ORDER OCD- 6

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA NO: GA-COM/1/2025
AP-COM/260/2025
RESPONCE RENEWABLE ENERGY LTD.
VS
NATURALS DAIRY PVT LTD AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th May, 2025.

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.
Ms. Noelle Banerjee, Adv.
Mr. AltamashAlim, Adv.
Ms. Joyshree Ghosh, Adv.
Ms. Priyanshi Bainwala, Adv.
...for petitioner.

Mr. Debnath Ghosh, Sr. Adv.
Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Ms. Akanksha Chowdhury, Adv.
...for respondents.

1. GA-C0M/1/2025 is an application for setting aside and/or stay of the operation of the order dated April 30, 2025 passed in AP-COM/260/2025. The order was passed ex-parte on the plea of urgency. The order dated April 30, 2025 was passed in an application under Section 9 of the Arbitration and Conciliation Act, 1996, upon the Court being, prima-facie, satisfied on its jurisdiction, as also the right of the petitioner under the Share Subscription and Shareholders Agreement dated September 5, 2024 (hereinafter referred to as 'the said agreement').

2. On the last occasion, the petitioner prayed for urgent protection of the money that was invested in the respondent/applicant No. 1, in view of the breach committed by the respondents of some of the clauses contained in the said agreement. Clause 2.3 of the agreement provided that a maximum of 39% of the total paid-up share capital of the company was to be allotted to the petitioner on pro-rata basis. The said clause was breached. Reliance was placed on clause 12.2.5 of the said agreement which provided that the company i.e. the respondent No. 1 was to maintain a separate and exclusive bank account for the expenses and proceeds of the Ethanol Division, which was to be jointly operated by one authorized signatory of the promoters and the petitioner. Both the signatories were to jointly operate the bank account. However, for ease of functioning, one representative to be mutually agreed upon by the parties could be authorized to operate the bank account. Such authorization could not exceed operation of more than Rs. 5 lakhs. The bank's statementswere relied upon to demonstrate that one Ayush Raj i.e. respondent No.4 had opened the account in the company's name and also used his own name. The operation of the account was being done by a single signatory. Clause 12.4 of the agreement was placed in great detail to demonstrate that capital expenditure could not be undertaken unless approved by the Board. The composition of the Board, according to the agreement, was to include a representative of the petitioner. It was urged that the representative of the petitioner was not called to the meetings. Clause 16.1 of the said agreement provided for resolution of dispute by

arbitration. The seat and venue of arbitration was provided to be either Patna or Kolkata. On the point of jurisdiction, Mr. Mitra had urged that, jurisdiction of Patna had not been agreed. Hence, Kolkata jurisdiction was not ousted. One of the respondents was carrying on business within the ordinary original jurisdiction of this Court and the agreement was signed within the jurisdiction of the Court, at the office of the petitioner. This Court found, prima facie, that in the letter dated March 24, 2025 issued by the company, there was an admission by the respondents that, Rs.13.35 crore had been invested by the petitioner. Rs.6 crore therefrom had been diverted to the Dairy Division of the respondent No.1, although the money was to be invested in the Ethanol Division. The agreement between the parties was executed to record that the investments were made by the petitioner and certain terms and conditions were to be complied with by the respondents. There were reciprocal obligations. Mr. Mitra, learned senior advocate submitted that upon termination of the said agreement, the petitioner's money claim for a substantial amount, was required to be protected.

3. Under such circumstances and having found the above facts to be supported by the documents annexed to the application, this Court issued an injunction, restraining the respondents from operating the bank account No.3891002900000020 maintained with Punjab National Bank, SSI Branch, Patna at JJ Complex, East Boaring Canal Road, Patna, Bihar, without keeping aside a minimum balance of Rs.13 crore to be maintained continuously in the said account. The points of maintainability,

jurisdiction etc. were kept open and the respondents were granted liberty to pray for variation, vacation and/or modification of the order.

