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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 29, 2009
Date of Order: May 04, 2009

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04.05.2009

**National Agricultural Cooperation
Marketing Federation of India
Ltd. (NAFED)**

...Petitioner

Through: Mr. Anshu Dhingra, Advocate

Versus

**Women Development Organization
(WDO)**

...Respondent

Through: Mr. Shiv Khorana and Mr. Ashish Khorana, Advocates

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?

JUDGMENT

1. The petitioner has preferred this application under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") with a prayer that respondent be restrained from selling, disposing of and creating any third party rights in any manner as far as balance goods/ salvage lying in its godown No.5, Khasra No.39/9, Jai Hind Gram, Tekri Kalan, New Delhi-41 and the respondent be also restrained from transferring, alienating its rights, title and interest in property No.313, DDA, MS Tower -1, Mount Kailash, East of Kailash, New Delhi-110015 and Khasra No.23/14 and 23/17, Village and Post Office Rani Khera, Madanpur Dabas, Delhi-81.

2. The petitioner had entered into an agreement with the respondent on

20th May 2004. This agreement contained an arbitration clause for reference of a dispute between the parties to an Arbitrator. The agreement, as entered into between the parties provided that though all products were to be purchased by WDO in its own name, but on behalf of Nafed and Nafed was to release funds in respect of these purchases made by WDO on showing proof of purchases. Nafed also advanced funds to WDO (respondent) to meet all other incidental expenses relating to transactions of supply to the indentors. Thus, the goods were being purchased by the respondent in its own name but all financing was being done by the petitioner on showing the proof of purchase and indentors and the goods so purchased were being supplied on behalf of petitioner to APO. Nafed was to be paid service charges on gross value of the transaction made on behalf of Nafed by WDO at the rate of 1.5% for business turnover of one thousand lac annually and one percent for business turnover exceeding one thousand lac annually.

3. On perusal of documents, it is apparent that the respondent was maintaining stock and was informing the petitioner from time to time about the stock maintained by it and was sending intends of the stock. The stock was being kept in the godown of the respondent. Clause 2.6 provides that respondent was responsible to make good the entire investment made by petitioner in the purchase made in the indentors. This contract was going on when the respondent informed the petitioner on 1st January 2008 through fax message that their godown being Godown No.5, Khasra N.39/9, Jai Hind Gram, Tekri Kalan, New Delhi-41 where the goods were stored had caught fire in the early morning of 1st January 2008 and respondent requested the petitioner to take necessary action as required. Pleadings further reveal that the godown was duly insured with the Insurance Company by respondent.

Respondent lodged claim with the insurance company for claiming damages due to fire. The insurance claim was received by the respondent.

4. The petitioner has made this petition praying that the goods lying in godown practically were financed by the petitioner and belonged to it and the losses due to fire were suffered by the petitioner as it was the petitioner who procured the orders from APO and these goods were to be supplied to APO in terms of the order procured by the petitioner. The respondent received a claim of Rs.3 crore from the insurance company against the policy and further claim of respondent was also to be settled by the insurance company. The petitioner, therefore, made a prayer that this Court should secure the interest of the petitioner during pendency of the arbitration proceeding and the amount paid by the insurance company to the petitioner should be directed to be kept in a fixed deposit and since the funds of the petitioner worth crores of rupees were involved, the Court should issue an interim injunction against the property of respondent restraining respondent from alienating or selling the properties.

5. It is argued by counsel for the respondent that the goods lying in the godown before its catching fire belonged to the respondent. The petitioner had also approached the insurance company during the period when claim of respondent was pending with insurance company and the insurance company had come to conclusion that the goods in the godown belonged to the respondent, so the claim of the respondent under the insurance policy was paid. It is submitted that the petitioner had no ownerships of the stock that got bulged in fire, nor the petitioner has shown that there was any apprehension that the respondent was likely to flee away with the property

warranting an injunction order to be passed by this Court. It is submitted that the respondent was an organization working since 1996 and has an overall turnover of Rs.10 crore per annum and it was not an individual that will run away. The respondent owned number of properties in Delhi worth more than Rs.15 crore and the application of the petitioner had no merits.

