

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**  
**SRI LANKA**

In the matter of an application under and  
in terms of Article 143 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**CA Case No: INJ/03/2024**

SPECTRUM PHARMATECH LANKA  
(PRIVATE) LIMITED,  
No. 184/7,  
Nobandi Mawatha,  
Dewala Road, Koswatta,  
Battaramulla.

**Petitioner**

**Vs.**

1. STATE MINISTER OF  
PRODUCTION,  
SUPPLY AND REGULATION OF  
PHARMACEUTICALS,  
State Ministry of Production, Supply  
and Regulation of Pharmaceuticals,  
No. 646/A, T.B. Jaya Mawatha,  
Colombo 10.

And also of

2<sup>nd</sup> Floor,  
No. 525, Union Place,  
Colombo 02.

2. MINISTER OF HEALTH  
Ministry of Health, Suwasiripaya,  
No. 385,  
Rev. Baddegama Wimalawansa Thero  
Mawatha,  
Colombo 10.

**Respondents**

**Before:** **R. Gurusinghe J.**

**&**

**M.C.B.S. Morais J.**

**Counsel:** Nishan Sydney Premathirathna with Sidath Gajanayaka instructed by M/S Sarvanan Neelakandan Law Associates for the Petitioner.

H. Jayasinghe, DSG with Printha Kunaratnam, SC and C. Lokuge, ASA for the Respondents.

**Inquiry on:** 22.07.2024

**Decided On:** 05.09.2024

**M.C.B.S. Morais J.**

The Petitioner, Spectrum Pharmatech Lanka (Private) Ltd, is a company duly incorporated under the laws of Sri Lanka and operates as a subsidiary of Spectrum Pharmatech Consultants (Private) Limited, a corporation based in Mumbai, India. The 1<sup>st</sup> Respondent is the State Minister of Production, Supply, and Regulation of Pharmaceuticals, who operates under the direct authority of the Ministry of Health of Sri Lanka and the 2<sup>nd</sup> Respondent is the Minister of Health of Sri Lanka.

The establishment of a pharmaceutical production zone at Oyamaduwa, Anuradhapura, has been approved by the cabinet of Sri Lanka. The 2<sup>nd</sup> Respondent released an Expression of Interest in January 2021, inviting local and foreign developers with experience in pharmaceutical industry to develop and set up a project to establish Sri Lanka's first Pharmaceutical Manufacturing Zone in Oyamaduwa, Anuradhapura. Following their expression of interest and participation in the bidding procedure, the Petitioner was awarded the bid designating them as the "Zone Developer" for the planned Zone in or around March 2021, with no objections raised. The Petitioner and the 1<sup>st</sup> Respondent signed a Development and Management Agreement on 30<sup>th</sup> of August 2021, according to the document submitted as "P4".

The Zone Developer was obligated by the conditions of the agreement to finish this project on schedule. Nevertheless, upon failing to complete it in the allotted time, the parties had subsequently agreed to a different deadline for the project's completion.

The Petitioner states that,

According to the 10<sup>th</sup> paragraph of the petition filed on 15<sup>th</sup> of March 2024, Respondents informed the Petitioner that,

- a. The Zone was to be developed by the Petitioner;*
- b. Notwithstanding, private parties were to invest monies with Respondent to lease out land parcels and also with the petitioner for the development and maintenance of the Zone;*
- c. Such parties were, in return, to be allotted land parcels on a leased basis and were to be permitted to set up pharmaceutical production facilities.*
- d. Once completed, this ambitious project of the Sri Lankan government is expected to create over 2,000 direct and over 5,000 indirect jobs while the overall Zone would attract direct investments totaling over 40 billion rupees.*

However, to invest in the zone to be fully occupied, 24 potential investors should be selected. Even though the Respondents said that 24 investors were supposed to invest in the zone, only 20 of them had finally given their consent. Just 12 investors—out of the aforementioned 20 investors—signed the management agreements with the Petitioner and only 7 members have paid the first installment towards the one-time ZDP as of the date the Counter Objections were filed. The subject contract includes all signed agreements between the Petitioner and the tenants. A portion of the funds needed for the zone's development, which the Petitioner was responsible for overseeing, were to come from the rent that investor tenants were expected to pay. The Petitioner claims that buyback agreements were also made between the Respondents and the renters.

However, there was an extraordinary and sharp increase in construction expenses at the start of 2022 as a result of Sri Lanka's severe economic crisis. A portion of the tenants had failed to pay the Petitioner, the Zone Development Premiums. The Petitioner received a notice from the 2<sup>nd</sup> Respondent in May 2023 about the delayed pace of the Zone Development work.

However, as for the Petitioner, the Petitioner also experienced several delays on part of the Respondents. Despite the Petitioner having several conversations with both the renters and the 2<sup>nd</sup> Respondent, none of them worked out. Due to disagreements between the Petitioner and the Respondents in these circumstances, the Petitioner requested arbitration in relation to the disputes arose and served the Respondents with a Notice of Arbitration. More than 60 days have passed since the Arbitration Notice was sent, as of 09<sup>th</sup> of March 2024, Respondents have not responded to it.

Contrary to the above position the Respondents state that,

The Ministry was keen to guarantee the prompt completion of the infrastructure development and the start of operations of this project, according to the Respondents, and some investors who had contributed funds to the project were legitimately displeased with the lack of progress. The Petitioners themselves submitted a timeline, which they are unable to adhere to. As agreed upon, a number of investors have already made payments to the zone developer. That being said, the zone developer has asked the ministry to approve a larger investment amount, which it is now requesting.

The Respondents claim that zone developers will be unable to finish this project in a timely and satisfactory manner. As such, it is highly doubtful that they are capable of finishing this project. In their project proposal, the Petitioners pledged to invest 600 million in this endeavor. There would have been no financial obstacles in the way of the Petitioners finishing this project if they had this money in reality. It is evident at this point that they are not in possession of this money.

However, by answering these objections Petitioner states that,

Respondents are making attempts to alter agreements between investors and Respondents in a way that would allow investors to completely leave the Zone, as well as to conduct actions that are irrevocable and irreparable in an effort to frustrate the subject Contract. In an application submitted to the Commercial High Court, the Petitioner requests the court's involvement in order to appoint an arbitrator to serve as the Respondent's representative on the arbitral panel. On 26<sup>th</sup> of June 2024, during the hearing in the Commercial High Court,

the Respondents informed the court that they intended to appoint an arbitrator. It cannot be disputed that the Petitioner, in his capacity as the Zone Developer, made a commitment to invest a considerable amount of money in the project for its entire duration.

This court recognizes that the dispute at hand arises from the Development and Management Agreement dated 30<sup>th</sup> of August 2021, which includes a binding arbitration clause mandating that any conflicts be resolved through arbitration. It is understood that arbitration will serve as the ultimate mechanism for the resolution of this matter.

However, as alleged there is a reasonable suspicion that the Respondents are currently engaging in attempts to modify the existing agreements with investors in a manner that would permit these investors to exit the Zone entirely. In light of these actions which pose a significant risk of causing irreparable harm and fundamentally altering the *status quo*, this court finds it necessary to intervene to preserve the current conditions and prevent any further irreparable damage until the arbitration process can be properly convened and conducted.

Therefore, we grant the injunction as prayed for in prayer ‘b’ of the petition dated 15<sup>th</sup> of March 2024. It shall remain in effect for a period of three months from the date of this judgment, or until the commencement of arbitration proceedings, whichever occurs first. The court emphasizes that this order is issued to preserve the *status quo* of the subject matter and to ensure that the arbitration process can proceed without hindrance.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**