

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL ARBITRATION PETITION  
NO. 308 OF 2022  
WITH  
INTERIM APPLICATION NO. 3193 OF 2022  
IN  
COMMERCIAL ARBITRATION PETITION  
NO. 308 OF 2022

Sara Chemicals and Consultants .. Petitioner  
Versus  
Deepak Nitrite Limited .. Respondent

...  
Mr.Virendra Tulzapurkar with Ms.Alpana Ghone Karthik Somasundram, Ms.Khyati Mehrotra i/b Bharucha & Partners for the petitioner.  
Mr.Sachin Mandlik with Ms.Kareena Tahilramani, Ms.Nishi Doshi i/b Mandlik & Partners for the respondent.

CORAM: BHARATI DANGRE, J.  
DATED : 19<sup>th</sup> JANUARY 2023.

**JUDGMENT:-**

1 In the Technology Development Services Agreement entered on 8/12/2017, the parties to the present petition are introduced as under :-

“Deepak Nitrate” (respondent herein) being referred to as ‘the Company’ and the petitioner herein “Sara Chemicals & Consultants” being referred to as “SCC”. I, therefore, deem it

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appropriate to continue to refer to the parties, in like manner as their reference in the subject Agreement.

2 A Technology Development Service Agreement was entered between the parties on 8/12/2017 for developing cost effective technology for production of a chemical intermediate called DMS from PNT.

The Petitioner, a proprietary concern, is engaged in the process of development of organic chemicals, consultancy and operate a research and development facility for lab and pilot trials at Navi Mumbai, and it claim to possess an expertise for developing efficacious and novel process technologies as of date, struck a deal with the Respondent, engaged in manufacturing and selling of chemical intermediates for industrial use in India.

With the expertise owned by them in the respective field, an agreement was entered, on 8/12/2017 in form of “Technology Development Service Agreement”, for developing cost effective technology for production of chemical intermediate, called DNS. The agreement stood amended by two addendums.

3 The dispute arose between the parties as the petitioner claim that the respondent has falsely termed the trials as unsuccessful and on false pretext, wrongly terminated the contract, and refused to issue the work order for the basic and detailed engineering.

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The petitioner, on one hand, claim that it has successfully developed the processes and technology, but since the contract was terminated, the respondent invoked arbitration and sought appointment of a sole arbitrator in a Commercial Arbitration Petition filed before this Court.

It staked a claim against the petitioner 'SCC' for an amount of Rs.443.66 crore on account of the damages and sought the relief of payment of amount of Rs.1,70,66,000/- on account of the refund, together with interest at the rate agreed at 15% p.a. Certain ancillary reliefs were also sought before the Tribunal.

In the said proceedings, the petitioner submitted a counter claim after filing its detailed Statement of Defence (SOD) contesting the claim filed by the respondent/claimant and it prayed for an award in it's favour by declaring the termination of the contract as wrongful and by holding that the counter claimant has exclusive right, title and interest to the Intellectual property in the process developed including the data, samples, process, docket etc. Damages are also claimed on account of the wrongful termination of the contract along with certain other ancillary reliefs.

4 A petition filed u/s.9 before this Court by the respondent Company before invocation of arbitration was disposed off on 4/2/2022, subject to issuing a formal notice

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invoking arbitration, within a period of 21 days of setting out the claim and demand.

Pending the arbitral proceedings, the parties agreed to an order, which has been distinctly divided into two parts, one regarding 'Equipment' and other regarding 'Data samples'.

In the first para, the SCC, Respondent therein agreed as under :-

- (a) Regarding equipment :-
- (i) The respondent had purchased equipment from funds provided by the petitioner. The invoices are in the name of the petitioner.
  - (ii) In 21 days, the respondent will deliver these items of equipment to the petitioner.
  - (iii) The petitioner will pay for the costs of transportation from the respondent's factory or unit.
  - (iv) A list of the equipment along with the supporting documents such as invoices will be put on Affidavit and this will be furnished to the other side as also filed in Court.
  - (v) The petitioner has a list of equipment that includes more items that the respondent accepts or acknowledges. Mr.Mody limits his statement to the equipment items accepted by the respondent. He agrees that the proceeding explained his stand in regard to the balance items of equipment claimed by the petitioner. That affidavit is also to be filed within 21 days from today.

