senior Counsel for the petitioners that as this Court has appointed an Arbitrator to arbitrate on the disputes between the parties today in Arb. P. 1093/2024 and Arb. P. 1107/2024, it would be in the interests of expediency to refer these disputes to the learned Arbitrator to treat these petitions as applications under Section 17 of the 1996 Act and decide them accordingly. Mr. Saikumar, on instructions, submits that, instead of resorting to this recourse, this Court should decide the issue itself.

6. Mr. Saikumar seeks to justify his request on the submission that the refusal on the part of Respondent 1 to countersign the cheques is bringing the petitioners' business to a grinding halt. He has also sought to place reliance, in this context, on the decision of a learned Single Judge of this Court in ***Jain Motor Car Company v. Deepti Jain***[1].

7. Deciding of the issue would require the Court to examine, for itself, justification of Respondent 1's refusal to countersign the cheques. I am unable to accede to the said request.

[1] **ILR (2009) IV Delhi 622**

8. Insofar as the decision in ***Jain Motor Car Company*** is concerned, para 12 of the said decision is sufficient to distinguish that case from this. Paras 11 to 13 of the decision in ***Jain Motor Car Company*** may be reproduced to advantage, thus:

> "11. In ***Modern Metal Industries v. Shanti Parolia***[2] where respondent sent letters to the bank asking the bank to stop the payment of firm's bank account, it was observed that to stop payment of the firm's bank account was an act of extreme highhandedness and in breach of trust and malafide. It was further observed that this betrays irresponsible and reckless behaviour on the part of the respondents and was in breach of the terms and conditions of the partnership deed and Partnership Act.
>
> 12. *It remains undenied that immediate payments have to be made on behalf of the firm on a regular monthly basis for labour wages, electricity bills, telephone bills, trade tax, central excise and other government and public dues, purchase of raw materials etc. for timely production and supply of goods to the purchasers and in particular to the Government of India (Ministry of Defence) within the stipulated and fixed deadlines under the contract and obtaining bank guarantees under the government contracts without which the contracts would face cancellation* and for these payments, the petitioner No. 2 genuinely requires immediate resumption of normal operation of the bank account without the stoppage of payment of cheques as claimed by respondent in her application.
>
> 13. Though there are allegations of misappropriation of funds of the firm by the petitioners No. 2 to 6, *a very grave and sudden situation would arise if the business of the firm itself faced imminent danger of being paralysed if the bankers are stopped from honouring the cheques which are not signed by the respondent.* Hence I am of the opinion that an interim injunction under Section 9 of the Act as prayed should be granted for protection of the firm from severe crises and imminent danger of its business coming to a grinding halt resulting in huge and irreparable loss."
>
> (Emphasis supplied)

[2] **2004 (2) Arb. LR 561 (Allahabad) (DB)**

9. Thus, this Court, in ***Jain Motor Car Company***, was concerned with a situation in which there was a complete freeze on the bank account of the petitioners, which had resulted in paralysis of its activities. The petitioners were unable even to pay labour wages, electricity bills, telephone bills, VAT, Central Excise and other Government and public dues.

10. In the present case, the bone of contention appears only to be with respect to the payments to be made to vendors. It is not possible, therefore, to analogise this case with ***Jain Mator Car Company***.

11. A Court seized with a Section 9 petition in a case where an arbitrator has already been appointed, has to decide whether to proceed with Section 9 petition or to allow the petition to be decided by the arbitrator treating it as a petition under Section 17 of the 1996 Act.

12. At this stage, Mr. Saikumar submits, on instructions, that he is agreeable to these petitions being treated as Section 17 applications and listed before the learned Arbitrator for decision.

13. The learned Arbitrator appointed by the order passed today is requested, given the urgency of the issue, to decide these applications expeditiously and, if possible, within three weeks of entering on reference, needless to say, after hearing both sides and in accordance with law.

14. This Court has not expressed any opinion on the merits of the matters. This order is passed without prejudice to all rights and contentions of both sides, which are left open.

15. These petitions stand disposed of in the aforesaid terms.

I.A. 22142/2023 and I.A. 9146/2024 in O.M.P.(I) (COMM.) 347/2023

I.A. 22401/2023 and I.A. 9147/2024 in O.M.P.(I) (COMM.) 348/2023

16. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

AUGUST 14, 2024

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Click here to check corrigendum, if any