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

% **Date of order : 22nd March, 2023.**

\+ O.M.P.(I) (COMM.) 90/2023

M/S DCM SHRIRAM LTD. ..... Petitioner

Through: Mr.Harish Malhotra, Senior Advocate with Mr.Rajender Agarwal and Mr.Anoop Kumar, Advocates

versus

M/S MAHARAJA SALT WORKS CO. PVT. LTD. & ANR. ..... Respondents

Through: Mr.Akhil Sibal, Senior Advocate with Mr.___, Advocate (appearance not given)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

CAV. 144/2023

Since the learned counsel appearing for the respondents has put in appearance, the caveat stands discharged.

I.A. No. 5609/2023 (for Exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

O.M.P.(I) (COMM.)90/2023

1. The petitioner vide the present petition under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') has sought the following reliefs:

> *"a) pass an ex parte ad interim injunction in favour of the petitioner and against the respondent no. 1 thereby restraining the respondent no.1, its agents and employees from in any manner selling the plant and machinery installed at Versamedi unit of respondent no.1 and is further liable to be restrained from in any manner selling or supplying the stock in trade to anyone except to the petitioner in terms of the salt supply agreement;*
> *b) appoint a receiver with the direction to forthwith take possession of the respondent no.1's versamedi unit situated at Village Varsamedi, Ta. Maliya, Dist. Morbi, Gujarat, Pin Code-363660 and after taking possession to hand over the same to the petitioner to undertake the operational rights of the said unit in terms of clause 20.8(g) of the supply agreement;*
> *c) appoint a local commissioner to forthwith visit the unit of respondent no.1 at Village Varsamedi, Ta. Maliya, Dist. Morbi, Gujarat, Pin Code-363660 and to make inventory of the plant and machinery and the stock in process/stock lying therein;*
> *d) award cost of this petition in favour of the petitioner and against the respondent no.1;*
> *e) pass any other or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondent no.1."*

2. Mr. Harish Malhotra, learned Senior Advocate for the petitioner submitted that the petitioner is a company engaged in the business of manufacturing chemicals using industrial salt as the main raw material, whereas the Respondent no. 1 is engaged in the business of manufacturing industrial grade salt. The petitioner and the respondent no. 1 conducted a meeting wherein the respondent agreed to supply industrial grade salt to the petitioner and also desired to avail loan for the purpose of development of its plant and business. Accordingly, a long term salt supply agreement dated 3rd March, 2020 was executed between the parties.

3. It is submitted that under the salt supply agreement, respondent no.1 had agreed to supply 10 MT of industrial grade salt +/- 10% in a period of 5 years which was divided @ 2 lakh MT per year +/- 10% which was further divided into monthly basis @ 15,000 MT per month. The petitioner was also authorized to with-hold Rs.125/- per MT and Rs.25/- per MT from each supply for onward payment to respondent no.2 which was later agreed to be paid directly by respondent no.1 to respondent no.2 upon making payment by the petitioner. Further it was also agreed that the price would be Rs.575/- per MT which price was agreed because the petitioner had arranged loan from respondent no.2 at a subsidized interest rate i.e. only 7.5% p.a.

4. It is submitted that the petitioner arranged loan from respondent no.2 for which a loan agreement was executed on 20.3.2020 between the respondent no.1 and respondent no.2 i.e. M/s DCM Shriram Credit & Investment Ltd., wherein respondent no.2 agreed to give the loan to the extent of Rs.11.50 lakhs to respondent no.1. In order to secure the

repayment of respondent no.2, the respondent no.1 had entered into various agreements with respondent no.2 including guarantee deeds, hypothecation agreement, mortgage agreement and also entered into a tripartite agreement with the petitioner and respondent no.2 which was in continuation of the salt supply agreement dated 3rd March, 2020 entered into between the petitioner and respondent no.1.