On the other hand, the petitioner before the Court in Section 9 petition, 'the Company' agreed to pay the cost of the

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transportation from respondent's factory or unit and it also agreed, that a list of Equipments along with supporting documents and invoices will be put on affidavit. The learned counsel for the SCC also agreed as under :-

(vi) Mr.Mody agrees that, as a precautionary measure, the dismantling of the equipment will be in the presence of representatives of the original vendor or the original equipment manufacturer. The respondent will maintain a log of this dismantling showing the item dismantled, the date and time, and the persons present. These details are to be filed in the arbitration proceedings.

5 As regards data sample, the consensus arrived between the parties was recorded as under :-

(b) **Regarding Data Samples** The pilot or testing done by the respondent and which the respondent says is complete, but which the petitioner says is partial, certainly generated some data and some samples. I am not accepting the petitioner's request for a hand over or delivery of that data or those samples but instead will accept as reasonable Mr.Mody's statement that the data and samples relating to the subject project for an on behalf of Deepak Nitrite Limited will be separately identified, appropriately packed, stored or preserved".

6 Keeping all the contentions expressly open, the order regarding Data and Samples was directed to continue, pending the completion of arbitration and until the award is made and communicated to the parties.

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By consent, the Sole Arbitrator was appointed who was conferred with liberty to consider the interim applications filed before it.

7           The arbitration proceedings commenced before the sole arbitrator and the Company filed its claim, whereas the SCC files its Defence and Counter Claim. The notes of evidence of the claimant was tendered, and on 14/2/2022, the proprietor of 'SCC' Dr. Sunil Arora, was subjected to cross-examination by counsel for the Company/claimant and he was asked certain questions which were answered by him and this gave rise to the present dispute. It is necessary to reproduce the relevant questions since the application which was preferred before the Tribunal and upon which the impugned order is passed revolve around the said questions.

Q.90           When did the Respondent order for the equipment as required for carrying out the scope of work under the Agreement?

Ans.           The scope of work involves two aspects, viz. (i) laboratory validation of data; and (ii) hardware for pilot trials separately. Each having a different date for the placement of orders for the required equipment. I shall submit these dates on the next date.

Q.91           When did the Respondent receive such ordered equipment(s)?

Ans.           I will check up from the inward registry of my organization and revert.

Q.92           Will you please confirm as to whether the Respondent received from the Claimant, the amount of Rs.

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1,60,69,100/- by 22nd December 2017 as required in terms of Clause 4.1 of the Agreement?

Ans I will confirm the milestone dates and the payments received date wise by the Respondent on the next occasion.

(Shown Exhibit C-8 at Page 162 of the Statement of Claim)

Q.93 Will you please confirm from the said statement whether the Respondent has received the payments as reflected therein from the Claimant? If no, could you please elaborate what is the discrepancy?

Ans. I will confirm the payments as received from the Claimant on the next occasion.

8 Again, on raising query about the said question, the following answers are given by the witness.

Q.97 Which document did you verify to answer Q.95 today?

Ans I did not verify any document and mentioned that the payment of Rs.40,00,000/- was received on signing of LOI as I remembered the event.

Q.99 Can you now answer Q.91?

Ans As per my answer to Q.98 above, the equipments were assembled by us based on the components ordered starting 20<sup>th</sup> October 2017. There are about 80 components which were ordered to assemble these equipments which carried on upto April 2018.

Q.100 Will you please give the dates on which these about 80 components allegedly ordered by the respondents?

Ans Dates and details can be handed over to the



Tribunal as they amount to intellectual property of this process.

9 The aforesaid answers being solicited gave rise to an application filed by the claimant 'Company' for a limited purpose of seeking direction to SCC to disclose the information that it had submitted to the learned Arbitrator in a sealed envelope on 3/3/2022 with a specific averment, which is reproduced as under :-

“3 The respondent has submitted to the learned Arbitrator the said List in a sealed envelope and the Claimant has not been provided a copy. The respondent has claimed that the contents of the said List are confidential information, therefore cannot be revealed to the Claimant. However, the Claimant submits that the contents of the said list cannot be confidential for the reasons as stated hereinafter”.

10 In the application, the following relief was sought :

“(a) Direct the respondent to provide to the Claimant a copy of the said List which has been submitted by RW-1 to the Learned Arbitrator on 3<sup>rd</sup> March 2022, in pursuance of the answer given by RW-1 to Q.114 (as recorded in the notes of evidence dated 15<sup>th</sup> February 2022) and the subsequent directions of the Hon'ble Tribunal”

This application was responded by SCC by raising a preliminary objection that it is not specified as to what powers of the Tribunal are invoked by the claimant.

