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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L.) NO.1520 OF 2018

Allied Blenders And Distillers Pvt.Ltd. ..Petitioner
Vs.
Colona Blenders And Bottlers (India) Pvt.Ltd. ..Respondent

Mr.Cyrus Ardeshir, Mr.Priyank Kapadia, Ms.Akshita Palvia and Ms.Ava Nagporewalla i/b. M/s.M. Mulla Associates for Petitioner.
None for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 17th DECEMBER, 2018

P.C.:

This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 whereby the petitioner is seeking interim reliefs pending the arbitration proceedings.

2. A manufacturing agreement dated 1 April 2014 was entered between the petitioner and the respondent under which the respondent agreed to manufacture the petitioner's brands of Indian Made Foreign Liquor (for short, “IMFL”).

3. Case of the petitioner is that under the said agreement, the

petitioner had paid in advance excise duties and VAT for the relevant financial years i.e. 2015-16 through the respondent in whose name the licenses and approvals were granted by the authorities. The petitioner had also deposited certain sums of money with the Bihar State Beverages Corporation Limited.

4. In April 2016, Government of Bihar issued a notification under Section 19(4) of the Bihar Excise Act, 1915 whereby manufacture, sale and consumption of IMFL was prohibited. Consequent thereto the petitioner in November 2016 made an application for refund of duties, fees and taxes paid towards manufacture and sale of the petitioner's brands of IMFL.

5. Further by an agreement dated 21 June 2017 as entered between the parties, the principal agreement dated 1 April 2014 came to be terminated. In the said agreement in regard to the refund of duties, fees and taxes, the parties agreed as under:-

> "3(vii) All amounts received as refunds from the respective authorities i.e. by way of refund of duty, taxes, fees, from the State authorities and deposits from BSBCL shall forthwith be paid over by CBBPL to ABADPL and in any event within 48 (forty eight) hours from the receipt of such funds by CBBPL in its account. CBBPL confirms that as on date a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) lying deposited with BSBCL and a sum of Rs. 17,41,579/- (Rupees Seventeen Lakhs Forty One Thousand Five Hundred and Seventy Nine only) lying deposited with the State Excise authorities is receivable and shall be paid to ABADPL immediately upon its receipt. It

> is clarified that these sums are over and above any refund of duty, taxes or fees which may be received by CBBPL.
> ……..
> 5. CBBPL hereby confirms and acknowledges that ABADPL has paid all Excise Duty and Sales Tax on all the stocks sold to BSBCL. CBBPL hereby also confirms and acknowledges that ABADPL has paid the requisite licence fee to the concerned authorities for the 19 C and has also paid all the charges towards label registration with the concerned authorities as applicable."

6. The petitioner contends that in pursuance to the above express clauses as contained in the above agreement, the petitioner was entitled to the refund of the duties which are stated to be Rs.3,43,77,707/-. It is stated that this amount was actually received by the respondent in the month of September 2018 in pursuance of the tax refund order dated 8 August 2018 passed by the office of the Deputy Commissioner of Commercial Taxes, State of Bihar.

7. The petitioner asserting its claim for the refund of the said duties and taxes also approached the Patna High Court by filing a writ petition being CWJC-16716 of 2017. In an order passed on the said writ petition the Court recorded a statement as made by the learned Advocate General for the State of Bihar that the concerned authorities have undertaken an exercise to quantify the refund and a refund order would be issued.

8. The petitioner has stated that a second writ petition being CWJC-

16565 of 2018 was filed by the petitioner before the Patna High Court being aggrieved by the action of the State authorities of not granting refund of the taxes to the petitioner. It is stated that the said petition is pending.

9. The petitioner thereafter addressed a letter dated 21 September 2018 to the respondent calling upon the respondent to make the payment of the said amount of Rs.3,43,77,707/- which was received by the respondent as a refund of duty and taxes. According to the petitioner as per terms and conditions of the agreement, the said amount is entitled to the petitioner. In response to the petitioner's request, the respondent issued a cheque dated 5 October 2018 for an amount of Rs.25,00,000/-. The said cheque when presented for payment, was dishonoured on the ground of funds being insufficient. The petitioner thereafter issued a notice dated 6 November 2018 under the Negotiable Instruments Act, 1881 to the respondent.