5. It is stated that despite having agreed to supply 2 lakhs MT p.a. +/- 10%, the respondent no.1 in a period of more than 2-1/2 year could hardly supply 30,831 MT. The respondent no.1 has miserably failed not only in supplying the requisite quantities of salt to the petitioner but has also miserably failed to repay the loan amount of respondent no.2 in terms of schedule agreed and even in terms of various revised schedule of repayment given by the respondent no.1. The respondent no.1 also failed to give the delivery of industrial grade salt to the petitioner despite having revised the schedule twice, which has led to the filing of the present petition.

6. It is submitted that the petitioner gave a notice dated 7th March, 2023 to respondent no.1 calling upon the respondent no.1 to forthwith pay a sum of Rs.48,91,85,928/- towards difference of cost of deficient supply made in the previous years and to handover the operational rights of the entire Versamedi unit alongwith entire goods lying in the said unit to the petitioner forthwith as well as the intimation for initiation of arbitral proceedings under Section 21 of the Arbitration & Conciliation Act, 1996.

7. It is submitted that again on 18th March 2023, a legal notice invoking arbitration has been sent to the respondent no.1 and the

respondent no.l has been asked to suggest the names of three arbitrators so as to enable the petitioner to choose one. It is also prayed at this juncture that the Court may be pleased to appoint an arbitrator to adjudicate the issues arising between the parties.

8. It is submitted that since there are threats from the respondent no.l to liquidate its assets and to remove the entire stock and to hand over the same to third parties and refusal to hand over the possession of the Versamedi unit of respondent no.l to petitioner for operating the unit in terms of clause 20.8(g) of the Salt Supply Agreement, the instant petition be allowed and an interim injunction be granted.

9. *Per contra,* Mr. Akhil Sibal, learned Senior Advocate for the respondents vehemently opposed the contentions and averments raised by the learned senior counsel for the petitioner and stated that the injunction being prayed for is totally unwarranted and uncalled for in the facts and circumstances of the case. Learned senior counsel however stated that he has no objection if an independent arbitrator is appointed by this Court.

10. Heard learned counsels for the parties and perused the record.

11. At this juncture, this Court finds it relevant to reiterate the spirit of the Arbitration Act. The Arbitration Act and the provisions therein encourage that the parties to a dispute may be referred to arbitration where there exists an arbitration clause/agreement, the disputes between the parties are arbitral in nature and a prior notice is served upon the other party to the dispute.

12. In the instant case, Section 27.7 of the Supply Agreement deals with Dispute Resolution and provides for arbitration as a method for resolution. The disputes have arisen between the parties which are arising

from the said agreement and are arbitrable in nature and the petitioner has also served a Notice under Section 21 of the Act. The learned senior counsels have also consented to the appointment of an arbitrator to adjudicate the disputes between the parties.

13. Accordingly, keeping in view the aforesaid, this Court finds it appropriate to refer the said disputes and differences arising between the parties to Arbitration by appointment of an Arbitrator. Hence, the following Order:

ORDER

(i) Justice (Retd.) Pradeep Kumar Singh Baghel is appointed as Sole Arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement dated 3rd March 2020;

(ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;

(iii) The learned sole arbitrator shall be paid fees as prescribed under The Delhi International Arbitration Centre (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;

(iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;

(v) All contentions of the parties are expressly kept open.

14. Before disposing the instant petition, in view of the peculiar circumstances of the case, as well as in view of the apprehension of liquidation of stocks and vesting the same in a third party, this Court

directs the petitioner to file Application under Section 17 of the Act before the learned sole arbitrator within 10 days of the constitution of the Tribunal, until which date an injunction in the favour of the petitioner is granted. The respondents are accordingly directed to maintain *status quo* till the date of filing of the said Application.

15. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Justice (Retd.) Pradeep Kumar Singh Baghel
Mahagun Mastero
Flat No 008 Ground floor
Sector 50F, Noida 201307
e-mail ID: psbaghel6@gmail.com
Phone no. - 9936931931/9415237424

16. Accordingly, the instant petition is disposed of alongwith pending applications, if any.

17. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 22, 2023
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Click here to check corrigendum, if any