



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 02nd DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.620 of 2020

and

O.A.Nos. 206 to 208 of 2020

In the matter under Section 11 of the Arbitration and Conciliation Act, 1996 for interim orders and directions.

And

In the matter disputes between M/s. Trimex Industries Private Limited, M/s. Trimex Sands Private Limited and M/s. Trimex Aggregates and Binders Private Limited against Refcem Refractories Private Limited in Memorandum of Understanding dated 17.03.2012.

1.M/s.Trimex Industries Private Limited;
Trimex Towers, No.1 Subbaraya Avenue,
C.P.Ramaswamy Road,
Alwarpet,
Chennai – 600018.
Rep. By its Company Secretary
Mr.S.Sudhakaram

2. M/s.Trimex Sands Private Limited;
Trimex Towers, No.1 Subbaraya Avenue,
C.P.Ramaswamy Road,
Alwarpet,
Chennai – 600018.
Rep. By its Authorized Signatory
Mr.S.Sudhakaram



3.M/s.Trimex Aggregates and Binders Private Limited,
Room No.26, 2nd Floor, Falcon House,
22A Jharpada, Cuttack Road,
Bhubaneswar,
Odisha – 751006.
Rep. By its Authorized Signatory
Mr.S.Sudhakaram

. . . Petitioners

Versus

1.Refcem Refractories Private Limited
(Represented by its Managing Director, Mr.Pradip Kumar Mohanty)
Having its Registered office at
Plot No.516/1679, Kiran Complex,
Kanan Vihar, Phase-II, Patia, Khordha,
Bhubaneswar – 751024

2.Mr.Pradip Kumar Mohanty
Ex-Director of M/s.Trimex Aggregates and Binders Private Limited
Plot No.516/1679, Kiran Complex,
Kanan Vihar, Phase-II, Patia, Khordha,
Bhubaneswar – 751024

. . Respondents

Original Petition praying that this Hon'ble Court be pleased to appoint
a Sole Arbitrator to hear and decide the dispute amongst the parties arising
out of the Memorandum of Understanding dated 17th March 2012.

O.A.Nos.206 & 207 of 2020:-

In the matter under Section 9 of the
Arbitration and Conciliation Act, 1996
for interim orders and directions.

And

In the matter disputes between M/s.
Trimex Industries Private Limited,
M/s. Trimex Sands Private Limited
and M/s. Trimex Aggregates and
Binders Private Limited against
Refcem Refractories Private Limited in



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Memorandum of Understanding dated
17.03.2012.

1.M/s.Trimex Industries Private Limited;
Trimex Towers, No.1 Subbaraya Avenue,
C.P.Ramaswamy Road,
Alwarpet, Chennai – 600018.

2. M/s.Trimex Sands Private Limited;
Trimex Towers, No.1 Subbaraya Avenue,
C.P.Ramaswamy Road,
Alwarpet, Chennai – 600018.

3.M/s.Trimex Aggregates and Binders Private Limited,
Room No.26, 2nd Floor, Falcon House,
22A Jharpada, Cuttack Road,
Bhubaneswar,
Odisha – 751006.

. . . Petitioners

Versus

1.Refcem Refractories Private Limited
(Represented by its Managing Director, Mr.Pradip Kumar Mohanty)
Having its Registered office at
Plot No.516/1679, Kiran Complex,
Kanan Vihar, Phase-II, Patia, Khordha,
Bhubaneswar – 751024

2.Mr.Pradip Kumar Mohanty
Plot No.516/1679, Kiran Complex,
Kanan Vihar, Phase-II, Patia, Khordha,
Bhubaneswar – 751024

. . Respondents

O.A.No.206 of 2020:-

Original Application praying that this Hon'ble Court be pleased to
pass an order of interim injunction restraining the respondent no.1 from
transferring, alienating or creating any third party rights or interest in the



land and building in Plot No.2326(P), Khata No. 531/1, corresponding to IDCO Plot No.65 & 66 in Revenue Mouza, Makundaprasad comprising an area of Ac. 1.963 Cents within the limits of Makundaprasad P.S.Khurda Tahasil, Khurda in the District of Khurda in Orissa.

