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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 124/2015

LAKHDHIRGARDH SEVA SAHAKARI MANDALI
LTD.

..... Petitioner

Through: Mr. Om Prakash, Advocate.

versus

INDIAN FARMERS FERTILIZERS COOPERATIVE
LTD

..... Respondent

Through: Mr. Rajiv Bansal with Ms. Arpita,
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

02.11.2016

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1. The challenge in this petition by the Petitioner, Lakdhirgardi Seva Sahakari Mandali Limited in Gujarat, is to an arbitral Award dated 4th October, 2014 passed by the sole Arbitrator in the dispute between the Petitioner and the Respondent, Indian Farmers Fertilizers Cooperative Limited (IFFCO).

2. The background facts are that the Petitioner is a cooperative society under the Gujarat Cooperative Societies Act, 1961 and a primary level service society at the village level. The Petitioner was a member of IFFCO which is a multi-state cooperative society governed by the Multi-State Cooperative Societies Act, 2002 (MSCS Act). IFFCO is engaged in production and trading of chemical fertilizers. According to the Petitioner, it merely acts as

a retailer of the fertilizers produced by IFFCO. The Petitioner and certain other societies are also members of Krishak Bharati Cooperative Limited (KRIBHCO) which is also a national level multi-state cooperative society engaged in the production and trade of chemical fertilizers. The Petitioner has been member of KRIBHCO since 30th January, 1997.

3. IFFCO by its letter dated 7th July, 2010 resorted to Section 25 (5) of the MSCS Act and terminated with immediate effect the Petitioner's membership in IFFCO. It was stated therein that since the Petitioner was also a member of KRIBHCO, it could not meaningfully serve the interests of two mutually competitive cooperatives and that in its 37th Annual General Meeting of the Representative General Body of IFFCO held on 26th May, 2010 it had been decided that no society/a delegate "should be allowed to represent in the competitive cooperative society." The entire equity of Rs. 10 lakhs held by the Petitioner in IFFCO was refunded by way of a demand draft dated 7th July, 2010.

4. The Petitioner declined to accept the aforementioned refund of the equity money. The Petitioner filed OMP No. 464 of 2010 in this Court under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act'). In the said proceeding, IFFCO gave an undertaking to the Court on 6th August, 2010 that they would continue to supply urea to the Petitioner and would secure the Petitioner to the extent of loss of annual dividend. Pursuant to the above order, IFFCO deposited Rs. 2 lakhs with the Registrar General of this Court being the dividend payable to the Petitioner for the year 2010-11 in terms of the IFFCO bye-laws. OMP No. 464 of 2010 was disposed of on that basis on

10th August, 2011.

5. By an order dated 4th March, 2011 in Writ Petition (Civil) No. 972 of 2011, the Central Registry of Cooperative Societies was asked to constitute the Arbitral Tribunal.

6. By an order dated 28th March, 2011, the former Chief Justice of the Gujarat High Court was appointed as a sole Arbitrator to adjudicate upon the disputes that arose as a result of the termination of the membership of IFFCO.

7. One of the central issues in the arbitration is whether the letter dated 7th July, 2010 terminating the Petitioner's membership in IFFCO is in conformity with the provisions of MSCS Act. *Inter alia* the learned Arbitrator in the Award dated 4th October, 2014 came to the following conclusions:

“13. The golden rule of interpretation is first go by the plain language of the provision of the MSCS Act, 2002. The provisions of Section 29 (a) of the MSCS Act, 2002 and Rule 19 (e) of the Bye-laws provides that the business of the members should be in conflict or competitive in nature with the business of the Respondent. The question is when the Respondent and the claimants have no similar business as the Claimant is not a manufacturer or producer of fertilizer, the business of the claimant is to distribute the product of the Respondents to its members at village level. Thus, that too, in the large scale like the business of the Respondent. Therefore, now it cannot be said that the Claimant's business is in conflict or competitive in nature with the business of the Respondent.

14. No material has been submitted before me which shows that the business of the Claimant is in conflict or competitive with the business of the Respondent. Of course there is no dispute on the facts

that the business of the KRIBHCO is in conflict and competitive with the business of the Respondent but if we go by the plain language the requirement of the provision is that no person shall be eligible for being a member of a Multi State Cooperative Society. If the business is in conflict or competitive with the business of Respondent. When the business of KRIBHCO is in conflict and competitive with the business of the Respondent does not mean that the business of the Claimant is in conflict or competitive with the business of the Respondent solely because the Claimant is member of KRIBHCO also.

15. The admitted facts are that the business of IFFCO is manufacturing of fertilizers in large scale while the business of the claimant is distribution of fertilizer urea of the Respondent at village level. Therefore, when there is no common business between claimant and the Respondent it cannot be said that in the year 2010 the business of the claimant and the Respondent is in conflict or they are in competitive business with each other. When they are not in competitive business or their business is not in conflict with each other, the termination of the claimant from the membership of the IFFCO is not justified invoking the provisions of Section 29 (a) and Bye-laws 19 (e).”

8. After coming to the above conclusions, the learned Arbitrator issued the following directions:

“30. As no notice of opportunity of being heard was given to the claimant before terminating its membership, I set aside the order dated 7th July, 2010. However, considering the facts discussed above, I also give the liberty to the Respondent to reconsider the action for termination of membership of the Claimant after giving it a reasonable opportunity of being heard and can take a fresh decision on the basis of material the Claimant submits.

31. If the respondent wants to terminate the membership of the claimant, take steps within three month and it will be open to both the parties to proceed with in accordance with the provisions contained in the MSGS Act, 2002 and the Byelaws of the society and submit the

material they want and there will be no restriction either of the parties to bring on record any other material which has not been placed on record before me and is relevant to decide the issue.

