

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

**COMMERCIAL NOTICE OF MOTION NO.1506 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.735 OF 2019**

Sucden India Private Limited Applicant/Petitioner

Vs.

Cane Agro Energy (India) Limited Respondent

Mr. Venkatesh Dhond, Senior Advocate a/w. Mr. Prasad Shenoy and
Ms. Anusha Peri I/b. AZB and Partners for applicant/petitioner.

Mr. Rajshekhar Govilkar I/b. Mr. Padmanabh D. Pise for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 15th JULY 2019

P.C.:

1 Prayer clause – (a) as prayed for in the notice of motion reads
as under :

(a) that this Hon'ble Court be pleased to appoint a commissioner to take inventory of the sugar manufactured by the respondent and/or under the respondent's control and submit a report of the same to this Hon'ble Court.

2 The conduct of respondent has to be noted. Respondent is in gross breach of the orders passed by this Court. Paragraphs 6 and 8 of order dated 10th April 2019 read as under :

6. When this matter was listed for ad-interim orders, time was sought by the defendant to obtain instructions. Accordingly the matter came to be adjourned. It is taken up today for hearing. Mr. Apte the learned Senior Counsel appearing on behalf of the defendant contended on instructions that presently no sugar is available for supply. However, the respondents have assets which can be offered as security. Apart from this no further suggestion is forthcoming in terms of securing the petitioners dues. There is no denial of the fact that the petitioners have been themselves admitted the balance at the foot of the ledger account at Exhibit F in a sum of Rs.19,49,29,871/-. The

contention taken up today is that the sugar can be supplied now only after the new crushing season which commences in September 2019. Admittedly, there is no stock sugar available. Since the supply of sugar is not an option, I therefore called upon Mr. Apte to ascertain when the unadjusted advance paid towards price of sugar remaining to be delivered would be repaid. However, to this Mr. Apte states that he had no instructions to make any statement but was only willing to make a statement to the fact that the fixed assets of the company respondent would not be disposed.

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8. In that view of the matter, I pass the following order;

(i) The respondents shall secure the amount of Rs.19,99,92,000/- by providing an unconditional bank guarantee of a nationalized bank for the aforesaid amount within a period of eight weeks from today. The bank guarantee if got issued it will initially be kept alive for a period of one year.

(ii) There will be ad-interim order in terms of prayer clause(b). The respondents shall also disclose on oath all their assets including fixed assets, bank accounts and balances and other investments within four weeks.

(iii) Pending the compliance with the paragraph (i) and (ii) above, there will be ad-interim order in terms of prayer clause (f).

(iv) Liberty to apply.

(v) Reply, if any, to be filed within a period of 4 weeks from today.

3 Eight weeks to furnish bank guarantee expired on 5th June 2019. The four weeks to disclose on oath all assets etc. expired on 8th May 2019. This notice of motion has been lodged on 2nd May 2019 and Mr. Dhond, on instructions states that notice of motion was served on respondent on 2nd May 2019. Respondent, however, has not considered it necessary to approach this Court even for extension. Mr. Govilkar candidly stated that no bank guarantee has been given and the disclosure affidavit is ready and it can be filed. Mr. Govilkar also in fairness, as an officer of the Court, stated that respondent has no explanation as to why they did not comply with the directions till date and also stated that respondent, if they

had any difficulty, should have approached the Court for extension. None of this has been done by respondent.

4 In view of the conduct of respondent, I see no reason why respondent of this nature should be even heard. A person who willfully and deliberately disobeys orders of this Court shall have no audience in this Court. Moreover, prayer as prayed for only seeks appointment of Commissioner to take inventory of the sugar manufactured by respondent and under respondent's control and submit a report to this Court.

5 Accordingly, Mr. D.R. Talekar, First Chamber Registrar, is appointed as Commissioner to visit the factory godowns, store houses, retail outlets and shops everything wherever the sugar of respondent is situated to take inventory of the sugar and submit a report to this Court. If respondent tells the Commissioner that the entire sugar or some part of it is hypothicated to any bank, the Commissioner shall make a note of that but also mention if any document is shown to support that statement. Respondent is put to notice that if no document is shown, respondent will be presumed to have not hypothicated quantity of sugar and it is freely available. The Chairman/Managing Director/CEO and all officials and staff and servants and agents of respondent are directed to co-operate with the Court Commissioner and permit him unhindered access to all places in their

control or possession. The Commissioner's fee is fixed at Rs.10,000/- per day, which shall be paid by petitioner directly to the Commissioner. The Commissioner shall also be reimbursed all travel and administrative expenses, including boarding and lodging. Petitioner is also at liberty to make arrangements for the Commissioner's travel, boarding and lodging. The Commissioner to complete the exercise and submit within three weeks a report to this Court as well as to the Arbitrator appointed.

6 Notice of motion accordingly stands disposed.

(K.R. SHRIRAM, J.)