

\$~21 (Original Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 91/2021, I.A. 3289/2021, I.A. 5947/2021,
I.A. 5948/2021, I.A. 5951/2021, I.A. 5952/2021 & I.A. 6489-
6492/2021

SUNIL SUD & ANR

..... Petitioner

Through: Mr. Ashish Dholakia, Sr.
Advocate with Ms. Fareha
Ahmad Khan, Ms. Shagun
Chopra and Mr. Akash Panwar,
Advocates

versus

AJAY SUD & ANR

..... Respondent

Through: Mr. Jayant Mehta, Sr. Advocate
with Mr. Vikas Mishra and Mr.
Nikhil Chawla, Advocates for
R-1.
Mr. Akhil Sibal, Sr. Advocate
with Mr. Sanchit Gawri,
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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05.08.2021

(Video-Conferencing)

1. IA 5947/2021 has been filed by Respondent No. 1 and IA 5951/2021 has been filed by Respondent No.2 in this petition, seeking a modification of the order dated 3rd March, 2021, passed by this

Court in IA 3389/2021. By the said order, this Court had granted *ad-interim* relief in favour of the petitioner in terms of prayers, (i), (ii), (iii), (vi), (vii) and (viii) of the prayer clause in the petition. The prayer clause reads thus:-

“In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i) restrain the Respondent No. 1 from selling, alienating, disposing off, encumbering, renting or creating any third-party right or interest in the movable and immovable assets of the Partnership Firm including plant and machinery, of the Partnership Firm without the consent of the Petitioners;
- ii) direct the Respondent No. 1 to maintain complete books of accounts of the Partnership Firm and provide, to the Petitioners, foil and complete information of all things affecting the firm including details of pending stock, outstanding orders, outstanding payments of previous orders, outstanding supplier entries etc. for the period 2018-19 till date and continue to provide the same until conclusion of the arbitration proceedings;
- iii) restrain the Respondent No. 1 from accepting and dispatching fresh orders with respect to pending stock available in the name of the Partnership Firm without the consent of the Petitioners;
- iv) restrain the Respondent No. I from creating hindrances and obstructions in the right of the Petitioners to take part in the operations of the business of the Partnership Firm and further direct the Respondent No. 1 to, forthwith, restore and ensure complete and unrestricted access to the

following email accounts of the Petitioners -
sunil@mikiexports.com and
privasud@alnooreexports.com;

v) restrain the Respondents, their agents, representatives and assignees from using the licenses and approvals granted by various statutory/government authorities [including by APEDA] to the Partnership Firm for carrying out any production or processing in a unit/factory of a third party, without" the consent of the Petitioners;

vi) direct the Respondent No. 1 to allow the Petitioners complete and unrestricted access to the accounting software. Busy and Tally, of the Partnership Firm;

vii) direct the Respondent Nos. 1 and 2 to furnish the Statement of Accounts of the Respondent No. 2 from the Financial Year 2018-19 till date and continue to provide the same until conclusion of the arbitration proceedings;

viii) pass any other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. Both these applications essentially seek deletion, from the *ad-interim* relief granted by this Court, of the relief prayed in prayer (vii) of this petition requiring furnishing of the Statement of Accounts of Respondent No.2 for the financial year 2018-19 to the petitioner, on a continuing basis, till conclusion of the arbitral proceedings. To sustain the request for modification of the order dated 3rd March, 2021 by deleting the *ad interim* relief granted to the extent of the direction for furnishing of Statement of Accounts of Respondent No. 2 for the financial year 2018-2019, to the petitioner, reliance has been placed

on para 12 of the order dated 3rd March 2021, which observes that prayers (i), (ii), (iii), (vi), (vii) and (viii) in the petition merely seek to preserve the assets of the partnership firm M/s. Alnoor Exports. The application points out that, in order to preserve the assets of M/s. Alnoor Exports, there can be no requirement of furnishing of the Statement of Accounts of Respondent No. 2, i.e. M/s Suco Exports Pvt Ltd. It has also been averred that, under the Companies Act, 2013, the petitioner is not entitled to the access to the Statement of Accounts of M/s Suco Exports Pvt Ltd.

3. The requirement of going into this controversy is obviated in view of the fair submission of Mr. Dholakia, learned Senior Counsel for the petitioner that, for the present, he would not be seeking to enforce the order dated 3rd March, 2021, in so far as it directs furnishing of the Statement of Accounts of Respondent No. 2, reserving liberty to the petitioner to seek revival of the said relief before the learned Arbitral Tribunal.

4. Reserving liberty as aforesaid, for the present, the order of *ad interim* relief dated 3rd March, 2021, shall not be treated as requiring the furnishing of Statement of Accounts of Respondent No.2 to the petitioner. The order stands modified accordingly.

5. IA 5947/2021 is allowed accordingly.

6. The Arbitral Tribunal stands constituted. The parties are *ad idem* that the present petition under Section 9 of the Arbitration and

Conciliation Act, 1996 may be disposed of by referring the petition to the learned Arbitral Tribunal to be adjudicated as an application under Section 17 of the 1996 Act.

7. It is ordered accordingly.

8. The impugned order dated 3rd March, 2021 as modified today, shall continue to remain in force pending further orders to be passed by the learned Arbitral Tribunal. The learned Arbitral Tribunal is requested to decide OMP (I) (COMM) 91/2021, treating it as an application under Section 17 of the 1996 Act as expeditiously as possible, uninfluenced by any orders passed in these proceedings.

9. OMP (I) (COMM) 91/2021 stands disposed of accordingly.

10. Pending applications do not survive for consideration and stand disposed of accordingly.

C.HARI SHANKAR, J

AUGUST 5, 2021/Aj