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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.4464 OF 2022
IN
COMM. EXECUTION APPLICATION OF 25 OF 2017

Noble Resources Ltd.

...Applicant /
Claimant

Versus

Dharni Sampada Pvt. Ltd.

...Respondent

Mr. Chetan Kapadia with Vidisha Rohira and Mr. Raghav Bhargava i/
b. Trilegal for the Applicant / Plaintiff.

Mr. Anukul Seth, i/b. Karam Vyas for Respondent No.1.

CORAM : R.I. CHAGLA J.
DATE : 20 MARCH 2023.

ORDER :

1. By this Interim Application, the Applicant / Claimant has sought for appointment of Chartered Accountant to submit a report to this Court on the financial transactions undertaken by the Respondent from 1st January, 2016 till date and directions to the Respondent and its auditors to extend cooperation to the Chartered Accountant appointed by this Court in preparation of report as well as to furnish all details / documents / information etc., as sought by the Chartered Accountant to aid the preparation of the report.

2. The Applicant has referred to the disclosures made by the Respondent pursuant to the orders passed by this Court from time to time in the above Execution Application. There have been four disclosures which have been made and according to the Applicant there have been insufficient disclosures. Further, in the financial statement which has been disclosed, there appears to be substantial change in fixed assets with decrease in the fixed assets of the Respondent and correspondent increase in the fixed assets of Baidyanath Minerals from year 2016 to 2018. It is stated that in view of insufficient disclosures made by the Respondent it cannot be ascertained as to when the property was sold to Baidyanath Minerals Pvt. Ltd.

3. The Applicant has further stated that a perusal of the financial statement of the Respondent indicate a trend of systematic disposal of its assets since the passing of the award. This is stated to be contrary to the order dated 15th December, 2017 directing that “The Respondent will not except in the ordinary and usual course of their business, dispose of, encumber or alienate these assets.” The Applicant has accordingly stated that the financial statements of the Respondent raise a substantial doubt as to the conduct of the affairs

of the Respondent particularly with regard to the transactions undertaken by the Respondent subsequent to the passing of the Award. Accordingly, the present Application is made for appointment of the Chartered Accountant to submit report of the status of the Respondent's financials to aid the Applicant in the present proceedings, given the insufficiency of disclosures and the events which have transpired at the time the warrants were attempted to be served by the bailiff. There is tabular statement in paragraph 27 which give particulars of the financial year accounts, as well as auditors for years 2016 to 2020.

4. Having considered the averments in the Interim Application, it is not for this Court to appoint the Chartered Accountant but it is for the Applicant to appoint a Chartered Accountant to carry out exercise of ascertaining the financial statement of the Respondent and if there are insufficient disclosures, the same shall be brought by a fresh Interim Application for further disclosures. The direction sought for in the prayer clause (b) of the Interim Application with regard to directions to be issued to the Respondent and its auditors mentioned in paragraph 27 above, to extend cooperation to the Chartered Accountant appointed which the

Respondent will appoint in preparation of report as well as financial statements undertaken by the Chartered Accountant to aid the preparation of the report, is granted. The Respondent and its auditors shall comply with this direction.

5. The Interim Application is disposed of with liberty to file fresh Interim Application, if necessity arises.

6. At this stage, Mr. Kapadia, Senior Counsel appearing for the Applicant has sought leave to delete the Respondent No.2 from the array of parties in the Execution Application as Respondent No.2 is not a necessary party and in compliance of the order passed on 18th November, 2019. Accordingly, leave is granted. The Applicant shall delete Respondent No.2, Taurian Manganese and Ferro Alloys CISA from the array of parties in the Execution Application and which amendment shall be carried out within a period of one week from today. Re-verification is dispensed with.

[R.I. CHAGLA J.]