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11 An order passed by the Sole Arbitrator on the claimant's application on 10/6/2022, by which the Company is held entitled to disclosure of the list of the components and corresponding procurement dates, all of which the respondent has submitted to the Tribunal in a sealed envelope and a further direction that the sealed envelope shall be opened in physical presence of the parties on the given date, is subject to challenge in the Petition filed u/s.37 of the Arbitration and Conciliation Act, 1996.

12 The Petitioner, SCC seek setting aside of the said order on examining its legality and validity and also pray for grant of stay of the impugned order.

On the first day of effective hearing of the petition, the counsel for the respondent raised a preliminary objection to the maintainability of the petition on the ground that the impugned order passed by the Arbitrator is not appealable u/s.37 of the Arbitration and Conciliation Act, as it is not a substantive order passed u/s.17 of the Act of 1996.

The counsel representing the petitioner however took a specific stand that it is a substantive order and necessarily it would be required to consider as an order passed u/s.17 of the Act as it prejudicially affects the right of the petitioner.

13 In the wake of the rival contentions advanced, this Court (Justice G.S. Kulkarni) deemed it appropriate to direct the Arbitrator to clarify whether the impugned order is passed u/s.17 of the Act or otherwise.

As directed by this Court, the clarification came from the learned Arbitrator on 30/8/2022, clarifying that the impugned order dated 10/6/2022, is passed by him, invoking the powers vested in the Tribunal u/s.19 of the Arbitration and Conciliation Act, 1996.

14 In this background, I have heard learned Senior counsel Mr.Tulzapurkar for the petitioner and Mr.Sachin Mandlik for the respondent.

Despite the clarification being offered by the learned Arbitrator, the learned senior counsel would submit that it is still open for the Court to examine whether the impugned order falls within the purview of Section 17 or 19 of the Arbitration Act, since if the Court holds that the order is u/s.17, then the Appeal would lie and the Court would look into the merits of the matter or else, the petition do not deserve to be entertained.

15 At the outset, I must refer to the power of the Arbitral Tribunal u/s.17 of the Arbitration and Conciliation Act, which relate to the interim measures, which could be ordered during the arbitral proceedings, or at any time, after the making of the

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arbitral award, but before it is enforced in accordance with Section 36.

Section 17 of the Act enable the Arbitral Tribunal to grant certain orders on an application by the party while the arbitral proceedings are in progress or at any time after making of the arbitral award, but before it is enforced, which would inter alia, extend to appointment of a guardian for a minor or person of unsound mind for the purpose of arbitral proceedings, or all those reliefs which are contemplated by clause (ii) of Section 1 of Section 17 to the following effect :-

“(ii) for an interim measure of protection in respect of any of the following matters, namely:-

- (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
- (b) securing the amount in dispute in the arbitration;
- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (d) interim injunction or the appointment of a receiver;
- (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

16 The power of the Arbitral Tribunal to pass interim measures, is definitely restricted to the situation/contingencies contemplated in the aforesaid provision and if it is necessary that any interim measure is warranted for protection in respect of any of the matters, as regards preservation, interim custody or sale of any goods which are subject matter of the arbitration agreement, then the Tribunal shall have the same power of making orders as the Court has, for the purpose of, and in relation to, any proceedings before it.

In contrast, when one turn to Section 19 of the Act of 1996, which pertain to determination of Rules of procedure, sub-section (4) of Section 19 reads thus :-

“(4) The power of the Arbirtal Tribunal under sub-section (2), includes the power to determine the admissibility, relevance, materiality and weight of any evidence”

17 Section 37 of the Act of 1996 provide for an Appeal which shall lie from the orders mentioned therein and it would include an order granting or refusing to grant an interim measure u/s.17.

In the wake of the aforesaid provision, the question that arise for consideration before me is whether the present Appeal is maintainable, and if I have to hold that it is maintainable, then the order necessarily must be the one passed

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in form of an order u/s.17 by the Arbitral Tribunal, else the Appeal is not maintainable.

To determine this issue, I must briefly refer to the dispute which was made over to the Sole Arbitrator and whether the impugned order passed by the Tribunal is by way of certain interim measure in exercise of power u/s.17 or it is a procedural order.

With the able assistance of the respective counsel representing the parties, I have assimilated the facts which resulted in making reference of the dispute arising between the parties to the sole arbitrator who has passed the impugned order.

