

(2001) 02 DEL CK 0098

In the Delhi High Court

Case No : Suit No. 710 A of 1996

M/s. Aggarwal Bandhu (Pvt) Ltd.

APPELLANT

Vs

M/s. National Seeds Corporation

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Citation : (2001) 4 AD 146 : (2001) 1 RAJ 377

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. Deepak Sabharwal, for the Appellant;

Judgement

J.D. Kapoor, J.—The petitioner, a Private Ltd. Company, is having its registered office at 2637 Naya Bazar, Delhi and Mr B.K. Aggarwal is its Managing Director. The respondent is a Government of India undertaking. Through this petition the petitioner has sought direction to the respondent-Corporation for filing the Arbitration Agreement and appoint an Arbitrator in terms of the arbitration clause and refer the disputes to the said Arbitrator.

2. Put briefly the facts are as under:-

The respondent corporation invited tenders for supply of DW jute tarpaulin bags. Petitioner company purchased tender and applied for supply of aforesaid bags and was allotted work vide purchase order No.PUR/NSC/2(47-3)/92-93 dated 10.04.1992. Both the parties entered into an agreement on 01.06.1992 as per clause 15 Section (1), part-B of the tendered documents. Petitioner supplied total quantity of 4,50,400 DW jute tarpaulin bags to the respondent.

3. As per agreement 90% payment was to be cleared within 10 working days of delivery of goods at destination and remaining 10% was to be released within 60 days from the date of delivery of last consignment. The date of supply was extended. As per letter dated 20.05.1992 of the respondent corporation 2,17,000 bags were to be supplied on or before 27.05.1992 and 2,33,000 bags on or before 27.06.1992. Total 4,50,400 bags worth Rs. 45,04,000/- were supplied but

the respondent corporation paid only Rs. 39,02,414/-. The last payment was released on 30.03.1993. On coming to know that liquidated damages were imposed by the respondent corporation and that the balance amount of more than Rs. 6 lacs have been withheld, the petitioner made various representations explaining that the delay was due to reasons beyond their control. Though representations/letters of petitioner dated 12.07.1993, 11.10.1993, 12.10.1993, 22.11.1993, 01.05.1995 and 02.01.1996 were received by the respondent but none was replied to. The petitioner explained in above letters that delay was due to following reasons:-

- (a) "Delay in signing of the agreement.
- (b) Bomb blast at Naya Bazar, adjacent to the registered office of the petitioner company.
- (c) All India Transporters Strike.
- (d) Delay in inspection by the Inspection Agency.
- (e) Change of destination from Jalandhar to Palwal.
- (f) Mistake by the Corporation in calculating the date of supply from the date of actual receipt of G.R. by the company.
- (g) Delay in releasing 90% payment by the respondent Corporation."

4. The agreement dated 01.06.1992 contains an arbitration clause which reads as under :-

"And Whereas, the Corporation and Supplier have agreed that all disputes or differences in relation to the contract or interpretation, if any of its terms or implementation thereof or arising out or concerned directly or in-directly with the contract, shall be referred to the Arbitration or a single Arbitrator to be appointed by the Chief Executive of the Corporation by mutual consent.

The venue of Arbitration shall be New Delhi. the Arbitration Act 1940 of India shall apply to the Arbitration proceedings. If for any reason, the matter has to be referred to a Court of law, the court of law at New Delhi/Delhi or the Court of law having its jurisdiction at New Delhi/Delhi, only shall have jurisdiction in the matter. The Arbitrator (shall have power) with the consent of the parties to extend the time for making and publishing their Award."

5. The petitioner also sent a letter dated 26.02.1996 calling upon the respondent to appoint an arbitrator and refer the matter to him for adjudication but without any response. Then petitioner sent further letter dated 14.03.1996 appointing Mr. Rattan Lal Gupta Adv., 1716/18, Queens Road, Naya Bazar, Delhi as its arbitrator and also requesting the respondent to give their consent for appointment of aforesaid arbitrator but without any response; hence this suit.

6. The petitioner has raised following disputes in para 12 of its petition for settlement:-

(a) Whether delivery schedule was to be made effective from 2.6.1992 or from 10.04.1992?

(b) Whether the petitioner company is entitled to extension at least of 25-30 days on account of Bomb blast at Naya Bazar, adjacent to the registered office of the petitioner company?

(c) Whether the Transporters strike from 01.07.1992 up to 12.07.1992 is to be exempted from the said period and the extension be given further for the period from 25.6.1992 to 12.07.1992?

(d) Whether the delay in inspecting the bags before dispatch by M/s Eskaps (I) Pvt. Ltd. appointed by the Corporation is to be extended?

(e) Whether on account of change of destination from Jalandhar to Palwal by the respondent Corporation, of how much days extension, the petitioner company is entitled?

(f) Whether the petitioner company is entitled for the extension of the period on account of non co-operation of the Transporters as explained in various letters mentioned above?

(g) Whether the time for imposing liquidated damages is to be taken from the date when it reached the destination or from the date when G.R. of the same is being received by the respondent Corporation?

(h) Whether the petitioner company is entitled to extension of time on account of abnormal delay in making 90% payment by the respondent/Corporation against the terms and condition?

(i) Whether the said delay effected the delivery of the goods and the price of the goods?

Besides above, petitioner also submitted also submitted following more disputes:-

(j) Whether the petitioner company is entitled to receive a Principal amount of Rs. 6,01,536/- on account of the facts mentioned above or not?

(k) If the petitioner is entitled for the said amount, whether the petitioner company is entitled for interest and on what rate?

8. Despite service of summons for 24.11.1997 the defendant did not appear to contest the petition and was proceeded ex parte. The plaintiff adduced evidence by way of affidavit which was filed on 28.1.1998 along with documents marked exhibits AW-1/1 to AW-1/8.

9. As per the arbitration clause of the agreement (Exhibit Aw-1/3) between the parties all disputes or differences arising in relation to the contract or interpretation or implementation of the terms thereof or arising directly or indirectly were too be referred to the arbitration and a single Arbitrator was to be appointed by the Chief Executive of the respondent- Corporation by mutual

consent. It was further agreed that the venue of the Arbitration shall be New Delhi and Arbitration Act of 1940 shall be applicable and if for any reason the matter has to be referred to a Court of Law, the Court of Law having its jurisdiction at New Delhi only shall have jurisdiction in the matter. The petitioner sent a letter dated 26.2.96(Exhibit AW-1/8) calling upon the respondent to appoint the Arbitrator and refer the matter for adjudication but there was no response from the side of the respondent. The petitioner again sent a letter dated 14.3.96 appointing Shri Rattan Lal Gupta as its Arbitrator and also requested the respondent to give the consent for appointment of the said Arbitrator but still there was no response. Having failed in his efforts to get the Arbitrator appointed the petitioner was left with no other alternative but to approach this Court by way of instant petition.

10. As a result the petition is allowed. Shri P.S.Sharma, Advocate r/o Flat no.27, Supreme Enclave Apartments, Mayur Vihar, Phase-I, Delhi -110091 is appointed as an Arbitrator who shall adjudicate upon the disputes mentioned in this order and in the petition, as per procedure laid down in the arbitration agreement. The Arbitrator shall fix his own fees which shall be shared equally by both the parties.

11. A copy of this order be sent to the aforesaid Arbitrator and the concerned parties.