

(2001) 09 DEL CK 0242
In the Delhi High Court
Case No : Suit No. 1580-A/97

M/s New Era Steel Company

APPELLANT

Vs

Chief Engineer, Delhi Zone and Another

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Citation : (2002) 61 DRJ 54

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. George Thomas, for the Appellant; Mr. Rajinder Nischal, for the Respondent

Judgement

Vijender Jain, J.—Disputes arose between the parties and matter was referred in terms of arbitration clauses to the arbitrator appointed by objector. The arbitrator was a serving Chief Engineer of the respondents. The arbitrator gave the award on 3.7.1998. Objections to the award have been filed by the respondents.

2. Mr. Rajinder Nischal, learned counsel appearing for the respondents has vehemently contended that award of the arbitrator was bad as the arbitrator did not take into consideration the relevant material and the conditions of contract before giving the award. He has assailed the finding of the arbitrator vis-a-vis claim nos. 1, 2, 3, 4, 6 and 7.

3. It is contended by the learned counsel for the respondents that the award by the arbitrator under claim no.1 Loss suffered due to provision of additional quantities of the items without proper amendment being carried out amounting to Rs.33,750/= was bad as the claimant has signed the deviation order without any protest and words "U.P." under his signatures ought to have been clearly mentioned that he signing of deviation order was under protest. Merely ascribing the words "U.P." could not demonstrate that the letter was signed under protest. It was contended that contractor's letter dated 9.11.1993 was not received by the respondents. Similarly Mr. Nischal has contended that award of a sum of

Rs.40,500= under claim no.2 -Additional work done for provision of racks and their arrangement on the first floor as per user convenience was outside the scope of the contract and same was not in terms of the agreement between the parties. It was contended that there was no order in writing by the Chief Engineer or Engineer in charge for shifting of racks to first floor and if the racks were shifted on the first floor it might be a private arrangement between the contractor and user and MES have nothing to do with it.

4. Mr. Nischal also assailed the award of a sum of Rs.18,000/= under claim no.3 on account of Additional work done for straightening of sheets which were issued in CR coils which had to be handled by cranes whereas the contract provided issue of sheets in available sizes. Learned counsel for the respondents contended that same was awarded ignoring page-14 of the contract, which, inter alia, stipulated that material will be issued in random sizes and length as available with MES and all straightening and cutting required shall be the responsibility of the contractor.

5. Lastly, learned counsel for the respondents contended that award of interest was on higher side. The arbitrator awarded interest on unauthorised blockage of funds against various claims @ 15% p.a. although the claimant has demanded @ 18% p.a.

6. On the other hand learned counsel for the petitioner, Mr. Thomas, has contended that for claim no.1 the amount of claim was Rs.2,02,549/50 paise which was the amount on account of loss suffered due to provision of additional quantities of the items which was spent by the claimant. Similarly, it was contended before me by the learned counsel for the petitioner that under claim no.2 a sum of Rs.1,50,200/= was claimed on account of Additional work done for provisions of racks and their arrangement on the first floor as per user convenience and same was outside the scope of the contract for which the claimant is entitled to recover from the respondents.

7. It was further contended by the counsel for the petitioner that the additional work done by the claimant for straightening of sheets which were issued in CR coils had to be handled by cranes and Therefore a claim was made for RS.610,000= out of which the arbitrator only gave Rs.18,000/=. Lastly, it was contended that for the amount withheld illegally by the respondents, the arbitrator instead of allowing 18% p.a. has only allowed 15% p.a. interest.

8. I have given my careful consideration to the arguments advanced by the learned counsel appearing for both the parties. The law regarding the arbitration is well settled. When parties have chosen forum of arbitration in exclusion of normal civil law remedies, this Court will not either sit in appeal nor would substitute its own opinion for that of the arbitrator. The fact that arbitrator was a serving Chief Engineer of the respondents. He was well-acquainted with the facts, the conditions and the parameters of contract. This Court would not like to substitute its own judgment for that of the arbitrator. Let me deal with the first

objection of the respondents regarding claim no.1. The claimant has made a revised claim of Rs.2,02,549/50 paise. The case of the contractor was that on account of change in the design which was done after 132 months of the submitting of the tender, the prices which were prevalent in 1993 ought to have been taken into consideration by the respondents while finalising the final bill. It was contended before the arbitrator on the basis of documentary evidence that the claimant has spent a sum of Rs. 78,280/= on manufacture of these racks and with 10% as his profit and overheads as per accepted norm of MES, claimant was to be paid Rs.9,66,108/=.The respondents, however, only paid a sum of s.7,63,558/50 paise. The arbitrator has discussed in length, giving reasons for awarding a sum of Rs.33,750/= which is at page -10 of the award:-

"30.5 Having examined the arguments of both the parties as also the deviation order prepared by Union of India. I notice the following:-

(a) Do as prepared takes the basis as the quoted rate of old design rack viz Rs.5326.00, which rate was quoted in Aug 90.