4. Accordingly, the respondent Nos.1 and 2 have filed this application and they pray for vacation of the order of injunction on the following grounds:-

(a) The account in respect of which the order of injunction had been passed was a Trust and Retention Account. The account was the designated account created by a Trust and Retention Account Agreement dated August 30, 2024.

(b) All disbursals as per the loan agreement with the lender were to be made through the designated account.

(c) Contributions by promoters would also be made through the designated account.

(d) The designated account would be held by the Trust Bank and was to be operated in terms of the agreement.

(e) Only the Trust Bank could appropriate the amounts credited to the designated account in accordance with clause 3.2(g) of the said agreement, which provided the waterfall mechanism to be followed for disbursal of receivables from the borrower i.e. the respondent No.1, by third parties.

(f) The Share Subscription and Shareholders' Agreement was entered into between the parties on September 5, 2024, whereas the Trust and Retention Account Agreement was entered on August 30, 2024.

(g) The agreement between the parties provided for pledge of 51% shares by the shareholders on pro rata basis in favour of IREDA (lender) upon the successful allotment of shares.

(h) The termination of the said agreement by the said petitioner, was contrary to the terms of the contract. Termination could only be done by mutual written agreement.

(i) The agreement also provided that the petitioner would not exit the company before seven years from the date of signing of the agreement.

(j) The order passed on the earlier occasion should be vacated as the same was passed without taking into consideration the clauses of the Trust and Retention Account Agreement as also the Share Subscription and Shareholders' Agreement.

5. Having heard the learned Advocates for the respective parties, this Court finds that the Trust and Retention Account Agreement preceded the Share Subscription and Shareholders' Agreement. The Share Subscription and Shareholders' Agreement mentions the designated account. The disbursal of the loans, receipt of payment from the buyers, payment on behalf of the company to the vendors etc. were to be made from the designated account. Punjab National Bank was the trust bank and it controlled the said account. The lender had a say in the operation as well.

6. Injunction is granted on the assessment of prima facie case, balance of convenience and inconvenience as also irreparable loss and injury.

7. This Court has already held that the petitioner hasmade out a prima facie case of commission of breach of certain clauses of the agreement by the respondents. Clauses 2.1 and 2.3 of the Share Subscription and Shareholders' Agreement had not been complied with. The investment of more than Rs.13 crores in the said company (Ethanol Division) by the petitioner is an admitted fact and the security for such investment was not extended as per the agreement.

8. Now comes the question of balance of convenience and inconvenience. The records reveal that the injunction was issued on the designated account. The result of such injunction is that the entire activity of the company from the said account would come to a standstill. Disbursal to persons entitled to payment from the company, which was solely to be done through the designated account, to be operated by the Trust Bank, will be affected.The entire commercial activity of the company will be prejudiced. The petitioner was aware of such Trust and Retention Account. Moreover, the clauses of the agreement do not support the unilateral termination. The order dated April 30, 2025 cannot continue. The injunction is vacated.

9. Thus, the respondents are directed to comply with clauses 2.1 and 2.3 by extending a maximum 39% of total paid up share capital which was to be allotted to the petitioner on pro rata basis, to the extent of the investment made. This compliance should be completed by the respondent No. 1 and/or its representatives and assigns within a period of four weeks from

date. It is further directed that the nominee of the petitioner shall be allowed to participate in the Board Meetings. He shall be allowed to exercise all rights emanating from the agreement. Clauses 10.7, 10.10 and 10.10.2 shall be strictly adhered.

10. With the above observations and directions, the application is disposed of.

11. The issuance of the shares and acceptance of the respondent No.1 shall be without prejudice to the rights and contention of the parties.

12. This order is valid for a period of 90 days.

13. Further prayers for interim protection may be made before the learned Arbitrator. Parties shall take steps for appointment of Arbitrator. All observations are tentative.

14. The order dated 30th April 2025 stands modified to the above extent.

15. The application IA-GA/COM/1/2025 stands disposed of.

(SHAMPA SARKAR, J.)

S Kumar / R. D Barua / GH / JM