

(2006) 10 DEL CK 0016

In the Delhi High Court

Case No : CS (OS) No. 2716A of 1993 and I.A. No. 7365 of 1995

Modi Distillery

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 20, 30, 33
Delhi Liquor Licence Rules, 1976 — Rule 33, 34, 35
Government of National Capital Territory of Delhi Act, 1991 — Section 52
Punjab Excise Act, 1914 — Section 6
Sales of Goods Act, 1930 — Section 64A, 64A(1), 64A(2)

Citation : (2007) 1 ARBLR 192 : (2007) 94 DRJ 101

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Nisha Bagchi, for the Appellant; V. Shankara, for the Respondent

Judgement

Gita Mittal, J.—By this judgment I propose to dispose of CS(OS) No. 2716A/1993 and I.A. No. 7365/1995. There is no dispute to the dates and events in this matter. The parties are at variance only on the construction to be put thereon.

2. It appears that M/s. Modi Distillery was awarded a contract for supply of country liquor to the Delhi Administration for the year 1986-87 under licenses issued to it in Form L-9 and CLW-1. It was also a licensee for the preceding year 1985-86. The petitioner has pointed out that such licenses were awarded pursuant to exercise of the statutory powers under the Delhi Excise Act and the rules and regulations framed there under. The general and special condition for the supply stipulated that the statutory rules and regulations would govern the supplies made by the licensees.

3. There is no dispute that the power to vary the supply of the liquor was statutorily vested in the Lt. Governor and the Commissioner (Excise) under the provisions of the Delhi Excise Act. The license was awarded to the petitioner on the 10th December, 1986 which inter alias contained the following stipulations:

1. The agreement shall commence on 1st May, 1986 and shall be for a period of 11 months i.e. up to 31st March, 1987.

xxx xxx 17. The Licensee shall keep a minimum stock of 15 truck loads country liquor at a time at the bonded warehouse. Initially, the Licensee shall build up the stock within 15 days of the grant of the license.

The instant case is concerned with the rates for the supply of certain quantities of liquor by the petitioner in April and May 1987. So far as the rates are concerned, the license contains the following stipulations with regard to the rates at which the petitioner would be paid:

3. That the Lt. Governor, Delhi has accepted the tendered rates for the wholesale supply of country liquor, to the country liquor vends for the year 1986-87 (up to 31st March, 1987) at the uniform rate of Rs. 69/- per quarts per dozen and Rs. 42.30 for pints per dozen on the usual terms and conditions and subject to further conditions that a provision as contained in Section 64A of sale of Goods Act, 1930 may be made which is reproduced below:

In contracts of sale, amount of increased or decreased taxes to be added or deducted (1) unless a different intention appears from the terms of the contract in the event of any tax of the nature described in Sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulations to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at the time;

(a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax and he shall be entitled to be paid and to sue for and recover such additions, and

(b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax, or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of such deduction.

(2) The provisions of Sub-section (1) apply to the following taxes namely ;

(a) any duty or customs or excise on goods.

(b) any tax on the sale or purchase of goods.

4. As per the agreement between the parties, the petitioner was required to make available quantities of liquor from its distillery that is Modi Nagar to the bonded warehouse under a bond as provided u/s 6 of the Punjab Excise Act, 1914. The issue of country liquor from the bonded warehouse was regulated and

controlled by the Government from time to time. The agreement contained specific provisions whereby the Government reserved the right to reduce or cancel the licenses of the liquor of licensees as the petitioner. So far as the lapsing of any allotment of liquor was concerned, the license agreement provided thus:

PROVIDED further that if any allotment of alcohol made in favor of any licensee lapses due to the reasons within the control of such licenses, he will be liable to pay the damages to the extent of loss of the excise revenue which would otherwise have been realised if such quantity would have been imported into Delhi.

5. It is an admitted position that the liquor could enter Delhi only under specific permits issued by the respondents. The licensee was required to operate a bonded warehouse in accordance with Delhi Country Liquor Bonded Warehouse Rules at his own expenses. The licensee was also required to abide by the Punjab Excise Act, 1914 and the Delhi Liquor license Rules, 1976 which were in vogue at the relevant time.