18 Careful reading of Section 17 of the Act would reveal that the Arbitral Tribunal is empowered to issue directions for passing such interim measures during the course of arbitration proceedings or even after the pronouncement of the Arbitral Tribunal, if a party apply to it, for such measures. This may include direction for detention, preservation or in respect of any property or things, which is the subject matter of dispute in the arbitration proceedings.

The powers of the Arbitral Tribunal under Section 17 are aligned with the powers of the Court u/s.9 of the Act and the Tribunal is empowered to grant all measures which can be granted u/s.9(1). The power to pass interim measures imposes a discretion vested in the Tribunal, which has to be exercised in

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consonance with the well settled principles governing the grant of such relief by the Civil Court.

Needless to state that it may not be confined to tangible property and it may extend to intangible property also as expressed by the Delhi High Court in case of *Union of India Vs. Reliance Industries Ltd and ors, ARB.A. (Comm.) 57/2018*.

However, what is manifest from the said provision is the power to be exercised in respect of any property or things which is the subject matter of the dispute in arbitration, and if the Arbitral Tribunal deem it necessary to pass such interim measure, as it appear to be just and convenient.

19 In the wake of the scope of the above provision, when the application moved before the Tribunal by the claimant/Company is perused, in the backdrop of the consent order dated 4/2/2020, it is manifestly clear that the order covered two aspects of the dispute; the Equipment and the Data samples and it chalked out a mechanism for dealing with each other.

The order clearly recorded that the respondent SCC had purchased the equipment from funds provided by the petitioner (the Company) and the invoices stood in its name. The respondent was to deliver the items of the equipment to the petitioner in 21 days, upon which the petitioner agreed to pay costs of transportation. A list of equipments along with the supporting documents was to be placed on affidavit to the Court.

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Apart from this, it was also understood between the parties that the dismantling of the equipments will be in the presence of representatives of the original vendor or the original equipment manufacturer. The respondent agreed to maintain a log of dismantling showing the details of the process.

Another aspect of the matter was regarding Data Samples and the understanding was recorded in the consent order and it was agreed that the Data and Samples relating to the subject project for and on behalf of Deepak Nitrite Limited will be separately identified, appropriately packed, stored or preserved.

20 By an order of this Court in Arbitration Petition (L) No.1463/2019 seeking restrain order against SCC from utilizing, marketing or dealing with equipment, data and samples belonging to the 'Company', the High Court directed SCC to hand over possession of 19 pieces of equipment and invoices to the Company. Accordingly, SCC filed affidavit, disclosing status of 19 pieces of equipment, along with its invoices issued to the Company.

The Company terminated the agreement, but, thereafter since Covid delayed handing over of equipments and the Company alleged that various components were missing in the equipments, it called upon the petitioner, SCC to hand over

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balance equipments and designs, specifications and operating manuals of the pieces of equipments. The respondent Company invoked arbitration, as according to it, the trials were unsuccessful and it terminated the Technology Agreement and refused to issue further work order for the detailed engineering.

It staked its claim before the Arbitral Tribunal for (a) Refund of amount paid to SCC for undertaking trials (b) Handover of data, samples and process, docket generated during trial and (c) Right over the Intellectual Property vesting in SCC. 'SCC' alleged that its dues were not paid by the claimant and filed counter claim alleging as under :

“(a) that the counter claimant successfully demonstrated the batch process developed pursuant to and in terms of the contract’

(b) that the continuous process was not demonstrated at the pilot plant level as the requirement for the same was waived by the respondent’

(c) that the equipment was completely handed over on the wrongful termination of the contract, in terms of the undertaking furnished to the Hon’ble High Court of Bombay.

(d) that the invoices in respect of the equipment was handed over as directed by the Hon’ble High Court of Bombay.

(e) that on account of wrongful termination of the contract, the respondent is not entitled to the intellectual property, data, samples and/or any information or know



how in respect of the processes developed and demonstrated to the respondent; and

(f) that the counter claimant is consequently entitled to an award of damages in the sum of unpaid amounts from the respondent.”

21 The counter claim filed by SCC prayed for an award on following terms in it's favour :-

“(a) Declaratory award that the termination of the contract vide letter dated 25/2/2020 by respondent is wrongful

(b) Declaratory award that the counter claimant has exclusive right, and interest to the intellectual property in the process developed including the data, samples, process docket, etc.

