

Via video conferencing

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 278/2020**
SUNBEAM REAL VENTURES PRIVATE LIMITED Petitioner
Through Mr.Kushal Gupta with Mr.Kishore
Kumaar, Advs.

versus

MASABA ENERGY PRIVATE LIMITED & ORS. Respondent
Through Col.Chanjeet Singh Gauba(Retd.),
Director of R-1 & 2 and A.R. of R-3 & 4.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

% **ORDER**
15.09.2020

I.A. 8094/2020

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 278/2020

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking the following reliefs:-

“a. Grant ad interim ex-parte injunction against the Respondents No. 2 to 4 from alienating, transferring, pledging or creating any encumbrance in any manner whatsoever on the shares held by them in the Respondent No. 1;

b. Grant ad interim ex-parte injunction against the Respondents No. 1 to 4 from entering in any arrangement, agreement with any third party to issue any Equity Shares of the Respondent No. 1 in contravention of the Subscription Agreement;

- c. Grant ad interim ex-parte injunction against the Respondents No. 1 to 4 from issuing any Equity Share of the Respondent No.1 to any third party, including but not limited to the Respondents No. 2 to 4, without consent of the Petitioner;*
- d. Grant ad interim ex-parte injunction against the Respondents No. 1 to 4 from altering the existing shareholding pattern of the Respondent No. 1 in contravention of the Subscription Agreement or in any manner whatsoever; and*
- e. Pass any other order as this Hon'ble Court may deem fit.*

3. Learned counsel for the petitioner submits that the petitioner company, on 29.01.2020, had entered into a Share Subscription and Shareholder's Agreement with the respondent nos. 2 to 4 who presently hold 100% shares in the respondent no.1 company. According to the terms of this agreement, the petitioner was required to assist the respondents in obtaining approvals and permissions for setting up a solar power park in Haryana, in exchange whereof, the respondent nos. 2 to 4 agreed to issue 49% shares in the respondent no.1 in favour of the petitioner. He submits that although the petitioner has been repeatedly requesting the respondents to issue the 49% shares in favour of the petitioner, the respondent nos.2 to 4 has failed to do so and the petitioner apprehends that the respondent may alienate these shares by creating third party interests thereon. He, therefore, prays that the respondents be restrained from creating third party interests in these shares till the dispute between the parties is resolved through arbitration which the petitioner intends to invoke shortly.

4. Issue notice. Col. Chanjeet Singh Gauba (Retd.), Director of

respondent nos.1 & 2 and authorised representative of the respondent nos.3 & 4 accepts notice. He submits that the respondents do not have any intention to violate the terms of the agreements executed between the parties and undertake not to create any third party rights in these shares till this dispute is resolved through arbitration. He, therefore, assures the Court that the respondents will neither create any third party rights in the shareholding of the respondent no.1 nor will they alter the shareholding pattern of the respondent no.1 in any manner, subject to any orders passed by the sole Arbitrator.

5. At this stage, learned counsel for the petitioner prays for the appointment of an independent arbitrator by this Court and, in response thereto, Col. Chanjeet Singh Gauba (Retd.) does not have any objection to this request.

6. Accordingly, while binding the respondents to the assurance recorded in paragraph 4 hereinabove and with the consent of the parties, Ms. Nandni Sahni, Advocate (Mobile No. 9810034205) is appointed as the sole Arbitrator for adjudication of the disputes and differences which have arisen between the parties in relation to the aforesaid two Agreements both dated 29.01.2020.

7. It is made clear that this Court has not considered the rival claims of the parties on merits and it will, therefore, be open for them to file claims/counter claims and raise all pleas permissible in law before the learned Arbitrator, which will be decided in accordance with law.

8. Before commencing arbitration proceedings, the learned Arbitrator will ensure compliance with Section 12 of the Act. The fee

of the learned arbitrator shall be determined in accordance with the Schedule-IV of the Act.

9. A copy of this order be sent to the learned Arbitrator through electronic means.

10. The petition stands disposed of.

REKHA PALLI, J

SEPTEMBER 15, 2020

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