6. So far as the redressal of disputes was concerned, the agreement between the parties contained the following arbitration clause:

33. All disputes and differences arising out of or in any way touching or concerning this amount (except those the decision where is otherwise hereinafter provided for) shall be referred to the sole arbitration of any person nominated by the Lt. Governor of the Union Territory of Delhi or in case his designation is changed or his office is abolished, to the sole arbitration of any person nominated by the officer who, for the time being is entrusted, whether or not in addition to other functions, with the functions of the Lt. Governor of the Union territory or Delhi by whatever designation such officer may be called. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant, that he had to deal with the matter to which this indenture relates and that in course of his duties as such government servant he had expressed views on all or any of the matter is dispute or difference. The award of the arbitrator so appointed shall be final and binding on the parties.

7. The petitioner has submitted that the contract rates for liquor for the year 1985-86 were Rs. 60/- per dozen quarts and Rs. 38/- per dozen pints as compared to the rates being Rs. 83.49/- per dozen quarts and Rs. 49.54/- per dozen pints for the year 1986-87.

8. The original supply rates, as per the agreement, were Rs. 69/- per dozen quarts and Rs. 42.30/- per dozen pints which were enhanced to Rs. 83.49/- and Rs. 49.54/- per dozen respectively in consequence of increase in the export duty by the Exporting U.P. State Government. As the new contracts for the supply of country liquor for the year 1987-88 could not be finalised in time, the Excise Authorities were apprehensive that it would not be possible to get the supply of country liquor from new licensees (CLW-1 and L-9) for a considerable time

beyond 31st March, 1987. It has been pointed out that shortage in liquor supply leads to a spurt of spurious, illicit and the problem of boot-legging which results in dangerous consequences in terms of loss of life etc. The authorities treat maintenance of liquor supplies as imperative.

For this reason, before the expiry of such license with it, the petitioner was approached by the respondents and asked to continue the supply from the bonded warehouse even in April and May, 1987 to maintain the supply line.

9. In this behalf, the petitioner has pointed out its communication dated 23rd March, 1987 whereby it had agreed to supply fifteen trucks of country liquor up to 31st March, 1987 to the Delhi State on the "same terms and conditions". This communication was placed before the arbitrator as Annexure "E" to the statement of claims filed by the petitioner. Pursuant to this communication of the petitioner, communications were addressed by the Commissioner of Excise, Delhi on the 23rd March, 1987 to the Excise Commissioner, Allahabad, U.P. requesting it to release 81000 bulk litres of country liquor from the distillery of the petitioner up to 31st March, 1987. Based on this communication, the petitioner requested the Excise Commissioner, Allahabad, U.P. to issue the necessary release order for such quantity of liquor from the distillery of the petitioner in U.P. for transportation from U.P. to Delhi. Release order was also issued by the respondent to the petitioner.

10. Admittedly, the respondent issued 15 import permits numbering 1868 to 1882 dated 24th March, 1987 valid up to 31st March, 1987 for 5400 bulk litres (600 dozen quarts) to the petitioner on the basis of which it imported to its warehouse, 15 consignments of country liquor from 27th March, 1987 to 31st March, 1987.

It is this stock which was so issued from the bonded warehouse of the petitioner to the retail vends of the respondents as per their demand between the period 1st April, 1987 to 8th May, 1987 against the indents placed by the respondent through its excise staff posted at the warehouse on the petitioner. The petitioner has contended that it had indented the liquor pursuant to its letter dated 23rd March, 1987 prior to the expiry of the license on the same terms and conditions.

11. The dispute arose between the parties when the petitioner raised bills for its supply of this liquor at the contract rates of 1986-87 in terms of the license dated 10th December, 1986 and also tendered consolidated periodical bills to the Excise Department, that is the respondent for payment. Such bills were duly certified by the respondent's representatives, namely Inspector of Excise who had been posted in the warehouse. The petitioner claimed a sum of Rs. 16,67,752.28/- for payment from the respondent on account of the liquor which had been supplied between the period from 3rd April, 1987 to 8th May, 1987. However, instead of making payment at the rates prevalent for the period 1986-87, the respondents effected payments at the rates which were in vogue for the year 1985-86. As a result, a sum of Rs. 3,05,816.28/- remained

outstanding from the respondent in respect of the supplies made by the petitioner. The petitioner consequently raised a dispute and sought reference thereof for arbitration in terms of the Clause 33 of the agreement.

