

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

+ **O.M.P. 130/2013 & IAs 2313/2013, 2672/2013**

Date of Decision: 22.03.2013

M/S JAY USHIN LIMITED

..... Petitioner

Through: Mr.Ratan Kumar Singh,
Mr.Nikhilesh Krishanan,
Mr.Shashi Bhusan, Advs.

versus

M/S U-SHIN LTD

..... Respondent

Through: Mr.Maninder Singh, Sr. Adv.
with Mr.Manik Dogra,
Mr.V.Mehta, Advs.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. The petitioner initially filed this suit for declaration, permanent injunction and mandatory injunction against the respondent. However, vide an Order of this Court dated 12.02.2013, the same was converted into a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short the 'Act'). The petitioner filed an application under Order 6 Rule 17 CPC seeking formal amendments relating to conversion of suit to a petition under Section 9 of the Act. Formal

replies to the amendment application (under Order 6 Rule 17 CPC) as well as the petition and application under Order 39 Rules 1 and 2 CPC still remains to be filed by the respondent. However, having regard to the nature of urgency explained by the learned counsel for the petitioner that the respondent was in the process of starting competing business in India by 29th March, 2013, despite that the Joint Venture Agreement (JVA) dated 30.05.1986 still subsisting between the parties and the petitioner was in the process of invoking arbitration proceedings as per the order of the Supreme Court dated 28.02.2013, and further that the High Court is closing on account of holidays from 24th to 31st March, 2013, I have proceeded to hear the learned counsels for the parties extensively.

2. So far as the application of the petitioner under Order 6 Rule 17 CPC is concerned, it is formal in nature in that only the formal amendments are sought to be made relating to the conversion of the suit to a petition under Section 9 of the Act, (which was in fact, allowed by order of this court), the application is allowed and the amended petition is taken on record.

3. The Technical Assistance Agreement (TAA) was executed between the joint venture company i.e. the petitioner and the respondent on 30.05.1986. The TAA that was executed by the petitioner was extended by way of subsequent supplementary agreements dated 10.07.1991, 16.09.1997 & 01.03.2001. Validity of this last TAA as per Article 3 thereof was up to March, 2010. The case of the petitioner, in brief, is that a joint venture agreement dated 30.05.1986 executed by M/s. Jay Industries (a partnership concern represented by Mr.J.P.Minda), with the respondent, M/s. U-Shin Co. Ltd., is still subsisting, and has not been terminated. It is the case of the petitioner that the technology was purchased from the respondent for a valuable consideration of \$45,000/-, and that the same is now vested with the petitioner. It is further contended that the supplementary agreements, which were executed between the joint venture petitioner company and the respondent was in respect of the additional products, by which, the additional technology was purchased by the petitioner for different considerations, as mentioned in those supplementary agreements. It was also its case that the Government of India as also the Reserve Bank of India had granted

license to the joint venture petitioner company on the conditions of the technology being adopted and absorbed by the petitioner within a period of five years and at the most, eight years, and that as per the conditions set up by the Government of India as also the Reserve Bank of India, there could not be any term entered between the parties at variance with the terms and conditions, on the basis of which, the permission was granted by the Government. It is further the case of the petitioner that since JVA was subsisting, the respondent was stopped from entering into any agreement for competing business or for transmitting the competitive technology to any other competitor in India. It is not disputed by the respondent that it has already announced to join hands with M/s. Minda Valeo Security System Ltd., an Indian company, and form a joint venture located at Delhi. The petitioner has averred that this new arrangement is similar to the one which is in existence between the contesting parties and thereby is a competing business arrangement.

4. On the other hand, the case of the respondent is that the agreement which was executed on 30.05.1986 was extended, and as

per the last agreement of 01.03.2001, the same has come to an end by efflux of time on 31.03.2010. Further since there is no non-compete clause in the JVA or TAA, the respondent could not be enjoined from entering into any joint venture with anyone else.