(b) Taking the above basic rate, plus and minus adjustments to cover the differences between the old design and new design rack have been carried out on market rates obtained by respondent in Jan 93.

(c) The manufacture of new design rack actually took places during Jan to Nov 93 after sheets were issued by the respondents under Sch "B"

30.6 I have also scrutinised the method pricing laid down in Condition 31 of IAFW-18157 which was the agreed condition of contract. The method of pricing adopted by respondents is found correct in principle. It would have been correct in application also, if the deviation was ordered during the original currency period of he contract taking a quoted rate of Aug 90 as having been applicable in mid 93 also is a bit far fetched assumption on the part of the respondent. I have also analysed the quoted rate of Rs.5326.00 of Aug. 90. A predominant component of this rate is cost of MS angle iron and MS black sheets the procurement cost of which remained same. It is other component which includes labour, transportation, painting, welding, cutting etc. that would undergo an increase during this period. The increase in this component should have been allowed.

30.7 The argument of the contractor that this should have been amendment to contact at mutually agreed rate and that the deviation violated condition 5 of IAF2-1815 has also been examined. Condition 5 of IAFW-1815Z has two distinct and separate components, a one relating to modification of design and second relating to variation in quantities. These have to read individually. I am Therefore not willing to agree with the contention of the contractor and their argument for amendment to contact fails to stand.

30.8 The claim is basically to seek reimbursement of loss suffered, which in my opinion cold occur only in one component as discussed in para 30.6 above. The

methodology adopted by contractor of working out the financial effect can also not be agreed to as the quoted rate cannot be dismissed as non-existent, for any contractual consideration of adjustments. Condition 31 of IAFW-18157 has to be given the due respect.

30.9 The controversy of receipt or otherwise of Exh 1, at this stage and in my analysis as above is not relevant.

30.10 Considering the submissions. made, documents, and evidence produced, argument,s during hearing by both the parties, my examination of documents, I have come to the conclusion that he claim for the contractor is only partially sustained to the extent as discussed above. I Therefore award an amount of Rs33,750.00 (Rupees thirty three thousand seven hundred and fifty only) to the contractor on this claim."

9. By no stretch of imagination it can be said that the award is not proper or same is based on conjectures and surmises. I do not find any merit in the submissions of the respondents with regard to award of claim under claim no.1

10. Let me now dal with claim no.2 Under this head the claimant ha demanded a sum of Rs.1,50,200/= for provisions of racks and their arrangement on the first floor as per requirement of Commanding Officer. There is no force in the arguments of the respondents that as the same was not within the scope of work, the claimant was not entitled for the payment of shifting as the same might have been a private arrangement between the contractor and user. The arbitrator has considered the objections of the respondents and held that shifting of 1810 numbers of large steel racks was not denied by the respondent and same was done and fair and reasonable expenses for this element of work done need to be reimbursed to contractor and Therefore out of a total amount of Rs.115200/= a sum of Rs.40,500/= was awarded. I do not see any infirmity with the award of the arbitrator under this head also.

11. With regard to claim no.3 the amount claimed by the claimant was Rs.60,000/- on account of issue of MS Black sheets in available sizes where as some consignments were issued to contactor in coils weighing 6 to 7 tons each and the coils had to be handled with use of cranes and then the coils had to be got out by them by computerised cutters from Naraina before shifting to their workshop The arguments advanced by Mr.Nischal that as per the terms of the contract material issued in random sizes and any work done for straightening of sheets though issued in CR coils had to be done by the contractor in view of the clause of the contract as same was the responsibility of the contractor does no find support from the observation of the arbitrator who held that;-

".....However, the description cannot be taken to imply issue in coils on 6 to 7 MT each. This could not have been the intention when the contract was concluded. The sheets in normal and conventional sizes could be handled by manual labour but it would be a different aspect for 6 to 7 MT coils...."

12. The arbitrator has awarded a sum of Rs.18,000/= on this head. The award is well reasoned. No interference is required under this claim also. There is no merit in the submission of the respondents with regard to claim no.6 - Anfractuous and additional expenditure incurred due to reduction in number of racks and change in design. The arbitrator has awarded a sum of Rs.8411/= on this head. Similarly there is no merit in the objections filed by respondents with regard to claim n.7. Lastly, it was contended that the interest awarded by the respondents, was on higher side. The claim for interest @ 18% p.a. was made. Considering the circumstances the arbitrator awarded the interest @ 15% p.a. I do not see that the rate of interest is n the higher side and in any event of the matter I would not like to interfere with the reasoned award of the arbitrator There is no merit in the objections, same are dismissed. Award is made rule of the Court. A decree in terms thereof is passed. Petitioner shall be entitled to interest @ 15% p.a. from the date of decree till its realisation.

13. Petition stands disposed of.