12. As no action was taken, the petitioner was constrained to file the petition u/s 20 of the Arbitration Act, 1940.

During the pendency of the petition which was filed before this Court, the Lt. Governor of Delhi issued an order dated 4th January, 1990 which was in the following terms:

M/s Modi Distillery(A Unit of Modi Industries Limited), Modi Nagar, District Gaziabad, U.P. Were granted licenses in form L-9 and C.L.W-1 for the wholesale supply of country liquor to retail sale government run country liquor - cum - bear vends in the Union Territory of Delhi for the year 1986-87. The licencing period was extended beyond 31-3-87 on the excise policy for the year 1987-88 was not formulated before the close of the licencing period. The licensee agreed to supply country liquor on the rates approved for the year 1986-87. Such rates were paid to the licensee till the extended period i.e. 30-4-1987 but for the left over stock as on 30-4-1987, the ex-licensee was paid the rates approved for the year 1987-88 which were less than the rates approved for the year 1986-87. the licensee contends that for the supplies made from 1-5-1987 to 8-5-1987, he should be the same rates as approved for the year 1986-87.

As per Clause 33 of the agreement, all disputes and differences arising out of or in any way touching or concerning the agreement (except those the decision whereas otherwise herein provided for) shall be referred to the sole arbitration of any person nominated by the Lt. Governor.

The Hon"ble Lt. Governor, Delhi is pleased to appoint Mrs. B. Prasad, Director, Technical Education, Delhi as an arbitrator in the said case. The dispute is being referred to Mrs. B. Prasad for arbitration. She is requested to initiate arbitration proceedings and announce the award.

General Manager (Excise) shall represent Excise Department before the "Arbitrator".

13. Initially, Smt. B. Prasad, who was appointed as arbitrator could not complete the proceedings before the expiry of her term. Thereafter, Mr. A.K. Mathur who was appointed as an arbitrator, was posted abroad and could not complete the proceedings. Finally, by an order dated 22nd June, 1993, the Lt. Governor of Delhi appointed Shri Madan Jha as an arbitrator. These two orders appointing the arbitrators were in identical terms as the order dated 4th January, 1990.

14. After a detailed consideration of the matter, the pleadings and the record, the arbitrator made and published an award dated 18th October, 1993 holding that the petitioner had made the supplies in terms of the license which was granted to it and further supplies which were made between the period 1st April, 1987 to 8th May, 1987. The petitioner was held entitled to the rates for the year

1986-87. Consequently, the arbitrator awarded a sum of Rs. 3,05,816.28/- with interest at the rate of 18% per annum.

15. The petitioner filed a petition under Sections 14 and 17 of the Arbitration Act, 1940 seeking a direction to the arbitrator to file his award in this Court. As a result of the direction issued by this Court, the award was filed by the arbitrator in this Court. This petition has been registered as Suit No. 2716A/1993.

The respondents filed objections to the award on 15th February, 1995 under Sections 30 and 33 of the Arbitration Act, 1940 which were registered as I.A. No. 7365/1995.

16. On the 21st March, 1996, the following issues were framed in the matter:

21.3.1996

Present: Mr. N.K. Khetrapal for plaintiff

Mr. Sanjay Poddar for defendant

S. 2716A/1993 & I.A. No. 7365/1995

...The following issues are framed:

1. Is the suit maintainable in view of non-compliance of provisions of Section 52 of the Government of National Capital Territory of Delhi Act, 1991? OPP
2. Are the objections filed by the respondent against the award within time? OPD
3. Whether the award is liable to be set aside in view of the objections filed by the respondent? OPD
4. Relief.

17. It is noteworthy that the notice of the filing of the award was served on the respondent Nos. 1 to 3 on 17th May, 1994. No objections were filed by the respondents within the statutory period of thirty days. On the 24th September, 2001, the respondents contended that while the limitation of 30 days would apply in relation to objections u/s 30 of the Arbitration Act, however, the objections u/s 33 of the Arbitration Act cannot be contended to be not maintainable on the ground of the same being barred by limitation. Reliance was placed on the pronouncement reported in AIR 1968 Del 21 Prem Sagar Chawla s/o Tara Chand v. Security & Finance (P) Ltd. and Anr.

