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

+ **W.P.(C) 14795/2023**

FIROZ KHAN

.....Petitioner

Through: **Mr. Jawahar Raja and Ms. Aditi
Saraswat, Advocates**

versus

M.A. DESIGN INDIA PVT. LTD. & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

07.08.2024

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CM APPL. 45103/2024 [For Early Hearing]

1. Issue Notice.

1.1 Learned Counsel for Respondents, who appears on advance Notice, accepts Notice and submits that he has no objection if the matter is taken up for hearing and disposal today itself.

2. The Application is accordingly allowed.

W.P.(C) 14795/2023

3. With the consent of parties, the matter is taken up for hearing and disposal today itself. At the outset, learned Counsel for the Petitioner restricts his prayer in the present Petition to prayer A. In so far as concerns prayer B, he submits that he will move an appropriate proceeding before the learned Labour Court qua the same.



4. Liberty is so granted.

5. Prayer A in the Petition reads as follow:

'a. Set aside or quash the impugned order dated 17.02.2023 passed by the Hon'ble Presiding Officer, Labour Court Rouse Avenue in LC No.3/2017 titled as 'Firoz Khan v. M.A. Design India (P) Ltd.'

6. Learned Counsel appearing on behalf of the Respondents seeks to draw the attention of the Court to the Affidavit dated 19.03.2024 which is filed by Respondent No.2, wherein it is stated that in pursuance to a Business Transfer Agreement dated 01.04.2021, the business undertaking of Respondent No.1 has been purchased by Respondent no.2 in a "slump sale" as a going concern.

7. At that time of the aforementioned sale, the Petitioner was not in employment of Respondent No.1 thus, his name is not listed in the Schedule-2 of the Business Transfer Agreement ["BTA"]. He submits that as per Article 5.2 of the BTA, Respondent No.1 would continue to be liable for the claims and dues of those employees who were in the Company prior to the Effective Date of the BTA.

8. Learned Counsel for the Petitioner seeks to rely upon paragraphs 5, 6 & 7 of his Affidavit dated 19.03.2024, which are reproduced herein below:

5. That Article 5 of the Agreement deals with employees and 5.2 reads as follows:

"For any period prior to the Effective Date, the Seller shall be liable to pay to the employees all amounts becoming due and payable to them, as per the terms of employment and statutory provisions whether by way of salary, bonus or otherwise, calculated and due and payable up to Effective Date, unless the same forms part of liabilities being



transferred as per part 2 of Schedule 1. The Purchaser shall assume and be liable for all dues and obligations towards such Employees from the Purchaser in accordance-with the terms set out in clause.5.1 ."

6. That in view of the above mentioned provisions of the business transfer agreement dated 01.04.2021, P-7, it becomes clear that the Respondent No. 1 had not been purchased by the Respondent No. 2, but only the business undertaking of the Respondent No.1 had been purchased by way of slump sale as a going concern by the Respondent No. 2, which business undertaking did not include the Petitioner as he was not in employment on the date of the business transfer agreement and as such his name was not listed in Schedule-2 of the agreement. Therefore, as per Article 5.2 for any period prior to the effective date, the Respondent No.1 i.e. the seller continued to be liable for all claims and dues, if any, of the employees who had been employed prior to .the effective date and whose names were not mentioned in Schedule 2 to the agreement.

7. That in fact, the Respondent No. 1 even after the transfer of its business undertaking to the Respondent No. 2 continues to be in existence as a Private Limited company although not performing its earlier business, which was wholly transferred to the Respondent No. 2."

9. Learned Counsel for Respondent No.2 further submits that a similar Affidavit has been filed by Respondent No.1 as well.

10. It is the case of the Petitioner that by way of the impugned order, learned Labour Court has dealt with the matter in a manner that the entire business of Respondent No.1 including liabilities has been transferred to Respondent No.2 and Respondent No.1 has ceased to exist, which is clearly



not the case. Thus, it is contended to that extent the impugned order suffers for an infirmity.

11. In view of what is stated above and consensus amongst the parties, the impugned order dated 17.02.2023 is set aside.

12. The parties are directed to appear before the learned Labour Court on the date already fixed i.e. 03.10.2024.

13. The Petition is disposed of in the foregoing terms.

14. This order should not be construed as an expression on the merits of the case. All rights and contentions of the parties are left open to be agitated before the learned Labour Court.

15. The date already fixed hereby stands cancelled.

TARA VITASTA GANJU, J

AUGUST 7, 2024/tp

Click here to check corrigendum, if any