(2001) 10 DEL CK 0171

In the Delhi High Court

Case No : IA No. 2448/99 and Suit No. 2591-A/97

Jayshree Tea and Industries Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Citation : (2002) 61 DRJ 216

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Shiv Khorana, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Shri S B Saran had been appointed as the sole arbitrator. He had submitted his awarded on 20th November, 1997. The petitioner M/s Jayshree Tea & Industries Ltd. filed the application for making the award a rule of the court and for a decree to be passed in terms of the award.

2. On behalf of Union of India objections have been filed against the said award. Reply has been filed by the applicant and the assertions made by the objectors/ Union of India were controverter. One objection with which the court is presently concerned is that it has been alleged by the applicant that objections are not maintainable because the award has since been implemented. The arbitrator had rejected the claim of the parties for damages. The Union of India had implemented the said award. Vide letter dated 22nd April, 1998 the Union of India had paid the amount and consequently the objections were not maintainable.

3. Keeping in view the aforesaid the short question that comes up for consideration is as to whether in the facts of the present case the objections are maintainable or not. To keep the record straight it can well be mentioned that it is not being disputed that the amount awarded by the arbitrator has since been paid during the pendency of the present petition. But the interest has not been

paid and has been given up.

4. Learned counsel for the objector urged that merely because amount awarded has been paid will not debar the court from entertaining the petition and deciding the same on merits. According to him, no benefit has been drawn by the objector and Therefore it does not estopped the objector from raising the pleas that have been put forwarded in the objections.

5. Reference in this connection can well be made to what has been stated by Russel on Arbitration, 20th Edition page 332. It was pointed out that if there is acquiescence in the award the party moving to set aside may justify refusal of motion. If benefit has been taken under it in that even the court can refuse to issue the motion for setting aside the award on any ground. Russel states:

"Acquiescence by taking benefit under award. It will be a good answer to a motion to set aside an award if the opposing party can show that the party moving has acquiesced in the award by knowingly accepting a benefit under it. Even an acceptance of a benefit under it. Even an acceptance of a benefit under protest may amount to acquiescence in the award, especially if there is delay in taking proceeding to set it aside."

6. This principle of law in fact is not being disputed and this court in the decision rendered in the case of Anand Kumar Jain v. Union of India 1988 RLR 208 also in similar terms held:

"...When a party makes the other party believe that the award has been accepted by both the parties, and this results in at least one of them not filing any objections, it would, to my mind, be wholly unfair and iniquitous to allow one of the parties, the petitioner in the present case, to file objections and challenge a part of the award after having given in writing that the award was accepted."

7. In other words, one can conveniently state that merely because if the amount awarded has been paid will not debar a party from raising the objections. But at the same time if a party taken benefit under the award of a nature in that event he cannot challenge the award after taking the said benefit.

8. What is the position in the present case. The applicant has placed on the record a letter of 21.4.1998 written on behalf of Director General of Supplies and Disposal to the applicant in which the offer of the applicant for not claiming the interest on the awarded amount in case the payment is made within 30 days, from the date of the letter. It was pointed that decision is to be taken shortly. The letter reads:-

"Dear Sirs,

with reference to the above wherein you have agreed for non-claiming of interest on the awarded amount for the payment of the awarded amount is released to you within a period of 30 days from the date of letter i.e. up to 6.4.98. You are hereby informed that matter was considered in consultation with the Ministry of

Law and final decision could be taken only on 21.4.98 about releasing of your payment of the arbitration award. however, before any action for releasing the other payment is taken you are requested to extend the time further up to 30.4.98 for acceptance of the amount without any claim of interest.

An immediate confirmation to the above is requested.

This is however without prejudice to the terms and conditions of the contract."

9. This was followed by a subsequent letter of 22.4.98 addressed to Chief Controller of Accounts with copy to the applicant. Herein the copy of the award was sent to the Chief Controller of Accounts authorising the release of the payment and it was mentioned that the applicant has agreed not to claim the interest if the payment is made by 30.4.1998. It was advised that payment be made to avoid payment of the interest. The said letter reads:-

"Please find enclosed a copy of the arbitration award dated 20.11.97 given by Shri S B Saran, Learned Sole Arbitrator. As per decision taken by the competent authority to this arbitration award you are hereby authorised to release the firm''s balance payment for the supplies made amounting to Rs.91,382/- in respect of A/T No. TP-2/309/0003/23.8.88/Z-2 1304/COAD dated 22.5.89. The earlier letters dated 2.7.93 and 20.8.93 stand withdrawn in view of arbitration award and decision of the competent authority to release the firm''s payment.

The Learned Arbitration has allowed payment of interest on the awarded amount. However, the firm as agreed not to claim any interest on the awarded amount if the payments are made to them on or before 30.4.98. You are, Therefore advised to ensure that the awarded amount is released to the firm on or before 30.4.98 positively so as to avoid payment of any interest on the awarded amount."

10. It is followed by another letter of the same date i.s. 22.4.98 written for Director General of Supplies and Disposal to Chief Controller of Accounts with copy of the applicant. Once again the objector was keen to take the benefit of not paying the interest and wanted to make the payment of the award for satisfaction of the award. The operative part of the said letter reads:-

"Since our claim for a sum of Rs.21,85,476/- in respect of the risk purchase loss against A/t No. TP-2/309/0008/23.8.88/Z-2/1082/COAD dated 22.5.89 has been disallowed by the Learned Arbitrator and release of withheld amount in RGC No. TP-2/TRGC-1485/Plywood/JST. 86-87/Z-2/1082/COAD has been allowed by the Learned Arbitrator and as per decision taken by the competent authority on the arbitration award for release of withheld amount you are hereby authorised to release the withheld amount of Rs. 4,50,615/- in satisfaction of the arbitration award in RGC No. TP-2/RGC-1435/Plywood/JST/86-87/Z-2/ 1082/COAD.

The learned Arbitrator has allowed payment of interest on the awarded amount. However, the firm has agreed not to claim any interest on the awarded amount if the payments are made to them on or before 30.4.98. You are Therefore advised to ensure that the awarded amount is released to the firm on or before 30.4.98 positively so as to avoid payment of any interest on the awarded amount."

11. The position that clearly emerges from these letters is that the applicant had offered to give up the interest if the amount awarded by the arbitrator is paid. The Director General of Supplies and Disposal had been writing to the Chief Controller of Accounts that to avoid the payment with interest the other amount awarded may be paid. This is apparent from the subsequent two letters already reproduced above. The interest admittedly was given up and the amount has since been paid. There is no mention on behalf of the union of India in any of the letters, copy of which has been endorsed to he applicant that it is without prejudice to the rights to file the objections with respect to the other part of the award or they reserved any other right in this regard. In other words the payment was made and benefit was taken in not payment of the interest. In this process there is a complete acquiescence to what was alleged by the applicant that if interest is given up payment should be made. No such right was reserved that any other claim which was not awarded would be taken up by filing the objections. Keeping in view the above said principle referred to above obvious conclusion would be that the objector would be de-barred from filing the objections in the peculiar facts of the present case because they have been benefit of non payment of interest and clearing the amount of the award without reserving any such right.

12. For these reasons objections must fail and are dismissed.