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

+ **W.P.(C) 11030/2015 and CM APPL. 28457/2015**

B D AROMATICS PVT LTD

..... Petitioner

Through: Mr Varun Goswami, Mr Rajesh
Singh and Mr Rahul Sinha,
Advocates.

versus

AGRICULTURAL & PROCESSED FOOD
PRODUCTS EXPORT DEVELOPMENT
AUTHORITY (APEDA) & ORS.

..... Respondents

Through: Mr Kirtiman Singh, Mr Sumit
Rajput, Mr Waize Ali Noor,
Advocate for R1 and R-3.
Mr Joshua Samuel, Mr Rajat
Agnihotri, Advocates for R-2.
Mr Achint Singh Gyani, Advocate
for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.02.2019

1. The petitioner has filed the present petition, *inter alia*, praying that directions be given to respondents to accept a hard copy of the No-Objection Certificate (NOC) dated 11.04.2015 issued by Serendimenthe India Pvt. Ltd. (hereafter 'SIPL'), and not insist that an NOC be uploaded on 'TRACENET', the software platform maintained by respondent no.1 (APEDA).

2. The controversy in the present petition relates to the business of organic farming. The Department of Commerce, Ministry of Commerce and Industry, Government of India, runs a programme for organic

production – “*National Programme for Organic Production*”. In terms of the operational structure of the said programme, business relating to organic agriculture, processing, exports can undertaken by various producers, exporters and processors subject to certification by accredited Certification Bodies. The said programme also expressly provides that it would be incumbent upon all accredited certification bodies to operate through APEDA software, ‘TRACENET’, access to which would be provided by APEDA.

3. In accordance with the said programme, SIPL was registered with APEDA and organic farming was being certified by respondent no. 2 (IMO). The operations were monitored through an Internal Control System (ICS), which was also operated on TRACENET. Admittedly, all data relating to the farmers and necessary controls were uploaded on TRACENET.

4. The petitioner is engaged in processing of essential oils and has its works/factory located at Bhojipura, Bareilly, UP. The petitioner claims that it had entered into a Toll Processing Agreement with SIPL on 01.04.2013. It is stated that disputes arose between the petitioner and SIPL. These were amicably settled by the end of February, 2015 and the said parties entered into an MOU dated 03.03.2015.

5. It is stated that in terms of the said MOU, SIPL issued an NOC dated 11.04.2015, *inter alia*, stating that SIPL had agreed to transfer the management of the ICS and the petitioner would assume all responsibilities for the day to day operation of the ICS.

6. It is the petitioner's case that it made all efforts for implementing the same and acquiring control of the ICS but the same was frustrated, as APEDA and respondent no.2 declined to accept a hard copy of the NOC, and insisted that the same be uploaded by SIPL on TRACENET. SIPL on its part refused to give the Login ID and the password in order to enable the petitioner to access TRACENET.

7. As noticed above, it is the petitioner's case that in terms of the MOU entered into with SIPL, it was now entitled to access SIPL's data on TRACENET and run the organic farming business, as was prior to the MOU being run by SIPL.

8. The said endeavour was frustrated as respondent no.2, which is one of the accredited Certification Bodies through which SIPL was operating the organic farming programme, declined to accept a hard copy of the NOC and insisted that the petitioner be registered on TRACENET with APEDA and thereafter seek a transfer on the said software by SIPL uploading the NOC on TRACENET.

9. The petitioner contends that SIPL (respondent no.4) has resiled from its commitment and failed to cooperate in ensuring that the ICS relating to organic farming, which is operated on TRACENET, is transferred to the petitioner.

10. SIPL disputes the above and states that it was not obliged to handover a Login ID and password for TRACENET to the petitioner, as that would enable the petitioner to access its intellectual property, which was not transferred to the petitioner.

11. It is in the aforesaid context that the petitioner has filed the present petition.

12. As is apparent from the above that the disputes are, essentially, between the petitioner and SIPL. The only limited controversy before this Court is to consider whether IMO and APEDA could be compelled to act on the NOC dated 11.04.2015 issued by SIPL and, on the strength of the same, permit the petitioner to step into the shoes of SIPL.

13. During the course of proceedings, the learned counsel appearing for IMO had pointed out that this dispute is rendered academic as, in any event, IMO cannot now certify any of the crops/farms to be organic, since no audit has been conducted since the past four years.

14. It was pointed out that SIPL's certificate had expired and, therefore, further certification was required by IMO to certify the organic fields in question. In this regard, an affidavit has been filed on behalf of the IMO, *inter alia*, affirming that the last certification in respect of SIPL was carried out on 14.08.2014, pursuant to an inspection done in July, 2014. It is stated that, subsequently, IMO has not carried out any certification except a brief verification visit which was done on 5th, 6th and 7th August, 2015 as per instructions of APEDA.

15. It is further submitted that an ICS operator (which in this case was SIPL) is required to monitor the registered farmers continuously and carry out two internal inspections every year. Further, an external inspection is carried out by a certification body (in this case, IMO), once every year. It is affirmed on behalf of IMO that it has not certified the

ICS operated by SIPL since 14.08.2018, and it would not be able to issue the necessary certification on information based available prior to April, 2014. It is also affirmed that the organic nature of agriculture and the land (organic fields) cannot be ascertained as eight cropping seasons have passed (and now, nine cropping seasons) since IMO last certified the ICS being operated under SIPL.

16. It is clear from the above that even if the prayers in the present petition are granted, and APEDA and IMO are directed to act on the NOC issued by SIPL, no effective relief would be available to the petitioner, as it has been unequivocally affirmed on behalf of IMO that it would not be able to issue the necessary certification regarding the ICS, because now more than nine cropping seasons have since passed from the last certification.

17. In view of the above, this Court does not consider it apposite to entertain the controversy any further.

18. The petition and the pending application are disposed of.

19. It is clarified that insofar as the *inter se* disputes between the petitioner and SIPL are concerned, it would be open for the petitioner to avail of such remedies as available in law. All contentions of the petitioner and respondents in this regard are reserved.

VIBHU BAKHRU, J

FEBRUARY 06, 2019/RK