(1998) 12 DEL CK 0027

In the Delhi High Court

Case No : S. No. 1020/92

Bindal Agro Chemical Ltd. APPELLANT

Vs

Ballarpur Industries Ltd. RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:
Arbitration Act, 1940 — Section 20

Citation : (1998) 76 DLT 967 : (1999) 48 DRJ 206

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : T.K. Ganju and Mukta Chaudhury, for the Appellant; Rarry M., for the Respondent

Final Decision : Dismissed

Judgement

M.S.A. Siddiqui, J.—The petitioner has filed this petition u/s 20 and 8 of the Arbitration Act seeking a direction to the respondent to appoint an arbitrator to adjudicate upon the disputes between the parties in terms of the arbitration agreement.

2. By the agreements No.SS/334/90 dated 5.1.1991 and No.SS/332/91 dated 4.1.1991, the petitioner agreed to supply to the respondent 3000 MT Soyabean Meal @ 3,700/- per M.T. on FOR Kandla Basis. The payment for the goods was to be made through letter of credit. As per terms of the agreement, respondent opened the letter of credit No.392 dated 14.1.1991 in the Citi Bank New Delhi for a value of Rs.1,11,00,000/- + 5%. The letter of credit was negotiable in two parts, one for 97% of the value on presentation of the documents listed in Part -1 of the Annexure A to the letter of credit and the other for 3% of the value, on presentation of documents listed in part II of the said annexure. After supply of the contracted quantity of soyabean meal, the petitioner presented the documents for negotiation to the State Bank of Indore. The letter of credit was negotiated by the State Bank of Indore and the petitioner was paid a sum of Rs.1,07,80,135.50. However, on March 7, 1991 the petitioner was informed by

the State Bank of Indore that it had been reimbursed by the Citi Bank for Rs.98,48,826.15 p only in accordance with the instructions given by the respondent. As regard the balance of 3% of the letter of credit, the respondent did not make available to the petitioner the documents stipulated under Part II of Annexure ''A'' of the said letter of credit, as a result whereof the petitioner could not receive the payment due under the contract. Since the petitioner had discharged the contractual obligations, it became entitled to recover the balance amount of Rs. 1,79,287.36 p. from the respondent. Despite repeated representations, the respondent neither paid their amount nor appointed an arbitrator to adjudicate upon the disputes between the parties in terms of the arbitration agreement.

3. The respondent resisted the petition on the ground that the disputes raised by the petitioner are not covered by the arbitration agreement and further the petitioner has not exhausted the remedy of mutual settlement as provided in the agreements and so it cannot invoke the arbitration agreement for resolving the dispute. It is alleged that under the agreements dated 5.1.1991 and 4.1.1991 M/s.SGS India Pvt. Ltd was named as surveyors for assessing the weight and quality of the soyabean agreed to be supplied by the petitioner to the respondent. Accordingly, at the time of the delivery of the said goods at Kandla, the weightage of the cargo was undertaken by M/s. SGS India Ltd. and it was found that there was great variance in the quantity as well as the quality of the goods supplied by the petitioner. The report of the said surveyors was duly sent to the petitioner on 20.2.1991. However, after exchange of correspondence between the parties, the petitioner agreed to accept a sum of Rs.98,28,826 towards full and final discharge of the L.C. The said amount was paid to the petitioner and so the petitioner is not entitled to recover the balance amount of 3% or any other amount over and above the sum of Rs.9848826/- paid by the respondent to the petitioner. It is also alleged that Shri T.S. Sahni was not authorised to sign and verify the petition on behalf of the petitioner and so the present petition is liable to be dismissed on the said ground. On these pleadings the following issues were framed:

1. Whether there is any binding and valid contract containing the arbitration clause between the parties?

2. Whether the petition has been signed by a competent person?

3. Relief.

ISSUE NO. 1

4. It is beyond the pale of controversy that by the agreements No. SS/332/91 dated 4.1.1991 and No. SS/334/90 dated 5.1.1991, the petitioner agreed to supply to the respondent 3000 MT soyabean meal at the rate of Rs.3,700/- per M.T. on FOR Kandla basis. It is undisputed that the payment for the goods was to be made through the letter of credit. The respondent opened the letter of credit No.392 dated 14.1.1991 in the Citi Bank, New Delhi for a value of

Rs.1,11,00,000/- + 5%. The letter of credit was negotiable in two parts: one for 97% on presentation of the documents listed in part I of the Annexure A to the letter of credit and the other for 3% of the value on representation of documents listed in part II of the said annexure. It is also undisputed that certain disputes have arisen between the parties with regard to the quantity and quality of the soyabean meals supplied to the respondent under the terms of the said agreements and the same are to be resolved by arbitration. In view of the said admissions, I find and hold that there is a valid and binding contract between the parties and that certain disputes have arisen between the parties with regard to the contract in question which are to be resolved by arbitration. Hence, issue No. 1 is answered in affirmative. ISSUE NO.2

5. Admittedly, the petition has been signed by Mr. T.S. Sahni. Mr. Anil Bhalla, one of the Directors of the petitioner company, has filed his affidavit stating that Mr. T.S. Sahni was duly authorised by the company to sign and verify the petition on behalf of the petitioner company. Copy of the Resolution passed in the meeting of the Board of Directors held on 31.1.1992 has also been filed in support of the said contention. Relying on the affidavit and the copy of the said resolution, I find and hold that the petitioner has been signed and verified by a duly authorised person. Hence the Issue No.2 is answered in favor of the plaintiff. ISSUE NO.3

6. During the course of arguments, learned counsel for the parties have suggested the name of Mr. Justice P.K. Bahri (Retd) for appointment as an arbitrator for resolving the disputes between the parties. Accordingly Mr. Justice P.K. Bahri (Retd) is appointed as arbitrator to adjudicate upon the disputes which have arisen between the parties in respect of the agreements in question. The arbitrator shall enter upon the reference within 4 weeks from the date of this order and will give his award as expeditiously as possible. The arbitrator shall be free to fix his own remuneration. The petition is disposed of accordingly. Parties shall bear their own costs.