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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 150/2018**

CARLSBERG INDIA PVT. LTD. Petitioner
Through Mr.Arvind Nayar, Sr.Adv. with
Dr.Maurya Vijay Chandra, Mr.Manu
Prabhakar and Mr.Ashish Ansuman,
Advs.

versus

PALI HILLS BREWERIES PRIVATE LIMITED Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **09.04.2018**

IA No.4574/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 150/2018

1. This petition under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner *inter-alia* seeking the following reliefs:

“A. Restrain the Respondent and its Directors/ their family members/ Employees/ Affiliates/Associates to refrain from disclosing any confidential information to any Third Party and to command the said persons to deliver up such information to the Petitioner; And
B. Restrain the Respondent and its Directors from entering into any agreement or creating any third party rights and lien over the manufacturing capacity of the brewery at Patratu that may defeat the rights of the Petitioner; and
C. Direct the Respondents to restore the production of SKUs in their Brewery; And

D. Direct the respondents to not to disconnect the machines supplied by the Petitioner, including the labeler, from the production unit; And

E. Direct that in the event CIPL's machines have to be removed, the same must be removed only after joint inspection with the AMC provider to ascertain the damage/deterioration, if any caused to the machines by Pali Hills; And

F. To disclose any offer from third parties for Contract Brewing so that the Petitioner can exercise their right of First Renewal under the Contract; And

G. Direct the respondents to not to disrupt the business of the Petitioner by abruptly halting the production in the impending season and produce the number of SKUs as per Minimum Monthly Plan during the currency of the Agreement.”

2. It is the case of the petitioner that the petitioner had entered into a Contract Brewing and Packaging Agreement dated 11.12.2015 with the respondent. In terms of the said Agreement the respondent was to contract manufacture exclusively for the petitioner its products as defined in the Agreement, in Pali Hills' brewery at Patratu Industrial Area, Ramgarh, Jharkhand.

3. Certain disputes having arisen between the parties, the respondent by way of its notice dated 09.10.2017 sought to terminate the Agreement. This was duly replied to by the petitioner and certain discussions also ensued in order to resolve the disputes between the parties. As the disputes could not be amicably settled, the petitioner by its notice dated 23.03.2018 has invoked the Arbitration Agreement contained in Clause 28.2 of the Agreement. Though not on record, learned senior counsel for the petitioner brings to my notice that the respondent has replied to the notice of

invocation by its letter dated 04.04.2018, where the respondent has also expressed its agreement to resolve the disputes that have arisen between the parties through arbitration.

4. Learned senior counsel for the petitioner submits that without prejudice to petitioner's right to seek other relief in the arbitration proceedings, in the present petition, he would be confining his claim only to the prayer seeking order restraining the respondent from, in any manner disclosing to any third party the confidential information received by it in pursuance of this Agreement from petitioner and making use of the machinery belonging to the petitioner and lying with the respondent at the time of termination of the Agreement i.e. today. In this regard he draws my attention to Clause(s) 14.1, 14.6, 14.10, 14.11, 16.3 and 20 of the Agreement which are reproduced herein below:

“14.1 CIPL shall endeavour to provide and install CIPL Equipment at the Brewery before Start Date. Contract Brewer shall provide CIPL Bank Guarantee of INR 30,000,000 (Indian Rupees thirty million) within 15 (fifteen) days of Effective Date valid for the Term and additional three months from a Nationalised Bank/Scheduled Bank. In the event the Contract Brewer is unable to provide initially a Bank Guarantee for the aforementioned period then the Contract Brewer shall provide the Bank Guarantee atleast valid for 2 (two) years from Effective Date and renew the said BankGuarantee atleast 1 (one) prior to expiry of the Bank Guarantee.

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14.6 Contract Brewer will ensure that CIPL Equipment is at all times protected and safeguarded. Any damage, other than normal wear and tear, caused to the CIPL Equipment due to any fault of the Contract Brewer or any employee or hired help of Contract Brewer, will be rectified/ repaired by CIPL nominated vendor/supplier and the cost for the repair

will be borne by the Contract Brewer.

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14.10 Contract Brewer will use the CIPL Equipment to Contract Manufacture Products and Finished Product only. The Contract Brewer undertakes to CIPL that during the Term of this Agreement, it will not introduce on its own products packaging similar to Products including "pull-off cap" or bottles or labels similar to Product.

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14.11 Title to the CIPL Equipment will at all times remain with CIPL and Contract Brewer shall not sell, mortgage, encumber or part with possession of the CIPL Equipment or allow any lien or encumbrance to arise over them. Risk of physical loss of or damage to the CIPL Equipment will pass to Contract Brewer on installation of the same at the Brewery.

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16.3 Contract Brewer agrees that any breach of the terms of this Agreement, including without limitation, breach of its confidentiality obligations and any breach relating to the Trademarks or Intellectual Property, may result in irreparable and continuing damage to CIPL for which there may or will be no adequate remedy at law, and that in the event of such breach, CIPL shall be entitled to apply for injunctive relief and/or such other and further relief as may be appropriate.

