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

+ O.M.P.(I) (COMM.) 106/2016

**INDIAN RAILWAY TOURISM AND  
CORPORATION LIMITED**

..... Petitioner

Through: Mr Divya Prakash Pande and Ms  
Bhawana Pande, Advocates.

versus

**MAA TARA TRADERS**

..... Respondent

Through: Mr Sanjay Kumar Shandilya with Mr  
Abhishek Kumar Singh, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**14.07.2016**

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the petitioner, *inter alia*, praying as under:-

- “i. Direct the respondent to furnish a Bank Guarantee in favour of the Petitioner amounting to Rs.5,34,74,373/-; and/or
- ii. Direct the respondent to furnish Collateral Security of like amount as claimed by the petitioner; and/or
- iii. restrain the Respondents from creating any third party interest on its assets, till the disputes which have arisen between the parties are decided by way of Arbitration as per Clause 5 of Section 4 of General Conditions of Contract between the parties;
- iv. pass ad interim ex parte order in terms of prayer (a) above and confirm the same after notice to the Respondent;
- v. award costs of the present proceedings in favour of the

applicant and against the respondent;”

2. The learned counsel appearing for the petitioner states that initially conciliation proceedings were commenced by the parties, however, the respondent had abandoned the same. He also drew the attention of this Court to the running account of the respondent (MAA TARA TRADERS) indicating that a sum of Rs. 5,34,74,373/- is outstanding and payable by the respondent. The learned counsel appearing for the petitioner has also referred to the document (at page 96) which indicates the amounts deposited by the respondent as well as the net outstanding which is reflected at Rs.5,43,27,799/-. According to the petitioner, the said statement is also signed by the respondent (which is now disputed by the learned counsel for the respondent).

3. The learned counsel for the petitioner further submits that the Arbitral Tribunal was constituted; however, the respondent filed an application under Section 16 of the Act and the Tribunal came to a conclusion that its constitution was not in terms of the agreement between the parties. He submits that in the circumstances, the petitioner would take further steps for re-constitution of the Arbitral Tribunal.

4. The learned counsel appearing for the respondent submitted that the dues claimed by the petitioner are time barred as they pertain to the year 2005. He further submits that the respondent is a sole proprietorship but the agreement sought to be relied upon by the petitioner was with the partnership firm, albeit, with the same name. He further submits that the petitioner has not been able to make out any case for recovery of the aforesaid amount and, therefore, the present petition is liable to be

dismissed. He further submits that the respondent also has a counter claim against the petitioner.

5. The petitioner had floated a tender notice (IRCTC/RN/Logistics/2005) dated 19.01.2005 for distribution of packaged drinking water “Rail Neer”. It is not disputed that M/s Maa Tara Traders had participated in the aforesaid tender and it is pursuant to the same that the business of distribution of packaged water (Rail Neer) was undertaken by the respondent. It is also not disputed that the respondent continues to distribute the said product. The letters sent by the respondent also indicate that the respondent claims to be an “Authorised Railway Distributor”. In the circumstances, I am *prima facie*, unable to accept that the respondent has no role to pay in the contract referred to by the petitioner.

6. Insofar as, the contention that the present claims are barred by limitation is concerned, the same will be considered by the Arbitral Tribunal as and when constituted. However, it is seen that the petitioner claims that it has a running account with the respondents and, *prima facie*, it is difficult to accept that the claim would be barred by limitation.

7. In the aforesaid circumstances, I consider it necessary that certain protective orders be passed to protect the interest of the petitioner. However, I am not persuaded to direct that a Bank Guarantee be furnished as the same is liable to involve additional costs and expenses.

8. In the circumstances, following directions are issued:-

- (i) The respondent will not sell, transfer, alienate or in any manner create third party interest in its immovable property.
- (ii) The respondent will also not sell, transfer or alienate any of its moveable assets except in the normal course of business.

- (iii) The respondent shall furnish an affidavit disclosing its assets to the petitioner within a period of four weeks from today.
- (iv) The aforesaid directions shall be operative for a period of one year from today or till such time as the petitioner's application under Section 17 of the Act, if so filed, is considered by the Arbitral Tribunal, whichever is earlier.

8. The petition is disposed of with the aforesaid directions. It is needless to clarify that nothing stated herein shall prejudice any of the contentions of the parties before the Arbitral Tribunal.

**VIBHU BAKHRU, J**

**JULY 14, 2016**  
**MK**