

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION NO. 93 OF 2019
IN
COMM ARBITRATION PETITION NO. 1558 OF 2019**

Kothari Steel Syndicate ...Applicant
(Intervener)

In the matter between
JSW Steel Ltd.

...Petitioner

Versus

Delta Iron and Steel Company Pvt. Ltd. & ors. ...Respondents

Mr. Rahul Narichania, Senior Advocate, a/w Mr. Vishal
Muglikar and Mr. Sanket Singh, i/b Meraki Chambers,
for the Applicant.

Mr. Karl Tamboly, a/w Ms. Zahra Padamsee, i/b Vashi and
Vashi, for the Petitioner.

Mr. S. K. Dhekale, OSD, Court Receiver, present.

CORAM: N. J. JAMADAR, J.

DATED : 5th APRIL, 2022

ORDER:-

1. The applicant, who is not a party to the arbitration petition, has preferred this application seeking permission to intervene in the petition, and also an order to vacate the *ex parte* ad-interim order passed by this Court on 23rd August, 2019, to the extent of goods of the applicant as described in Exhibit-A annexed to the application, with a further direction to the Court Receiver to forthwith release/de-seal the goods and hand over the possession thereof to the applicant.

2. The background facts leading to this application can be stated in brief as under:

(a) The petitioner JSW Steel Limited (“JSW”) preferred a petition under Section 9 of the Arbitration and Conciliation Act, 1996, (“the Act, 1996”) with the assertion that JSW is one of the India’s leading business conglomerates dealing, *inter alia*, in steel and its allied products. JSW had entered into and executed a Franchisee Agreement with respondent nos.1 to 3. Under the terms of the said agreement, the petitioner was to provide the respondents with material to be sold and promoted vide “JSW SHOPPE”, pursuant to the purchase orders to be placed by the respondents. The Franchisee Agreement, *inter alia*, provided that payments against each of the purchase order was to be made by the respondents immediately upon dispatch of the goods.

(b) The petitioner asserted, during July 2018 to July 2019, the respondents placed 17 purchase orders on the petitioner for supply of goods worth Rs.121,35,85,585/-. The petitioner, accordingly, sold and delivered the goods. The petitioner claimed under the invoices, particularly, for the period between April and June, 2019, the respondents owed the principal amount of Rs.20,39,90,685/-. The respondents

committed persistent default in the payment of the price of the goods sold and delivered. The petitioner made repeated demands. Without disputing the liability, the respondents started to sell the said goods sans payment of the price, to the petitioner. The contract specifically provided that the property in the goods would pass to the franchisee only upon receipt of the invoice amount by the franchisor. Clause 12.2 of the Franchisee Agreement incorporated the petitioner's lien on the goods to the extent of the unpaid purchase price with a right to sell those goods to another dealer. Thus, as the Franchisee Agreement contained an arbitration clause, the petitioner moved this Court for interim measures as the sale and delivery of the goods by the respondents would defeat the petitioner's lien on the said goods and also deprive the petitioner of the unpaid price.

(c) On 23rd August, 2019, the petition was moved without notice to the respondents. This Court was persuaded to grant ad-interim reliefs in terms of prayer clauses (k) and (l). The relevant part of the order dated 23rd August, 2019, reads as under:

“4. Clause-12 of the agreement deals with right of lien of petitioner and it provides that although the risk in the products passes to the Franchisee from the date of dispatch of the products to the carrier and delivery being taken by the Franchisee, the title to the products shall pass to the

Franchisee only upon receipt of invoice amount by the Franchisor. Clause-12 also provides that Franchisor shall have lien on the products so delivered to the extent of unpaid purchase price of products and the Franchisor shall be entitled to exercise the lien to recover the unpaid purchase price by taking back the products and shall be entitled to sell the same to some other dealer and adjust the sum so realized against the unpaid purchase price.

5. Petitioner has been supplying products from time to time and according to petitioner as on 14.8.2019 there is an outstanding of about Rs.19 crores. Petitioner gave a notice demanding payment on 14.8.2019 and respondents replied admitting about Rs.9 crores. Mr. Khambata states that set off of claim by respondents is incorrect but at the same time, admittedly over Rs.9 crores is payable.