O.A.No.207 of 2020:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondent no.1 from transferring, alienating or creating any third party rights or interest in the Plant and Machinery which is fixed in Plot No.2326(P), Khata No. 531/1, corresponding to IDCO Plot No.65 & 66 in Revenue Mouza, Makundaprasad comprising an area of Ac. 1.963 Cents within the limits of Makundaprasad P.S.Khurda Tahasil, Khurda in the District of Khurda in Orissa.

This Original Petition alongwith these original applications coming on this day before this court for hearing in the presence of Mr.M.S.Krishnan, Senior Counsel for Mr.S.Raj Makesh, Advocates for the Petitioner in O.P.No.620 of 2020 and for the applicants in O.A.Nos. 206 to 208 of 2010, and Mr.J.R.K.Bhavananthan, Advocate for the respondent in O.P.No. 620 of 2020 and O.A.Nos. 206 to 208 of 2020 and upon reading the petition and the counter statement filed in O.P.No.620 of 2020 and the



common counter affidavit of Pradip Kumar Mohanty, filed in O.A.Nos. 206 to 208 of 2020, and the respondents have admitted in paragraph No.22 of the counter that the respondents have no intention to alienate, transfer or create any third party right over the property. it is ordered as follows:-

That The Hon'ble Mr.Justice F.M.Ibrahim Kalifullah (Retd.) Former Judge, Supreme Court of India, residing at No.22, Sivananda Road, Gill Nagar Extension, Choolaimedu, Chennai— 600 094, Mobile No.7550048928, be and is hereby appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall enter reference afresh and send notice to the parties and the applicant, namely the respondent, shall file claim statement afresh.

Iii) That the learned arbitrator appointed herein shall decide the issue on merits and pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iv] That the learned Sole Arbitrator appointed herein shall be paid fees as per the schedule and the same shall be borne by the parties equally.

v) That both parties hereto, shall bear their own costs.

vi) That 1.Refcem Refactories Private Limited, (Represented by its Managing Director, Mr.Pradip Kumar Mohanty) and 2. Mr.Pradip Kumar Mohanty, the respondents in O.A.Nos. 206 to 208 of 2020, be and are



hereby restrained by an order of interim injunction till the arbitral proceedings is over from transferring, alienating or creating any third party rights in the property more fully set out in the schedule hereunder.

Schedule of Property

All that piece and parcel of land and building appertaining to Revenue Plot No.2326(P), Khata No.53/1, corresponding to IDCO Plot No.65 & 66 in Revenue Mouza, Makundaprasad comprising an area of Ac. 1.963 grounds rent Rs.2945.00 in IDCO's IID Centre, Khurda within village limits of Makundaprasad P.S, Khurda Tahasil, Khurda the District of Khurda in Orissa containing by ad-measurement and bounded by

On the North by : IDCO Road

On the South by : IDCO Road

On the East by : IDCO Road

on the West by : IDCO Plot No.70 & 64

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
02nd DAY OF JULY 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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O.P. No.620 of 2020
and
O.A.Nos. 206 to 208 of 2020

ORDER:-
DATED: 02.07.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 20.07.2021

APPROVED ON : 22.07.2021

Copy to:

The Hon'ble Mr.Justice
F.M.Ibrahim Kalifullah (Retd.)
Former Judge,
Supreme Court of India,
Sole Arbitrator
residing at No.22, Sivananda Road,
Gill Nagar Extension, Choolaimedu,
Chennai– 600 094.

