

(1979) 04 DEL CK 0025

In the Delhi High Court

Case No : Suit Appeal No. 880A of 1977

K.G. Khosla Compressors Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-04-1979

Acts Referred:

Citation : (1980) 18 DLT 236

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : D.K. Kapur and Rekha Ijharma, for the Appellant;

Judgement

Sultan Singh, J.

(1) This is a Petition u/s 20 of the Arbitration Act for filing an Arbitration agreement and appointment of Arbitrator in terms of Clause 24 of the General Conditions with respect to contract dated 23rd January 1968 for the supply of goods entered into by the Petitioner with the Union of India. M/s. K.G. Khosia Compressors Pvt. Ltd., the Petitioner, is a limited Company. Previously the Petitioner Company was known as M/s. K.G. Khosia & Company Pvt. Ltd., which was amalgamed with M/s K.G. Khosia Compressor Pvt. Ltd. under Orders of this Court dated 24th October 1975, Subsequently M/s K.G. Khosia Compressors Pvt. Ltd., was confronted into a Public Limited Company and as such it came to be known as K.G. Khosia Compressors Pvt. Ltd., that is the Petitioner Company. The contract was for the supply of 115 Tyre Inflation Plants. The Petition states that the supplies were completed from time to time and that now a sum of Rs. 30,204.25 paise on account of 5% of the balance of the payment towards seven supplies is due from the Respondents and interest amounting to Rs. 25,356.00 ie.. @ 12 per cent per annum. In this way a total sum of Rs. 55,560.25 paise is claimed by the Petitioner from the Respondents. The Respondents in reply have admitted that 5 per cent balance amount is payable to the plaintiff. But it is contended that there is no dispute or difference between the parties as per Clause 24 of the General Conditions of contract requiring the appointment of an

Arbitrator. Respondents further denied liability to pay interest that is @ 12 per cent per annum or at any other rate. Under the circumstances, it is contended on behalf of the Respondent that there is no dispute or difference and the matter is not referable to Arbitrator under Clause 24 of the General Conditions of contract. On 14th September 1978 the following issues were framed :-

1. Whether there is any dispute in existence and an Arbitrator is to be appointed?
2. Whether the present application u/s 20 of the Arbitration Act is not maintainable in view of the allegations contained in the written statement.
3. Relief?

(2) Clause 24 of the General Conditions of contract is as under:-

"IN the event of any question dispute of difference arising under these conditions or any special conditions of contract or in connection with this contract (except as to any matter the decision of which is specially provided for by these or the special conditions), the same shall be referred to the Sole Arbitration of an Officer in the Ministry of Law, appointed to be the Arbitrator by the Director General of Supplies & Disposals. It will be no objection that the Arbitrator is a Government Servant, that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government Servants, he has expressed views on all or any of the matters in dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract.

In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to Act for any reason, or his award being set-aside by the Court for any reason, it shall be lawful for the Director General of Supplies & Disposals to appoint another Arbitrator in place of the out going Arbitrator in the manner aforesaid. It is further a term of this contract that no person other than the person appointed by the Director General of Supplies & Disposals as aforesaid should act as Arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitrator at all. The Arbitrator may from time to time with the consent of the practices to the contract enlarge the time for making the award. Upon every and any such reference, the assessment of the costs incidental to the reference and award respectively shall be in the discretion of the Arbitrator. Subject as aforesaid, the Arbitration Act, 1940 and the Rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this Clause. Work under the contract shall, if reasonably possible, continue during the Arbitration proceedings and no payment due to or payable by the purchaser shall be withheld on account of such proceedings. The venue of Arbitration shall be the place from which the acceptance note is issued or such other place as the Arbitrator at his discretion may determine.

In this Clause the expression "The Director General of Supplies & Disposals" means the Director General of Supplies & Disposals, for the time being and

include, if there be no Director General of Supplies & Disposals) the Officer who is for the time being, the Administrative head of the Supplies Organisations, whether in addition to other functions or otherwise."