6. A perusal of agreement between the petitioner and the respondent makes it clear that the goods were to be purchased by respondent in its own name and the petitioner was to provide finances. The petitioner was to get an assured return on the finances provided by the petitioner. The risk involved in storage of the goods was therefore entirely of the respondent and not of the petitioner. The insurance company after considering the purchase indents and documents pertaining to goods rightly came to conclusion that the goods were purchased by the respondent in its own name and the ownership vested in respondent. The insurance company was in fact not required to go into the aspect as to who provided the finances but the fact remains that under the agreement the entire finances for the goods stocked for supply to APO was provided by Nafed i.e the petitioner. It is not the case of the respondent that the Nafed had not provided finance to respondent on confirmation of the stocks and on confirmation of purchase of goods. The correspondence between the parties shows that the respondent had informed the petitioner about the purchase of goods and also confirmed the stock from time to time. Thus, the stake involved of the petitioner is much higher than that of the respondent. As far as turnover of the respondent is concerned, the agreement entered into between the parties itself provides turnover of Rs.10 crores or more annually from the contract between petitioner and APO for which the services of the respondent were being taken. The respondent had failed to

show any other business being done by it except the business being provided by the petitioner. Looking into the huge investment made by the petitioner into the stock of the respondent and the fact that the respondent had claimed the entire insurance money received from the insurance company after burning of stock in the godown, the petitioner getting scared was obvious as huge funds of the petitioner running into crores of rupees were involved.

7. It is argued by counsel for the respondent that the prayer made by the petitioner was akin to seeking relief before judgment in terms of Order 38 Rule 2 of Civil Procedure Code. The Court should not entertain this prayer since the petitioner has failed to show that the respondent has any intention of obstructing or delaying the execution of award that may be passed against the respondent. Nor the petitioner has shown that the respondent was about to dispose of whole or part of its properties. He relied upon *Rite Approach Group Ltd. v. M/s Rosoboronexport 2004(2) RAJ 484 (Del)* and submitted that no good ground was made out by the petitioner for issuance of a restrain order against the properties of respondent.

8. The petitioner has filed statement of claim before the Arbitrator and this statement of claim shows that the petitioner had to recover an amount of Rs.21,46,30,039.76 from the respondent. The petitioner alleged in the claim that it suffered heavy losses because of non fulfillment of the commitments by respondent on its behalf with APO. A performance bank guarantee was furnished by the petitioner to APO and because of non fulfillment of the contract, APO has invoked the Bank Guarantee. The respondent, after fire in the godown has not acted in conformity with the agreement and did not even made an effort to refurbish the stock for fulfillment/ of commitments with

APO which resulted into heavy losses to the petitioner.

9. In view of the facts stated above, the petitioner has been able to show that due to irresponsible conduct of the respondent, the petitioner had to undergo a heavy liability towards APO. Looking into the fact that the petitioner was the main source of business for the respondent, there is every likelihood that the respondent, despite being an organization and working since 1996, may try to sell off its properties in order to frustrate the award that may be passed. There is a good prima facie case in favour of petitioner. Equity and balance of convenience also lie in favour of petitioner. Under the circumstances, I consider that it is a fit case where the respondent should be restrained from alienating its properties till pendency of the arbitral proceedings.

10. This petition under Section 9 is allowed and the respondent is hereby restrained from alienating, transferring, selling or creating any third party interest in the properties at 313, DDA, MS Tower -1, Mount Kailash, East of Kailash, New Delhi-110015 and Khasra No.23/14 and 23/17, Village and Post Office Rani Khera, Madanpur Dabas, Delhi-81 during pendency of the arbitral proceedings before the Arbitrator. No orders as to costs.

May 04, 2009
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SHIV NARAYAN DHINGRA J.