


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Arbitration Application No. 40/2020

Emeraldstone Management Sia, (A Company Duly Organised And Existing Under The Law Of Latvia),having Its Registered Office At Vaidavas-Iela 2 K-5-290, Riga, Lv - 1084 Through Its Authorised Power Of Attorney Mr. Pradeep Yadav.

-----Petitioner

Versus

Mamta Hygiene Products Pvt Ltd, (A Company Incorporated Under The Companies Act, 1956, Through Its Directors), Having Its Registered Office At Industrial Area Gulabpura, Bhilwara, Rajasthan India - 311021.

-----Respondent

For Petitioner(s) : Mr. Vinay Kothari
Mr. Ayush Goyal
For Respondent(s) : Mr. Nishank Madhan

HON'BLE DR. JUSTICE NUPUR BHATI
Order

19/07/2024

1. Learned counsel for the appellant submits that vide judgment dated 26.09.2023, a Co-ordinate Bench of this court had ordered that "the foreign award in question is enforceable and executable as a decree of this Court, and for the purpose of enforcement and execution, the respondent is directed to disclose its assets by way of filing an affidavit within a period of four weeks from today." Further the applicant was granted liberty to seek further directions for enforcement and execution of the Foreign Award in question strictly in accordance with law.

2. Learned counsel for the applicant submits that despite the direction of the Court, the respondent has not disclosed its assets by way of filing an affidavit within a period of four weeks from the passing of the judgment dated 26.09.2023. Learned counsel

further submits that thereafter, on many occasions, the respondent was granted time to make compliance of the judgment dated 26.09.2023 however, no effective steps were taken by the respondent. He further submits that the Co-ordinate Bench vide order dated 22.03.2024 had given certain directions to the respondent-company however, till date the respondent-company has failed to comply with the said directions. The order dated 22.03.2024 is reproduced hereunder:-

"1. In the present matter, while deciding the application under Sections 44, 46, 47 & 49 of the Arbitration and Conciliation Act, 1996, the Court ultimately held that it is satisfied that the foreign award is enforceable under this Chapter and hence, the award shall be deemed to be a decree of this Court. While making the above declaration/observation, the Court directed as under:

"14. Thus, it is ordered that the Foreign Award in question is enforceable and executable as a decree of this Court, and for the purpose of enforcement and execution, the respondent is directed to disclose its assets by way of filing an affidavit within a period of four weeks from today. The application shall be at liberty to seek further directions for enforcement and execution of the Foreign Award in question strictly in accordance with law."

2. The above direction was not complied with by the respondent and time was sought on behalf of the respondent on 17.11.2023, 01.12.2023 and further on 22.01.2024. On 05.02.2024, learned counsel appearing for the respondent-Company pleaded 'No Instructions' and hence, the matter was directed to be listed on 12.02.2024. On that date, it was made clear that if no-one appears on behalf of the respondent or the order dated 26.09.2023 is not complied with, appropriate orders in terms of Order 21 Rule 41, CPC would be passed.

3. However, on 12.02.2024, learned counsel Mr. Nishank Madhan put in appearance on behalf of the respondent-Company and he undertook to comply with the order dated

26.09.2023. In view of the said undertaking, time was granted and the matter was directed to be listed on 19.02.2024. The matter was however adjourned to 20.02.2024, 26.02.2024, 11.03.2024, 19.03.2024, 20.03.2024, 21.03.2024 and lastly, to 22.03.2024. The matter has hence, been listed today for orders in terms of the Order 21 Rule 41, CPC.

4. Before the order could be dictated, learned counsel appearing for the respondent-Company submitted that he has instructions to make a submission before the Court that the respondent-Company is ready to pay the award amount to the applicant in 24 equal installments. Learned counsel placed on record the e-mail as received by him from the respondentCompany. The said e-mail is taken on record

5. Taking into consideration the previous conduct of the respondent-Company, this Court is of the opinion that the submission as made today, can also prove out to be a tactic of the respondent-Company to somehow wriggle out of the responsibility to pay the award amount or to somehow avoid any order being passed in terms of law for civil imprisonment.

However, this Court is also not oblivious of the fact that as of date, the complete details of the assets and bank accounts of the respondent-Company are not available on record. Therefore, an order of civil imprisonment, at this stage, would not serve the purpose of the applicant-Company as the same would not satisfy the decree in question.

6. Hence, keeping into consideration the cumulative facts of the present case, it is hereby directed that:-

- i. The respondent-Company shall place on record its income tax return along with audited balance sheet of the last five financial years on record by the next date.
- ii. The respondent-Company shall deposit an amount of Rs.50,00,000/- (Rupees Fifty Lacs only) in the bank account of the applicant-Company by the next date.
- iii. The bank account details of the applicant-Company shall be furnished to learned counsel for the respondent during the course of the day.

7. List the matter on 03.04.2024.

8. It is made clear that if the present order is not complied with by the next date, appropriate orders in terms of Order 21 Rule 41, CPC would be passed on the next date.”

3. Learned counsel for the applicant further submits that on 22.03.2024 while giving certain directions to the respondent-company, the Court had also made clear that if the respondent-company fails to comply with the directions passed by the Court, then, on the next date, appropriate directions under Order 21 Rule 41, CPC would be passed. Learned counsel also submits that till date, the respondent-company has not taken any steps for compliance of the order dated 22.03.2024.

4. Learned counsel for the respondent submits that the matter may be referred to mediation in order to arrive at an amicable settlement between the parties. He also submits that in light of the directions passed by the Court on 22.03.2024, though, the applicant has furnished the bank details to the respondent-company, however, the bank details did not match with the details furnished in the agreement and therefore, on this ground the respondent-company was unable to deposit the amount of Rs.50,00,000/- in the bank account of the applicant-company as directed by the Hon'ble Court.

5. Learned counsel for the applicant has completed his instructions and submits that the applicant-company is not inclined for mediation until and unless the respondent-company places on record its Income-Tax return along with the audited balance sheet of last five financial year in the bank account of the applicant-company and also deposits a sum of Rs.50,00,000/- in

the bank account of the applicant in compliance of the order dated 22.03.2024.

6. From perusal of the various order-sheets, it is apparent that the respondent-company has failed to comply with the judgment dated 26.09.2023 as has not disclosed its assets by way of filing an affidavit within a period of four weeks from the date of passing of the said judgment and further has not complied with the directions passed by this Court dated 22.03.2024 as has not placed on record its Income-tax return along with the audited balance sheet of last five financial years by the next date as directed vide order dated 22.03.2024 and has also failed to deposit the amount of Rs.50,00,000/- in the bank account of the applicant-company as directed in the order dated 22.03.2024.

7. This Court, finds that the respondent-company has blatantly disobeyed the judgment dated 26.09.2023 as well as order dated 22.03.2024 passed by the Court and thus, this Court deems it appropriate to invoke the provisions laid down in Order 21 Rule 41, CPC while directing the Superintendent of Police, Bhilwara to detain the Director of Mamta Hygiene Products Pvt Ltd. having Its Registered Office at Industrial Area Gulabpura, Bhilwara namely Mr. Sanjay Rathi in civil prison for a period of one month.

8. The matter is directed to be listed on 20.08.2024 and report of the Superintendent of Police, Bhilwara shall be placed on record.

(DR. NUPUR BHATI),J