Mobile No.7550048928

with covering letter



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.620 of 2020
and O.A.Nos. 206 to 208 of 2020

1.M/s.Trimex Industries Private Limited;
Trimex Towers, No.1 Subbaraya Avenue,
C.P.Ramaswamy Road,
Alwarpet,
Chennai – 600018.
Rep. By its Company Secretary
Mr.S.Sudhakaram

2. M/s.Trimex Sands Private Limited;
Trimex Towers, No.1 Subbaraya Avenue,
C.P.Ramaswamy Road,
Alwarpet,
Chennai – 600018.
Rep. By its Authorized Signatory
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3.M/s.Trimex Aggregates and Binders Private Limited,
Room No.26, 2nd Floor, Falcon House,
22A Jharpada, Cuttack Road,
Bhubaneswar,
Odisha – 751006.
Rep. By its Authorized Signatory
Mr.S.Sudhakaram

. . . Petitioners

Versus

1. Refcom Refractories Private Limited
(Represented by its Managing Director, Mr.Pradip Kumar Mohanty)



Having its Registered office at
Plot No.516/1679, Kiran Complex,
Kanan Vihar, Phase-II, Patia, Khordha,
Bhubaneswar – 751024

2.Mr.Pradip Kumar Mohanty
Ex-Director of M/s.Trimex Aggregates and Binderes Private Limited
Plot No.516/1679, Kiran Complex,
Kanan Vihar, Phase-II, Patia, Khordha,
Bhubaneswar – 751024

. . . Respondents

PRAYER : Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to hear and decide the dispute amongst the parties arising out of the Memorandum of Understanding dated 17th March 2012.

For Petitioners : Mr.M.S.Krishnan
Senior Counsel for
Mr.S.Raj Makesh

For Respondents : Mr.J.R.K.Bhavananthan

ORDER

This original petition has been filed to appoint a Sole Arbitrator to hear and decide the dispute amongst the parties arising out of the Memorandum of Understanding dated 17th March 2012.

2.Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. As dispute arose in the Memorandum of Understandings dated 17.03.2012 and 17.07.2012 and Technical Transfer Agreement dated

02.07.2013 entered between the parties, this petition has been filed for



appointment of a Sole Arbitrator.

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4. Though in the third agreement, the parties have agreed for the three member Arbitral Tribunal, the third agreement is a continuation of the first two agreements entered between the parties. However, first agreement being the mother of the Contract, subsequent contracts are continuation of the earlier contract. In this regard, the parties are governed by the Memorandum of Understanding entered between the parties and Clause 7 of the Memorandum of Understanding dated 17.03.2012 provides for reference to the Sole Arbitrator.

5. Both sides have agreed to appoint Hon'ble Mr.Justice F.M.Ibrahim Kalifullah (Retd.) Former Judge, Supreme Court of India as a Sole Arbitrator to enter upon reference and adjudicate the matter. It is open to the parties to raise all the disputes before the learned Arbitrator as per law.

6. Accordingly, this original petition is ordered as follows:

i) that Hon'ble Mr.Justice F.M.Ibrahim Kalifullah (Retd.) Former Judge, Supreme Court of India, residing at No.22, Sivananda Road, Gill Nagar Extension, Choolaimedu, Chennai– 600 094, Mobile No.7550048928 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.



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ii] That the learned Arbitrator appointed herein, shall enter reference afresh and send notice to the parties and the applicant, namely the respondent, shall file claim statement afresh and learned arbitrator shall decide the issue on merits and pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] That the learned Sole Arbitrator appointed herein shall be paid fees as per the schedule and the same shall be borne by the parties equally.

7. This Original Petition is ordered accordingly, leaving the parties to bear their own costs.

O.A.Nos. 206 to 208 of 2020

These original applications have been filed for an order of interim injunction restraining the respondent No.1 from using, transferring, alienating or creating any third party rights or interest in the Plant and Machinery and land and building in Plot No.2326(P) , Khata No.531/1, corresponding to IDCO Plot No.65 and 66 in Revenue Mouza, Makundaprasad comprising an area of Ac.1.963 Cents and to appoint a



receiver as an Administrator in respect of the Respondent No.1 company.

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2. Heard the learned counsel for the applicants and the learned counsel for the respondents.

3. Learned counsel for the respondents has filed a counter in the above applications. The respondents have admitted in paragraph No.22 of the counter that the respondents have no intention to alienate, transfer or create any third party right over the property. In view of the such undertaking, there shall be an order of interim injunction against the respondent from transferring, alienating or creating any third party rights in the property till the arbitral proceedings is over.

5. In view of the above, all the original applications are ordered.

Sd./-(N.S.K.J.,)

02.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.