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

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Judgment delivered on: 14th September, 2022

+ **FAO(OS) (COMM) 130/2021 & C.M. APPL 35593/2021**

M/S GOLDEN TOBACCO LIMITED

..... Appellant

versus

M/S GOLDEN TOBIE PRIVATE LIMITED

..... Respondent

Advocates who appeared in this case:

For the Appellant:

Mr. Sumeet Verma, Advocate with Mr. Mahinder Pratap Singh and Ms. Sujatha, Advocates.

For the Respondent:

Mr. Amit Gupta and Mr. Harisankar Mahapatra, Advocates.

CORAM:-

HON'BLE MR JUSTICESANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J (Oral)

1. Learned counsel for appellant submits that proceedings under the Insolvency and Bankruptcy Code, 2016 have been initiated against the appellant and an Interim Resolution Professional (IRP) has been appointed, and he has been authorized by e-mail dated 12.09.2022 of the IRP to appear and prosecute the present appeal.



2. Appellant impugns order dated 24.09.2021, whereby the petition filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter would be referred to as the ‘Act’) had been dismissed and the interim order that was granted on 11.06.2021 had been vacated.

3. Appellant had filed the subject petition under Section 9 of the Act in respect of disputes emanating out of Trademark License Agreement dated 12.02.2020 as amended by a supplementary Agreement dated 29.08.2020.

4. By an interim order in the Section 9 petition, the learned Single Judge on 11.06.2021 had restrained the respondent from manufacturing, selling and supplying cigarettes by using the brand names “*Panama, Golden Gold Flake, Golden Classic, Taj Chhap & Chancellor*” owned by the appellant.

5. By the impugned order, the Section 9 petition has been dismissed and the interim order vacated.

6. When the appeal was listed before this Court on 07.10.2021, this Court, while issuing notice, directed that respondent shall not manufacture the appellant’s brands of cigarette i.e., “*Panama, Golden's Gold Flake, Golden Classic, Taj Chhap and Chancellor*”.

7. Order of 07.10.2021 was subsequently corrected by an order of 29.10.2021 and it was directed that respondents shall not



“manufacture and sell” the above-referred appellant’s brands of cigarette. The order has continued from time to time. It is informed that an Arbitrator has been appointed and the arbitral proceedings are underway.

8. Learned counsel for parties agree that the appellant be permitted to file an application under Section 17 of the Act seeking the interim relief sought for in the Section 9 petition from the Arbitrator.

9. In view of the above and without commenting on the merits of the order, since both parties have consented that the appellant may file an application under Section 17 of the Act, we set aside the impugned order dated 24.09.2021.

10. Appellant is permitted to file an application under Section 17 of the Act before the Arbitral Tribunal seeking relief as had been sought in the petition under Section 9 of the Act. The Arbitral Tribunal shall consider the application without being influenced by anything stated on merits or on law in the impugned order dated 24.09.2021.

11. The interim order as granted by this Court on 07.10.2021 and clarified by order dated 29.10.2021 shall continue to operate till it is varied by the Arbitral Tribunal.

12. It is clarified that the interim protection shall cease to operate in case no application is filed before the Arbitral Tribunal within a



period of six weeks from today or till the application under Section 17 is listed before the Tribunal and the order is varied, whichever is earlier.

13. The appeal is disposed of in the above terms.

C.M. APPL 38816/2021

1. This is an application on behalf of the petitioner seeking action against the respondent for wilful breach of order dated 07.10.2021.

2. It is contended by learned counsel for appellant that despite there being an order restraining the respondent from selling and manufacturing the appellant's brand of cigarettes in the market, they have found packets manufactured after the interim orders have been passed and even packets without any manufacturing date, which shows that with impunity the respondents are continuing to breach the orders passed by this Court.

3. Perusal of the reply filed by the respondent shows that there is an averment that there is no manufacturing activity carried out after June, 2021. However, there is no explanation as to how the packets containing a later date of manufacturing have been found in the market by the appellant.

4. Learned counsel for respondent prays for time to file a better affidavit. Let the same be filed on behalf of the respondent by its



Chairman/Managing Director within four weeks.

5. List on 17.11.2022.

6. The Chairman/Managing Director shall be personally present in the Court on the next date of hearing.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

SEPTEMBER 14, 2022

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