

Surinder Kumar Beri and Another Vs. Deepak Beri and Another

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Court : Delhi

Decided On : Aug-19-2016

Judge : Manmohan Singh

Appeal No. : O.M.P. (COMM) Nos. 382, 326 of 2016 & I.A. No. 9837 of 2016

Appellant : Surinder Kumar Beri and Another

Respondent : Deepak Beri and Another

Judgement :

Manmohan Singh, J. (Oral)

1. Mr.Surinder Kumar Beri is the father of Mr.Deepak Beri and Mr.Atul Beri. The Award has been challenged by Mr.Surinder Kumar Beri and Ramesh Beri by filing the petition being O.M.P. (COMM.) No.382/2016 under Section 34 of the Arbitration and Conciliation Act, 1996. Another petition being O.M.P. (I) (COMM.) No.326/2016 has been filed by Mr.Deepak Beri under Section 9 of the Act.

2. Section 9 petition filed by Mr.Deepak Beri was listed on 11th August, 2016 when it was informed that another objection petition under Section 34 of the Act filed by the father was also coming up, therefore, the matter was adjourned to 12th August, 2016. On 12th August, 2016, this Court was on leave and the matters were mentioned to Hon ble the Judge Incharge (Original Side) who has adjourned the same to be listed before the Regular Bench on 16th August, 2016 and passed certain directions to Mr.Deepak Beri and Mr.Atul Beri who were directed to

exchange the list of employees of the units that have fallen to their respective share in terms of the Award dated 2nd August, 2016. The Court also passed the order that as far as Mr.Surinder Kumar Beri is concerned, he would furnish to both Mr.Deepak Beri and Mr. Atul Beri, the details of the cheques issued from the account of D.B. Engineering Pvt. Ltd. with Canara Bank in the month of August, 2016.

3. When the matters were taken up on 17 th August, 2016, parties desired to show their keenness to settle the disputes in view of the terms of MOU and Arrangement Deed which were executed between the parties prior to publishing of the Award by the Arbitral Tribunal, except the objections were raised on behalf of Mr.Deepak Beri and Mr.Atul Beri that their father is not the party in the arbitration proceedings, therefore, the objections filed by him under Section 34 of the Act are not maintainable. Despite of that, they are ready to resolve the disputes with the father who was called in the Chamber at 4.30 p.m. for the purpose of settlement. Mr.Surinder Kumar Beri and the Advocates on behalf of Mr.Deepak Beri and Mr.Atul Beri appeared in Chamber and agreed that the sons would file their respective affidavits by 19th August, 2016 so that the salary of the employees and the statutory obligations of the Companies may be cleared.

4. After small discussion, Mr.Surinder Kumar Beri has reconfirmed to the Court that in terms of the MOU, his stand remains the same and the terms and conditions of the MOU and the Arrangement Deed are binding upon the parties and he has no objection if the movable and immovable assets be divided accordingly as per settlement arrived at between the parties, however, none of the parties should be allowed to misuse any term, and the process of division of the assets should be completed in a peaceful and smooth manner. He agrees to sign all the cheques of the Companies/Firms which are the part and parcel of the MOU and the Arrangement Deed, subject to the condition that his share in the said Firms and Companies shall remain undisturbed, for which the Advocates for Mr.Deepak Beri and Mr.Atul Beri have no objections.

5. Both the sons Mr.Deepak Beri and Mr.Atul Beri have filed their respective affidavits for the time being as a temporary measure. They are also present in

Court. Mr. Atul Beri has stated in his affidavit that the list of payments due that has been submitted by him pertains only to D.B. Engineering Pvt. Ltd. and the employees listed therein are working for D.B. Engineering Pvt. Ltd. only and for no other entity.

6. On the similar lines, the affidavit has been filed by Mr. Deepak Beri who has also confirmed that the salary amount due to the employees and other statutory requirements shall be cleared only and for no other entity. Without prejudice to their respective contentions, all parties at this stage are also agreeable that the cheques may be signed by at least two parties, i.e. the father and one of the sons and no amount by way of cheques at present shall be issued with regard to overdue supplier payment. The Banks concerned to act accordingly. They have also requested the Court to appoint a Local Commissioner to oversee the situation so that no payment other than the wages of the employees and other statutory liabilities is issued for the time being. They have also requested the Court to appoint an Observer so that the terms and conditions of the MOU be fully complied with in a peaceful manner, and liberty may also be granted to mention the matter in case of any difference of suggestion. They admit that some steps have already been taken in this regard but there are some formalities and disputes are yet to be resolved between them in view of demerger of the assets of Companies owned by Mr. Deepak Beri and Mr. Atul Beri as per the settlement and Award rendered.

7. As far as the appointment of Observer is concerned, an appropriate order would be passed on the next date. In the meanwhile, the affidavits of Mr. Deepak Beri and Mr. Atul Beri are taken on record. As agreed, Mr. M.N. Dudeja, Advocate (Mobile No. 9811321220) is appointed as Court Commissioner for the purpose of releasing the wages of employees and other statutory liabilities as well as to overview the entire situation. The Court Commissioner would see that none of the parties will misuse any term of the settlement and divert any amount to third entity owned by any party. As agreed, Mr. Surinder Kumar Beri and Mr. Deepak Beri or Mr. Atul Beri will sign all the requisite cheques with regard to the charges of the employees and other statutory liabilities due. Parties shall also file the full details about the issuance of cheques along with list of documents before the next date.

As stated in the affidavit of Mr. Deepak Beri that the salaries and wages are due to the employees of M/s D.B. Engineering Pvt. Ltd., M/s S.K. Beri and Bros. and M/s D.B. Engineering Company and it is also stated that with respect to wages and salaries, an amount of Rs.27,60,000/- has been paid by him from his personal funds in order to help the employees and workers tied over their financial difficulties, which amount is liable to be reimbursed to him, Mr. Deepak Beri will give the proof of the same to the Court Commissioner and in case the said amount has been paid by Mr. Deepak Beri, the order of reimbursement would be passed on the next date, although the details of the same have been given as Annexure A-1 filed along with his affidavit. Similarly, if Mr. Atul Beri has also spent any amount and actual expenses in this regard, he would also show the cogent evidence to the Court Commissioner so that similar order be passed.

Mr. Deepak Beri, who is present in Court, also makes the statement that no employee, for whom the salary is to be released, is working for LLP owned by him.

The fee of the Court Commissioner is fixed at Rs.1,50,000/- which shall be paid by Mr. Deepak Beri and Mr. Atul Beri in equal proportions, subject to final adjustment. The Court expects from the parties to cooperate with the Court Commissioner so that the order be complied with smoothly. As desired by both parties, an order for appointment of an Observer/Mediator would also be passed on the next date for remaining compliance of division of assets of the Companies/Firms as per settlement.

8. List this matter on 23rd August, 2016.

9. Copies of this order be given dasti to the learned counsel for the parties, under the signatures of the Court Master and a copy thereof be also communicated to the learned Court Commissioner forthwith.

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