

**(2009) 05 DEL CK 0121**

**In the Delhi High Court**

**Case No : OMP 74 of 2009**

Ms. Pooja Gambhir and Others

APPELLANT

Vs

Mr. Parveen Jain and Others

RESPONDENT

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**Date of Decision :** 19-05-2009

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 9

**Citation :** (2009) 05 DEL CK 0121

**Hon'ble Judges :** S.N. Dhingra, J

**Bench :** Single Bench

**Advocate :** Harish Malhotra and Vipul Gupta, for the Appellant; Rajesh Rattan, for the Respondent

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## **Judgement**

Shiv Narayan Dhingra, J.—By this application/petition u/s 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") the petitioner has made a prayer that the Court should restrain the respondents or their representatives from disposing of the properties bearing No. B-317, Saraswati Vihar, Pitam Pura, Delhi, D-8 & Swarn Park, Mundka, each measuring 1,000 sq. yds and respondents be also restrained from selling movable or immovable assets of the Company T.I. Steels Pvt. Ltd.

2. The contention of the petitioners is that the petitioners incorporated a company under the name of T.I. Steel Pvt. Ltd. This company was running an industrial unit at Panta Sahib and certain term loan and working capital were borrowed by the petitioner from Vijaya Bank, Barakhamba Road by creating equitable mortgage of their properties. An MoU was entered into between the petitioner and respondent whereby the respondent agreed to carry on the business of the company M/s T.I. Steel Pvt. Ltd. and the petitioners were to remain sleeping partners and parties were to fulfill certain terms and conditions in accordance with MoU dated 6th September 2008 executed between the parties.

3. As per the terms and conditions, the petitioners were not to be entitled to profit or loss of the company with effect from 1st April 2007 and all liabilities and

profits after 1st April 2007 were to be that of the respondents. The existing bank loan taken by the company was also to be the responsibility of the respondent. The respondent was to make arrangement to get the properties of the petitioner lying as security released from the bank and to give fresh security of their own to the bank. However, the petitioners were to be responsible for all kinds of liabilities of the company up to 31st March 2007 including excise, income tax, custom, VAT, service tax, electricity and water charges, labour creditors and other liabilities relating to government or non governmental entities. All these liabilities were mentioned in the balance sheet. It was also agreed that even if some liabilities were not mentioned in the balance sheet and which may arise in future for the period up to 31st March 2007, except loan of Vijaya Bank to the tune of Rs. 22.5 crore, the same shall be the liability of the petitioner. The petitioner was also to get credit of the payments for the period prior to 31st March 2007. Thus in nutshell, the respondents were to adjust the amount received from the debtors of the period up to 31st March 2007 and pay to the creditors out of this amount and shortfall if any was payable by the petitioners. Apart from that, the respondents had also agreed for payment of monthly compensation to the petitioners in following terms:

- i) A sum of Rs. 12 lakhs each in the month of August, 2008 and September, 2008;
- ii) A sum of Rs. 17 lakhs in the month of October, 2008;
- iii) A sum of Rs. 22 lakhs in the month of November, 2008 and thereafter on monthly basis till the concast process of manufacturing is commenced;
- iv) The amount of Rs. 22 lac p.m. as stated in para 7(iii) above will be enhanced to Rs. 30 lakhs per month immediately following the month in which the concast process is commenced.

4. It is submitted by counsel for the petitioners under MoU that the respondents were to buy all shares of M/s T.I. Steel not exceeding 65 lac equity shares belonging to the petitioners at a pre-determined rate of Rs. 15 per share. Any excess shareholding over and above 65 lac was to be purchased by the respondents after settlement of amount between both the parties. It was also agreed that shares mortgaged by the respondents to the petitioners shall be returned by the petitioners to the respondents as soon as the accounts were settled. The petitioners namely Ms. Pooja Gambhir, Ms. Stuti Gambhir, Mr. Naresh Gambir all were to resign from the directorship of the company immediately on release of the properties by the bank and after receiving payment of shares and withdrawal of the personal guarantee. However, during interregnum the respondents were to enjoy the control over the management of the company and the petitioners were to cooperate with the respondents. It was also agreed that the respondents shall not incur further loan from the bank on the guarantees furnished by the petitioners.

