$~49

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

% ***Date of Decision : 18.10.2024***

\+ **O.M.P.(I) (COMM.) 359/2024**

COGOPORT PRIVATE LIMITED .....Petitioner

Through: Mr. Rajiv Nayar, Sr. Adv. alongwith Mr. Mayank Mishra, Mr.Kamlendra Pratap Singh, Ms.Anukriti, Mr. Anuj Berry and Mr. A. Sen, Advocates.

versus

MR ANUJ BAJAJ AND OTHERS .....Respondents

Through: Mr. Shri Venkatesh, Mr. Aditya Vardhan Sharma, Mr. Akash Lamba and Mr. Vedant Choudhary, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*Oral*)

I.A. 42493/2024

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

O.M.P.(I) (COMM.) 359/2024

3. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter *'the A&C Act'*) has been filed by the petitioner on the basis of the Arbitration Agreement incorporated in the Shareholders Agreement dated 07.04.2022 (hereinafter *'the SHA'*) executed between the parties.

4. It is notable that apart from the SHA, a Share Purchase Agreement (hereinafter *'the SPA'*) was also executed between the parties on the same day

i.e. on 07.04.2022. Arbitration proceedings were initiated by the respondent on the basis of the Arbitration Clause contained in the SPA and the same culminated in an arbitral award dated 21.07.2024 (hereafter '*the Award*'). The said arbitral award reads as under :-

> *"(i) Declares that the termination of the SPA dated 07.04.2022 by Cogoport is illegal.*
>
> *(ii) Declares that Cogoport is liable to clear the amounts outstanding in the account of Mituj maintained by HDFC Bank being A/c No. 50200023245253 and get released the encumbrances created by the Bajaj Family on the two immoveable properties vide Deed of Mortgage dated 16.10.2020 (C-2) House No. 4910, DLF Phase IV, Gurugram, Haryana- 122002 and Flat No. 604, 6th Floor, Tower No. T-5, Park View Residency, Gurugram, Haryana-122017.*
>
> *(iii) Awards the Claimants the sum of INR 2,38,22,089.00; the sum of INR 4,25,00,000.00; and the sum of INR 12,50,00,000.00 against Cogoport.*
>
> *(iv) On the sum of INR 2,38,22,089.00 interest is awarded to the Claimants @8% p.a. w.e.f. 16.11.2022 till date of payment, which date of commencement of interest has been culled from the email (RD-1/14), the statement of account attached therewith shows that by said date the 90+ days receivables have been recovered in excess of the said amount.*
>
> *(v) On the sum of INR 4,25,00,000.00, the second long stop date for the second Tranche to be payable being 15.01.2024, interest is awarded to the Claimants against Cogoport@8%w.e.f. 15.01.2024 till date of payment.*
>
> *(vi) No interest is granted on the sum of INR 12,50,00,000.00 being the sum payable by Cogoport to the Claimants towards Tranche III for the reason said payment would be due and payable to the Claimants by Cogoport on 01.04.2025.*
>
> *(vii) Declares that the dues of the workmen of Mituj in the sum of INR 1,80,79,960.00 together with such interest which is awarded to the workmen by the court/Tribunal of competent jurisdiction shall be cleared by Cogoport.*

9(Lvii) Since the Claimants were forced to litigate and the stand of Cogoport being found to be frivolous, malicious and vexatious the Claimants are awarded the cost as per the cost memo filed in sum of INR 1,62,67,514.00 which comprises legal fee in sum of INR 72,67,514.00 and fee paid to the Arbitral Tribunal in sum of INR 90,00,000.00."

5. In the aftermath of the said award, a petition under Section 9 of the A&C Act was filed by the respondent, wherein *vide* order dated 10.09.2024, a Coordinate Bench of this Court directed as under:-

"1. Pursuant to the order dated 31.07.2024, Mr. Rajiv Nayar, learned Senior Counsel for respondent No.1, states that respondent No.1 will ensure that it maintains a minimum balance of Rs.20 crores in its bank accounts and fixed deposits, which can be utilised to satisfy the monetary component of the award dated 21.07.2024. An undertaking to this effect, signed by the Managing Director and Chief Financial Officer of respondent No.1 – company, supported by a Board Resolution, be filed within two weeks from today. Alongwith the affidavit, respondent No.1 will also file the bank statements showing the balance to the aforesaid extent. Bank account numbers may be redacted from the affidavit served upon the petitioner.

2. Mr. Nayar states that the respondents are in the process of filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], challenging the award. The aforesaid directions will be subject to any orders that may be passed by the Court in proceedings under Sections 34 and/or in enforcement proceedings, under Section 36 of the Act.

3. The petition is disposed of with these directions."

6. It is submitted by the learned senior counsel for the petitioner that the petitioner has complied with the directions contained in Para 1 of the aforesaid order, however, directions contemplated in Para 9(ii) of the Award (reproduced herein above) are yet to be complied with.

