O.A.No.395 of 2024 & A.No.2773 of 2024
in O.A.No.72 of 2024

KRISHNAN RAMASAMY, J.,

The application in O.A.No.395 has been filed for an interim order restraining the 2nd respondent from releasing a sum of USD 1,678,364 under the Letter of Credit dated November, 2022, which is due to expire on 17th June, 2024.

2. The application in A.No.2773 of 2024 has been filed to extend the order dated 19.03.2024 for a further period of 60 days in O.A.No.72 of 2024.

3. The learned counsel for the applicant would submit that initially, the original application in O.A.No.72 of 2024 was disposed of vide order dated 19.03.2024, wherein this Court passed the following order:

> *"The applicant has entered an agreement with the first respondent on 08.10.2021 which contemplates a Clause for resolution of dispute through Arbitration. Relevant Clause reads as under:-*

> *"6.Contract Dispute Resolution, Alteration and Termination:*
>
> *A.Any dispute arising from the execution of this contract shall be settled by both parties through mutual understanding and negotiation as far as possible. If the dispute is not resolved after continuous efforts then both parties may go to China International Economic and Trade arbitration commission/International court for arbitration.*
>
> *B.This contract may be changed or terminated after mutual agreement between the parties; if it is an irresistible natural disaster, Man made conditions such as war, India and China trade relation effecting supplies or any other condition which is out of control of buyer and supplier.*
>
> *C.If the supplier fails to deliver the goods on time due to the production accident, the supplier may change the delivery schedule with mutual understanding and accordingly the LC period will be extended. Any charges for extension of LC will be borne by supplier. D.In any case if supplier has failed to supply the contract equipments, the advance deposited will be refunded by supplier to buyer."*

2. Notice on the first respondent has been served. Pursuant to notice ordered on the respondents. However, the first respondent has not come forward to either enter appearance by filing a vakalat or a counter to oppose the *prayer in this Application. Earlier, an interim order was passed on 07.02.2024 restraining the second respondent from releasing a sum of US$ 16,78,364.00 subject to the applicant renewing the Letter of Credit. The second respondent has filed a counter stating that the amount under the Letter of Credit executed in favour of the first respondent at the behest of the applicant will not be transferred pending further orders. Same is taken on record.*

3. Considering the fact that the dispute is arbitrable pursuant to order passed by this Court, the second respondent is directed to keep on hold payment for USD 16,78,364.00 to the first respondent for a period of 90 days.

4. Since the dispute between the applicant and the first respondent is arbitrable, I deem it fit to direct the applicant to invoke the arbitration Clause under agreement/contract dated 08.10.2021 and seeks further extension of this order under Section 17 of the Arbitration and Conciliation Act, 1996, from the Arbitral Tribunal.

5. This Original Application stands disposed of with the *above liberty and observations."*

4. By virtue of the above order, the liberty was granted to the applicant to invoke the arbitration Clause under the Agreement dated 08.10.2021 and and further, this Court directed the applicant to seek further extension of the above order under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act") from the Arbitral Tribunal.

5. Further, he would submit that the applicant informed the 1st respondent with regard to the constitution of Arbitral Tribunal before International Economic and Trade Arbitration Commission, however, the same is yet to be constituted. At this juncture, the time period of 90 days granted by this Court for retaining the payment of USD 1,678,364 by the 2nd respondent is due to expire on 17.07.2024. Hence, the applicant had filed these applications.

6. There is no representation on behalf of the 1st respondent and hence, considering the submissions made by the learned counsel for the applicant

and the 2nd respondent, this Court is satisfied and is inclined to pass the following orders:

a) The 2nd respondent is directed to keep on hold the payment of USD 1,678,364 to the 1st respondent till the date of first sitting of Arbitral Tribunal constituted in terms of the Agreement dated 08.10.2021.

b) Thereafter, the Arbitral Tribunal shall decide with regard to the withholding of payment to the 1st respondent.

7. With the above direction, these applications are disposed of. No cost.

12.06.2024

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Note: *Issue order copy on 12.06.2024*

KRISHNAN RAMASAMY, J.,

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