



\$~17, 18 & 24

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

+ CONT.CAS(C) 790/2016, CM APPL. 28886/2016 & CM APPL. 45239/2018 & CM APPL. 51810/2018

M/S AGARPARA COMPANY LIMITED

..... Petitioner

versus

GHANSHYAM SARDA & ORS

..... Respondents

+ CONT.CAS(C) 800/2016, CM APPL. 28922/2016, CM APPL. 32559/2016 , CM APPL. 20853/2018, CM APPL. 20855/2018
CM APPL. 20856/2018, CM APPL. 44421/2018, CM APPL. 49038/2018 & CM APPL. 51812/2018

RABINDRA KUMAR WALIA

..... Petitioner

versus

GHANSHYAM SARDA & ORS

..... Respondents

+ CONT.CAS(C) 149/2020 & CM APPL. 6849/2020

RABINDRA KUMAR WALIA

..... Petitioner

versus

GHANSHYAM SARDA & ORS

..... Respondents

Through: Mr. Shoeb Alam, Advocate for
Petitioner in Item No. 17

Mr. Rudra Pratap, Advocate for
Petitioner in Item Nos. 18 & 24.

Mr. Jayant Mehta, Mr. Ashok Jain
and Mr. Amit Kasera, Advocate for
R-1 in Item Nos. 17 & 18.

Mr. Sanjiv Sen, Sr. Advocate with
Mr. Atanu Mukherjee, Advocate for



R-2 to R-6 in Item Nos. 17 & 18.

Mr. Santosh Kumar Sahu, Advocate for Mr. Sriram P., Advocate for R-13 to R-20 in Item Nos. 17 & 18.

Mr. Gopal Jain, Sr. Advocate with Mr. Gaurav Kejriwal and Ms. Indrani Mukherjee, Advocates for ACL, Applicant in CM No. 28886/2016.

Mr. Sahil Dhawan, Advocate for R-7 to R-9 in Item Nos. 17 & 18.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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11.02.2021

The hearing was conducted through physical court.

1. Mr. Shoeb Alam, the learned counsel for ACL submits that there has been breach of the orders dated 30.04.2009 and 29.11.2013, which *inter alia* directed M/s Agarpara Jute Mill Ltd. ('AJML') not to dispose-off, lease or otherwise encumber in any manner, the assets of AJML. He contends that admittedly, the respondents have breached the said orders by disposing-off/leasing or otherwise encumbering the assets of AJML.
2. A subsequent order was passed by the AAIFR on 01.06.2015, wherein the respondents in that petition (who are arrayed as some of the respondents in CONT.CAS(C) 790/2016) gave an undertaking as under:



“ ...

... ”

Primarily, Mr. Ray has tried to demonstrate that the third paragraph from the bottom of the order makes it clear that M/s Agarpara Jute Mills should not part with possession or sale or transfer of its immovable properties as mentioned in the sanctioned scheme without the leave of court. So even if the respondents M/s Agarpara Jute Mills intends to part with possession or sale or transfer of the immovable properties as mentioned in the scheme a leave has to be obtained from this court so long the order remains in force during the pendency of this appeal. But, Mr. Ray further submits that it does not prevent or restrain the respondent from ascertaining as to whether interested persons in the market are ready and willing to make negotiations with the respondent in respect of such immovable properties or assets of the company if leave of court, as mentioned in the order, is obtained, if negotiations succeed. Since the respondent made the statement before this court on 06.08.2014 that the respondent would not part with or sale or transfer the immovable properties as mentioned in the scheme without obtaining the leave of court, the interests of the parties, in particular, the appellant, I think, are fully protected even if the respondent makes any survey, or looks for such interested persons as mentioned above for any future transaction.”

3. The later order too is stated to have been breached.
4. Mr Alam further submits that this petition has been filed with due authority of the Directors as recognised, even as of today by the Registrar of Companies. In support he refers to the MCA website as of today which records the authorized the Directors of ACL as under:

Mr. Rabindra Kumar Walia,

Mr. Tej Narayan Thakur and

Mr. Naveen Nayyar



5. The learned counsel further contends that assets of AJML are being ceaselessly depleted or otherwise encumbered by the respondents in recalcitrant breach of the aforesaid orders. Therefore, to save and secure AJML's assets and its very existence, an assessment be made of the *status quo* of all the assets of the company, in terms of the list furnished at Annexure A-13 in Vol. II of CONT.CAS(C) 800/2016. This ascertainment of the status of assets is sought through a Local Commissioner regarding various leases and/or encumbrances. All the assets are in one area – abutting Graham Road and Barrackpore Trunk Road, Kolkata – as depicted at page no.322 of the aforementioned Annexure A-13. The petitioners assert that contempt would be ascertained in terms of the BIFR scheme, therefore, a Local Commissioner's report would be essential.
6. Mr. Gopal Jain, the learned Senior Advocate for the applicant in CM No. 28886/2016, submits that there are three different streams of proceedings which may be permitted to be put in a convenience file for ease of reference by this Court.
7. Mr. Rudra Pratap submits that a convenience file already exists.
8. Nevertheless, let a convenience file in terms of the above, be filed with the consent of the parties.
9. List on 08.04.2021.
10. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

FEBRUARY 11, 2021

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