
(2004) 04 DEL CK 0010

In the Delhi High Court

Case No : I.A. No.606 of 2000 in CS (OS) No. 1851-A of 1999

Ingersoll Rand India Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Citation : (2004) 2 ARBLR 54 : (2004) 111 DLT 452 : (2004) 74 DRJ 567

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Nem, for the Appellant; Rajinder Nischal, for the Respondent

Judgement

Mukundakam Sharma, J

1. A contract was entered into between the petitioner and the respondent for supply of 10 number of Rigs of two different capacities. In the execution of the aforesaid contract, dispute arose between the parties. Accordingly, the same was referred to the sole arbitrator Mr.K.D.Singh in terms of the arbitration clause between the parties. The learned arbitrator entered into the reference, received evidence and published his award on 1.4.1992. When the said award was filed in this Court, notices were issued to the parties. Thereupon objections were filed and this Court, after going through the award passed by the arbitrator, set aside the award and remitted the same and ordered that the respondent would appoint a new arbitrator for the purpose of adjudicating the disputes between the parties. It was also held that the new arbitrator so appointed would go into the question as to whether or not the price preference clause could be applied to the contractor, apart from the other disputes raised. Pursuant to the said order, the respondent appointed Shri S.B. Sharan as the sole arbitrator, who took up the matter and after hearing the parties made and published his award on 16.12.1998. The said award was filed in this Court. Notices were issued to the parties intimating them about the filing of the award. The respondent filed objections under Sections 30 and 33 of the Arbitration Act as against the aforesaid award dated 16.12.1998. I have perused the said objections, which are

filed by the respondent and other relevant records and also heard the counsel appearing for the respondent on the said objections.

2. On a close perusal of the objections and upon hearing the counsel for the parties, I find that the objections filed relate mainly to twofold objections. The first objection relates to applicability of the price preference clause as mentioned in Clause 19(L) of the A/T. The other objection is against the rate of interest which was awarded by the arbitrator.

3. So far the first contention that is raised regarding the applicability of price preference clause, the same was a matter, which was directed to be considered by this Court while remitting the award. Pursuant to the said order of this Court, the new Arbitrator, who was appointed, considered the aforesaid Cause 19(L) of the A/T, which is shown to be a price preference clause. The learned Arbitrator, after going through the records and on appreciation of the said clause namely Clause 19(L) held that the said price preference clause is not applicable to the facts and circumstances of the present case. It is pointed out by the learned Arbitrator that the petitioner did not offer the price preference clause in their tender and clarified before acceptance of A/T i.e. as far back as on 20.1.1980 objecting to the price preference clause. It is also recorded by the learned Arbitrator that the acceptance of the said clause, namely, price preference clause in the A/T was conditional. The learned Arbitrator further held that various documents on record disclose that the said price preference clause would not apply and that even assuming the same applies, the same is not attracted due to the reasons which are recorded in the award. It is pointed out by the learned Arbitrator that it was a condition of supply that the equipment mounted on the truck chassis would be made within four to six weeks of the delivery of the truck chassis and, Therefore, the delivery of the truck chassis was not within the control of the petitioner. From the language used therein it was deduced by the learned Arbitrator that the efforts were made by the petitioner for securing the delivery of the truck chassis but the same could be obtained only after pressure from the respondents on the manufacturers. The learned Arbitrator has also recorded a finding of fact that the deliveries by the petitioner have been affected more or less within the stipulated period of four to six weeks, which conclusions are derived from the documents mentioned in the said award. It is also recorded that the respondent also appreciated the said fact and in the light thereof extension was also given by the respondent for the reasons which were beyond the control of the petitioner including power cut etc. and, Therefore, the price preference clause is not attracted.

4. The aforesaid discussion would prove and establish that the learned Arbitrator considered the evidence on record and in the light thereof considered the price preference clause and on analysis thereof the learned Arbitrator held that the said clause is not applicable to the facts and circumstances of the case. It is settled position of law that the arbitrator has the power and jurisdiction to appreciate the evidence on record and also is empowered to interpret a particular

clause in the light of the documents on record and thereafter record its reasons. The Supreme Court has held that the Court while exercising jurisdiction under Sections 30 and 33 of the Arbitration Act would not sit over the finding of facts recorded by the Arbitrator by giving a particular interpretation to a clause in the contract.

5. In the present case, the learned Arbitrator has recorded his reasons for coming to the conclusions that the aforesaid clause is not applicable to the facts and circumstances of this case. This Court, Therefore, should not sit over the reasoning and the appreciations of the learned Arbitrator on the records and the clause of the contract so as to come to a contrary finding.

6. In that view of the matter and particularly in view of the fact that the learned Arbitrator has come to the conclusion that the said price preference clause is not applicable to the facts and circumstances of this case, I am not inclined to interfere with the aforesaid award passed by the learned Arbitrator. The said objection, accordingly, is rejected.

7. I may now, Therefore, proceed to deal with the second contention of the counsel appearing for the respondent. It was submitted by the respondent that the rate of interest which is awarded by the learned Arbitrator is on the higher side. It may be noted that the learned Arbitrator has awarded interest @ 12% per annum from July 1980 up to 1.4.1992 and @ 18% after 1.4.1992 till the payment is made. While giving the said award, the learned Arbitrator has referred to the decision of the Supreme Court in *M/s Santokh Singh Arora v. Union of India* reported in 1992 ALR 168 wherein the Supreme Court has held that the contractor is entitled to pendente lite interest because he has been deprived of the money for the period when the proceedings were conducted before the learned Arbitrator. The learned Arbitrator has awarded interest at the aforesaid rate from July 1980 up to 1.4.1992 @ 12% per annum. The records disclose that whatever is awarded by the learned Arbitrator as interest is only for the pendente lite period, which he has jurisdiction to award. Therefore, grant of interest @ 12% per annum cannot be interfered with. However, for the period from 1.4.1992, the learned Arbitrator has directed that the interest shall be paid at an enhanced rate i.e. @ 18% per annum. No justification and reason is given by the learned Arbitrator for raising the rate of interest from the period from 1.4.1992. Even if it is assumed that the said date is the date of the earlier award, the fact remains that the said award was set aside and remitted and the proceeding was concluded again. Therefore, the said date could not be the basis for grant of enhanced rate of interest. Accordingly, I set aside that part of the award awarding 18% per annum from 1.4.1992 till payment and order that for the aforesaid period also interest shall be paid @ 12% per annum.

8. In terms of the aforesaid order the objections stand disposed of. The award with the aforesaid modification in the interest payable from 1.4.1992 till date of payment is made a rule of the Court. A decree shall be drawn in terms of this order