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

+ W.P.(C) 9059/2025 and CM APPL.38566/2025 (Stay)

M/S SUKHDEV PRASAD GOENKA & ANR.Petitioners

Through: Mr. V.K. Shukla and Mr. Madhav
Shukla, Advs. (through v/c)

versus

ADITRI CHEMICALS AND MINERALS PVT. LTD.....Respondent

Through: Ms. Shweta and Ms. Akansha Singh,
Advs. (through v/c)

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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04.07.2025

1. The present petition has been filed by the petitioners assailing an order dated 30.05.2025, passed by the learned Sole Arbitrator in Arbitration Case Ref. No. DIAC/6825/09-23, whereby the petitioner's application under Section 23 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "*the A&C Act*"), seeking to place on record additional documents and an affidavit of evidence, has been rejected.

2. Order dated 30.05.2025 is as under –

"1. This order will dispose of an application filed by the Respondents on 23rd May 2025, seeking permission to place on record an additional Affidavit of Evidence of Mr. Ashish Goenka (RW-2).

2. The background of the present application is that two witnesses have been examined on behalf of the Respondents. The first was Mr. Anand Goenka (RW-1), whose cross-examination was concluded on 10th May 2025. However, in relation to certain questions put to him, Mr. Anand Goenka (RW-1) had responded saying "I will check and revert". Regarding such questions, he was directed to file an additional Affidavit, which he did on 16th May 2025.

3. The second witness for the Respondents, Mr. Ashish Goenka (RW-2), was to be examined on the same date i.e., 10th May 2025. However, at



the request of counsel for the Claimant, the said cross-examination was deferred to 21st May 2025. In between these two dates, on 15th May 2025, Mr. Ashish Goenka, without seeking leave of the Tribunal, filed an additional Affidavit of Evidence enclosing two documents described by him as 'Exhibit E' and 'Exhibit F' . The first was stated to be a Raising Agreement dated 30th May 2018 between M/s SKG Manganese Pvt. Ltd. and one Mr. Haji Gulam Mohammad. The second was stated to be an agreement dated 9th October 2018 between M/s SKG Manganese Pvt. Ltd. and M/s Ram Mining Services. During his cross-examination, which was conducted on 21st May 2025, when Mr. Ashish Goenka sought to rely on the above documents, the Tribunal did not permit it since no application was filed by the Respondents for placing on record the said documents. Counsel for the Respondents then prayed for time to file such an application. In the order dated 21st May 2025 passed by the Tribunal while granting time to the Respondent's till 5pm on 26th May 2025 to file such application, it was directed that if the application was so filed, the Claimant would file its reply, thereto, by 5pm on 29th May 2025.

4. Thereafter, on 23rd May 2025, the Respondents filed the present application seeking permission to place on record the above two documents i.e., 'Exhibit E' and 'Exhibit F'. The Claimant has filed the reply to the said application, objecting to the documents being taken on record for the following reasons:

i. The said documents were sought to be tendered after the completion of evidence of the parties and would delay the proceedings further.

ii. That the documents placed on record are not relevant to the dispute, since, the parties thereto are not parties in the present arbitral proceedings.

iii. The Respondents are deliberately trying to delay the conclusion of the arbitral proceedings and have already been given sufficient opportunities to pace their evidence on record.

5. The Tribunal has heard the submissions of counsel for the parties. It was the earnest submission by Mr. Shukla, learned counsel for the Respondents that the two documents sought to be now placed on record demonstrate the connection of Mr. Abhiram Sharma (CW-1) with M/s SKG Manganese Pvt. Ltd., which connection he was denying during his cross-examination. It is submitted that he was acting on behalf of M/s SKG Manganese Pvt. Ltd. and these documents demonstrate the falsity of the statements made by CW-1 and therefore, these documents should be permitted to be placed on record. He further pleaded that this Tribunal should also order the recall of CW-1 to be cross-examined based on



these documents.

6. This Tribunal is not inclined to entertain the present application for several reasons. First, it is not as if that the Respondents were unaware of the timebound nature of the proceedings and the need to place whatever evidence was available with them in good time before the Tribunal. The proceedings under the Arbitration and Conciliation Act, 1996 ('Act') are indeed time-bound and for a party to wait till the fag end of conclusion of the evidence of the parties to present additional documents cannot be viewed as a reasonable conduct. There is no doubt that entertaining an application at the present stage and then directing recall of Claimant's witness would delay the proceedings interminably.

7. The second reason is that although the Respondents claim that they became aware of the existence of these documents only after 10th May 2025, the averment in the application in this regard is not very convincing. One of the parties to the first mentioned document i.e., Exhibit E is Mr. Haji Gulam Mohammad and the document in question is dated 30th May 2018. It is claimed that the said Mr. Haji Gulam Mohammad visited the office of the Respondents on 12th May 2025 'in connection with business dealings'. It cannot be a mere coincidence that two days after the conclusion of cross-examination of CW-1, the said document surfaced.

8. The third reason is that the parties to the said document dated 30th May 2018, and the parties to the agreement that forms the subject matter of the present arbitral proceedings, viz., the agreement dated 15th March 2017 are not the same. Further, these documents are not contemporaneous. The date of Exhibit E and for that matter Exhibit F is more than a year after the execution of the agreement between the parties to the present arbitral agreement. Consequently, the Tribunal is not satisfied that the said documents have any immediate relevance to the dispute on hand.

9. Fourthly, when the Tribunal pointedly asked counsel for the Respondent whether the entire case of the Respondent hinged only on these two documents and nothing else, the answer was in the negative. In other words, the Respondents are relying on other materials to buttress their argument that the Claimant's witness was not speaking the truth. Consequently, the Tribunal is of the view that no demonstrable prejudice is going to be caused to the Respondents, if the said documents are not taken on record. In any event, it is clarified that the mere dismissal of the present application will not preclude the Respondents from advancing arguments as to the reliability of the statements made by counsel for the Claimant.



10. For all the aforementioned reasons, the Tribunal is not satisfied that there is any merit in the present application. It is dismissed as such. Consequently, the further application of the Respondents seeking to recall Mr. Abhiram Sharma (CW-1) is also dismissed.

11. The next hearing of the Tribunal will take place in physical mode in the office of Arbitrator on 19th July 2025 at 3 pm and 21st July 2025 at 5pm.”

3. A perusal of the order dated 30.05.2025 reveals that the same is a reasoned order which gives cogent reasons for rejecting the application of the petitioner.

4. It is no longer *res integra* that under Section 226 of Constitution of India the scope of interference with arbitral proceedings is extremely circumscribed and is to be exercised in rare occasions. In this regards reliance is apposite to judgments rendered by the Supreme Court in **Bhaven Constructions vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.**, (202) 1 SCC 75 and this Court in **Sadbhav Engineering Ltd. vs. Micro and Small Enterprises Facilitation Council and Ors.**, 2025 SCC OnLine Del 319 and **Surender Kumar Singhal and Ors. vs. Arun Kumar Bhalotia and Ors.**, 2021 SCC OnLine Del 3708.

5. Given the limited scope of these proceedings and the cogent reasoning contained in the impugned order passed by the learned Sole Arbitrator, this Court finds no scope for interference with the same in proceedings under Article 226 of the Constitution of India.

6. Needless to say, in case the petitioner is aggrieved with the same, it is at liberty to pursue its remedies within the framework of the A&C Act.

7. Consequently, this Court finds no merit in the present petition. The same is accordingly, dismissed.

8. Needless to say, all rights and remedies of the petitioner under the



framework and regime of the A&C Act are reserved.

JULY 4, 2025/cl

SACHIN DATTA, J