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

+ **O.M.P.(I) (COMM.) 163/2019**

TRIMEX INDUSTRIES PRIVATE LIMIMED Petitioner

Through: Mr. Nikhil Swami, Advocate with
Ms. Divya Swami, Advocate.

versus

TEESTA AGRO INDUSTRIES LIMITED Respondent

Through: Mr. Dharmesh Misra, Advocate with
Mr. Ankit Kakkar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **27.05.2019**

I.A. 7898/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

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2. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs in the nature of directing the Respondents to deposit an amount of Rs. 8,05,90,201/- (Rupees Eight Crores Five Lakhs Ninety Thousand Two Hundred and One only) with interest.

3. During the course of the hearing, learned counsel for the Respondent who

appears on advance notice, on instructions, states that he has no objection in case the Court were to appoint an Arbitrator in terms of the Arbitration Clause. Learned counsel for the Petitioner also has no objection and states that in fact the Petitioner has already invoked the Arbitration Clause and suggested the name of the Arbitrator and the same is pending consideration of the Respondent.

4. The Arbitration Clause is contained in Clause 4 of the Letter Of Intent (LOI) which reads as under:-

“4. Governing Law and Jurisdiction: This Letter of Intent shall be governed by and construed in accordance with the laws of India and the Parties agree to submit to arbitration by appointing a sole arbitrator under the Arbitration and Conciliations Act 1996. The seat of arbitration shall be Delhi and the language of arbitration shall be English.”

5. The existence of Arbitration Clause is not in dispute. The invocation of the Arbitration Clause is also not in dispute.

6. Learned counsel for the Respondent, however, states that all the claims raised by the Petitioner are barred by limitation. However, the plea of limitation would have to be raised before the learned Arbitrator and cannot be examined in the present petition. Thus having regard to the fact that the existence of the arbitration agreement is not in dispute and the parties are willing to go for Arbitration, Hon'ble Mr. Justice Vikramajit Sen (Retired Judge, Supreme Court of India) is appointed as the sole Arbitrator to adjudicate upon the disputes and differences including claims and counter

claims between the parties.

7. The parties are directed to appear before the Arbitrator as and when notified. Learned Arbitrator will issue a declaration under Section 12 read with the attendant provisions of the 1996 Act before entering upon reference.

8. The learned Arbitrator will be paid his fee in terms of the provisions of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996.

9. The Petition is allowed in the above terms. No order as to costs. The Registry will despatch a copy of this order to the learned Arbitrator.

10. In view of the aforesaid appointment, the Petitioner would now be at liberty to approach the Arbitral Tribunal under Section 17 of the Act for seeking the relief which is being sought in the present application.

11. The present petition is disposed of in the above terms.

SANJEEV NARULA, J

MAY 27, 2019/ss