(2009) 05 DEL CK 0306

In the Delhi High Court

Case No : Writ Petition (C) 3571 of 2007

N.K. Industries and Another APPELLANT

Vs

Special Dir. Enforcement Foreig RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 9(1)

Citation : (2009) 05 DEL CK 0306

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Maneesha Dhir and Preeti Dalal, for the Appellant; Mayank Goel, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The petitioners M/s N.K. Industries Ltd. and Mr. Nimish K. Patel by the present Writ Petition have challenged order dated 25.01.2007 passed by the Appellate Tribunal for Foreign Exchange disposing of their application of waiver of pre-deposit with the direction that the petitioner company shall furnish bank guarantee for penalty amount of Rs. 25 lakhs and Mr. Nimish K.Patel director of petitioner company will make pre-deposit of Rs. 5 lakhs.

2. The aforesaid penalty was imposed vide order dated 30.07.1999 on the allegation that N.K. Industries Ltd had entered into an agreement with Barsway Trading ltd, New York to settle their disputes for a sum of USD 5,80,000/- and therefore, had violated the provisions of Section 9(1)(c) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as Act). The case of the petitioner is that there was dispute between N.K. Industries Ltd. and Barsway Trading Limited, New York which was pending before an Arbitrator. It is stated that negotiations were in progress and a proposal was made to settle the dispute. It is further stated that the petitioner company had applied to Reserve Bank of India for making payment through proper banking channel. It is, therefore,

submitted by the counsel for the petitioners that the petitioners had not resorted and had no intention to resort to Hawala route or illegal transfer of money. It is further stated that the proposal itself envisaged that the agreement, if any, will be subject to the permission being granted by the Reserve Bank of India.

3. It is pointed out that the petitioner company is a sick company and proceedings are pending under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985.

4. At this stage, I need not go into merits and demerits in detail as the first appeal is still pending before the Appellate Tribunal. However, I have noted the submissions made by the counsel for the petitioners and prima facie find merit in the same.

5. Learned Counsel for the petitioner states that the petitioner No. 1 and petitioner No. 2 will furnish security of Rs. 25 lakhs and Rs. 5 Lakhs respectively to the satisfaction of the Adjudicating Officer, Mumbai. She further states that the Adjudicating Officer/Enforcement Directorate will be entitled to encash the said security in case the appeal filed by the petitioners is dismissed. Security will be furnished within 4 weeks.

6. Modified by Order dated 19th May, 2009. The statement made by the counsel for the petitioner is accepted. The petitioner No. 1 will furnish security of Rs. 25 lacs and the petitioner No. 2 will furnish security of Rs. 5 lacs to the satisfaction of the Adjudicating Officer, Mumbai. The Adjudicating Officer/Enforcement Directorate will be entitled to encash the said security in case the appeal filed by the petitioners is dismissed. Security will be furnished within 4 weeks. The writ petition is accordingly allowed to the extent indicated above and the impugned Order dated 25th January, 2007 is modified. The findings and observations made in this order are tentative and prima facie and the Appellate Tribunal will decide the appeal without being influenced by the observations made in this order.

