

(2019) 05 DEL CK 0438

In the Delhi High Court

Case No : First Appeal From Order No. 52 Of 2019

Hil (India) Ltd

APPELLANT

Vs

M/S Indogulf Crop Sciences Ltd

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2019) 4 R.A.J. 442 : (2019) 260 DLT 408 : (2019) 7 AD(Delhi) 478

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Sadiqua Fatma, Amir Zafar Khan

Final Decision : Dismissed

Judgement

XXXX XXXX XXXX XXXX,,

6,"Our normal payment terms are 100% payment with 60 days clean credit from the date of receipt but subject to acceptance of the material by our respective unit through cheque. However, any deviation from this term has to be specifically mentioned. In this regard Please see our Methodology for evaluation of tender (Annexure - IV)â??", "Agreed/Not agreed

XXXX XXXX XXXX XXXX,,

addition to the general terms and conditions of the tender documents. It is the settled law that this court is not to sit as a court of appeal and the,, objections taken by the petitioner against the award are in the nature of appeal. Id. Arbitrator has taken the entire material and documents into,,

consideration while passing the impugned award. The impugned award is not vitiated by any illegality and the same has been passed after proper,, appreciation of evidence and merits of the case.â??,,

5. Learned counsel for the appellant submitted that the respondent was bound by the tender conditions and was not entitled to insist upon payment of,, interest for delayed payments. She submitted that the appellant was entitled to forfeit the earnest money under Clause 22 of the tender conditions in,, view of the respondentâ??s failure to supply the material. Clause 22 of the tender conditions states as follows:-,,

â??22. RISK PURCHASE: In the event of failure or delay on the part of the supplier to fulfil his obligation in the execution of the order/contract to,,

HIL's satisfaction, HIL shall have the right to terminate the order/contract and make necessary alternate arrangements for completion of the",,,

order/contract through other means at delinquent suppliers risk and cost. In such an event the earnest money deposit will be forfeited without prejudice,,

to HIL's right to claim compensation from supplier for the loss incurred by HIL as a result of supplier's failure to fulfil his obligation under the,,

contract/order conditions. The damages so claimed by HIL will be in addition to the liquidated damages recoverable by HIL as mentioned in our,,

liquidated damages clause. The supplier shall have no claim for compensation for any loss that may accrue from any material he might have collected,,

or engagements, he may have entered into on account of the order/contract.â??",,,

Her contention was that the respondent had pre-emptively failed to supply the goods on the baseless presumption that the appellant would not pay,,

within the contractual period of 60 days.,,,

6. Having heard learned counsel for the appellant, I am of the view that the impugned award of the learned arbitrator, and the impugned order dated",,,

01.11.2018 do not call for any interference. If the appellant was not willing to accept the terms offered by the respondent, including as to payment of",,,

interest, the appropriate consequence would have been to reject the respondent's bid and to decline to place orders upon it. It is evident from the",,,

award that the parties were not, in fact, ad idem on this issue. Clause 22 was not intended to operate in such a situation. The contractual clauses and",,,

the documentary evidence have been duly considered by the learned arbitrator

whose findings do not demonstrate any manifest arbitrariness or,,
perversity. The limited grounds of interference under Section 34 of the Act, as
elaborated by the Supreme Court, inter alia, in Associate Builders",,
(supra) are therefore not attracted in the present case.,,
7. For the reasons aforesaid, the appeal is dismissed.",,