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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.420 OF 2019

EOC Belgium N.V.	..Petitioner
Vs.	
EOC Tailor Made Polymers India Pvt.Ltd.	..Respondent

**WITH
COMMERCIAL ARBITRATION PETITION NO.195 OF 2019**

EOC Tailor Made Polymers India Pvt.Ltd.	..Petitioner
Vs.	
EOC Belgium N.V. & Anr.	..Respondents

Mr.Prathamesh Kamat, Mr.Zoeb Cutlerywala and Mr.Vikram Kamath i/b. M/s.Kochhar & Co. for Petitioner in CARBPL No.420/19 & for Respondent in CARBP No.195/19.

Mr.Zal Andhyarujina with Mr.Simil Purohit, Ms.Ishani Khanwilkar, Mr.Punit Damodar, Ms.Nikita Vardhan and Ms.Raveena Khinkhabwala i/b. M/s.Kanga & Co. for Petitioner in CARBP No.195/19 and for Respondent in CARBPL No.420/19.

CORAM : G.S. KULKARNI, J.

DATE : 3rd MAY, 2019.

P.C.:

1. Heard Mr.Kamat, learned Counsel for the petitioner and Mr.Andhyarujina, learned Counsel for the respondent. Rejoinder filed on behalf of the petitioner in Commercial Arbitration Petition No.195 of 2019 is taken on record.

2. These are two cross petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”).

3. In Commercial Arbitration Petition (L.) No.1489 of 2018 (Commercial Arbitration Petition No.195 of 2019) as filed by EOC Tailor Made Polymers India Pvt. Ltd. on 29 November 2018 this Court while issuing notice to EOC Belgium NV, had granted ad-interim reliefs in terms of prayer clauses (d) and (e) by the following order:-

“ Heard Mr.Andhyarujina learned counsel for the petitioner.

2. By this petition under section 9 of the Arbitration and Conciliation Act, 1996 the petitioner prays for reliefs which are in the nature of interim measures pending the arbitration proceedings.

3. I have perused the averments as made in the petition, and the various documents as placed on record and more particularly the Joint Cooperation Agreement dated 4.7.1996 (for short 'the agreement'), the supplemental Agreement dated 18.9.1996 and the correspondence as ensued between the parties and the notice dated 27.8.2018 issued by the petitioners terminating the said agreement. In the said notice issued by the petitioner to the respondents considering clause 19 of the said agreement, the petitioner in para 13 of the said notice recorded as under:

“In the circumstances, in view of the continuous breaches of the terms of the said Agreement by you, we hereby terminate the said Agreement forthwith in accordance with Clause 19 of the said Agreement and further call upon you, EOC Belgium formerly known as TMPNV, the shares of EOC Tailor Made Polymers India Private Limited, to sell the shares held by you in EOC Tailor Made Polymers India Private Limited to the original promoters of RPCL at a value determined by a Valuer in accordance with the terms of the said agreement.”

(Emphasis supplied)

4. This notice was replied by respondent no.1 by its letter dated 2.10.2018. The respondent no.1 interalia commenting in regard to the transfer of its share holding recorded as under:

“We would like to sell the shares of TMPL held by us and in terms of Clause 6.2 of the Agreement are attaching our offering Notice long with this email. In terms of Clause 6.2 of the Agreement, you have 60 days to respond to our offering Notice.”.

5. It therefore, clearly appears that on one hand, petitioner is asserting its rights under clause 19 of the said agreement and on the other hand, the respondents intend to sell its share holding taking recourse to clause 6.2 of the agreement. This prima facie appears to be the area of dispute between the parties which may form subject matter of the arbitration proceedings.

6. Mr.Andhyarujina learned counsel for petitioner in the above circumstances, has prayed for urgent ad-interim protection and more particularly in terms of clause (a) to (e) of the petition.

7. Having considered the submissions as made by Mr.Andhyarujina the learned counsel for the petitioner and having perused the record in my opinion, it would be in the interest of justice that at this stage, ad-interim protection is granted to the petitioners in terms of prayer clause (d) and (e) which reads thus:

“(d). Pending the commencement and completion of the Arbitral proceedings between the petitioner and respondent no.1 under the Joint Co-operation Agreement dated 4th July 1996 and for a period of ninety days thereafter, this Hon'ble Court may be pleased to grant a temporary order and injunction restraining the respondent no.1 from acting upon the Offering Notice dated 2nd October 2018 in any manner whatsoever.

(e) Pending the commencement and completion of the Arbitral proceedings between the petitioner and the respondent no.1 under the Joint Cooperation Agreement dated 4th July 1996 and for a period of ninety days thereafter, this Hon'ble Court may be pleased to grant a temporary order and injunction restraining the respondent no.1 from selling the shares held by it in the petitioner company to third party.”

8. As none of the respondents have appeared despite being served by the advocates for the petitioners, issue

notice to respondent no.2 returnable on 13.12.2018. Respondent no.2 is having its registered office at New Delhi. Office to issue humdust to the petitioner for service on respondent no.2. Respondent no.1 has its office in Belgium. The advocates for the petitioner shall take appropriate steps to serve respondent no.1 and file affidavit of service on or before 13.12.2018.

All concerned to act on authenticated copy of the order.”

4. EOC Belgium N.V. had filed Commercial Arbitration Petition (L.) No.420 of 2019 seeking interim reliefs pending the arbitral proceedings in regard to the use of the corporate name “EOC Tailor Made Polymers” by the respondent EOC Tailor Made Polymers India Private Limited. The case of the petitioner in Commercial Arbitration Petition (L.) No.420 of 2019 is that the agreement between the parties having been terminated on 27 August 2018 as per clause 16(4), the respondent was prohibited from using the corporate name.

5. After both these petitions were heard for sometime, learned Counsel for the parties are agreeable that the disputes and differences between the parties in both these petitions be referred for adjudication by an arbitral tribunal by appointing an arbitral tribunal. It is also agreed between the parties that both these proceedings shall be permitted to be treated as applications under Section 17 of the ACA to be adjudicated by the arbitral tribunal.

6. In view of the above consensus between the parties, both these proceedings can conveniently be disposed of. Hence the following order:-

ORDER

- (i) Mr. Justice R.M. Savant, (Retd.) is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the Joint Cooperation Agreement dated 4 July 1996 and the Supplemental Agreement dated 18 September 1996;
- (ii) The learned prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these petitions with a copy to be forwarded to both the parties;
- (iii) Both these petitions (Commercial Arbitration Petition (L.) No.420 of 2019 and Commercial Arbitration Petition No.195 of 2019) filed under Section 9 of the ACA are permitted to be treated as applications under Section 17 of the ACA to be adjudicated by the arbitral tribunal;
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

- (v) All contentions of the parties including on merits of the disputes are expressly kept open;
- (vi) The learned arbitrator shall consider Section 17 applications as filed by the respective parties as expeditiously as possible and pass appropriate ad-interim and interim orders as the circumstances the case may require.
- (vii) The ad-interim order dated 29 November 2018 passed by this Court in Commercial Arbitration Petition (L.) No.1489 of 2018 (Commercial Arbitration Petition No.195 of 2019) shall continue to operate till adjudication of the Section 17 application of EOC Tailor Made Polymers.
- (viii) The petitions are disposed of in the above terms. No costs.
- (ix) Office to forward a copy of this order to the learned Arbitrator on the following address:

Flat No.103, Atur Terraces Co.Op. Housing Society Ltd.,
Capt. Prakash Pethe Marg, 19-A Cuffe Parade, Mumbai – 400 005.
E-mail - rajendramsavant@gmail.com

[G.S. KULKARNI, J.]