6. In view of what is stated in paragraph-22 read with paragraph-25 of the petition and in view of the admission of respondents to the tune of at least Rs.9 crores, I am satisfied that there is a prima facie case for ex-parte ad-interim injunction made out.

7. Therefore, ad-interim order in terms of prayer clauses-(k) and (l) is granted and the same read as under :-

“(k) Order and direct that pending the hearing and final disposal of the Arbitral proceedings and for a period of 12 weeks thereafter, the Respondents be restrained themselves and through its officers and/or its directors and/or its subordinates and/or its servants and/or agents from in any manner whatsoever taking any steps to dispose of the said Materials belonging to the Petitioner and in the possession of the Respondent at least to the extent of the amounts due and payable to the petitioner, including the Principal Amounts and Interest thereon as set out in the Particulars of Claim at Exhibit H hereto ;

(l) Order and direct that the Court Receiver be appointed and/or such other fit and proper person be appointed as Receiver with all the powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908 to inter alia take stock and custody of the said Materials belonging to the Petitioner and in the Respondents’ possession, whether stored at the latter’s warehouses or otherwise wherever situate.”

8. The Court Receiver High Court, Bombay shall keep the impugned goods under his seal in the safe custody of respondents. Court Receiver is authorized to seek police assistance if required and police authorities of concerned police station shall render all possible help to the Court

Receiver including deployment of such number of police personnel as required on production of an authenticated copy of this order. The Court Receiver to do the needful and submit a report to this court by 7.9.2019.

.....

12. This order will operate till 16.9.2019. Liberty to respondents for variation of this order with 24 hours prior notice to petitioner is granted.”

(d) The applicant has approached the Court with a case that the applicant also deals in the business of steel. In it's normal course of business the applicant had purchased Hot Roll Coils (“HR Coils”) from respondent nos.1 and 3. The applicant had paid the price of the goods purchased from respondent nos.1 and 3 through banking channels. As per the trade practice, respondent nos.1 and 3 had delivered the HR Coils directly to the cutters/warehouses. Respondent nos.1 and 3 would also inform the cutters/warehouses the details of the goods i.e., HR Coils, to be transferred to the applicant, who, in turn, would address its own letters to the cutters/warehouses about the transfer of particular coils in its name. Respondent nos.1 and 3 would thereafter raise the tax invoices including applicable CGST and SGST. The applicant claimed to have submitted its CGST and SGST returns with the tax authorities in the prescribed form. In addition, the applicant has annexed the copies of the statements of account which, according to the applicant, evidence the payment of entire price of the goods,

purchased by the applicant, to respondent nos.1 and 3 and the ledger statements of respondent nos.1 and 3 maintained by the applicant.

(e) The applicant thus asserts that the applicant is a *bona fide* purchaser for value of the goods. The property in the goods had already been transferred to the applicant. The applicant was intimated on 23rd August, 2019, that the Court Receiver has seized the goods belonging to the applicant, i.e., 21 HR Coils, in addition to the goods belonging to other traders, lying at cutters/warehouses. The applicant has no concern whatsoever with the transaction between the petitioner and the respondents. The applicant is, however, made to suffer huge losses running into crores of rupees, mental trauma and loss of reputation in the market. Moreover, third party rights are created in the goods, which have been unjustifiably seized pursuant to the *ex parte* ad-interim order passed by this Court. Hence, this application to vacate the said order dated 23rd August, 2019, to the extent of 21 HR Coils, described in Exhibit-A to the application and the consequential direction to the Court Receiver to release/de-seal the goods and hand over possession thereof to the applicant.

3. The petitioner resisted the application by filing an affidavit-in-reply. After enumerating the circumstance in justification of the ad-interim order, which is sought to be varied by the applicant qua the goods described in Exhibit-A, the petitioner has raised two principal grounds to resist the prayer in the instant application. First, the applicant, being neither a party to the arbitration agreement nor to the commercial arbitration petition, is not entitled to claim any relief against the petitioner in the arbitration petition. If the applicant has any remedies to work out, the applicant ought to institute a separate proceeding against the respondents for the recovery of the goods allegedly purchased by the applicant or the price thereof. The petitioner contends that the application has been preferred with malafide intent to defeat the legitimate rights of the petitioner, secured by the ad-interim order passed by this Court.