(c) As a consequence of the wrongful termination of the contract, award damages of (i) an amount of Rs.25.5 crores in terms of clause 4.1(7) of the original agreement as loss of revenue and (ii) the amount of Rs. Two crores in terms of 4.1(8) in terms of the original agreement towards loss of revenue.

(d) Award an amount of Rs.1.75 crores as a compensation for loss of revenue towards hiring of the pilot plant for 160 days.

(e) Award an amount of Rs.53,030/- towards expenses incurred by the counter claimant for de-fabrication and packaging.

(f) Award the entire cost and amount of arbitration including fees of lawyers and other reasonable and direct



expenses incurred for contesting the present proceedings.”

22 The controversy arose between the parties leading to a claim being staked by the claimant/company in respect of the components which went into the assembled equipments. From the reading of the order of the Sole Arbitrator, it can be seen that he has clearly crystallized the controversy in paragraph no.6.5 to the following effect:

“6.5 The genesis of the current controversy can be found in RW-1’s answer to Q.99 wherein RW-1 has revealed (ostensibly for the first time) that the 19 items of equipments (which required to be handed over to the Claimant) contained 80 components which went into the assembled Equipments. Upon RW-1 revealing existence of the “80 components” incorporated within the said 19 Equipments, I am of the view (as will observed with greater clarify later in this Order) that the Claimant has legitimately called upon RW-1 for details in respect of these components; details such as list of Equipments and the corresponding dates of their purchase. Initially, in response to Q.91, the respondent clearly agreed to providing information regarding the dates on which the ordered equipment was received; making no mention of any intellectual property/confidentiality in such information. It is only on a subsequent date, and in response to Q.100 and Q.114 that RW-1 mentioned as regards confidentiality in the required information”.



23 In the wake of the consent terms, SCC had agreed to deliver the items of equipments to the Company, and it was agreed that the equipments shall be dismantled as the equipments were purchased with the funds provided by the claimant. A list of the equipments along with the supporting documents such as invoices were to be furnished to the claimant and at that relevant time, there was no issue about the confidentiality/ intellectual property residing in the equipments, as the equipments were fabricated and engineered by the respondent and therefore, the Tribunal has rightly recorded that there is no question of confidentiality as regards the components involved in the equipments which were handed over to the claimants/ petitioner.

However, it was during the cross-examination, the issue of the components was raised, claiming confidentiality and SCC, by volunteering to hand over the list/information in a sealed envelope to the Tribunal was found to be not justified in making the disclosure to the other side. The claimant Company was held entitled to the disclosure list of 80 components since the claim was not in respect of the intellectual property involved in the equipments, nor was the claim in respect of the confidential information in manufacturing of these equipments. In any case, since it was not the subject matter of the dispute, there was no question of conferring any interim measures to protect the said subject matter.

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24 The application was made on behalf of the claimant for limited purpose for seeking direction to the respondent/counter claimant to disclose the information, which it had submitted to the Arbitrator in form of a list in a sealed envelope, but the claimant/the Company was not provided a copy thereof and the respondent/SCC claimed that the contents in the envelope is confidential information, which cannot be revealed to the claimant. It is worthy to note that all the equipments and/or components were purchased by SCC itself with the funds advanced by the claimant/Company, on behalf of the claimant, in pursuance of the execution of technology development service agreement dated 8/12/2017 read with the two Addendums. The claimant before the Tribunal i.e. the Company, therefore, specifically claim that all rights, title and interest in the equipment and/or component belong to the claimant and the respondent merely held these equipments on its behalf.

Clause 5 of the subject Agreement specifically stipulate that all hardware, equipment or apparatus acquired by the respondent for and on behalf of the claimant for developing technology or product as envisaged in the agreement shall always remain property of the claimant Company and therefore, it was submitted before the Tribunal that the respondent was obligated under the Agreement, to return to the claimant such hardware, equipment, and/or apparatus, upon completion of the scope of work under the agreement or upon termination thereof.

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25 At this stage, it is appropriate to refer to clause 7 and 8 of the agreement, which read thus :

“7 Intellectual Property Rights

7.1 SCC agrees that the technology as developed by SCC for DNS from PNT by Ammonia route shall always remain property of the Company and all the Intellectual Properties related to the Project and rights therein shall be owned by the Company for exclusive use at any of its manufacturing locations”.

7.2 This Agreement shall not in any way be construed as granting or transferring by implication or otherwise, any right in, title to or license in respect of Intellectual property Rights of the Company owned or hereafter owned by the Company.

