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

+ **FAO(OS) (COMM) 104/2020**

CAREER LAUNCHER INFRASTRUCTURE PRIVATE LIMITED

..... Appellant

Through Mr. Rajat Arora, Advocate

versus

NALANDA FOUNDATION

..... Respondent

Through Ms. Yukti Anand, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **03.09.2020**

C.Ms. No.21548/2020 & 21549/2020(exemption)

Allowed, subject to all just exceptions.

FAO(OS) (COMM) 104/2020

1. The present appeal has been filed by the appellant/petitioner against the interim order dated 25.08.2020, passed by the learned Single Judge in a petition filed by it under Section 9 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act') praying *inter alia* for certain pre-arbitration interim reliefs, including issuance of directions to the respondent to deposit in court, a sum of Rs.5,69,59,688/-, stated to be the outstanding amount payable under the Agreement governing the parties, for handing over peaceful possession of the infrastructure licenced by the appellant to the respondent, for appointment of an independent auditor to ascertain the financial position of the respondent, for restraining the respondent from

transferring, selling, alienating or creating any third party interest in any assets of the appellant, in its possession etc.

2. Upon enquiring from Ms. Anand, learned counsel for the respondent as to whether the apprehension of the appellant/petitioner as mentioned in para 21 of the petition to the effect that the respondent has indiscriminately sold off its assets leased out under the Agreement is correct and on a specific denial by her, the learned Single Judge has opined in the impugned order that there is no imminent threat of the assets being sold and it would be necessary for the court to examine as to whether the Section 9 petition as filed by the appellant/petitioner, can be entertained. As a result, notice has been issued to the respondent and the parties have been directed to complete pleadings in Section 9 petition. The matter has now been listed on 16.10.2020.

3. Mr. Arora, learned counsel for the appellant/petitioner states that the learned Single Judge has placed an onerous condition on the appellant/petitioner for declining any interim relief to it though it has made out the existence of a *prima facie* case, shown balance of convenience and irreparable loss and injury. He submits that it is a fit case where the respondent ought to have been restrained from selling, transferring and/or alienating the assets of the appellant/petitioner in its possession. In fact, the said assets ought to have been directed to be handed back to the appellant/petitioner straightaway.

4. In our view, it was not necessary for the learned Single Judge to have passed an order directing the respondent to hand back the assets to the appellant on the very first date, particularly when the purpose and intent of a Section 9 petition is to preserve the subject matter of the arbitration

agreement which in the instant case, are the assets of the appellant/petitioner that have been leased out to the respondent under the Agreement. In any event, learned counsel for the respondent has reiterated before us the submission made before the learned Single Judge that her client has not sold off the assets of the appellant/petitioner as alleged and nor do they intend to do so, at least not till the next date of hearing fixed before the learned Single Judge.

5. While binding the respondent to the aforesaid assurance, the present appeal is disposed of with directions issued to the parties to adhere to the timeline granted for completion of the pleadings in the Section 9 petition, so that the matter can be heard on the date fixed before the learned Single Judge. It is made clear that the respondent shall not seek any adjournment in the matter.

6. Before parting with the matter, we have also enquired from learned counsel for the appellant/petitioner as to whether any steps have been taken by his client to refer the inter se disputes between the parties to a Sole Arbitrator, as contemplated in the Agreement. Learned counsel states that a Sole Arbitrator is required to be jointly appointed by the parties under Clause 15.2 of the Agreement dated 01.04.2009. He however concedes that no name has been suggested by his client to the respondent so far and that he has no objection to the court appointing a Sole Arbitrator. However, learned counsel for the respondent states that she shall have to obtain instructions in this regard.

7. The appellant shall furnish a list of suggested names for appointment of a Sole Arbitrator to learned counsel for the respondent within one week. The respondent may either select one of the names or come up with counter

suggestions to the other side within one week thereafter, so that parties can mutually arrive at an agreed name and if not, further steps can be taken by the aggrieved party in this regard ,in accordance with law.

8. While disposing of the present appeal, the aspect of its maintainability against an order which has neither granted, nor refused to grant any measure under Section 9 of the Act, as contemplated under Section 37 1(b) of the A&C Act, is kept open for decision in an appropriate case.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

SEPTEMBER 3, 2020

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