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20. Special Obligations after Termination

20.1 Upon expiration or termination of this Agreement, without any regard to the cause of expiration or termination, Contract Brewer will forthwith:

20.1.1 return to CIPL all instructions, specifications, reports, formulas, Technical Manuals, IT software and any other material of a confidential nature received from CIPL during the life of this Agreement, and Contract Brewer will not keep any copies of said documents,

20.1.2 procure that all design, promotion, media and advertising material or any other Intellectual Property Rights belonging to CIPL is delivered to CIPL.

20.1.3 return all CIPL Equipment installed at the Site within 5 (Five) Business Days of termination of this Agreement subject to Contract Brewer obtaining all applicable approvals under Applicable Laws. In the event Contract Brewer fails to return CIPL Equipment, CIPL will have the right to encash the bank Guarantee furnished by the Contract Brewer. Further the Contract Brewer will also be liable to pay, a delay penalty of INR50,000 (Indian Rupees Fifty Thousand only) per day for the period of such delay. It is agreed between the Parties that immediately after obtaining approvals under Applicable Laws, if any, or termination of the Agreement, as the case maybe the Contract Brewer will give unfretted access to CIPL and its nominated representatives to the Site for dismantling, packaging and transportation of CIPL Equipment. The Parties agree that CIPL shall be responsible for dismantling, packaging and transportation of CIPL Equipment out of Site within 15 (fifteen) Business Days of getting access to the Site.. Any delay by CIPL to dismantle and remove CIPL Equipment inspite of Contract Brewer fulfilling its obligation to give unfretted access to the Site, the penalty payable by the Contract Brewer in terms of this Clause shall stand nullified. Further it is agreed between the Parties that in the event that CIPL is unable to dismantle and remove CIPL Equipment within 15(fifteen) Business Day time period set out above, then CIPL shall pay the Contract Brewer a penalty of INR10,000/- per month for each month of delay. CIPL shall not unreasonably delay dismantling, packaging and transportation of CIPL Equipment.

20.1.4 promptly inform to CIPL and make available for collection by CIPL all unused stock of Material in its possession to CIPL in the condition in which Contract Brewer is required to maintain them under this Agreement;

20.1.5 use all reasonable endeavours to terminate the provision of the Contract Manufacturing as efficiently as possible and assist and enable a hand over of the business and operations to CIPL or any new contract brewer appointed by CIPL

20.1.6 if CIPL requests, complete Contract Manufacturing Products as per Firm Monthly Production Plans already shared with the Contract Brewer as at the date of termination in accordance with the relevant provisions of this Agreement and for this purpose those provisions will remain in force until sale of such Finished Products to Customers has been completed;

20.2 Upon termination or expiration of the Agreement for any reason whatsoever, Contract Brewer will cease to use Trademarks, Know How and Intellectual Property Rights including without limitation CIPL's name, trade name and any the domain name in any connection whatsoever.

20.3 Following termination or expiration of this Agreement Contract Brewer will not at any time use for any Brewery Goods or otherwise the Trademarks or any trademark, trade name, domain address, label or packaging confusingly similar to the Trademarks.

20.4 Upon termination or expiration of this Agreement, CIPL will at its option be entitled to take over any quantities of the current stocks of Contract Brewer of the Products and advertising and promotion material for Products at the price at which such assets are booked in Contract Brewer's accounts.

20.5 CIPL and Contract Brewer shall conduct a joint accounting reconciliation for the Material that the Contract Brewer has procured for Contract Manufacturing from Approved Suppliers. Upon Reconciliation, the cost of Material which is damaged/has deteriorated while being stored at the Site will be paid by Contract Brewer to CIPL.

20.6 Parties shall pay other party any outstanding payment within 30 (thirty) days from expiry or termination of this Agreement. Such outstanding payment will be calculated based on Charges specified in Schedule 8, penalties on

Contract Brewer specified in Schedule 6 and all amounts that are recoverable from Contract Brewer in terms of this Agreement.”

5. He further draws my attention to the reply dated 11.03.2018 sent by the respondent wherein the respondent acknowledged its obligation to protect the trade secret and also follow the other terms and conditions of the contract that were to operate after the termination of the Agreement.

6. In view of the specific terms of the Agreement reproduced herein above, in my view, the petitioner has been able to make out a *prima facie* case in its favour. As far as the equipment belonging to the petitioner lying installed at the factory premises of the respondent, as also protection of its confidential information from disclosure to any third party, Clause 20 of the Agreement provides for specific obligations of either party upon termination of the Agreement. Needless to say that these obligations have to be complied with by the parties. No further direction is required from this Court in this regard.

7. As noted above, the parties are already in the process of appointment of an Arbitral Tribunal for the resolution of their disputes. This order is being passed without prejudice to the rights and contentions of either party and such rights and contentions shall remain open before the Arbitral Tribunal so constituted.

8. The petition is disposed of in the above terms with no order as to cost.
Dasti.

NAVIN CHAWLA, J

APRIL 09, 2018/Arya