7. Learned senior counsel for the petitioner confines himself to seeking that (i) the petitioner be permitted to enforce its rights under the SHA *qua*

inspection of certain records of the company in question; (ii) any surviving assets of the company be not dissipated by the respondent.

8. Issue notice.

9. Learned counsel as aforesaid accepts notice on behalf of the respondent.

10. At the outset, learned counsel for the respondent submits that in terms of the Award, the entire shareholding and the control of the company is to vest in the petitioner, upon the petitioner's compliance with the directions contained in the Award, particularly the directions regarding payment of the awarded amounts to the petitioner. Nevertheless, he has no objection to the petitioner exercising its right under Clause 11 of the SHA dated 07.04.2022. The said Clause confers certain information rights of the petitioner ; the relevant sub-clauses read as under:

> *"11. INFORMATION RIGHTS, ACCOUNTING AND AUDIT*
>
> *11.1. Information rights*
>
> *(f) The audited financial statements, including cash flow statements of the Company within 180 (one hundred and eighty) days of the end of the relevant Financial Year or within such maximum period as may be permitted under the Applicable Law;*
>
> *(g) The unaudited financial statements, including cash flow statements of the Company within 60 (sixty) days of the end of the relevant Financial Year;*
>
> *(h) The quarterly consolidated management information statements, within 45 (forty five) days of the end of the relevant financial quarter;*
>
> *(j) Certified true copies of the minutes of the meetings of the committees, Board as wellas the Shareholders within 15 (fifteen) days from the date of such meetings;*
>
> *11.3. Right to review books and records*

At all times, the Investor or the designated representatives of the Investor shall have full accessto, and right to make copies of all books of account, records and the like of the Company andthe right to interview any officers and employees of the Company.

11.4. Inspection rights

Upon providing a prior notice of 7 (seven) days to the Company, the Investor may conduct an inspection of the Company, either by itself or through an authorized representative, and the Company agrees and undertakes to facilitate such audit exercise by providing all relevant assistance in that regard."

11. Learned counsel for the petitioner submits, on instructions, that any inspection that may be required by the petitioner shall be duly facilitated by the respondent, subject to adherence with the procedures contemplated under the SHA. The said statement is taken on record.

12. As far as the second relief pressed by learned senior counsel for the petitioner, viz. that the respondent be restrained from dissipating/alienating any assets of respondent no.3, it is pointed out by the learned counsel for the respondents that the Award itself notes that even prior to the termination of the SPA on 07.02.2023, the company had been denuded of its assets. In this regard, certain adverse observations were made by the Arbitral Tribunal regarding the conduct of the present petitioners. He draws specific attention to the following portions of the Award:

"9(xxii) Cogoport has obviously played it dirty. After shifting all activity on its Platform and as recorded in the email by Mr. Rahul Kumar: We will be going life with the platform on Monday 17th Oct. for FTL, PTL, and Air Domestic Services, started raising all and sundry frivolous objections.

9(xxiii) Regarding the charge that the assets of Mituj were flittered away, the Tribunal notes that the Observation Summary-

Financials forming part of Valserve report (Pg. 93 of rejoinder) records the sale of assets in FY 2018-19 to FY 2020- 21 with a note that the asset block of the company has been reduced. Suffice it to state that vehicles purchased by Mituj had been sold and the amount realized had been credited in the account of Mituj. There is no evidence of any vehicle being sold after 01.01.2022 i.e. after the third quarter of FY 2021-22 ended on 31.12.2022. The Tribunal adds a caveat: during arguments it was not informed that on account of default in repayment, HDFC Bank took possession of a few vehicles belonging to Mituj and sold the same and credited the amount realized in the loan account of Mituj."

13. Be that as it may, learned counsel for the respondent submits, on instructions, that the respondent shall refrain from dissipate/alienating or creating any third party rights in respect of any asset of the respondent no.3, except to the extent that the financial institutions in whose favour pre-existing rights or encumbrances have been created, cannot be prevented from taking necessary consequential measures. The said statement is taken on record.

14. In view of the aforesaid statements made by learned counsel for the respondent, the reliefs which are pressed for by learned senior counsel for the petitioner, stand satisfied. No other relief(s) is pressed for.

15. As such, no further orders are required to be passed in the present petition and the same is accordingly disposed of.

16. Needless to say, the directions/observations made hereinabove are without prejudice to the rights of the parties to take appropriate steps *qua* the Award rendered in the context of the SPA, and also without prejudice to any arbitral proceedings that may be initiated under the SHA, and the claims/counter-claims that may be raised therein. It is made clear that this Court has not expressed any opinion as regards the merits thereof.

OCTOBER 18, 2024/*at* **SACHIN DATTA, J**