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

% **Date of order : 12th April, 2023**

\+ O.M.P.(I) (COMM.) 105/2023

MAHARAJA SALT WORKS CO. PVT. LTD. ..... Petitioner

Through: Mr. Akhil Sibal, Sr. Advocate with Mr. Harsh Sethi, Mr. Prajot H.Jaggi, Mr. Bahuli Sharma, Ms. Deboshree Mukherjee and Mr. Anant Nigam, Advocates

versus

DCM SHRIRAM CREDIT INVESTMENTS LIMITED & ANR.

..... Respondents

Through: Mr. Harish Malhotra, Sr. Advocate with Mr. Vishwanathan Iyer, Mr. Arman Roop Sharma, Ms. Jyoti Mehra and Ms. Pooja Sharma, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 6476/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

O.M.P.(I) (COMM.) 105/2023

1. The instant petition under Section 9 of the Arbitration and

Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of petitioner seeking the following reliefs:-

> *"I. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondents thereby slaying the effect and operation of the Letter dated 06-03-2023 whereby the Loan granted to the Petitioner has been Recalled by the Respondent No.1;*
>
> *II. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondents thereby directing the Respondents not to take any coercive action against the Petitioners;*
>
> *III. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondents thereby directing the Respondents to provide an inspection of the Original Contract for the Supply of Industrial Grade Salt, Rupee Loan Agreement, Tripartite Agreement, Agreement of Hypothecation, Deed of Mortgage, Non-Disposal Undertaking and Deed of Guarantee all the Original Agreements and all other Original Documents in their possession which bear the signatures of the Petitioner.*
>
> *Alternatively, direct the Respondents to forthwith deposit the Original Contract for the Supply of Industrial Grade Salt, Rupee Loan Agreement, Tripartite Agreement, Agreement of Hypothecation, Deed of Mortgage, Non-Disposal Undertaking and Deed of Guarantee all the Original Agreements and all other Original Documents/ Communications in their possession which bear the signatures of the Petitioner with the registry of this Hon'ble Court;*
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> *IV. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondent No.1 thereby directing the Respondent No.1 to provide an inspection of the Original Registration Certificate under Factoring Regulation Act, 2011 issued by the Reserve Bank of India;*

V. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondent No.1 thereby directing the Respondent No.1 to provide an inspection of the Original Minutes of Meetings passed by the Respondent Companies in respect to all decisions taken in regard to the transactions with the Petitioner Company under Factoring Regulation Act, 2011 issued by the Reserve Bank of India;

VI. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondents, thereby directing the Respondents to re-conciliate the accounts with the Petitioner and further directing the Respondent No.1 to forthwith recall its Loan Recall Notice dated 06.03.2023;
Alternatively, this Hon'ble Court may be pleased to Pass an Ex-Parte -Ad- Interim Injunction in favor of the Petitioner and against the Respondents, thereby appointing a Ld. Court Commissioner to oversee the re-conciliation of the accounts between the Petitioner and the Respondents.

VII. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioner and against the Respondents, thereby directing the Respondent No.2 to start issuing Purchase Orders to the Petitioner and pay the Market Value of Industrial Grade Salt to the Petitioner i.e.Rs.1600 Per MT for the supplies to made by the Petitioner under the Contract for the Supply of the Industrial Grade Salt dated 03.03.2020 to the Respondent No.2, release the payments as per markets rates to the Petitioner after deducting the interest and principal instalment from the invoice value;
Alternatively, this Hon'ble Court may kindly be pleased to Pass an Ex-Parte Order thereby appointing a Ld. Local Commissioner to ascertain the Market Value of Industrial Grade Salt of the specifications as agreed under the Contract for the Supply of the Industrial Grade Salt dated 03.03.2020 for the Financial Years 2020-21, 2021-22 and 2022-23 and direct the Respondent No.1 to issue Purchase Order at the Market Price so fixed by the Ld. Local Commissioner and release the payments as per markets

rates to the Petitioner after deducting the interest and principal instalment from the invoice value;

VIII. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioners and against the Respondents thereby directing the Respondents to secure the sum of claim of the Petitioner which is currently valued at Rs.30.96 Cr by either depositing the same before this Hon'ble Court and/ or furnish a bank guarantee of like amount and/ or by restraining the Respondents from dealing with, creating any Third-Party Rights alienating their assets including Immoveable Properties, Fixed Deposits, Shares and Deposits in Current Accounts;

IX. Pass an Ex-Parte Ad-Interim Injunction in favor of the Petitioners and against the Respondents thereby directing the Respondents to maintain Status quo win respect of the Contract for the Supply of Industrial Grade Salt, Rupee Loan Agreement, Tripartite Agreement, Agreement of Hypothecation, Deed of Mortgage, Non Disposal Undertaking and Deed of Guarantee;

X. Award the cost of the present petition in favor of the Petitioner;

XI. Pass any further orders as this Hon'ble Court may decd fit and proper in favor of the Petitioner as the case may require in the interest of justice and equity."

2. Mr Akhil Sibal, learned Senior Advocate appearing for the petitioner submitted that the petitioner is a Micro, Small & Medium Enterprise (MSME) Company engaged in the business of the manufacturing of the Industrial Grade Salt whereas the respondent No. 1 is a Non-Banking Financial Company engaged in the business of the advancement of loan and respondent No. 2 is a group company engaged in the manufacturing of Chemicals, Sugars and various other items.