**8 Confidentiality**

8.1 All written information to the Project as disclosed by the Company to SCC and all results generated in performing the services by SCC under this Agreement shall be considered to be Company’s Confidential Information. SCC agrees that it will keep all Company’s Confidential Information confidential and use the same only for the purpose for which it was disclosed to SCC under this Agreement and shall not be disclosed to any third party without the prior written consent of the Company.

8.2 The Company’s confidential information may include (although it is not limited to) Company’s product plans, product designs, cost data, product prices, raw material costs, customer information, financial results, marketing or strategic plans, business



opportunities, research development, know-how personnel, specifications, drawings, software, data, samples and prototypes and all copies thereto”.

Thus, the Intellectual Property Rights and the Confidential information pertaining to the project belong to the claimant Company and since the list of 80 components purchased by the respondent was handed over to the Tribunal, the application was moved for disclosing the same to the Claimant, particularly in the wake of the answers given by RW-1 to Q.No.114. It is for the first time that SCC raised an objection about submitting its confidential data with the help of which the technology was alleged to be developed by the counter claimant and confidentiality is claimed in respect of these components and the disclosure was contested.

However, the Tribunal considered the application and since it did not pertain to the subject matter of the arbitration, the Sole Arbitrator allowed the application holding that the claimant Company is entitled to have disclosure of the 80 components in the list, as the claim never pertained to the Intellectual Property Rights in the said equipments and therefore, there could not have been any restraint order which would protect the subject matter of the arbitration. However, the claim was in respect of the termination of the technology development Service Agreement which conceptualized a continuous process of manufacturing of

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environment friendly and cost effective technology for DNS from PNT by Ammonia route with continuation of the recovery and re-use of Ammonia.

26 The Technology Development Agreement was terminated by the Company, showing distrust in SCC and it claimed refund of amount paid for undertaking trials. As per the Agreement, it claimed return of data, samples, process, docket etc, along with the intellectual property vesting in the counter claimant SCC.

The claim was installed with the Arbitrator for refund of the amount paid by the claimant as per the original agreement and the addendum thereof, to the tune of Rs.1,70,66,000/- excluding the cost of the equipments which were returned as per the High Court's order. A claim was also staked for interest of Rs.41,88,840/- calculated till 25/2/2022 @ 15% along with estimate costs of Rs.One crore fifty lakhs and costs of litigation of Rs.22,25,000/- along with business loan and damage caused to the claimant.

Now, there is also a counterclaim by SCC, the respondent before the Sole Arbitrator and this is in respect of exclusive right, title and interest to the Intellectual Property in the process developed, including the data, samples, etc. Worth to note that the counterclaim by SCC do not cover, right, title and interest in the equipment, for obvious reason that the equipments

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are purchased by SCC from funds of the Company and SCC agreed to deliver these equipments to the Company.

It never claimed that it has any rights in its components and rather the agreement contemplate that in consideration of services provided by SCC to the Company, the Company shall pay to SCC, amount for, hardware and instruments required, and one time payment of royalty fees. It is expressly agreed between the parties, that all and any hardware, equipment or apparatus acquired by SCC for, or on behalf of Company for developing the technology or product shall always remain property of Company and on accomplishment of the task, it shall be returned to the Company without any cost. What SCC is entitled to, is the technology used in the product developed by it under the Agreement and it had undertaken to refrain from implementing this technology to a third party for period of two years.

Hence, no confidentiality was conferred upon SCC, as regards the components, which made the equipments nor it is a subject matter of the claim/counter claim before the Arbitral Tribunal and hence, there was no reason for the Tribunal protecting it, during pendency of proceedings before it, in exercise of its power u/s.17 of the Act.

In the aforesaid circumstances, since the power u/s.17 can be exercised for protection of subject matter of the dispute

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before the Arbitrator, the Tribunal has rightly held that the power which has been exercised by him in allowing the application filed by the claimant, disclosing the contents of the components of the equipments, is an order passed u/s.19 and not u/s.17.

The order of the Tribunal finds its justification supported by the reasoning in the backdrop and hence, the order being passed u/s.19, being not appealable, the present application u/s.37 of the Arbitration and Conciliation Act, 1996, cannot be entertained and it definitely warrant a dismissal.

It is accordingly dismissed as not maintainable, against an order passed necessarily u/s.19 of the Act.

No order as to costs.

In view of disposal of Commercial Arbitration Petition, Interim Application do not survive and is disposed off.

**( SMT. BHARATI DANGRE, J.)**