

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

Date of Reserve: 8.5.2009
Date of Order: 20th May, 2009

OMP No. 510/2008

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20.5.2009

**National Agricultural Cooperative
Marketing Federation of India Ltd. ... Petitioner**
Through: Mr. Himinder Lal, Advocate

Versus

M/s Handum Industries Ltd. & Ors. ... Respondents
Through: Mr. C.Mohan Rao, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER

This application under Section 9 of the Arbitration & Conciliation Act, 1996 has been filed stating that the petitioner was to recover a sum of Rs.77.5 crores from the respondents under a transaction which took place under a Memorandum of Understanding executed between the parties on 28.6.2004. The petitioner wanted the Court to pass an order securing the amount due towards the petitioner. The contention of the petitioner is that under the

aforesaid agreement the petitioner advanced a sum of Rs.298.76 crore to the respondent for procurement of HMS-1 and other non-ferrous scrap and steel items. The respondent, in lieu of the amount which it was to receive from the petitioner from time to time, had entered into a hypothecation agreement dated 17.6.2004 and created first charge in favour of the petitioner over all material procured and lying at godown of the respondent against LoC established by the petitioner for the purpose of business of respondent. The godown of the respondent was situated at Plot no.5 Survey no. 296/7/7, 8 & 11 Seri Bollaram, Jinnaram Mandal, District Medak, Andhra Pradesh. It is submitted that while petitioner was to establish international LoC on behalf of the respondent the stock procured by the respondent was to be released by respondent on 100% payment made to the petitioner of cost of material, administration cost and expenses, bank charges and interests. The respondent was to keep petitioner indemnified against loss or shortage of material and the petitioner was to be entitled to 1% service charges on 110% of the amount of LoC and 8% p.a. interest beyond usance period. The respondent failed to fulfill its obligation and defaulted in payments and did not act in terms of the agreement. On 31.3.2008, the respondent was liable of Rs.57.07 crore as principal and Rs.16.77 crore as interest @ 8 % p.a. In addition to this, the respondent was liable to pay service charges and sales tax liabilities of about Rs.3.98 crore. As on 30.6.2008, the payment due towards the respondent was Rs.72 crore towards principal amount, sales tax/VAT/Service Charges and interest etc.. The last payment was made by

the respondent on 30.6.2008 of Rs.5.5 crore. The respondent vide letter dated 25.6.2008 made a request to the petitioner to keep the further payment in abeyance and not to enforce recovery of the amount through sale of the hypothecated goods.

2. The petitioner submitted that there was every likelihood of the respondents disposing of all the properties and belongings of theirs so that the petitioner was unable to secure the amount due and to render the petitioner remediless, in case the award was passed in favour of the petitioner and against the respondents. Needless to say the agreement between the parties contained an arbitration clause under which disputes were to be referred to the Arbitrator.

3. In counter affidavit, the respondent has not denied the transaction as alleged by the petitioner but made counter allegations that the petitioner had made the present application only to harass and cast a stigma on the respondent. It is submitted that respondents periodically discharged their liability under the LoC opened by the petitioner. The petitioner was supposed to release the material as and when the money was paid by the respondent company. The petitioner was having a contract with the respondent for transaction of business on a continuous basis. The agreement was mutually beneficial. However, the petitioner, without any notice to the respondents, did not release the corresponding material though it received the payments from the respondent. This crippled the respondent. According to the respondents, the outstanding

balance payable to the petitioner was Rs.27.07 crore, while the petitioner was withholding stocks worth Rs.89.73 crore. The claim of the petitioner for Rs.72 crore was unjustified and incorrect.

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 value than the amount 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.

5. I, therefore hold that the petitioner has a prima facie case in its favour. In case the stock is not allowed to be disposed of, the stock shall continue losing its worth and the loss of the petitioner shall rise further. I, therefore, allow this petition and the petitioner is permitted to sell the stock lying at Handum Industries Ltd. (HIL) Stockyard – 296/7/7, 8 & 11, Seri Bollaram, Jinnaram Mandal, District Medak, Andhra Pradesh.

5. While selling the stock at public auction the petitioner shall inform the respondent about the date of auction and the petitioner shall obtain a recent valuation report of the stock

Since, the amount recoverable by the petitioner is more than Rs.72 crores and the stock as per valuation report is worth Rs.37 crore (approximately), an injunction is issued against the respondent and in favour of the petitioner and the respondents are restrained from selling or disposing of immovable property at Swapna Lok Complex, S.G.Road, Secundrabad, Andhra Pradesh acquired through Sale Deed no. 104/1991, measuring 1211 sq. feet. With this, the application stands disposed of.

May 20, 2009
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SHIV NARAYAN DHINGRA, J.