3. The parties entered into a Long-Term Salt Supply Agreement dated 3rd March 2020 for supply industrial grade salt to avail loan for the purpose of development of the plant and business of the petitioner. It is submitted that the respondents conveyed their intention to purchase Two (2) Lakh MT Industrial Salt P.A from the petitioner, for the subsequent 5 years subject to issuance of proper Purchase Order by respondent No.2. It is submitted that Rs.13.5 crores was required for development of Salt Works and for establishment of a New Washery Plant, i.e., 2nd Washery Plant at Versamedi Unit of petitioner, and hence, it was decided that the respondents would provide Rs.10 crores as Loan by November, 2019 and balance 3.5 crores would be disbursed by petitioner. The burden of repayment in respect of the development loan of Rs.10 crores was decided to be on the respondent no.2 and was to be re-paid directly to the respondent no.1 under an Invoice Factoring arrangement.

4. It is submitted that the petitioner started to pour funds arranged independently by it for the development Works and establishment of New Washery Plant in accordance with the Agreement executed between the parties. Thereafter, the petitioner continuously pursued the respondent to release thier part of the funds amounting to Rs. 10 crores. However, the respondent delayed the release on one pretext or another.

5. Learned senior counsel submitted that after significant delay, the respondents vide their email dated 3rd March 2020 communicated the Draft Agreements, however, they were unconscionable and were drafted to entangle the petitioner in their malicious scheme. It is further submitted that while the petitioner disbursed Rs. 10 crores, the respondent only

disbursed Rs. 6.91 crores towards the Development Works. Moreover, despite repeated requests for furnishing of signed scanned copies of the Agreement, the respondent failed to do the needful.

6. Learned senior counsel submitted that due to the delay attributable to the respondent in disbursal of funds, the supply schedule had to be amended many a times between the parties and the New Washery Plant was made operational only in mid of March 2021. The petitioner, thereafter, released a further sum of Rs. 2.8 crores, however, the development of the Salt Works could not be progressed for various reasons, including onset of monsoon and COVID-19 pandemic.

7. It is further submitted that the respondent, thereafter, continued to default in releasing the funds as recorded in the Minutes of Meeting-Revised Plan for Pending Salt Dispatch and Release of Outstanding Payments wherein the respondents themselves agreed to immediately release such funds to the tune of Rs. 82 lakhs towards development and Rs. 33 lakhs for invoices of material already supply. The Notices of default were served on the respondents *vide* emails dated 2nd November 2021, 17th November 2021, 12th December 2021 and 23rd December 2021, however, the respondent did not take any steps. It is further submitted that despite the continuous failure on the part of the respondents to uphold their part of the obligations towards the Agreements signed between the parties, the respondents attempted to take over the Versamendi Unit.

8. It is submitted that the petitioner tried to resolve the disputes between the parties, however, all attempts failed. Therefore, the petitioner is before this Court seeking the reliefs as aforesaid till the final

adjudication of its claims to protect the rights and interests of the petitioner which are in grave threat by the actions of the respondents.

9. *Per contra*, Mr. Harish Malhotra, 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 wholly unwarranted and uncalled for in the facts and circumstances of the case. Learned senior counsel, however, stated that the respondent has no objection if an independent arbitrator is appointed by this Court to adjudicate upon the issues raised by the parties by way of the instant petition.

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

11. The petitioner has approached this Court by way of the instant petition seeking urgent relief against the respondent. Upon perusal of the record as well as the arguments advanced on behalf of the parties it is evident that there are disputes between the parties, which may be raised before and be adjudicated by an Arbitrator.

12. At this juncture, this Court finds it relevant to also reiterate the spirit of the Arbitration Act which encourages that the parties to a dispute to be referred to arbitration where there exists an arbitration clause/agreement and the disputes between the parties are arbitral in nature.

13. In the instant case, Section 27.7 of the Supply Agreement dated 3rd March 2020 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. Further, the learned senior counsel for the parties have also consented to the appointment of an arbitrator to adjudicate the disputes between the parties.

14. 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;

b. All contentions of the parties are expressly kept open.

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

the following address:

Justice (Retd.) Pradeep Kumar Singh Baghel

Flat No. 008, Ground Floor, Mahagun Mastero

Sector 50F, Noida 201307

E-mail ID: psbaghel6@gmail.com

Phone no. - 9936931931/9415237424

16. Mr. Harish Malhotra, learned senior counsel appearing on behalf of respondents, on instructions, submitted that the respondents shall not take any further action *qua* the letters dated 6th March, 2022 and 7th March, 2022 till 16th April, 2023.

17. Learned counsel for the petitioner is directed to approach the concerned Arbitrator and also file an application under Section 17 of the Arbitration Act before the learned Arbitrator before 16th April, 2023. It is also directed that the learned Arbitrator may adjudicate the said application under Section 17 of the Arbitration Act filed on behalf of the petitioner in accordance with law.

18. With the aforesaid directions, the instant petition stands disposed of, along with pending applications, if any.

19. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 12, 2023
dy/ms

Click here to check corrigendum, if any