

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

Date of Reserve: 8.9.2009
Date of Order: 15th September, 2009

OMP No. 567/2008

%

15.09.2009

**National Agricultural Cooperative
Marketing Federation of India Ltd.**

Through: None

... Petitioner

Versus

Disha Impex (Pvt.) Ltd.

Through: Mr. G.Narayan, Advocate

... Respondents

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 made by the petitioner with a prayer that the Court should restrain respondent from selling, alienating or creating any third party interest in property no. B-82, Sector-30, NOIDA-201302 (U.P.) and land bearing Survey no. 745 & 752 Village Varvala, Dwarka Taluka of Jamnagar District, Gujarat (Plot

Area 32+8= 40 Acre). It is also prayed that an order be passed restraining respondent from selling, disposing of, alienating or creating any third party interest in iron ore lying at Ballegudi, Karwar (DT), Karnataka and Plota at Kariganur & Voddarahalli, Hospet, Taluk, Bellary District, Karnataka. The Court should appoint a receiver to take possession of the iron ore lying at Ballegudi, Karwar and Palota at Bellary District in Karnataka and allow to sell the iron ore and to deposit the money so realized with this Court.

2. The facts as revealed from the petition are that the petitioner entered into a Memorandum of Understanding (MoU) dated 10.3.2004 with the respondent for financing the procurement of iron ore and related commodities for exporting to China. As per MoU, the petitioner agreed to extend financial assistance upto Rs.35.75 crore to the respondent for procurement of iron ore for export purposes. Iron ore was to be procured in the name of the petitioner and was to remain property of the petitioner. The amount so given was to be paid back to the petitioner by the respondent on sale of the iron ore.

3. It is stated by the petitioner that respondent deliberately and intentionally did not take any step to clear its dues and to honour the agreement. The respondent executed an Undertaking cum Confirmation dated 11.1.2006 admitting its liability to the tune of Rs.9,30,00,000/- towards the petitioner as on 31.12.2005. The relevant terms and conditions of MoU dated 10.3.2004 regarding procurement of iron ore are as under:

4. *DIPL will procure the iron ore in the name of Nafed.*
13. *DIPL will lift the iron ore by making prior payment for the same which shall include amount funded, interest @ 8.5% p.a. and one time 1.5% service charge on the cost of iron ore ex yard at Hospet.*
14. *DIPL will lift at least 50% of material within 60 days of disbursement against payment and the balance material within 90 days of the disbursement. For this purpose disbursement will mean date of first disbursement. Nafed will not sell the iron ore to any person other than DIPL unless and until DIPL has defaulted in its payments schedule as above.*
16. *Sales Tax and other statutory liability if any at the time of purchase of sale by Nafed will be borne by DIPL.*
17. *All the expenses at the yard including related to SGS, Certification, Insurance, security, electricity, water etc. will be borne by DIPL. Nafed will not bear any expenses at all except related to its own staff.*

4. It is stated by petitioner that after the dispute arose between the parties the sole Arbitrator was appointed in terms of the MoU and the dispute is pending before Ms. Justice Sharda Aggarwal, (Retd.). The claim made by the petitioner before the learned Arbitrator is to the tune of Rs.8,01,57,714.44/- along with interest. It is stated that the arbitration proceedings are likely to take some time and the respondent is delaying the arbitral proceedings on one or the other pretext. It is further stated that the petitioner apprehends that the respondent has intent to obstruct or delay the execution of the award likely to be made in favour of the petitioner and may dispose of the properties mentioned in the prayer clause thereby rendering the award inconsequential. The petitioner in the petition has submitted that the goods were of perishable nature and are likely to be damaged if left for long time. It is also submitted that the maintenance of

huge amount of iron ore in the Stock Yard was resulting into incurring of huge liability and day-by-day the liability was increasing and since iron ore was purchased in the name of the petitioner the iron ore continues to be the property of the petitioner so long as the amount is not paid by the respondent. It is submitted that the iron ore be allowed to be put to auction sale and the amount so realized be kept in the Court so that the additional liability of keeping the iron ore in stock yard is not incurred and the petitioner has a security of the amount to the extent iron ore is sold.

5. No reply to the petition has been filed, the Counsel for the respondent put appearance and stated that the respondent would argue the matter without filing the reply. The respondent contended that the goods were not of perishable nature and there was no hurry in selling goods. The other ground taken was that the property at NOIDA for which the Court had issued ex parte interim injunction, did not belong to respondent and was the personal property of one of the Directors, whereas the second property at Jamnagar was already mortgaged with the petitioner by giving the title deeds of the property to the petitioner.

6. In absence of any reply filed by the respondent, the averments made by the petitioner are deemed to have been admitted. I, therefore, allow this petition under Section 9 of the Arbitration & Conciliation Act, 1996 to the following extent:

- 1) The Respondent, its Officers, its Directors, its Attorneys or its Assignees are restrained from alienating, transferring or in any manner dealing with property no. B-82, Sector-30, NOIDA-201302 (U.P.) and property Survey no. 745 & 752 Village Varvala, Dwarka Taluka of Jamnagar District, Gujarat till passing and satisfaction of award.
- 2) The petitioner is given liberty to sell the iron ore lying in Stock Yards at Karnataka by a public auction through an authorized auctioneer of Karnataka and advertisement shall be published in National Newspaper about the auction of the iron ore. The auction procedure may be either through tender bid or by fall of hammer. The amount obtained from the auction after deducting the auction charges be deposited in the Court.

With these directions, the petition stands disposed of.

September 15, 2009
vn

SHIV NARAYAN DHINGRA, J.