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

+ **ARB.P. 243/2007**

April 1, 2008

SIDHARTH TRADING AND EXPORTS PVT. LTD. Petitioner
Through Ms. Ginny J. Rautray, Advocate

versus

ALCOBEX METALS LIMITED Respondent
Through Mr. S.M.F. Warsi, Advocate

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

- 1. Whether reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

Mr. Justice S. Ravindra Bhat (Open Court)

1. The petitioner seeks an order for appointment of an Arbitrator in respect of disputes arising out of the contract with the respondent in terms of an agreement/Memorandum of Understanding dated 27.8.2005. It is alleged that a commission of Rs. 29,10,163.20 was payable to the petitioner by the respondent for the order placed upon an overseas client in Iran.
2. The petitioner states that on 10.5.2006 the respondent undertook to pay the sum in two

instalments. The first instalment was payable in June 2006 and the balance on the next month. It is further claimed that the respondent did not fulfil its commitments and paid only Rs. 10 lakhs towards the first instalment on 22.7.2006 agreeing later to pay the balance on or before 15.8.2006. It is alleged to have paid only Rs. 5,10,240/- by a cheque dated 14.7.2006 which was dishonoured but later replaced through a demand draft. The petitioners therefore claims that Rs. 13,10,163.20 along with interest @ Rs. 18% is due and payable and that in terms of arbitration clause in the Memorandum of Understanding, inter se disputes are to be referred to the arbitration. The petitioner suggested the name of Justice R.C. Chopra, retired Judge of this Court and asked the respondent to convey its acceptance within seven days of receipt of notice on 13.4.2007. The respondent entered appearance and has not filed any reply. However, its counsel stated that an application has been filed and produced a copy of The Rajasthan Relief Undertakings (Special Provisions) Act, 1961 and a Notification issued under Section 4(1) of the said Act, on 16.11.2007 declaring the respondent as a relief undertaking in the first instance.

3. Reliance is placed upon Section 3 and 4 of the said enactment which read as follows:

***“3. Declaration of relief undertaking-** (1) If at any time, it appears to the State Government necessary to so, the State Government may, by notification in the official Gazette, declare that an industrial undertaking specified in the notification, whether started, acquired, or otherwise taken over, by the State Government, or in respect of which a notified order under section 18-A of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951) is in operation, and carried on, or proposed to be carried on, by itself, or under its authority, or to which any loan, guarantee, or other financial assistance has been provided by the State Government, shall, with effect from the date specified for the purpose in the*

notification, be a relief undertaking for the purposes of this Act.

(Explanation- The issuance and publication of a notification under sub-section (1) in respect of any industrial undertaking shall not have the effect of treating the employees of that industrial undertaking as Government Servants unless they are specifically appointed as such, in writing, by a special order of the State Government, issued subsequent to the said notification, to manage the affairs of that industrial undertaking)

(2) A notification under sub-section (1) shall have effect for such period not exceeding two years as may be specified in the notification: but it shall be renewable by like notifications, from time to time for further periods not exceeding twelve months at a time, so however, that the total period in the aggregate does not exceed (twenty years)."

4. Power to specify industrial relation and other facilities temporarily for relief undertaking. - *(1) Notwithstanding any law, usage, custom, contract, instrument, decree, order. Award, submission; settlement standing order or other provisions whatsoever the State Government may, by notification in the official Gazette, direct that :-*

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub section (2) of section 3.

(i) all or any of the laws mentioned in the Schedule to the Act or any provisions thereof shall not apply (and such relief undertaking shall be exempted therefrom) or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification; and

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws mentioned in the Scheduled to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before the issue of the notified order in respect thereof under section 18-A of the industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951) or before any loan guarantee or other financial assistance was provided to it, by the State Government, shall be suspended in operation or shall, if so directed by the State Government be applied with such modifications as may be specified in the notification; and

(b) no suit or other legal proceedings shall be instituted or commenced or if pending shall be proceeded with, against any industrial undertaking during the period in which it remains a relief undertaking.

[provided that a notification issued under this Act shall have no effect in respect of any law, legal proceeding, agreement, settlement, award, standing order or the like relating to the payment of wages to the workman of the industrial undertaking specified in the said notification.

Provided further that with the issuance and publication of notification under section 3 or section 4 of the Act, the State Government shall, in no case, be liable for payment of the wages or any other financial obligations or otherwise on behalf of the industrial undertaking specified in the said notification.

Explanation.- “Legal proceeding” means any proceeding under any law before any court, tribunal officer, authority or arbitrator, started on a plaint, petition of appeal, application, reference; or otherwise,

(2) The period, during which any suit or legal proceeding cannot be instituted or commenced because of the provisions of clause 9b) of sub-section (1), shall be excluded in computing the period of limitation prescribed by the Indian limitation Act, 1908 (Central Act 9 of 1908). or any other law for the time being in force, for such suit or proceeding.

(3) A notification under sub-section (1) shall have effect from such date, not being earlier than the date referred to in sub-section (1) of section 3, as may be specified therein.

4. The respondent's counsel submits that in terms of Section 4(b), no suit or other legal proceedings can be instituted during the subsistence of the notification.

5. On a conspectus of the provisions of Section 3 and 4, it is clear that this Court cannot refer the dispute to arbitration as long as the Notification declaring the respondent as a relief undertaking continues. Although the provision in Section 3(2) seems to be in extremely wide terms, this Court at

least exercising jurisdiction under Section 11(6) cannot go behind it read it down in any other manner.

6. Learned counsel for the petitioner had submitted that the appropriate course would be to adjourn these proceedings till November 2008 to examine whether the Notification would be continued or not extended. That course unfortunately is not available. As long as the notification subsists as well as the likelihood of its being extended, this Court does not possess the jurisdiction to entertain this proceeding, which is undoubtedly a prelude to the legal proceedings to recover the amounts.

7. In these circumstances, the respondent is directed to intimate to the petitioner immediately after 15th November, 2008 whether the Notification declaring it as a relief undertaking has been extended and if so to what effect or any other alternative course of action. A copy of the same shall also be forwarded to the petitioner within two weeks of the expiry of the said period.

8. The petition is disposed of in the above terms.

S. RAVINDRA BHAT,J

APRIL 01, 2008

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