(2010) 03 DEL CK 0262

In the Delhi High Court

Case No : O.M.P. No. 372 of 2003

Dawar Rubber Industries APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2010) 03 DEL CK 0262

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Shiv Khorana, for the Appellant; Anuj Aggarwal and Gaurav Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this petition u/s 34 of the Arbitration and Conciliation Act, 1996, the petitioner challenges the Award dated 5.6.2003, passed by the Sole Arbitrator. The Award came to be passed on account of disputes between the parties under the contract wherein the petitioner was supplier of shoes and the respondent/Union of India was the buyer.

2. The counsel for the petitioner has pressed his objections only with respect to Claims (A), (B) and (C) as decided by the Arbitrator.

3. Claim (A) was the claim of the petitioner for recovery of an amount of Rs. 3,91,163/- on the ground that the payment with respect to the subject invoice numbered 579/6 dated 11.10.93 and relatable RR No. 657239 dated 11.10.1993 was not released to the petitioner/claimant. The Arbitrator has found that this payment was in fact made to the petitioner and the Arbitrator accepted the certificate as filed by the respondent/Union of India of its bankers that payment of the goods pertaining to the subject invoice/railway receipt was paid to the petitioner on 24.11.1993.

Mr. Khorana, on behalf of the petitioner urges that the bankers of the petitioner however, informed the petitioner that payment with respect to this invoice and railway receipt was not received. I am unable to agree with the contentions of the counsel for the petitioner. Once the respondent shows that the account of the petitioner was in fact specifically credited with respect to subject invoice/railway receipt, the petitioner cannot contend that no payment was made. Mr. Khorana sought to take me through certain documents to show that payment has been received with respect to the other invoice and not the subject invoice. However, I note that the argument and the documents relied upon would be incomplete and unsustainable because Mr. Khorana cannot sustain his arguments until and unless for the entire financial year, the complete details of the credits in the bank account of the petitioner are shown, because only then, it would become clear that the payment made with respect to the subject invoice/railway receipt is not as found by the Arbitrator and proved by the respondent, but for some other invoice/railway receipt. Admittedly, before the Arbitrator, no such document being the complete credits in the bank account of the petitioner during the relevant financial year has been filed. If that be so, no objection can be sustained u/s 34 because the finding of the Arbitrator cannot be said to be in any manner illegal or perverse. In my opinion, the Arbitrator has validly dealt with this aspect in the following paragraphs and which findings I agree with.

Claim No. (A)

The claimants have claimed an amount of Rs. 3,91,163.00, towards 95% of the Bill No. 579/6 dt. 11.10.93, with interest @ 27% from due date, till actual realisation.

AWARD

It has been submitted by the respondents'' counsel, Shri P.B. Lal that the amount Rs. 3,91,163.00 in respect of R/R No. 657239 dt. 11.10.93 has been released to the claimants as the amount of Rs. 3,91,163.00 is included in the Demand Draft No. 125973 dt. 22.11.93 of Rs. 8,30,456/00 (U-68 and U-69) which has been encashed by M/s Dawar Rubber Industries on 24.11.93. Shri P.B. Lal''s submissions have a force as it is apparent from CCA''s letter (U-53) dt. 27.08.96-Sl. No. 1 that the amount of Rs. 3,91,163.00 has been released to the claimants. S/Shri Ranjit Singh and Desh Pande, Sr. A.O. have also shown the entry in the outward Bill Register (U-64) maintained for the purpose in CCA''s Office (the entries have also been seen by the claimants'' Advocate, Shri Shiv Khorana) wherein it has been mentioned that the claimants have supplied 14795 pairs against which an amount of Rs. 3,91,163.00 has been paid vide Bill No. 579/6 dt. 11.10.93 i.e. the alleged 95% payment has been made to the claimants vide the aforesaid bills.

In view of the above facts and circumstances, I am of the view that when the claimants have already received Rs. 3,91,163.00 towards the alleged 95% of Bill No. 579/6 dt. 11.10.93, their claim has no stand hence the claim with interest @ 27 per annum from alleged due date, is rejected.

4. The other claims which was objected to by the counsel for the petitioner was Claim (B) and (C). As per these claims, the petitioner challenges the withholding of an amount of Rs. 2 lacs by the respondent on account of breaches committed by the petitioner in other contracts. The counsel for the respondent during the course of hearing stated that now in fact Awards have been passed in favour of the respondent and against the petitioner with respect to those other contracts. The relevant Award in this regard is dated 15.9.2009 of Sh. B.L. Chaudhary, sole Arbitrator. Therefore, once an Award has been passed in favour of the respondent, the respondent will be entitled to appropriate and adjust the amounts as withheld from these contract towards the claim of other contracts. No objection is therefore maintainable against the action of the respondent in withholding the amounts of which payment is sought under these claims.

5. No other issue was pressed.

6. In view of the above, the petition is dismissed leaving the parties to bear their own costs.