5. It is brought on record by the petitioners that the respondents asked the bank

for enhancement of loan limits without substitution of collateral securities and the petitioners learnt about this when the petitioners received letter from the bank about seeking enhancement of credit facilities from Rs. 22.5 crore to Rs. 26.9 crore. The petitioners then wrote to the bank that the loan limit cannot be enhanced in terms of the MoU between the parties so long as fresh securities were not furnished by the respondents. The petitioners also alleged that the respondent had failed to fulfill their obligations under the MoU and had not paid periodical amounts as agreed between the parties. In order to secure the payments of the petitioners, petitioners wanted an injunction to be issued against the respondents' properties.

6. The respondents in their reply stated that the arbitration agreement between the parties provided that all the disputes between the parties were to be decided by the named arbitrator. The petitioners could not have raised the dispute before the Court and the disputes between the parties be referred to the named arbitrator. However, allegation of the petitioners that the respondent had not fulfilled its obligations under the MoU were denied rather counter allegations were made that the petitioners had not disclosed true facts to the respondents at the time of entering into MoU and many liabilities of the company for the period prior to 31st March 2007 were not disclosed and the same were much more than the recoveries to be made by the company. The balance sheet and profit and loss account of the company did not reflect true picture and many facts were concealed. The respondents started receiving claims against the company in bulk. The respondents placed on record a letter written by HP State Electricity Board (HSEB) asking for deposit of Rs. 212.75 lac in view of the earlier letter of HP State Electricity dated 25th April 2006. He referred to another letter of HP State Electricity Board enhancing its liability to Rs. 436.08 lac. He also stated that the company had received a notice from the creditors for payment. One notice was on behalf of Jolly Industries whereby a payment of Rs. 3,37,633/- was demanded. Another notice was on behalf of Skipper Electricals for payment of Rs. 13, 31,327/-, because of dishonor of the two cheques dated 1st December 2006 and 4th January 2007. The third letter was from Hotel Grand raising a demand of Rs. 24,873/- and one letter was from M/s Aggarwal Traders asking for Rs. 2,51,204/-, another was from Jaipur Transport Company asking for balance payment of Rs. 40,860/- and another from Rajasthan Road Pvt. Ltd. asking for payment of Rs. 2,05,000/-. These demands which started flowing to the company were much in excess of the debts as reflected in the balance sheet, with the result that the company could not pay the agreed amount to the petitioners since the amount as agreed in MoU was on the understanding that the balance sheet filed by the petitioners with the Registrar of Companies reflected true picture.

7. The counsel for the petitioners argued that the documents and letters received by the respondents were only in respect of those creditors who figure in the balance sheet of company. Even if all these creditors are taken into account, the amount received by the respondents from the debtors was in excess of the

credits and, therefore, no amount was payable by petitioners. Regarding HSEB demand, it is submitted that vide letter dated 6th April 2009, HSEB has withdrawn the demand raised and, therefore, no such demand was there from HSEB. The copy of letter dated 6th April 2009 has been placed on record.

8. I have perused the letter of HSEB dated 6th April 2009. This letter shows that HSEB has not given up the earlier demands but has only postponed the demand. The letter clearly states that fresh demand was under preparation and shall be intimated to the respondent company.

9. The MoU in this case was entered into in September 2008. The respondent thereafter had started running the company and the petitioners and respondents are at the initial stage of the MoU. Irrespective of letters of demand received, it is not difficult to assess as to what amount was due and payable by respondents to the petitioners after taking into account the demands raised upon the company. The properties of the petitioners are mortgaged with the bank for granting loan to the company and the respondents are running and managing this company, I consider that the respondents should have got the security of the petitioners substituted by providing security from their own resources with the bank, in view of their taking over the loan liability and giving an assurance in MoU that they shall substitute the security. Petitioners have a prima facie case and balance of convenience is also lying in their favour.

10. So long as the respondents do not substitute the security furnished by the petitioners to Vijaya Bank and settle the accounts of petitioners, respondents are restrained from selling or disposing of their properties bearing No. B-317, Saraswati Vihar, Pitam Pura, Delhi and immovable properties situated at D-8 & Swarn Park, Mundka, each measuring 1,000 sq. yds. Respondents are also restrained from selling machinery, equipments, plant and immovable assets of the Company T.I. Steels Pvt. Ltd.

11. In my view, it would be appropriate that the parties approach the named arbitrator immediately to get their disputes resolved. Although this petition was made by the petitioners in February 2009 but no steps seems to be taken by the petitioners of invoking arbitration clause. The petitioners are directed to invoke the arbitration clause and refer the matter to the Arbitrator within 15 days from today. In case the arbitration clause is not invoked within 15 days from today, this injunction granted against the respondents shall come to an end.

12. In above terms, the petition stands disposed of.