(3) The Petitioner supplied Tyre Inflation Plants and admittedly 95 per cent payment has been made. But with respect to 7 bills 5 per cent of the balance amount is still payable to the Petitioner. The Petitioner has also claimed interest. As per records 5 per cent balance is due to the Petitioner, the same is not denied but the liability to pay the interest is specifically denied on behalf of the Respondents. In a Petition u/s 20 of the Arbitration Act, the Petitioner has to prove that there is an Arbitration Agreement with respect to the subject matter in question that difference has arisen to which the agreements applies. In the present case there is an admittedly Arbitration agreement between the parties relating to the contract in question and Clause 24 of the General Conditions of contract narrates the circumstances under which the matter may be referred to Arbitration. Now the question is whether the dispute that is being raised by the Petitioner is a dispute calling for the reference to the Arbitration. u/s 24 of the General Conditions of contract the matter is to be referred to the Arbitrator in the event of any question, dispute or difference arising under these conditions or any special conditions of the contract and also if arises in connection with the: contract.

(4) Petitioner is claiming the balance of price of the Type Inflation Plant supplied to the Respondent and the question of remaining price and the interest is a matter arising in connection with the contract. To determine whether there is a dispute or not, there must be two things, "(i) an assertion of a claim by a party and (ii) denial by the opposite party." This denial may be express or may be implied. Denial may be assumed from the conduct of a party. In the present case it appears that the petitioner has been demanding the balance of 5 per cent of the price of the goods supplied to the Respondent but the Respondents have not cared to give any reply to any of these demands and Therefore, it is denial by conduct. In the present reply to the present Petition the Respondent no doubt admit that the amount is payable to the Petitioner but no ground has been taken why such an amount has not been paid. It may be that this matter is to be decided by the Arbitrator. In view of the Arbitration Clause and existence of dispute it does not stand to reason to direct the petitioner to file a suit for the recovery of the amount due and pay Court fees on it. The Petitioner also claims interest which liability is denied by the Respondents Union of India. In *Nandram Hanutram Vs. Raghunath and sons Ltd.*, . It has been observed as follow :

"THERE is no doubt that the existence of disputes or differences contemplated by the Arbitration Clause, is an essential condition of and pre-requisite to the exercise of the jurisdiction by the Arbitrator. A dispute implies an assertion of a right by one party and repudiation thereof by another. The repudiation by the other party may be either express or implied any may be by words or conduct. Failure to perform contract and to pay the amount claimed may take place under

such circumstances as. may justly lead to the inference to repudiation and denial of the right of the other party. Such conduct and stoic silence may be more eloquent than words and may show that the party is disputing his liability. Coupled with other circumstances a failure to a claim may constitute a difference between the parties."

(5) In the present case the Petitioner has been demanding the balance of the price but the Respondents have not given any reason for the nonpayment of the amount due to the Petitioner. In the circumstances. I am of the view that the disputes exist between the Petitioner and the Respondent regarding the payment of the balance of the price of goods as well as the claim of interest made by the Petitioner with respect to the supplies made under the contract in question. I Therefore, hold that there are disputes in existence between the parties and the Arbitrator is to be appointed. Nothing has been brought to my notice on the plea that the Petition u/s 20 of the Arbitration Act is not maintainable except on the ground that there is no dispute. In other words it is stated that failure to pay is not a dispute. In the circumstances of this case failure to pay balance of price and interest as claimed are disputes between the parties. I, Therefore, direct the Respondent to file the Arbitration agreement in court and direct the Director General of supplies and Disposals to appoint an Arbitrator within the meaning of Clause 24 of the General conditions of contract. The Arbitrator is to be appointed with in two months from today. In case the Arbitrator is not appointed within the period allowed, leave is granted to the Petitioner to move this Court. The Petitioner shall also be entitled to costs. Counsel's fee Rs. 300.00 .