Second, according to the petitioner, there is a stark discrepancy in the goods which have been seized, as recorded in the inspection report submitted by the Court Receiver dated 5th October, 2021 and the goods claimed by the applicant to have been purchased from the respondents. The petitioner has made a grievance that the inspection was not carried out by the

officials of the Court Receiver in a proper manner and, thus, there is no basis for release of the HR Coils described in Exhibit-A to the application.

4. As a dispute was raised about the identity of the goods and the payments, including the taxes, allegedly made by the applicant, the parties were called upon to have inspection. The applicant has thereafter filed two additional affidavits. In the first additional affidavit dated 25th February, 2022, the applicant has placed on record the copies of GSTR 2A Tax Returns of the applicant for the months of May, June, July and August 2019, as available on the GST Portal, in support of its claim that it had made full payment of the invoices (Exhibits-C1 to C11) including the applicable GST.

5. In the second additional affidavit dated 4th March, 2022, the applicant sought to explain the discrepancy in the weight of the HR Coils noted in the Court Receiver's Report and Exhibit-A. It is averred that the difference in the weight of coils is due to the fact that those coils are DOWN COIL, which means coils partially cut, and sold to the customer by the applicant as per the customers requirement prior to the ad-interim prder. The applicant has also annexed the copies of Tax Invoices, Ledger Account Statement and relevant entries from the applicant's

bank account statement to substantiate the applicant's claim that the applicant had, in turn, sold the six out of eight DOWN COILS to its customers, prior to the ad-interim order dated 23rd August, 2019.

6. In the wake of the aforesaid facts and the pleadings, I have heard Mr. Narichania, the learned Senior Counsel for the applicant and Mr. Tamboly, the learned Counsel for the petitioner. With the assistance of the learned Counsels for the parties, I have perused the material on record including the documents, which evidence the purported sale and delivery of the goods, in question, by respondent nos.1 and 3 to the applicant and by the applicant, in turn, to its customers.

7. Mr. Narichania, the learned Senior Counsel for the applicant, would urge that in commercial Notice of Motion (L) No.2044 of 2019 instituted by a party, who was similarly circumstanced like the applicant, this Court after an elaborate consideration allowed the prayer to release/de-seal the goods of the applicant therein, which were unjustifiably attached pursuant to the ad-interim order dated 23rd August, 2019. The reasons recorded by this Court in the said order apply with equal force to the facts of the case at hand. Moreover, in the case of other two third party-applicants, the petitioner gave

consent to vary the order. In the case at hand also, despite overwhelming material in support of the applicant's claim, the petitioner is unjustifiably resisting the prayers in the instant application.

8. Mr. Narichania would urge that the claim of the applicant as regards the sale and delivery of the goods by respondent nos.1 and 3, in the normal course of business, has gone totally uncontroverted. No endeavour has been made by the petitioner in the affidavit-in-reply to contest the claim of the applicant that it is a *bona fide* purchaser for value without notice of the fact that the petitioner had not been paid the price of the goods, as alleged. Instead, the petitioner is making an effort to cling to minor issues like discrepancies in the weight of the goods sold and delivered and absence of evidence to show exact payment, which corresponds with the invoice amount. This endeavour of the petitioner, in the totality of the circumstances of the case, according to Mr. Narichania, does not deserve countenance.

9. Mr. Narichania further urged that since the goods were both ascertained and in a deliverable state, the property in the goods passed at the time of the contract for sale. In any event, the petitioner's right of lien over the goods cannot operate against the applicant in view of the provisions contained in

Section 30(2) of the Sale of Goods Act, 1930 ("the Act, 1930") and it did not survive with the delivery of possession of those goods by the petitioner to the respondents which operated as a termination of lien under Section 49(1) of the Act, 1930.

10. In opposition to this, Mr. Tamboly, the learned Counsel for the petitioner, banked upon the discrepancy in the dates of invoices (Exhibits-C1 to C11) and the GST payment receipts (Exhibit-F7). Laying emphasis on the fact that the GST payment receipts were for the period anterior in point of sale and delivery of the goods, the learned Counsel for the petitioner would urge that the entire edifice of the claim of the applicant is dismantled on account of the irreconcilable discrepancy. It was further submitted that respondent nos.1 and 3, the sellers of the applicant, chose not to appear before the Court and lend support to the claim of the applicant. Thus, in the absence of any reliable material to demonstrate that the property in the goods at Exhibit-A to the application had passed to the applicant, there is no reason to vary ad-interim order passed by this Court, urged Mr. Tamboly.