32. It is also ordered that the dividends which declared in favour of the claimant and set apart in the form of FDRs which are in possession of the Respondent that amount shall be subject to final outcome of the fresh order if any passed by the Respondents. If the Respondents do not take or initiate such process required for termination of membership of the claimant, then the amount of dividends in the form of FDR which is with the Respondents be refunded to the Claimant if no initiation is taken within three month from the date of receipt of this inward.

33. Considering the facts on record, I see no justification to award any amount towards damages or any amount against costs on account of legal charges. Both the parties shall bear their own costs.”

9. The learned Arbitrator also noticed that during the pendency of the arbitration, the bye-laws of IFFCO were amended with effect from 26th September, 2013 which made it clear that if any member/representative of IFFCO represents any other administrative body of a society whose business is in conflict with the business of IFFCO, such member/society of IFFCO shall be disqualified. However, the learned Arbitrator clarified that this amendment would be prospective i.e., it took effect only on or after 26th September, 2013 and would have no application to the termination order dated 7th July, 2010.

10. The grievance of the Petitioner in the present petition is regarding the directions issued in paras 30-32 of the impugned Award to the extent that the learned Arbitrator has permitted IFFCO to issue a fresh show-cause notice (SCN) to the Petitioner for termination of its membership and also

directed to withhold the dividends due to the Petitioner till such time the fresh SCN was not decided. According to the Petitioner, the said directions were in conflict with the conclusions reached by the learned sole Arbitrator in paras 13 to 15 of the impugned Award.

11. Pursuant to the notice issued in the present petition, the Respondent filed its reply. Prior to filing of the present petition and subsequent to the Award, IFFCO issued an SCN to the Petitioner on 10th December, 2014 *inter alia* asking it to show cause why its membership could not be treated as having ceased. The main ground for termination was that the Petitioner's Chairman was represented on the general body/Board of Directors and also become chairman of the KRIBHCO and that the business of KRIBHCO was competitive to the business of IFFCO. After the Petitioner's reply to the SCN on 22nd December, 2014, a personal hearing was given to the Chairman of the Petitioner by the IFFCO at the meeting held on 16th December, 2015. It was resolved by the Board that the Petitioner's membership of IFFCO had ceased and the cessation would be effective from 1st January, 2016. A copy of the said resolution was communicated to the Petitioner through its Chairman by letter dated 7th January, 2016.

12. It is important to note that as of now the Petitioner has not filed a petition challenging the said decision. However, learned counsel for the Petitioner, in the course of his submissions made today, stated that the Petitioner would be instituting a challenge to the said Board resolution whereby its membership was terminated. In these proceedings, the Court is not required to express any opinion on the Board Resolution of IFFCO dated

16th December, 2015.

13. Mr. Rajiv Bansal, learned counsel appearing for IFFCO clarified that in view of the subsequent developments whereby after issuing a fresh SCN and giving personal hearing to the Petitioner, the Board of IFFCO by its resolution decided to terminate its membership with effect from 1st January, 2016, IFFCO would abide by the directions that may be issued by this Court as regards dividends payable to the Petitioner for the period upto 1st January, 2016.

14. It is pointed out by Mr. Bansal that the dividend due to the Petitioner for the year 2010-11 stands deposited in this Court by way of fixed deposit receipt (FDR). IFFCO has with it the FDRs for dividends payable for the years 2011-12 and 2012-13. It is pointed out that as regards years 2013-14 and 2014-15, while cheques were issued to the Petitioner for the amount, it appears that the said payments were refused by the Petitioner on the ground that the said amounts also included the amount representing the equity held by the Petitioner in IFFCO. Since the Petitioner did not accept its termination of the membership of IFFCO, the Petitioner did not accept such cheques. Nevertheless, Mr. Bansal clarified that IFFCO would undertake, if the Court directs, to pay dividends due to the Petitioner for the years 2013-14 and 2014-15 and further upto 1st January, 2016 *pro rata*.

15. The Court, accordingly, directs that the amount already deposited in this Court by IFFCO towards dividends payable to the Petitioner for the year 2010-11 should be paid to the Petitioner by the Registry within a period of two weeks from today together with interest, if any, accrued thereon.

Further, the FDRs already with by IFFCO towards dividends due to the Petitioner for the years 2011-12 and 2012-13 will be made over together with the interest accrued thereon to the Petitioner within the same period. As regards the dividends due for the years 2013-14 and 2014-15 and *pro rata* upto 1st January, 2016, a demand draft for the said sum (excluding the equity amount) shall be prepared and issued in favour of the Petitioner by IFFCO within a period of two weeks from today.

16. As regards the equity amount of Rs. 10 lakhs, the counsel for the Petitioner reiterates that the Petitioner will not accept the said sum till such time its challenge to the fresh decision dated 16th December 2015 of the Board of Directors of IFFCO terminating the Petitioner's membership is not decided. Accordingly it is directed that as regards the said sum IFFCO will abide by any decision that will be rendered by a Court or a forum before whom the aforementioned fresh decision of the Board of Directors of IFFCO would be challenged by the Petitioner.

17. As a result the directions in para 32 of the impugned Award regarding withholding of the dividends do not survive. Further, the directions issued in para 30 of the impugned Award have already been worked out with a fresh SCN having been issued and a fresh decision taken by IFFCO thereon. Consequently, no grievance of the Petitioner survives in the present petition.

18. It is clarified that the Petitioner's right to challenge the fresh decision of the Board of Directors of IFFCO to terminate the Petitioner's membership in IFFCO in accordance with law is reserved.

19. The petition is disposed of in the above terms. Order be given *dasti*.

S. MURALIDHAR, J

NOVEMBER 02, 2016

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