18. Accordingly, on the 24th September, 2001, the objections of the respondent u/s 30 of the Arbitration Act were dismissed as barred by time. However, the objections u/s 33 of the Arbitration Act survive for consideration.

It would be useful to consider the provisions of Section 33 of the Arbitration Act, 1940 which reads thus:

33. Arbitration agreement or award to be contested by application - Any party to

an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits.

19. The objections of the respondents which survive for consideration relate to the objection as to the existence of the arbitration agreement. In this behalf, the respondents have contended that the license granted to the petitioner by the competent authority came to an end on 31st March, 1987. The arbitration clause was contained in such license deed dated 10th December, 1986 which could not Therefore be contended to subsist after that. The supplies relate to the period between 1st April, 1987 and 31st May, 1987. The respondents have contended that there was no arbitration agreement between the parties after 31st March, 1987 in relation to such supplies beyond the license period.

20. It has further been contended that extension of the license could have been done only by the Lt. Governor of Delhi who is the competent authority under the provisions of Delhi Liquor license Rules, 1976 and there was no document granting extension of the license after expiry of the original license period. On these pleas, it is urged that there being no arbitration agreement, the reference of the dispute to the arbitration was void ab initio and consequently, the award made by the learned arbitrator was also invalid and cannot be enforced.

21. I have heard learned Counsel for the parties at length and also perused the available record. From the consideration of the same, the following undisputed facts emerge:

(i). The petitioner was validly appointed a licensee and a license deed dated 10th December, 1986 was executed in this behalf.

(ii). During the currency of the license, the petitioner was asked to provide an increased supply of liquor in respect of which the Excise Commissioner of Delhi addressed a communication to the Excise Commissioner, Allahabad, U.P. to enhance the quantity that is 81000 bulk litres of country liquor from the distillery of the petitioner up to 31st March, 1987.

(iii). The respondents issued import permits to the petitioner in respect of this enhanced supply during the currency of the license and the petitioner imported this indented liquor into the bonded warehouse in Delhi pursuant to such import license prior to the expiry of the license period.

(iv). The petitioner addressed a communication dated 23rd March, 1987 to the Excise Commissioner, Delhi which agreed to enhance supply of liquor to the Delhi State on the same terms and conditions as were subsisting on that date.

(v). The terms and conditions on which the liquor was being indented and imported into Delhi by the petitioner were those as were stipulated in the license deed dated 10th December, 1986. This deed also provides that the rates of 1986-87 would apply to such supplies.

22. As noticed above, the Lt. Governor of Delhi issued orders appointing the arbitrator. These orders which were passed by the competent authority were communicated under the signatures of the Commissioner cum Special Secretary (Excise), the Lt. Governor has noticed that the petitioner M/s Modi Distillery were granted license for the wholesale supply of country liquor to retail government run country liquor cum beer vends in Delhi for the year 1986-87. The orders record that the licensing period was extended beyond the 31st March, 1987 as the excise policy for the year 1987-88 was not formulated before the close of the licensing period.

The order also records that disputes and differences arising out of or in any way touching or concerning the agreement as per Clause 33 shall be referred to the sole arbitration of any person nominated by the Lt. Governor.

23. These facts were again repeated in the order which was issued on behalf of the Lt. Governor in 1991 when Shri A.K. Mathur was appointed as the sole arbitrator. Similarly, the order passed by the Lt. Governor of Delhi on 26th May, 1993 also records the fact that the license of the petitioner was extended. The Lt. Governor has also effected appointment of Shri Madan Jha as the sole arbitrator under Clause 33 of the agreement.

According to the respondents as per the Delhi Excise Rules, it is only the Lt. Governor of Delhi who is the competent authority who can extend the term of license or requiring additional supplies to be made.

Consequently, objection would have been taken to the maintainability of the claims of the petitioner when there was application of mind before passing of the above orders, if the contention of the respondent was correct. This was not so.

