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

\+ **FAO(OS) (COMM) 148/2017**

Date of decision : 24th July, 2017

TRAXPO ENTERPRISES PRIVATE LTD ..... Appellant
Through: Mr.Kuljeet Rawal, Adv.

versus

M/S P E C LIMITED ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

This intra court appeal impugns the order dated 10th April, 2017 whereby the learned Single Judge has dismissed objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act), *inter alia,* challenging the arbitral award dated 20th October, 2015.

2. The impugned order noticed the repetitive adjournments and dilatory tactics adopted by the appellant before the Arbitral

Tribunal. The appellant took more than 3 ½ months to re-file objections in the High Court upon return under office objections. Notwithstanding, the aforesaid unexplained delay, the learned Single Judge in order to appreciate the controversy and to be just and fair has referred to the objections to the award on merits.

3. Learned counsel for the appellant submits that they had challenged the authority of Mr.Jitender Singh Punia, General Power of attorney holder of P.E.C. Ltd. to file the claim petition before the Arbitrator. The aforesaid Company is a Government Company engaged in the business of facilitating exports and import of various commodities and guaranteeing payment of exporters from India and granting financial facilities to importers of India. This objection has been dealt with and examined in the impugned order, which has observed that the objection was legally untenable and unacceptable. The power of attorney in favour of Mr.Jitender Singh Punia was executed by the Chairman cum Managing Director of P.E.C. Ltd. The submission that the Chairman cum Managing Director had no

power to sub-delegate this Authority was rejected, relying upon minutes of the 88th meeting held by the Board of Directors held on 30th November, 1981. The minutes had authorized the Chairman to sub-delegate the power on Heads of Division and other Managers under him from time to time. The impugned order observes that Mr.Jitender Singh Punias' designation as Deputy Finance Manager does not detract from his role as a Manager. The learned Single Judge also rightly relied upon doctrine of internal management and that the appellant could not have grievance. The arbitrator had rejected the contention of the appellant challenging the authority of Mr.Jitender Singh Punia.

4. The second contention raised by the appellant is on merits of the awarded amount. It is submitted that the appellant had not become the owner of the goods as the title had remained vested in the respondent. Therefore, the appellant were not liable to pay customs/storage charges etc. It is submitted that goods were subsequently auctioned by the customs and the auction money received is lying with them.

5. We have considered the said contention but find that the issue has been dealt and rightly answered by the Arbitrator. There were agreements dated 5th March, 2007, 23rd October, 2007 and 24th December, 2007. There are also Deeds of Pledge dated 1st March, 2007, 5th September, 2007 and 26th November, 2007 whereby the appellant had charged and pledged the goods stored at Kandla by way of first charge in favour of respondent/P.E.C. Ltd. The appellant had given 3 post dated cheques aggregating Rs.8.08 crores towards the cost of the consignments along with 3 legal undertakings dated 8th April, 2009 to pay the balance amount in respect of the above import, on the first demand without demur and protest. The aforesaid cheques bounced and proceedings under section 138 of the Negotiable Instruments Act, 1981 have been initiated by the respondent / P.E.C. Ltd. They are pending. In addition, there were High Seas Sale Agreements dated 19th February, 2007, 22nd August, 2007 and 9th November, 2007 for transfer/sale to the appellant High Seas Sale basis. The arbitrator, in the impugned order has observed and held that the goods had

vested in the appellant and they were liable, even when the appellant had failed to discharge and pay their liability. The learned Single Judge has rightly held that there was no infirmity in the said finding.

6. The contention of the appellant with reference to the auction proceeds does not impress us. Merely because the auction proceeds are still available with the customs, does not and would not establish that the P.E.C. Ltd. is the owner of the goods and not the appellant. The appellant has obviously not paid the amount due and payable and it is open to P.E.C. Ltd. to proceed against the appellant by filing execution for recovery of the amount in accordance with law.

7. We do not find any merit in the appeal and the same is dismissed.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 24, 2017
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