

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 3rd APRIL, 2024

ARBITRATION CASE No. 18 of 2023

BETWEEN:-

**ILWONHIBRAND CO. LTD. THROUGH AR SHRI SHIV RATHORE 2173
SHUBHAANGAN OMAXE CITY 1 BALYA KHEDA, DISTRICT INDORE
(MADHYA PRADESH)**

.....PETITIONER

**(SHRI AMIT DUBEY – ADVOCATE FOR THE PETITIONER[THROUGH
V.C.]**

AND

**1. MAHAKALI FOODS PVT. LTD. 48 BENGALI COLONY KANDIA
ROAD, DISTRICT INDORE (MADHYA PRADESH)**

SHRI PARITOSH KUMAR SAHA OCCUPATION: DIRECTOR 48,

**2. BENGALI COLONY KANADIA ROAD, INDORE (MADHYA
PRADESH)**

SHRI PANKAJ KUMAR SAHA OCCUPATION: DIRECTOR 48,

**3. BENGALI COLONY KANADIA ROAD, INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

**(SHRI ANIKET NAIK, DY. ADVOCATE GENERAL APPEARED AS
AMICUS CURIAE)**

Reserved on : 09.01.2024

Pronounced on : 03.04.2024

This petition having been heard and reserved for order coming

on for pronouncement this day, *Hon'ble Shri Justice S.A. DHARMADHIKARI* pronounced the following

ORDER

Matter is heard finally with the consent of parties.

The present application u/S 9 r/W Section 2(1)(f) of Arbitration & Conciliation Act, 1996[referred to as ' the Act of 1996' hereinafter] and Section 10 of the Commercial Courts Act, 2015 has been filed seeking interim measure of protection and securing the amount involved in the arbitration.

2. Heard on I.A. No. 2525/2023, an application u/S 151 of CPC r/W Rule 31 of Chapter II r/W 1(8)(9) & 22 of Chapter IV of the High Court of Madhya Pradesh Rules, 2008[referred to as “Rules, 2008' hereinafter].

3. Facts in brief are that petitioner had business relationship with the respondent no.1 to 3. A sale contract was entered into between the petitioner and the respondents on 18.09.2019 for supply of 2014 MT ' Full-Fat Soya Grits'. However, respondents committed breach of contract in as much as that neither the quantity supplied was as per the contract nor the quality. Even for the sub standard material supplied by the respondent, the authorities conducted raid and sealed the premises of the petitioner. Petitioner notified the respondent about the breach. Respondent though admitted the supply of substandard quality under the contract and promised to compensate the petitioner but no such compensation was ever paid. Another contract was entered into between the petitioner and the respondent wherein respondent insisted for enhanced rate and issued proforma invoice and payment was duly made by the petitioner. However, respondent again committed breach of contract by not supplying the material as per the timeline mandated

in the contract and in fact only supplied goods worth \$1,42,500 despite receiving advance payment of \$375,000 and thereafter respondent did not made any supply and started avoiding answering the calls. Again with malicious intent, respondents communicated that it shall pay the balance amount to the petitioner, but no heed has been paid. Efforts to resolve the dispute failed since the respondent did not want to and stopped making communication with the petitioner. Since the contract between parties provides for resolution of dispute by way of arbitration to be conducted in India, the petitioner filed petition u/S 9 of the Act of 1996 before the Commercial Court which was dismissed for want of jurisdiction with liberty to the petitioner to approach appropriate forum. Hence, the present petition has been filed.

4. Learned counsel for the petitioner submitted that evidence of breach committed by the respondent are available and, therefore, an order of interim protection securing the amount involved in the arbitration is required to be passed since despite sending several reminders, respondent kept making false promises, but neither exported the balance shipment nor compensate for the delivery of sub-standard quality of products thereby putting the petitioner to suffer irreparable loss.

5. Adverting to the I.A. No. 2525/2023, learned counsel submitted that the present petition was classified under the category of Arbitration cases which corresponds to Rule 3 of Chapter II of the M.P. High Court Rules, 2008. He further referring to Section 2(e) and (f) of the Act of 1996 submitted that this petition can be heard by this Court being the jurisdictional Court as per provisions of law and the present arbitration being an international commercial arbitration.