24. Learned Counsel for the petitioner has pointed out from the record of the arbitration that on receipt of the order dated 19th May, 1993 of the Lt. Governor, Shri Madan Jha, the sole arbitrator had addressed a communication dated 24th May, 1993 seeking clarifications from the Excise Commissioner. It has been contended that the order of the Lt. Governor appointing Shri Madan Jha as arbitrator was signed by the Lt. Governor on the 12th April, 1993 after application of mind to the matter. The appointment of Shri Madan Jha as a sole arbitrator was confirmed by another communication dated 22nd June, 1993.

25. The respondents had also filed an application dated 5th August, 1993 whereby only two issues were proposed on behalf of the respondents which were to the following effect:

- i) Whether the license of the claimant was extended for the year 1987-88.
- ii) Whether any wholesale supply permit was issued to the claimant after 31-3-1987.

26. From the perusal of the above, it is apparent that the supplies were made by the petitioner with the implicit consent of the Commissioner, Excise Delhi and the

Lt. Governor. All concerned authorities had treated the import of the additional liquor which was effected before 31st March, 1987 to be on the same terms and conditions as were invoked under the license dated 10th December, 1986. The supplies made by the petitioner are relatable to the same contract. The imports were made on the same terms under similar import licenses and release order and secured in the bonded warehouse in respect of the supplies which were effected by the petitioner prior thereto.

27. The parties treated the disputes as if they were referable to arbitration under Clause 33 of the license deed. The order of Lt. Governor was issued after application of mind. Each time the orders of appointment were issued on 4-1-90, the second date being illegible and on 22-6-93, the competent authority had clearly noted that the license was extended. The placing of the order for this liquor in terms of the license deed thus stood ratified by the competent authority. This is amply borne out from the fact that no objection as to the existence of the arbitration agreement was taken by the respondent either in the reply to the petitioner u/s 20 of the Arbitration Act, 1940 or in the reply to the claims raised by the petitioner before the arbitrator.

28. The petitioner has effected all imports prior to the expiry of the license on import permits issued by the respondents in pursuance of the communication dated 23rd March, 1987. The Excise Commissioner had addressed a communication to the authorities in U.P. to permit release of the liquor of the petitioner and its import to Delhi.

29. In the light of the above, the respondent is bound by its conduct in raising no objection when the petitioner addressed the communication dated 23rd March, 1987 and in fact having acted pursuant thereto. The import permits and release orders have been issued thereafter by the respondents to the petitioner who has been permitted to import and indent liquor into Delhi.

30. There is yet another circumstance pointed out by Ms. Bagchi, learned Counsel for the petitioner which completely belies the position taken by the respondent.

So far as fixation of price is concerned, the respondent has in its rejoinder in para 10 has stated thus:

10. That the contents of para 10 of reply on merits are wrong and denied and the contents of para 10 of the objections are reiterated. It is reiterated that the respondents did not extend the license/agreement of the petitioner. It is reiterated that after 31-3-1987, the petitioner kept on supplying on its own the country made liquor to various outlets of the respondents with a view to dispose of its left over stock. It is denied that the findings of the arbitrator do not suffer from any infirmity or that the same are final or binding upon the parties. The respondents had demonstrated in its objections that the findings of the arbitrator are wrong and suffer from infirmities, apparent on the face of the record. The plea regarding the present objections being time barred is misconceived and has

been replied to in para 1 of the reply to the preliminary objections. It is denied that the present objections have not been made out within the scope of the permissible areas under the Arbitration Act, 1940.

Thus, according to the respondent the petitioner was disposing of its "left-over stock". The same statement is reproduced elsewhere in the objections.

31. So far as the left-over stocks are concerned, the terms and conditions of the license, clearly provided the manner in which the left-over stocks is to be disposed of. In this behalf, my attention has been drawn by Ms. Bagchi, learned Counsel for the petitioner to the general and specific conditions which govern the contract. So far as the terms and conditions for the grant of form L-9 and CLW-1 license for the year 1986-87 are concerned, the same provided thus:

11 (i) licenses in form L-9 shall be granted only to the working distilleries.

(ii) licenses in form L-9 and CLW-1 for the said period shall be subject to general and special conditions prescribed in rules 33, 34 and 35 of the Delhi Liquor license Rules, 1976 and the Delhi Country Liquor Bonded Warehouses Rules and licenses shall abide by the provisions of the said Act and rules and orders made there under any law in force in Delhi relating to liquor. (Some of the relevant provisions of the rules are attached at Annexure -III for the information of intending tenderers). These terms and conditions, unless repugnant to the express provisions of the said Act and rules made there under, shall be in addition to the said Act and rules and any other law in force in Delhi relating to liquor.

