

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 225 OF 2017
WITH
REVIEW PETITION (L) NO. 1 OF 2017

Surendra Overseas (Panama) Inc	...Petitioner
<i>Versus</i>	
Seashell Logistics Pvt Ltd	...Respondent

Mr Prashant Pratap, Senior Advocate, with Arjun Mital,
Damayanti Sen & Hari Wadhwa, i/b Bose & Mitra & Co., for
the Petitioner.
Mr AS Rao, with Ashish Rao, i/b M Bangale, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 9th May 2017

PC:-

1. In compliance with the order dated 4th May 2017, there is an Affidavit of disclosure dated 8th May 2017 of one Mr Ramesh Babu Chirumamilla. He is one of the three directors of the Respondent – company. The second director is his wife. The third director is one Mr Rajesh Gujjaraladi.

2. In paragraphs 3 to 7 there is a disclosure of assets. In paragraph 3 the deponent states that the approximate value of the

Respondent company's movable and immovable assets is Rs 21 crores. It holds freehold trailers valued at about Rs 3.93 crores. There is a certificate from the Chartered Engineer. That certificate is tendered, taken on record and marked "X" for identification with today's date. It remained inadvertently to be annexed to the Affidavit of Disclosure.

3. He also states that there is a total amount of Rs. 26,96,411.17 to the credit of the Respondent's various bank accounts. An amount of USD 28,445.42 is in the Respondent's Dollar Account. He clarifies that an amount of Rs. 24,38,186/- was credited to the Respondent's Current Account No. 02582320000388 on 8th May 2017. Then there are disclosures of personal assets.

4. For the purposes of this Petition, I will accept that the Petitioner's claim today is about Rs. 4.8 crores, the rupee equivalent of its USD claim of USD 750,000 (approximately). This claim can be partly secured by a restraint order in respect of the trailers mentioned above. It is clarified that these trailers are freehold and are unencumbered either by hypothecation or other charge to any party. The Chartered Engineer's certificate so certifies.

5. On instructions Mr Rao for the Respondent states that the Respondent company is agreeable to deposit with the Prothonotary & Senior Master of this Court an amount of Rs 20 lakhs per month starting from July 2017. The deposit will be made on or before 10th of each month. This statement is accepted as an undertaking to the Court.

6. Hence, the following order:

- (a) Pending the final disposal of the arbitration, the Respondent will not alienate, part with possession, encumber or create any third party rights in respect of its freehold trailers that are the subject matter of paragraphs 3 and 7 of the Chartered Engineer's certificate. These trailers may be used by the Respondent in the ordinary and usual course of its business;
- (b) From July 2017, on or before 10th day of each month, the Respondent will deposit an amount of Rs. 20 lakhs per month with the Prothonotary & Senior Master of this Court;
- (c) The Respondent proposes to make payments to the Prothonotary & Senior Master by cheques drawn up either on HDFC or Axis Bank. The Prothonotary & Senior Master will accept cheques drawn on either of these banks;
- (d) This amount will be invested by the Prothonotary & Senior Master and will remain to the credit of the Arbitration Petition and to any Award that is passed and made enforceable in respect thereof;

- (e) After the Respondent has deposited an amount of Rs. 90 lakhs in this manner, it will continue to make deposits in the same amount till it deposits an aggregate of Rs. 4.80 crores. As it deposits amount in excess of Rs 90 lakhs, trailers equivalent to the value of the amount deposited in addition to Rs. 90 lakhs will be released from the restraint order in clause (a) above. This will be continued till the entire amount deposited is Rs 4.80 crores at the foregoing rate;
 - (f) In the event of any two defaults, the Petitioners will be entitled to move in attachment of the trailers and for an order of sale of the trailers through the Court Receiver in order to realize the balance amount to make up the total dues of Rs 4.80 crores;
7. The Arbitration Petition is disposed of in these terms. There will be no order as to costs.
8. Liberty to the parties to apply.

(G. S. PATEL, J.)