11. Mr. Narichania joined the issue by canvassing a submission that the invoices raised by respondent nos.1 and 3 are inclusive of taxes. Even otherwise, the passing of title in

the property was not dependent on payment of tax. The said discrepancy has already been explained by placing on record the GSTR 2A Tax Returns, by way of second additional affidavit, to which there is no rejoinder. Thus, the petitioner cannot be permitted to draw mileage from an inadvertent discrepancy, submitted Mr. Narichania.

12. To start with, it may be apposite to note the terms of the contract, incorporated in JSW SHOPPE Agreement dated 1st July, 2018, executed by and between the applicant and respondent no.1 - Delta. For the purpose of determination of the controversy at hand, it would suffice to refer to Clauses (3) and (12), which read as under:

“3. PRICING, INVOICE AND PAYMENT TERM

3.1 The Franchisee shall sell all the Franchisor’s product range provided in the JSW SHOPPE at the maximum retail price as and when fixed and communicated by the Franchisor to the Franchisee.

3.2 At the time of dispatch, the Franchisor shall raise its invoice for supply of products of the Franchisee, which shall be dispatched along with other related documents at the time of delivery of the products to the Franchisee. IN case of any discrepancy in the invoice or quality or quantity, then the Franchisee shall within three (3) working days intimate in writing to the Franchisor, failing which, the amount due under the invoices shall be deemed to have been accepted for payment.

3.3 All payments under each of the invoice shall be made within the period determined by the policy of the Franchisor to be announced from time to time from the date of the invoices, by way of cheques payable at par or by demand draft drawn in favour of the Franchisor. In the event of delay in payments beyond the stipulated period, then the Franchisee shall pay simple interest at the rate of eighteen per cent (18%) per annum from the date of when the payment was due until the

actual payment and/or realization on the outstanding payments to the Franchisor

3.4 All payments to the Franchisor under the Agreement shall be exclusive of sales, value added, service, consumption tax or taxes of similar nature, which shall be paid for or reimbursed by the Franchisee at the applicable rates.

12. RIGHT OF LIEN

12.1 Although the risk in the products passes to the Franchisee from the date of dispatch of the products to the carrier and delivery being taken by the Franchisee, the title to the products shall pass to the Franchisee only upon receipt of invoice amount by the Franchisor.

12.2 The Franchisor shall have lien on the products so delivered to the extent of unpaid purchase price of products and the Franchisor shall be entitled to exercise the lien to recover the unpaid purchase price by taking back the products and shall be entitled to sell the same to some other dealer and adjust the sum so realized against the unpaid purchase price. This right is without prejudice to the Franchisor's other rights and remedies to recover the outstanding dues and/or other dues and/or the differential price of the product."

13. The agreement thus provided that the franchisee shall pay the price of the goods as claimed in the invoice raised by the petitioner. The time for payment was to be stipulated by the petitioner. In the event of delay, the respondents agreed to pay simple interest at the rate of 18% p.a from the date the payment fell due. All payments were to be exclusive of sales, value added service, consumption tax or other taxes of similar nature: which were to be paid by the respondents. Under Clause 12.1, it was specifically provided that the title to the products shall pass to respondent no.1 only upon receipt of invoice amount by the petitioner, although the risk in the products would pass to the respondent no.1 from the date of dispatch of the goods.

14. The aforesaid stipulations in the contract between the petitioner and respondent no.1 are required to be construed through the prism of the provisions contained in Sections 19 and 20 of the Act, 1930. Sections 19 and 20 read as under:

“Section 19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Section 20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.”

15. Section 19 incorporates a general principle that in a contract for the sale of specific or ascertained goods, the property in the goods passes to the buyer at such time as the parties to the contract intend it to be transferred and for the purpose of ascertainment of the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. Sub-section (3) of Section 19 further provides that, unless a different intention appears, the rules contained in Sections 20 to 24 are to govern

the ascertainment of the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

16. Section 20, in turn, provides that in case of unconditional contract for sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. For applicability of Section 20, there are two prerequisites: (i) The contract must be for sale of specific goods which are in a deliverable state; and, (ii) the contract is an unconditional contract.

17. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of *Agricultural Market Committee vs. Shalimar Chemical Works Ltd.*¹ wherein the concept of passing of the property in the goods was instructively postulated in paragraphs 36 to 40, which read as under:

“36. We may, before analysing the provisions of Sections 19 and 20, observe that the Indian Sale of Goods Act is based largely upon the English and American Acts. Under these Acts, namely, the English Sale of Goods Act, the American Uniform Sales Act and the Indian Sale of Goods Act, the relevant factor for determining where the sale takes place, is the intention of parties. A contract of sale, like any other contract, is a consensual act inasmuch as parties are at liberty to settle, amongst them-selves, any terms they may choose.

1(1997) 5 Supreme Court Cases 516.

37. Section 19 attempts to give effect to the elementary principle of the law of Contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, or the time of payment of price or even the time of the making of contract. It all depends upon the intention of the parties. It is, therefore, the duty of the Court to ascertain the intention of the parties and in doing so, they have to be guided by the principles laid down in Section 19(2) which provides that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

38. Section 19 indicates that in case of unconditional contract to sale in respect of specified goods in a deliverable state, the property in the goods passes to the buyer at such time as the parties intend it to be transferred . Section 19(3) provides that Section 20 to 24 contain the rules for ascertaining the intention of the parties as to the time at which the property in the goods shall be treated to have passed to the buyer. Both Sections 19 and 20 apply to the sale of "specific" or "ascertained" goods.

39. Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of "specific goods" in a "deliverable state", the property in the goods passes to the buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title in the goods passes to the purchaser. The passing of the title is not dependent upon the payment of price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title in the goods so purchased.

40. In order that Section 20 is attracted, two conditions have to be fulfilled : (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, "Unless a different intention appears" occurring the Section 19(3). In *Hoe Kim Seing v. Maung Ba Chit*, AIR (1935) PC 182, it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case."

18. In the case at hand, having regard to the nature of the goods, the provisions contained in Section 20 of the Act may govern the situation as the contract was for specific goods in a deliverable state and also unconditional one. The intendment, on the contrary is, however, to be found in Clause 12.1 extracted above, which specifically provided that the title to the products shall pass to the franchisee (respondent no.1) only upon receipt of invoice amount by the applicant. It could be thus urged that there was an intention to the contrary so far as as the applicability of the provisions contained in Section 20 of the Act. However, the issue does not rest at that.

19. The questions that wrench to the fore are: Whether the transaction entered into by the applicant with respondent nos.1 and 3 was of such a nature that it passed the property in the goods to the applicant, despite non-payment of the price of the goods by the respondents to the petitioner? And, whether in the circumstances of the case, the petitioner could exercise the right of lien?

20. Before adverting to deal with the aforesaid questions, it is necessary to note that the claim of the applicant that the applicant had purchased the goods in the normal course of business without notice of the claim of the petitioner finds requisite support in the documents annexed with the

application. The sale of the goods by respondent nos.1 and 3 is evidenced by the tax invoices (Exhibit-C1 to C11), raised during the period 27th May, 2019 to 1st August, 2019. In addition to the price of the HR Coils sold under the respective invoices, CGST and SGST, at the rate of 9% each, were also included in each of those invoices. There is contemporaneous material to indicate that the applicant had, in turn, indicated the cutters about the transfer of the coils by the sellers. These transfer intimations to the cutters are further supported by the intimations issued by respondent nos.1 and 3 to the respective cutters to transfer the coils. The petitioner has also placed on record the copies of the bank statements evidencing the payment of the price of the goods sold and delivered under the invoices to the sellers. The Ledger Accounts (Exhibit-E1) maintained by the applicant of respondent nos.1 and 3, lend further support to the claim of the applicant as regards the payment of the price of the goods to respondent nos.1 and 3.

21. The material on record thus establishes with sufficient clarity that the applicant had placed orders with respondent nos.1 and 3, the latter issued instructions to the cutters and the payment of the price of the goods is evidenced by the statements of account and the ledger statements. Viewed in

this backdrop, the submission on behalf of the petitioner that there is no material to demonstrate that the applicant had made exact payment against each of the invoices, does not merit countenance as there is overwhelming material to show that in the regular course of business, the applicant had made “on account” payment.