The general and specific conditions which have been prescribed in the rules made under the Punjab Excise Act, 1914 as were in force at the relevant time provided condition 33 which reads thus:

(33) If any person who had held a license under these rules, have in his possession on the expiry or determination of from any other cause of his license any intoxicants, he shall take action for its disposal in the following manner:

(a) He shall submit forthwith to the Collector the list such intoxicants indicating therein the sale price of each brand. The Collector may allow him not exceeding 15 days for the disposal of such stocks to the existing licensees:

Provided that if duty has not been paid on such stocks and the purchaser does not hold a license permitting him to possess them in bond, the duty on such stocks at the rates in force on the date of sale shall be recovered from the purchaser before he takes possession of them.

(b) In case the licensee is unable to dispose of such stocks, in part or in full, within the stipulated time, he shall immediately surrender the same to the Collector Along with a list mentioning the quantity and brand of the undisposed stock. He shall also intimate to the Collector the price at which each brands, so surrendered, shall be sold. It shall be open to the licensee to reduce

subsequently the sale price earlier intimated by him. If no sale price is intimated to the Collector at the time of the surrendering the stocks, it is lawful for the Collector to dispose of such stocks to the existing licensees by auction:

Provided that if duty has not been paid on such stocks and the purchaser does not hold a license permitting him to possess them in bond, the duty on such stocks at the rates in force on the date of sale shall be recovered from the purchaser before he takes possession of them.

(c) The Collector shall arrange to dispose of the surrendered stocks at the price intimated by the outgoing licensee. Whenever such price is reduced by the outgoing licensee, the Collector shall dispose of the remaining stocks at such reduced prices, as may be intimated to him by the former licensee from time to time. In case the stocks remain unsold for a period of 2 months from the date of the determination of the license, it shall be lawful for the Collector to destroy these stocks after obtaining the approval of the Commissioner of Excise. No compensation will be payable for such destruction to the outgoing licensee. No refund of duty shall also be allowed on stocks of liquor which ultimately remain unsold and are destroyed;

Provided that if duty has not been paid on such stocks, the Collector shall not order their destruction but may require in writing any person holding a license to acquire the stocks, or any part of them, by purchase from the former licensee within six weeks of service of the requisition after payment of duty at the rates in force on the date of the requisition, at such price as may have been indicated by the former licensee or such price as the Commissioner may fix after hearing the parties.

(d) Where the surrendered stocks are disposed of by the Collector in the manner aforesaid, he shall refund to the outgoing licensee the sale price of these stocks after deducting the expenditure incurred on arranging the disposal of such stocks.

(e) In case the outgoing licensee is unable to dispose of the stocks within the period allowed by the Collector as stated above and also fails to surrender the same to the Collector after the expiry of the aforesaid period, the possession thereof shall be illegal and unauthorised. Such stocks shall be immediately seized and prosecution will be launched for such unauthorised possession.

(f) If any person who has held a license under these rules has in his possession any intoxicant on which duty has not been paid and such person holds a license permitting the possession of such stocks but not permitting him to hold them in bond he shall be liable to pay duty on such stocks from the date of commencement of his current license at the rates in force on that date;

Provided that the licensee shall not be liable to pay interest on any penalty for delayed payment on such duty for a period of one month from the date of commencement.

32. In the instant case, the petitioner had stocks of liquor imported into Delhi

prior to 31st March, 1987. The respondents called for the supply of liquor from the bonded warehouse of the petitioner between the period 1st April, 1987 till 31st May, 1987 as noticed above. Even if the liquor was treated as left-over stocks in terms of the above condition by the respondents, it could be so done only under the license. On the own showing of the respondents they have treated the supply as being under the license. The petitioner was entitled to the price thereof at the rates of 1986-87 in terms of such a condition for the purposes of the same.

33. From the foregoing, it is apparent that the respondents have accepted not only the fact that supplies have been effected on terms and conditions as were laid down in the license given to the petitioner which would govern the supplies which were indented and imported prior to the expiry of the license. The competent authority has repeatedly accepted the position that the license was extended and the appointment of the arbitrator was effected.

