

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) NO.323/2009 & CM 10632-33/2009

Date of Decision : 8th September, 2009

HANDUM INDUSTRIES LTD.

.....Appellant

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Anurag Mathur, Mr. C. M. Rao, Adv.

Versus

NATIONAL AGRI CO-OPERATIVE MARKETING
FEDERATION LTD. & ORS.

.....Respondents

Through: Mr. Himinder Lal, Adv.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether the Reporters of local papers
may be allowed to see the judgment? ✕
2. To be referred to the Reporter or not? ✓
3. Whether the judgment should be
reported in the Digest? ✕

%

J U D G M E N T(Oral)

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
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file and no page is missing.

FAO(OS) No.323/2009

Page 1

4

MUKUL MUDGAL, J.

1. With the consent of the learned counsel for the appellant and respondent no.1, the appeal is taken up for hearing.
2. The learned counsel for the appellant states that the respondents 2 and 3 are not required to be served as they are merely proforma parties. In the Memo of appeal also, it has been so stated.
3. The principal grievance of the learned Senior Counsel for the appellant, Shri Rajiv Nayar, is two fold and arises from the following paragraph of the impugned order of the learned Single Judge dated 20th May 2009 which reads as follows:

“4. It is apparent from the pleadings and record that the NAFED/Petitioner had by openings of LOCs at the instance of the respondent in favour of the sellers, for the material being stocked by the respondent in its company stockyard, incurred heavy liabilities. The respondent had procured orders and assured the petitioner that the payment of the amount shall be made as and when stock is sold. However, the respondent did not discharge its liability of making payment to the petitioner within the time schedule as prescribed under the agreement. The respondents admitted their liability of more than Rs.27 crore, which is not inclusive of the interest etc. as calculated by the petitioner. The agreement between the parties provides the liability of respondents to pay interest to the petitioner apart from service charges, sales tax, excise etc. The liability of respondents as stated by the petitioner is prima facie correct and as per the terms of the agreement. The respondents thus have to pay an amount above of Rs.72 crore to the petitioner. The stock lying in the stockyard, as per the valuation report, is of much less than the amount

5

payable by the respondent. I, therefore, consider in order to secure the interest of the petitioner, it is necessary that this stock in the stockyard be disposed of by the petitioner in a public auction through open tenders. The respondent in its correspondence with the petitioner itself has written that the stock would be losing its worth with the passage of time. Relevant paragraphs of the letter dated 25.6.2008 written by the respondent to the petitioner reads as under:

"However, in order to give additional comfort to NAFED, the company had given post dated cheques and had also offered immovable property as collateral security though it was not originally envisaged. Further, the company has also been regularly making the payments thereby reducing the outstanding amount to Rs.50 crores. Out of this amount also, we are arranging Rs.4.50 crores as per the schedule advised by our Managing Director to NAFED and it shall be our endeavour to clear off the balance dues also at the earliest.

It is also worth mentioning here that all the stocks that have been procured are tailor made stocks to suit the specific requirements of our customers and any distress sale to force the disposal of the stocks will entail heavy losses to Handum.

In light of the above facts, we are request you not to initiate any further steps to dispose of the stocks till December, 2008 as we are making sincere efforts to lift the balance stock and are confident that with your support, we will be able to close the account at the earliest."

4. It has been urged that while admission of the liability of the appellant to the extent of Rs.27 crores has not been wrongly recorded but the finding that the appellant was liable to pay above a sum of of Rs.72

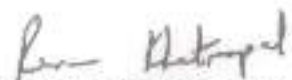
crores to the respondent practically concludes the arbitration proceedings. The other grievance is that the respondent was permitted to unilaterally sell the stocks lying at M/s Handum Industries. He has submitted that unilateral auction would not attract the correct market value and accordingly, the order deserves to be partially set aside on these two counts only. The learned counsel for the respondent No.1 Shri Himinder Lal, however, stated that observation of all the liabilities of Rs.72 crores may not be sustainable at this stage though the finding of the learned Single Judge in case of admitted liability of Rs.27 crores is in fact recorded on the statement of the appellant. He further submitted that as per the impugned judgment the public auction was to be after informing the appellant about the date of auction and obtaining the recent valuation report of the stock and therefore, the order is justified.

5. The learned counsel for the appellant and respondent no.1, after some arguments, however, agree that since the former Chief Justice of India Hon'ble Justice R. C. Lahoti was looking into the matter as the sole Arbitrator, any interim directions in the matter save and except the restraint on the selling and disposing off the property described in paragraph 5 of the impugned judgment, may be obtained from the learned Arbitrator itself. We, therefore, modify and set aside the order of the learned Single Judge dated 20th May 2009 to the extent of the public auction of the property, and the recorded liability of the respondent to pay

a sum of Rs.72 crores. However, interim orders for such or any other relief may be obtained from the learned Arbitrator by both the parties. Mr. Lal submitted that the amount may in fact be more than Rs.72 crores. We are of the view that this plea may be raised before the learned Arbitrator.

6. Accordingly, with the aforesaid observations and directions the appeal stands disposed of.


MUKUL MUDGAL, J.


REVA KHETRAPAL, J.

September 08, 2009

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