
(2007) 08 DEL CK 0018
In the Delhi High Court
Case No : OMP No. 489 of 2006

JNP Agro-Systems (P) Ltd. and Others APPELLANT
Vs
Technology Development Board RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 12(1), 34(2), 8

Citation : (2007) 08 DEL CK 0018

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : C.K. Sasi, for the Appellant; Rajiv Chandok, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The respondent is a Government of India organisation under the Ministry of Science, Department of Science and Technology, Government of India, set up under an Act of Parliament with the object of providing financial assistance to industry for promotion and commercialization of new technologies.

2. The petitioners approached the respondent for grant of certain loan facilities and a loan agreement dated 22.12.2000 was executed in that behalf which contained an arbitration and jurisdiction clause being Article 10. The petitioners failed to pay the installments of loan giving rise to disputes between the parties.

3. It may be noticed that a suit was filed by the respondent for recovery of the amount but the petitioners filed an application u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). The suit and the application were disposed of in terms of the order dated 14.11.2005 by this Court where on the agreement between the parties, it was recorded that an arbitrator had been appointed to whom disputes could be so referred. The suit was dismissed as withdrawn with liberty to the respondent to pursue the arbitration proceedings.

4. The petitioners received a notice of arbitration dated 16.1.2006 from one Mr.

N.K. Sharma, who claimed to have been appointed as the sole arbitrator by the Technology Board in terms of the order dated 17.11.2005 in accordance with the said Article 10 of the contract agreement dated 22.12.2000. It would be useful to reproduce the relevant portion of Article 10, which is as under:

10.1 If any dispute or difference arises between the Parties hereto as to the construction, interpretation, effect and implication of any provision of this Agreement including the rights or liabilities or any claim or demand of any party against other or in regard to any matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this Agreement, such disputes or differences shall be referred to the sole arbitration of the Chairperson, Technology Development Board or that of his nominee and the decision of such arbitrator shall be conclusive and binding on the Parties hereto. A reference to the arbitration under this Clause shall be deemed to be submission within the meaning of the Arbitration and Conciliation Act, 1996 and the framed there under and any statutory modifications thereof for the time being in force, which shall be deemed to apply to the arbitration proceedings under this Clause.

5. The petitioners while filing the written statement to the claim of the respondent raised an issue about the jurisdiction of the arbitrator. It was and it is still the case of the petitioners that the appointment of the arbitrator was not in accordance with the arbitration clause inasmuch as it is only the Chairperson of the Technology Development Board or his nominee, who could be the arbitrator. This aspect was dealt with by the arbitrator in terms of the order dated 23.3.2006 where the arbitrator found that the appointment was valid. In this behalf, it may be noted that the respondent had submitted a rejoinder to the written statement of the petitioners enclosing Annexures A and B which had earlier not been filed with the rejoinder but were subsequently produced before the arbitrator with copies to the petitioners herein. In the rejoinder it has been clearly mentioned in paragraph 3 of the preliminary objections that the Chairman of the respondent Board had made noting on the file dated 23.9.2005, nominating the said arbitrator as the sole arbitrator. This was followed up with a letter dated 29.9.2005 informing the petitioners about the said appointment. The letter states that the Chairman had approved the appointment of Shri N.K. Sharma as the arbitrator. This is Annexure A. The second letter dated 17.11.2005 is Annexure B, which has also been issued on behalf of the respondent Board.

6. The arbitrator made and published his award on 26.8.2006. In terms of the award certain issues were framed and one of the issues was about the claim of the respondent who had terminated the loan agreement before starting the recovery proceedings. A finding was reached in this behalf that though a legal notice had been sent to the petitioners for non-payment of loan installments and other aspects, there was no record of letter of termination. In respect of other issues the findings have been reached that the petitioners failed to execute the relevant agreement when called upon to do so. The arbitrator has, in fact, found

that the entire loan agreement could not have been recalled but the petitioners are liable to pay the installments which have become due and payable by that date along with interest and penal interest. It is this amount which has been awarded against the petitioners.

7. Learned Counsel for the petitioners contends, once again, that the finding of the arbitrator about the proper appointment of the arbitrator is not in accordance with law since only the approval of such appointment was placed on record through the communication issued as Annexure A to the rejoinder. Learned Counsel, thus contends that it is not the approval but the appointment which has to take place by the Chairperson, the Chairperson being the Persona Designata to appoint any other arbitrator.

8. I am unable to accept the plea in view of the categorical stand in the rejoinder wherein it has been mentioned that the appointment was made in pursuance to the noting of the Chairman dated 23.9.2005. The procedure whereby a proposal was put to the Chairman, who in turn took the decision about the appointment of the arbitrator cannot be faulted with or cannot be said to be one where the Chairperson has not exercised his independent mind in the appointment of the arbitrator. This appointment has been thereafter communicated vide letters dated 29.9.2005 and 17.11.2005.

9. I, thus, find no infirmity in the appointment of the arbitrator.

10. The second plea sought to be raised by learned Counsel for the petitioners is based on the provisions of Sub-section 1 of Section 12 of the said Act, which reads as under:

12. Grounds for challenge. - (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

11. Learned Counsel contends that it was the bounden duty of the arbitrator to have disclosed in writing any circumstances likely to give rise to justifiable doubts as to his independence. On being asked as to what were the facts, which had come to light, which ought to have been disclosed learned Counsel submits that there should be a disclaimer by the arbitrator in terms of Sub-section 1 of Section 12 of the said Act.

12. I am unable to accept the aforesaid plea for the reason that the occasion for the arbitrator to disclose any such circumstance would arise only if there were such circumstances in existence. It is not the case of the petitioners that any circumstances had subsequently come to light which ought to have been so disclosed.

13. I thus find no merit in this objection.

14. The last aspect raised by learned Counsel for the petitioners is based on the

provisions of Sub-clause (iv) of Sub-section 2 of Section 34 of the said Act. Learned Counsel contends that the arbitral award deals with the dispute not contemplated or not falling within the terms of the submission to arbitration. On being asked as to how this plea arises, learned Counsel for the petitioners states that once a finding is reached that the loan agreement was not terminated, there could be no question of any claim.

15. I am, once again, unable to accept the plea of the learned Counsel for the petitioners since the arbitral award is very clear in this behalf. The arbitral award states that there is no termination and that is why the whole loan amount could not have been recalled. The awarded amount is for the installments which had become due and payable by that time along with interest. It can hardly be said that this is not an aspect, which could have been adjudicated by the arbitrator or amounts to dealing with the disputes not contemplated or not falling within the terms of the submission to arbitrator. The arbitration clause is wide.

16. I am, thus, of the view that the objections filed by the petitioners are totally devoid of any merit and are accordingly dismissed with costs of Rs. 5,000.00.