The respondents have thus also accepted the validity and bindingness of the arbitration agreement and pursuant thereto, the respondents are thus clearly estopped from now asserting to the contrary.

34. In the light of the foregoing, I have no hesitation in holding that the supplies which were imported by the petitioner pursuant to specific orders of the competent authorities during the currency of the license would be governed by the terms and conditions thereof. The import license was issued at the instance of the Commissioner, Excise who addressed a communication to this effect to the concerned authority in U.P. as noticed hereinabove as well. The validity of the extension has been accepted by the competent authority who is the Lt. Governor of Delhi wherein he appointed the arbitrator and effected change in respect of such appointment twice over. The respondent is estopped from raising such objections for the first time before this Court by way of the present objections.

35. So far as the scope of Section 33 is concerned, the Apex Court had again to consider the same on several occasions in the pronouncement reported at R.N. Ganekar and Co. Vs. Hindustan Wires Ltd., the court held thus:

11. Section 33 of the Arbitration Act is as follows:

Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the court and the court shall decide the question on affidavits.

It is clear from the provision that the court had jurisdiction under this Section (i) when it is desired to challenge the existence of an arbitration agreement; (ii) when it is desired to challenge the validity of that agreement and (iii) when it is desired to have the effect of the arbitration agreement determined. In all these cases, it is the arbitration agreement only which is the subject matter for consideration before the court. Indeed, if an arbitration agreement forms one of

the clauses in a contract and that contract is for some reason invalid in law or non-existent in law, it would automatically follow the arbitration agreement was also invalid or non-existent in the eye of the law. But, when it is not the case that the arbitration agreement has become non-existent or invalid for that reason, the court u/s 33 is merely concerned with the three questions relating to the arbitration agreement only. As pointed out by this Court in *Shiva Jute Baling Limited v. Hindley and Co. Ltd.* (1960) 1 SCR 567:

An arbitration agreement may come into existence in one of the two ways; it may either arise out of an agreement which contains nothing else besides the arbitration agreement, or it may arise out of a term contained in a contract which deals with various other matters relating to the contract, which is the present case. Where one is dealing with an arbitration agreement of the second kind, Section 33 is concerned only with the term relating to arbitration in the contract and not with the other terms of the contract which do not arise for consideration on an application under that section.

36. Looked at from any angle, the challenge to the award on the ground that there is no arbitration agreement would Therefore be not sustainable. I.A. No. 7365/1995 is consequently dismissed.

37. It is however to be noted that the award was made and pronounced on 18th October, 1993. The arbitrator awarded a sum of Rs. 3,05,816.28/- with interest at the rate of 18 per cent per annum with effect from 1st June, 1987 till the date of realization.

By the order dated 24th September, 2001, the objections of the respondents u/s 30 of the Arbitration Act, 1940 stand dismissed. The jurisdiction of this Court is restricted to objections u/s 33 and nothing more.

38. The respondents have filed the objections to the award on 15th February, 1995 and the matter has remained pending for adjudication ever since.

After bestowing my best consideration to the matter, I am of the view that the award of interest at the rate of 18% during the period the matter has remained pending in this Court would be too excessive. This order is passed in view of the fact that the objections filed by the respondents were hopelessly barred by limitation and to the extent of the objections u/s 30 of the Arbitration Act, 1940, the same were dismissed by the court on 24th September, 2001. Accordingly, looking into the peculiar facts and circumstances of this case, while maintaining the award of interest at the rate of 18% per annum with effect from 1st June, 1987 till the date of passing of the award on 18th December, 1993, I reduce the rate of interest from 18% to 10% with effect from 18th December, 1993. For the period thereafter till the date of realization of the amount, the petitioner would be entitled to interest at the rate of 10% per annum.

Accordingly, the award dated 18th December, 1993 is directed to be made rule of the court subject to the direction that the petitioner would be entitled to interest

at the awarded rate with effect from 1st June, 1987 till 18th December, 1993. For the period thereafter till realization, the petitioner will be entitled to interest at the rate of 10%.

CS (OS) No. 2716A/1993 shall stand disposed of in these terms.