
(1998) 10 DEL CK 0007
In the Delhi High Court
Case No : Suit No. 2035 of 1985

Metal Forgings Pvt. Ltd.

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 23-10-1998

Acts Referred:

Citation : (1999) 1 AD 252 : AIR 1999 Delhi 176 : (1999) 4 CivCC 403 : (1999) 78 DLT 601 : (1999) RLR 266

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

Bench : Single Bench

Advocate : Mr. Kamal Mehta Adv, for the Appellant; Mr. Ajay K. Jha Advocate, for the Respondent

Judgement

Dr. M.K. Sharma, J.—This is a petition filed by the petitioner seeking to refer the disputes, as mentioned in paragraph No.27 of the petition, for adjudication through the process of arbitration in terms of clause 25 of the agreement between the parties.

2. The petitioner had three separate electric connections for industrial use and lighting in the three premises belonging to the petitioner obtained from the respondents under regular agreement with the respondents. The respondents issued various bills to the petitioner for the electricity consumed but the petitioner disputed and denied its liability to pay for electricity consumed, as charged, and claimed compensation for the losses suffered by it. According to the petitioner, thus disputes and differences have arisen between the parties on the aforesaid account. The petitioner requested the respondents from time to time to settle the disputes and differences through the process of arbitration in terms of the arbitration agreement between the parties being clause 25 of the aforesaid agreement. Since the respondent has failed to accede to the request, accordingly, this petition has been filed.

3. The petitioner filed several petitions in this Court, details of which are set out in paragraph 14 of the petition, in respect of the aforesaid disputes and

differences relating to separate bills. It would appear there from that in respect of the bills raised by the respondents w.e.f. 25th June, 1984 till the bill raised for the month of September, 1985, the petitioner sought reference of the disputes to arbitration in terms of aforesaid clause 25. Even subsequent thereto, the petitioner was served with three bills demanding balance payment of fuel adjustment charges for the years 1981-82, 1982-83 and 1983-84 which amounted to a sum of Rs.25,59,555.81. The petitioner disputed its liability to pay the aforesaid amount and accordingly has filed the present petition in this court for referring of the disputes and differences stated to have been arisen between the parties as set out in paragraph No. 27 of the petition.

4. The aforesaid petition is contested by the respondents contending, inter alia, that no dispute has arisen between the parties which could be referred to arbitration, in view of the fact that the respondents have been charging at all times payment for the electricity consumed by the petitioner in accordance with the provisions contained in the tariff which is fixed by the Corporation in exercise of its statutory powers. Exercise of such powers, according to the respondents, cannot be the subject matter of arbitration.

5. I have heard learned counsel appearing for the petitioner as also counsel appearing for the respondents. I have also carefully perused the disputes stated to have been arisen between the parties which are set out in paragraph No. 27 of the petition.

6. The disputes raised in paragraph Nos. 27(a) and (d) relate to payment of damages. My attention is drawn to the decision of Supreme Court in Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another, . In the said decision the Supreme Court has held that disputes as to damages payable for disconnection cannot be subject-matter of arbitration being not covered by any of the sections of the Act dealing with arbitration. The Supreme Court held that as such though the dispute about damages payable would have been referable to arbitration because of what has been provided in Condition 29, it cannot be done and that the provision in the Act would override the stipulation contained in the aforesaid Condition.

7. In view of the aforesaid settled position of law, in my considered opinion, the disputes relating to payment of damages as raised by the petitioner as aforesaid in the present case cannot be referred to the arbitration.

8. Claims as raised in paragraphs 27(b), (f) and (g) relate to fuel adjustment charges. A Division Bench of this Court considered the various provisions relating to fuel adjustment charges in the case of DCM Limited Vs. M.C.D. reported in AIR 1989 Delhi 30. In para 5 of the said judgment it was held by the Division Bench of this court that fuel adjustment charges are to be finally decided after raising of demand by the DESU. M/s. Sagar International Pvt. Ltd. Vs. Municipal Corporation of Delhi disposed of on 5th September, 1994, a Single Bench of this court held that the respondent was well within its right to recover the fuel

adjustment charges retrospectively for the months for which the provisional bills had been issued and such disputes are not referable for arbitration. In coming to the aforesaid decision, this court relied upon the decision of this court in DCM Limited Vs. MCD (supra). Similar view was also taken by this Court in Suit No. 2565-A of 1992 (M/s. Matsaya Metal Udyog Vs. D.E.S.U) disposed of on 28.10.1994 relying upon various decisions of this Court as also of Supreme Court. Following the ratio of the aforesaid decisions, I hold that the aforesaid claims as raised in paragraph Nos.27 (b) (f) and (g) are not referable to arbitration.

9. So far claim No. 27 (c) is concerned, the same relates to a claim for a sum of Rs. 6,26,035/-, an amount allegedly overcharged in the bill for September, 1985.. On perusal of the records, I find that the same is a subject matter relating to S.No. 1948/85 and, Therefore, the same cannot be said to be a dispute arising in the present case which was filed by the petitioner as against the three bills issued by the respondents towards fuel adjustment charges for the years 1981-82, 1982-83 and 1983-84. The same is also not referable to arbitration in the present proceedings and so ordered.

10. In respect of claim No. 27 (e), it is submitted that the aforesaid claim for an amount of Rs. 21,97,290/- is due to the petitioner in terms of the tariff of the respondents by way of rebate. The aforesaid issue raised, if referred would necessarily involve interpretation of tariff since the demand as aforesaid as stated in paragraph 27(e) has been raised on the basis of the tariff. According to the petitioner, the said dispute arises in view of the statements made in paragraph 23 of the petition. A bare glance at the aforesaid content would indicate that the petitioner desires the arbitrator to look into the provisions of the Tariff and interpret it to say that in view of the same the respondent was required to give rebate to the petitioner. As is held in M/s. Suri & Suri Ltd. Vs. DESU AIR 1982 Delhi 351, tariff is statutory. In M/s. Matsaya Metal Udyog (supra), this Court has held that interpretation of tariff or judging in its validity cannot be left to arbitrator. Thus the present dispute also, in my considered opinion cannot be referred.

11. In my considered opinion, claim 27 (h) is not a referable dispute at all as the same is vague and uncertain and accordingly stands rejected.

12. As I have held that claims as stated in paragraphs (a) to (h) of paragraph 27 of the petition are not referable disputes claim raised in paragraph 27(i) relating to interest also is not referable.

13. As there is no dispute raised in the present petition which is capable of being referred to arbitrator, the present petition stands dismissed but without costs.