5. It is seen that on 30.05.1986, two agreements were executed. One was a JVA between the petitioner i.e. M/s. Jay Industries (through its partner J.P.Minda) and the respondent company i.e. M/s. U-Shin Co. Ltd. By virtue of this JVA, a joint venture company i.e. the petitioner company came into existence. The second agreement, a follow up of the first was a TAA, which was entered into between M/s. U-Shin Co. Ltd. and M/s. Jay Ushin Ltd. (the joint venture petitioner company).

6. As per the JVA, the respondent was to supply the petitioner company the technical know-how necessary for the manufacture of the products. It was as per this JVA that the TAA was executed between the petitioner and the respondent. Article 19 of the TAA stipulated terms and termination as under:

“Article 19. Terms and termination:

19-1. This Agreement shall be effective from the date above written or the effectuation by appropriate government authorities if required whichever is later and shall be terminated when the Joint Venture Agreement dated May 30, 1986 between U-Shin Co. Ltd. and Jay Industries is terminated”.

7. From the above, it would be seen that the agreements were to become effective from the date of its execution i.e. 30.05.1986 or from the date of approval by the Government. The Government gave its approval of the joint venture project on 07.10.1986. From the above, it is seen that this TAA was to be terminated only when the JVA dated 30.05.1986 would be terminated. Referring to the above clause, it is contended by the learned counsel for the petitioner that the TAA could not be terminated during the subsistence of the JVA, which is in fact, the parent agreement between the parties. It was also the submission of the learned counsel for the petitioner that even as per the terms and conditions of the Government of India as also the Reserve Bank of India, the technology was to be adopted and absorbed by the petitioner company. The sum and substance of the submission is that the

supplementary agreements were in respect of the additional products and all the original terms and conditions of the TAA were to remain as they were, and further, that the termination of TAA was not in consonance with the main JVA, and was also against the terms and conditions laid down by the Government of India. It was also his submission that even after the alleged termination of TAA from March, 2010, the respondent has been providing technical data to the petitioner until 01.02.2013, and that the respondent's experts have also made visits to the petitioner's company since April, 2011 until November, 2012. In other words, his submission is that the agreement regarding technical assistance was still continuing and the clause relating to its termination has never been acted upon.

8. From the contentions which have been raised by the parties, it is apparent that disputes and differences have arisen between them regarding the interpretation of the JVA the TAA, the Supplement Agreements as well as the rights of the parties thereunder. In a petition under Section 9 of the Arbitration and Conciliation Act, 1996, it is not desired for this court to comment or opine regarding the merits of the

case or interpret the disputed provisions of the contract, because that would be within the domain of the Arbitrator. It is pertinent to note that the parties have already agreed before the Supreme Court to submit to an institutional arbitration before the Singapore International Arbitration Centre. In the interregnum, it is imperative for this Court to ensure that neither party acts in a prejudicial manner with respect to the subject matter of the dispute.

9. As noted above, it is not for this Court to comment upon the existence/validity of the agreements or non-compete clauses in a Section 9 petition. Ex-facie, it is evident that the petitioner has had a long-standing business relationship with the respondent for 26 years, and is claimed to be still in subsistence. At this juncture, I am of the opinion that the respondent's decision to enter into a competing business arrangement with another party will be extremely prejudicial to the petitioner. In contrast, the respondent will not be prejudiced if it delays or postpones the acquisition of the competing business arrangement by a few days, until the arbitrator passes some interim order touching the issue. Moreover, on being asked, the petitioner's counsel, on instructions, states that the petitioner will promptly invoke

the arbitration proceedings within a week from today. Besides, Courts in India have held the considered view that in cases where the business activity is yet to start-off; there will not be any grave prejudice if the start of business is delayed for a while. I find that the balance of convenience lies with the petitioner.

10. Therefore, I am of the view that it would be unjust on the part of the respondent company to enter into any competing business or to undertake any activity, prejudicial to the interest of the petitioner company till such time, the Arbitrator was able to pass any appropriate interim order in respect of the subject matter of the dispute. Thus, the respondent is restrained from entering into any competing business or from any activity, prejudicial to the interest of the petitioner till such time, the Arbitrator modifies or sets aside this order in the arbitration proceedings to be initiated by the petitioner.

11. OMP stands disposed of.

M.L. MEHTA, J.

MARCH 22, 2013

akb/kk/rmm