

(2012) 02 DEL CK 0493
In the Delhi High Court
Case No : O.M.P. 458 of 2010

M/s State Trading Corporation of India Ltd.	APPELLANT
Vs	
M/s Priyanka Overseas Limited.	RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2012) 02 DEL CK 0493

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : R.K. Sanghi, for the Appellant;

Judgement

G.S. Sistani, J.—Present petition has been filed by petitioner u/s 9 of Arbitration and Conciliation Act, 1996. As per the petition, petitioner is a Government of India undertaking having its branch office across various cities in India, is engaged in the business of import/export as well as domestic trade in various commodities. Respondent is also engaged in the trade of import and export. The Government of India during the years 2000-01 to 2004-05 announced scheme for export of food grains in order to liquidate the buffer stock of wheat available with the Food Corporation of India and export the same to various foreign countries through designated public sector undertakings/agencies.

2. Pursuant to the said scheme, the FCI framed procedures/guidelines from time to time containing various terms and conditions, under which wheat/rice stocks was to be purchased from FCI and was to be exported to the foreign countries. The petitioner, M/s State Trading Corporation of India Ltd. (STC), who is already in the business of export and import, was approached by the respondent herein with representation and proposal that they are also in the business of export and import and they may be assisted to export the food grains by providing financial assistance for the said export. The respondent represented and promised that they shall promptly repay the amount along with trading margin and interest among other incidental and miscellaneous expenses to the petitioner. In order to

avail the financial facility at the earliest, the respondent also submitted confirmed export orders from various foreign buyers. The petitioner believing the proposal, representations and promises of the respondent, in good faith agreed to provide to the respondent, the financial assistance subject however, to the terms and conditions. After detailed negotiations, commercial terms and conditions were agreed between the parties and binding contracts were executed/ entered into between the parties.

3. Pursuant to the said agreement the petitioner provided the financial assistance to the respondent by directly making payment for and on behalf of respondent to FCI from time to time. The allocation orders from FCI were issued in the name of petitioner which were subsequently endorsed by petitioner to respondent for taking delivery of the stocks from FCI's godown for export. The respondent assured the petitioner that after immediate export thereof, they shall promptly pay the amount of the financial assistance along with trading margin, interest and other incidental and miscellaneous expenses. Initially the financing agreed by the parties herein was in the ratio of 80:20 which was subsequently revised to 100% by the petitioner as the volume of export increased by meats and bounds.

4. Since the very inception the respondent remained irregular in making the repayment of the amounts as aforesaid and also failed to comply with the terms and conditions of FCI which were solely required to be fulfilled by the respondent to the satisfaction of FCI and petitioner. By utilizing the amount of financial assistance, substantial quantities of wheat and rice were lifted by the respondent from time to time and petitioner made payments to FCI for and on behalf of respondent. The respondent through various correspondences/ letters acknowledged and admitted their liability towards the claimant unequivocally and assured the petitioner that the payment will be made at the earliest. The respondent in their letter dated 21.07.2008 had specifically undertaken to pay 50% of the outstanding dues by 31.08.2008 and the balance by the end of September, 2008. Copies of relevant letters/correspondences have been filed along with the petition.

5. The respondent while acknowledging the liability has in fact issued two cheques dated 20.6.2008 each for Rs. 10.00 crores drawn in favour of the petitioner towards repayment account with the representation that the same would be honoured on presentation. However, the same have been dishonoured on presentation on account of insufficiency of funds for which the petitioners have already initiated appropriate criminal legal proceedings which are subjudice with the Hon''ble Court. Copies of returned cheques and endorsement have been filed along with present petition.

6. Respondent has acknowledged its liability besides the petitioner has also invoked the performance bank guarantee to the tune of Rs. 2.5 crores. In addition thereto a sum of Rs. 52,39,68,669/- is due and payable and further Rs. 33,58,29,115/- towards interest as on 31.3.2009 (total amounting to Rs. 85,97,97,784/- is due and payable).

7. Learned counsel for the petitioner submits that on account of mismanagement respondent company has incurred heavy financial losses. Counsel further submits that in case respondent transfers the fixed assets the petitioner will suffer irreparable loss. Counsel also submits that arbitration proceedings have already commenced and the respondent has not even paid the fee of the Arbitrator, which would show the poor financial conditions of the respondents.

8. None is present on behalf of the respondent to oppose the present petition.

9. I have heard Mr. Sanghi. Having regard to the outstanding amount, the correspondence exchanged between the parties and the cheques issued, it is a fit case to grant an injunction in favour of the plaintiff. Accordingly, respondent is restrained from transferring the fixed assets of the company, as detailed in their balance sheets, till further orders from this Court. This order is subject to variation at the instance of either of the parties before the Arbitrator. Counsel for the petitioner seeks liberty to raise the prayer made for furnishing the security and appointment of Receiver before the Arbitrator. Accordingly, present petition stands disposed of in view of above. Liberty, as prayed for, is granted.