

(2012) 10 DEL CK 0420

Delhi High Court

Case No: O.M.P. 486 of 2006 and I.A. No's. 18520 of 2011 and 18521 of 2011

State Trading Corporation of
India Ltd.

APPELLANT

Vs

Tradigrian S.A. and Another

RESPONDENT

Date of Decision: Oct. 12, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 44(a), 47, 48, 48(1), 49

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: D. Roy Chaudhary, with Mr. S.S. Jauhar, for the Appellant; Navin Kumar, Alishan Naqvee and Mr. Rupal Bhatia, Advocates for R-1 and Mr. Rajesh Roshan and Mr. Rajeev Kumar, Advocate for R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Justice S. Muralidhar

1. This is a petition filed by the State Trading Corporation of India Ltd. ("STC") which is captioned as a petition "under Sections 48, 49 of the Arbitration and Conciliation Act, 1996" ("Act"). The prayer in this petition is "to declare that the foreign Award/s No. 12336 dated 15.04.1999 and Award No. 4012 dated 19.11.2004 being numbered as 12336A dated 06.11.2000 and the Board of Appeal's Award dated 19.11.2004 and judgment in Appeal by the London Court being Annexure "I" are illegal, invalid and without jurisdiction and is not enforceable in India.". Learned Senior counsel for the Petitioner was asked by the Court whether there is any petition pending in this Court by Respondent No. 1 in whose favour the Award dated 15th April 1999 and the Award dated 19th November 2004 were passed. He answered in negative.

2. Section 48 of the Act is titled "Conditions for enforcement of foreign Awards". Section 48(1) states "enforcement of a foreign award may be refused, at the request of the party against whom it is invoked...". The essential condition for entertaining any of the objections u/s 48 of the Act is that in the first place there must be a petition seeking enforcement of the foreign Award. In the present case, there is no such petition seeking enforcement of the foreign Awards, the invalidity of which is sought in the present petition. It may be observed that the foreign Awards in the present case are New York Convention Awards in terms of Section 44(a) of the Act. Chapter I Part II of the Act incorporates by and large the procedure for enforcement of a foreign Award as contained in the New York Convention, which is set out as Schedule 1 to the Act. The sequence of the provisions in Chapter I, Part II of the Act indicates that the party in whose favour the foreign Award has been made, will first file an application for enforcement (Section 47) and the party resisting enforcement can in response seek to demonstrate, in terms of Sections 48(1) and 48(2) of the Act why such enforcement should be refused. There is no possibility of a party, against whom an Award is made, seeking a declaratory relief in relation to the invalidity of such Award, by filing a petition under Sections 48 and 49 of the Act. There has to be a petition, by the party in whose favour the Award has been made, seeking enforcement of the Award. The provision in Section 48 is a "shield" to defend the enforcement on the limited grounds set out thereunder. A substantive challenge to the Award has to be in separate proceedings, which in any event has been unsuccessfully availed of by STC in the present case. The present petition is, therefore, wholly misconceived and is dismissed on this short ground. None of the other applications survive and they are accordingly dismissed.