10. It is on the above conspectus the present petition is filed praying for interim measures pending arbitration proceedings. The learned Counsel for the applicant would draw the Court's attention to Clause 10 of the agreement dated 21 June 2017 which is the arbitration agreement between the parties. Under the very same agreement, the respondent

under the clauses as noted above has agreed for refund of the duties and taxes as paid by the petitioner under the said agreement.

11. This petition was moved for urgent reliefs on 10 December 2018, as the respondent was not appearing and although it was stated that the private service was effected by the Advocate for the petitioner on the respondent, this Court passed the following order:-

> " Issue notice to the respondents, returnable on 13 December 2018. Hamdast is permitted.
> 2. The respondents are put to notice that on the adjourned date of hearing, the Court shall hear the parties on prayers for ad-interim/interim reliefs as prayed in the application.
> 3. Stand over to 13 December 2018."

12. Again the matter was listed before the Court on 13 December 2018 and was adjourned for today, so that sufficient time was available to the respondent to appear in the present proceedings. In regard to the proof of service of the petition on the respondent, affidavit of service dated 13 December 2018 of Mr.Avinash Pate is placed on record. Another affidavit of service dated 17 December 2018 of Miss Akshita Palvia, Advocate of the petitioner, is placed on record setting out the steps taken to serve the respondent along with the documents. It thus appears that the respondent has sufficient notice of the proceedings and is not interested to appear and/or defend these proceedings.

13. Having heard the learned Counsel for the petitioner and having perused the record, in my opinion, the petitioner has made out a prima-facie case for grant of some of the interim reliefs pending the arbitral proceedings. The terms and conditions of the agreement are clear. Prima-facie the petitioner appears to be entitled to refund of duties and taxes which are received by the respondent on behalf of the petitioner. Moreover, in this regard, part payment of Rs.25,00,000/- was made by the respondent, however, the respondent's cheque issued to the petitioner for the said amount was dishonoured.

14. In the above circumstances, this petition is accordingly disposed of by the following order:-

<u>ORDER</u>

i. There shall be interim reliefs in terms of prayer clauses (a), (c) and (d) of the petition pending the arbitral proceedings. These prayers read thus:-

> "a. This Hon'ble Court be pleased to direct the Respondent to disclose on oath the detailed particulars of the sums refunded by the concerned authorities to the Respondent towards taxes, bottling and licence fees, label registration/renewal fees, Excise levies, VAT, deposits made with BSBCL etc. in respect of manufacture and sale/distribution of the Petitioner's brands of IMFL by the Respondent.
>
> c. Pending the aforesaid disclosure sought in (a) and pending the hearing and final disposal of the arbitral proceedings, direct the Respondent to disclose on oath particulars of all its assets and restrain the Respondent from dealing with the said assets;

> d. Pending the hearing and final disposal of the arbitral proceedings, this Hon'ble Court be pleased to pass an order directing the Respondent to forthwith submit the C Forms to be issued to the Plaintiff in terms of Clause 3(iii) of the Agreement or in the alternate secure, either by way of depositing in this Court or furnishing of an appropriate security/bank guarantee to secure any liability that the Petitioner may be exposed to on account of non-submission of the said C forms to the concerned authority."

ii. The petitioner shall initiate appropriate steps for appointment of an arbitral tribunal within a period of three weeks from today.

iii. In regard to prayer clause (b) and for any further reliefs/protection, the petitioner is at liberty to move an application under Section 17 of the Act before the arbitral tribunal.

iv. Learned Arbitrator shall endeavour to adjudicate on such interim application, if so filed within one month of the statement of claim being filed by the petitioner along with such an application.

v. Needless to observe that the above findings are prima-facie and in the context of adjudication of the Section 9 petition.

vi. All contentions of the parties on merits of the matter are expressly kept open.

vii. The petition is disposed of in the above terms. No costs.

viii. Parties to act on an authenticated copy of this order.

[G.S. KULKARNI, J.]