6. Learned counsel further submitted that in an identical situation the Apex Court in Civil Appeal No. 3695/2020 [S.D. Containers V.

Mold Tek Packaging Ltd.] has remanded the case to the Court to be tried under its original civil jurisdiction wherein the Court held that the Court while invoking its powers under Clause 9 of Letter Patent read with Rule 1(8) of Chapter IV of the Rules can exercise its extraordinary civil jurisdiction. Hence, the petition of petitioner which is made under Section 9 of the Act of 1996 is exclusively triable by this Court and, therefore, deserves to be classified under the relevant category as may be determined by this Court under the relevant provisions. Hence, the present petition be deleted from the category of Arbitration Case and be listed under the relevant category before appropriate Single Bench.

7. Shri Aniket Naik, appointed as *Amicus Curiae* submitted that petitioner has already approached the Commercial Court under Section 9 of the Act of 1996 seeking interim protection. However, learned Commercial Court dismissed the application filed by the petitioner holding the same as not maintainable for want of jurisdiction as the matter pertains to international commercial arbitration and not domestic arbitration. However, liberty is reserved to move fresh application before appropriate forum.

8. Thereafter, petitioner has preferred the present application under Section 9 r/W Section 2(1)(f) of the Act of 1996 before this Court which is not maintainable in view of the fact that as per Chapter 2 Rule 3 of Rules 2008, an application under Section 11 of the Act of 1996 shall be registered as an Arbitration Case which deals with appointment of Arbitrator which is not the relief as sought for by the petitioner as by the present petition u/S 9 r/W 2(1)(f) of the Act of 1996, petitioner is seeking interim protection which cannot be granted by this Court.

9. Learned *Amicus Curiae* has further drawn the attention of this

Court to sub-rule 8 Rule 10 Chapter 2, of the Rules 2008 which reads thus:

10. Miscellaneous Civil Case - Ordinarily following matter shall be registered as a Miscellaneous Civil Case -

(1)

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8) any other application of civil nature, not falling under any of the specified categories, which is not interlocutory to any proceedings.

10. It is submitted that petitioner can very well file Miscellaneous Civil Case in terms of sub-rule 8 of Rule 10 of Chapter 2 of Rules of 2008, which can be entertained and appropriate orders can be passed.

11. Heard, learned counsel for the petitioner as well as Shri Aniket Naik.

12. The petitioner has moved an application Section 9 r/W Section 2(1)(f) of the Act of 1996 seeking interim protection before the Commercial Court which stood dismissed for want of jurisdiction as the matter pertains to international commercial arbitration and the petitioner was given the liberty to move fresh application before appropriate forum. Admittedly, the next appropriate forum is to approach this Court. However, the present petition itself is not maintainable on twin grounds:

- (i) Firstly , the petitioner resorting to the liberty granted by the Commercial Court has filed present petition under Section 9 r/W Section 2(1)(f) of the Act of 1996 seeking interim protection

before this Court which cannot be entertained by this Court.

(ii) Secondly, as rightly pointed out by *Amicus Curiae*, in terms of Chapter 2 Rule 3 of the Rules of 2008, an application u/S 11 of the Act of 1996 shall be registered as an arbitration case which deals with appointment of Arbitrator which is not the case herein.

13. In the considered opinion of this Court, looking to the nature of case and the relief as sought for by the petitioner, the same does not fall within the category of an Arbitration Case. Rather the same ought to have been filed as a Miscellaneous Civil case falling within the ambit and scope of any other application of civil nature, not falling under any of the specified categories in terms of sub-rule 8 of Rule 10 of Chapter 2 of Rules of 2008.

14. In view of the above discussion, I.A. No. 2525/2023 is hereby rejected.

15. Accordingly, the present petition is hereby dismissed with liberty to the petitioner to file miscellaneous civil case in terms of sub-rule 8 of Rules of 2008.

16. This Court appreciates the efforts made by Shri Aniket Naik in assisting the Court as *Amicus Curiae*.

(S.A. Dharmadhikari)
Judge

(Devnarayan Mishra)
Judge