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

+ **FAO(OS) (COMM) 57/2017**

STARTREE MARKETING PVT LTD

..... Appellant

Represented by: Mr.Darpan Wadhwa, Advocate
with Mr.Amol Chitpale and
Ms.Shweta S.Parihar,
Advocates

versus

PALOGIX INFRASTRUCTURE PVT LTD

..... Respondent

Represented by: Mr.Shatadru Chakraborty,
Advocate with Mr.Anurag
Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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08.03.2017

CM No.9517/2017

Allowed subject to just exceptions.

FAO(OS) (COMM) No.57/2017

1. The respondent has established a private freight terminal at village Mohiuddinpur Hishali, Tehsil Modi Nagar, District Ghaziabad, Uttar Pradesh. It needed services of a person having expertise and infrastructure in loading, unloading, warehousing, carrying, forwarding and transportation of the cargos and goods from railway wagons and rakes. The appellant claimed to have such expertise. On April 01, 2015 a logistics agreement was entered into between the parties as per which the appellant became the

agent and took charge of the site to execute the operations at the freight terminal. Clause 14 of the agreement records that its duration would be 10 years and would be irrevocable, subject to the agreement being terminable upon one or more of the five events occurring, adumbrated in clause (a) to (e) of sub-clause (iii) of Clause 14 of the agreement.

2. As per the appellant it has invested ₹5 crores to develop infrastructure facilities at the freight terminal. In addition, the appellant has paid ₹1.95 crores to the respondent.

3. It appears that the respondent has obtained a credit facility from ICICI Bank Ltd. and is in default. There is a threat of the bank proceeding to take action. The immovable property at the freight terminal appears to be the secured asset of the bank.

4. The respondent had desired appellant to pay money to the respondent to avoid any action from ICICI Bank and since the appellant was hesitant to do so, the respondent appears to be scouting for third party to invest.

5. The agreement between the parties has an arbitration clause. The appellant filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 for an interim measure to restrain the respondent from creating third party interest in the freight terminal or from terminating the agreement.

6. Appellant's grievance is to the effect that notice has been issued by the learned Single Judge in said petition returnable for March 30, 2017 without giving any interim protection.

7. Learned counsel for the respondent who appears today upon learning of the appeal being filed and being armed with a copy of the appeal states

that as of now the respondent has not contemplated terminating the agreement between the parties though being hard-pressed by the bank the respondent is looking for fresh capital to be infused.

8. Learned counsel for the appellant urges that keeping in view the investment made by the appellant in the terminal and money paid to the respondent, the logistics agreement would make the agency irrevocable for the reason the agent has a pecuniary interest in the freight terminal.

9. We do not wish to comment on this aspect of the matter for the reason currently there is no threat of the agreement being terminated. The agreement is for a period of 10 years and is irrevocable, save and except upon the happening of the events adumbrated in clause (a) to (e) of sub-clause (iii) of Clause 14 of the agreement. As per the agreement, the appellant has to be given 24 hours to vacate the terminal.

10. Since the learned Single Judge has yet to consider the grant or non-grant of interim measure post-completion of pleadings, we dispose of the instant appeal noting that as of today the respondent is not threatening to terminate the agreement and should before March 30, 2017 (the date fixed before the learned Single Judge) the respondent proposed to do so, it shall serve a notice granting at least three days to the appellant. The appellant would be permitted to amend the petition filed before the learned Single Judge if the respondent issues any such notice.

11. No costs.

CM No.9515/2017 & CM No.9516/2017

In view of the order passed above disposing of the appeal, the above two captioned application are dismissed as not pressed as prayed by learned

counsel for the appellant.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

MARCH 08, 2017

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