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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 188/2019, IAs 8351/2019 & 12902/2019
NCML FINANCE PRIVATE LIMITED Petitioner
Through: Mr. Puneet Bajaj, Adv.
versus
GABS PEST CONTROL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **20.09.2019**

1. This is a petition filed by the petitioner with the following prayers:
“In the facts and circumstances mentioned herein above it is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to:-
 - i) *Receiver be appointed for taking the possession of pledged goods/commodities deposited by respondent under Ware house Receipt being 1598-81 dated 09.04.2019; Warehouse Receipt being 1598-82 dated 10.04.2019 and Warehouse Receipt being 1598-83 dated 18.04.2019;*
 - ii) *permission be granted to petitioner to sell pledged commodity in the open market through auction and recover the amount due under the loan agreement; and / or*
 - iii) *pass such other / further order(s) as this Hon’ble Court may deem fit and proper in the interest of justice.”*
2. Notice on the petition was issued to the respondent on 31st May, 2019.
I find despite service in the petition, no one appeared for the respondent on

July 26, 2019 on which date an interim order was passed by this Court and the matter was re-notified on October 15, 2019.

3. Now an application being I.A. 12902/2019 has been filed by the petitioner with the following prayers:-

“In the facts and circumstances mentioned hereinabove it is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to grant permission to sell the pledged commodities being pledged under Warehouse Receipt being 1598-81 dated 09.04.2019, 1598-82 dated 10.04.2019 and 1598-83 dated 18.04.2019 and further appoints receiver for conducting the sale of pledged commodities or pass any further order(s) with this Hon’ble Court may deem fit considering the fact of present case and in the interest of justice.”

4. Notice on this application was issued on September 18, 2019 for today.

5. An affidavit of service has been filed by the petitioner wherein paras 2 and 3 reads as under:

“2. That in compliance of order dated 18.09.2019 passed by this Hon’ble Court, dasti notice has been served upon the respondents through E-mail and whatsapp. That the dasti notice was also personally taken to the given address by Deponent, however as per guards available on site respondents was not available at the given address. That the photographs of dasti notice is attached herewith for the kind perusal of this Hon’ble Court.

3. That the notices sent through email to the email id of

the respondent as maintained by the petitioner company is delivered on 19.09.2019. copy of Email dated 19.09.2019 is attached and the service has been affected through Whatsapp.”

6. I have been informed by the learned counsel for the petitioner that the petitioner has appointed a Sole Arbitrator, who is seized of the issue and the proceedings before the learned Arbitrator are fixed on September 21, 2019. If that be so, I deem it appropriate to convert the Section 9 petition and the application being I.A. 12902/2019 as applications under Section 17 of the Arbitration and Conciliation Act, 1996 and the same shall be heard and decided by the learned Arbitrator. The learned Arbitrator shall decide the applications in accordance with law by giving notice to the respondent for its appearance before him.
7. Interim order dated July 26, 2019 shall continue till the learned Arbitrator decides the applications. The petition / applications are disposed of.
8. The date already fixed i.e. October 15, 2019 stands cancelled.
9. A copy of this order be conveyed by the learned counsel for the petitioner to the respondent through *WhatsApp* messages and *e-mail*.
10. A copy of this order shall be sent by the registry to the respondent.
Dasti under the signatures of the Court Master.

V. KAMESWAR RAO, J

SEPTEMBER 20, 2019/aky