22. This propels me to the pivotal question as to whether the property in the goods can be said to have passed to the applicant despite the non-payment of price thereof by respondent nos.1 and 3 to the petitioner. The second question of exercise and extent of unpaid sellers lien is also interconnected with this question. Thus, it may be appropriate to note the provisions contained in Sections 27, 30 and 49, at this juncture, which read as under:

“Section 27. Subject to provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in goods faith and has not at all the time of the contract of sale notice that the seller has no authority to sell.

Section 30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

Section 49. (1) The unpaid seller of goods loses his lien thereon—

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of goods;
- (c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.”

23. Section 27 incorporates a general rule that no man can transfer a better title than the one he possess. The proviso to Section 27 is founded on the principle that where a person has entrusted goods or the documents of title to the goods to an agent, who in the course of such agency, sells or pledges the goods, he ought, as regards innocent third parties, to be treated as the owner of the goods. Sub-section (2) of Section 30,

addresses the situation of disposal of goods by the buyer after obtaining possession. It provides that if the buyer obtains possession of the goods, before the property in them has passed to him, with the consent of the seller, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of any lien or other right of the original seller in respect of the goods, he will obtain a good title to those goods.

24. Applying the aforesaid principles to the facts of the case, the trade practices and usages assume critical significance. Respondent nos.1 and 3 were appointed as the franchisees to promote and sale the goods of the applicant. Indubitably, respondent nos.1 and 3 were put in possession of the goods. It is not the case of the petitioner that respondent nos.1 and 3 were restrained from selling the goods, until the price thereof was paid. In the circumstances, the necessary conditions to insulate the applicant as a *bona fide* purchaser for value without notice, seem to have been fulfilled.

25. This leads me to the aspect of continuation of unpaid sellers lien over the goods. Under Clause 12 of the Franchisee Agreement, the petitioner was to have lien over the goods for the unpaid price. However, indisputably, the petitioner had parted

with possession of the goods. Clause (b) of Section 49(1), extracted above, seems to clearly govern the situation at hand. Respondent nos.1 and 3 had lawfully obtained the possession of the goods. It does not appear that the petitioner had reserved the right of the disposal of the goods. In the circumstances, the petitioner could not continue to exercise the unpaid sellers lien.

26. The conspectus of aforesaid consideration is that, in the peculiar facts and circumstances of the case, it appears that the property in the goods had passed to the applicant as *bona fide* purchaser for value without notice of the non-payment of the price of the goods by its sellers to the petitioner and the rights with emanated therefrom. The submission on behalf of the petitioner that the claim of the applicant, be discarded as the applicant had pressed into service tax payment receipts, which pertain to the period prior to the raising of invoices, is not worthy of acceptance. The applicant, by filing an additional affidavit, has placed on record, GSTR 2A Tax Returns for the months May to August, 2019, as available in the GST Portal, which substantiate the claim of the applicant. Moreover, the fact remains that the invoices were inclusive of the tax amount.

27. The second objection on behalf of the petitioner about the discrepancy in the weight of the HR Coils as reflected in the

invoices and in the Court Receiver's Inspection Report, is also adequately explained by the petitioner by filing the second additional affidavit dated 7th March, 2022. The discrepancy in weight was stated to be on account of the cutting of the coils (DOWN COILS), so as to facilitate further sale of the HR Coils by the applicant to its customers. The applicant has placed on record documents in support of such further sale and delivery of the DOWN COILS. This claim of the applicant has gone uncontroverted.

28. Lastly, the objection to the locus of the applicant, raised in the affidavit-in-reply, though not forcefully canvassed during the course of the submissions, is required to be stated to be repelled as under Rule 4 of Order XXXIX, any party dissatisfied with an order of injunction may approach the Court to discharge, vary or set aside such order.

29. For the foregoing reasons, I am impelled to hold that the applicant has succeeded in making out a strong case that the order passed by this Court on 23rd August, 2019 qua its goods enumerated in Exhibit-A, is required to be set aside. Hence, the application deserves to be allowed.

30. Thus, the following order:

: O R D E R :

- (i)** Application stands allowed in terms of prayer clauses (a) and (b).
- (ii)** The Court Receiver is directed to take necessary steps to release/de-seal the goods of the applicant and deliver possession thereof to the applicant.
- (iii)** No costs.

[N. J. JAMADAR, J.]