(1999) 09 DEL CK 0037

In the Delhi High Court

Case No : I.A. 11742 of 1997 and Suit No. 2697-A of 1997

National Research Development Corporation — APPELLANT

Vs

M/s. Himachal Carbon Products — RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Citation : (1999) 6 AD 548 : (1999) 82 DLT 467

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. I.S. Baksi, for the Appellant; Dr. R.K. Gupta, Proprietor, for the Respondent

Judgement

Vikramajit Sen, J.

I.A. 11742 OF 1997:

1. This is an application dated 19.3.1997 for extension of time for making the award till 18.3.1997. Although notice of this application has been duly served on the respondent as is evident in the orders passed by the Joint Registrar on 23.7.1998, no reply has been filed thereto nor was any objection raised before me in the course of arguments. Although objections to the Award had been preferred it was not agitated that the Award had been published beyond the prescribed period. In Narsing Das Hiralal Ltd. and Another Vs. Bisandayal Satyanarain Firm, and Bengal and Bengal and Assam Investors Ltd. Vs. J.K. Eastern Industries Private Ltd., , time was extended in similar circumstances. Therefore, I allow this application with no order as to costs.

S.No. 2697-A of 1997:

2. The facts which have given rise to the disputes in the present case are that the Petitioner, National Research Development Corporation, (N.R.D.C.) had made a claim against the Respondent for "a minimum amount of Rs.6,00,000 (Rs. Six Lakhs only)" by way of Royalty for the use of the know how of an invention for

the manufacture of Carbon Thrust Bearings. The agreement between the parties was contained in a written agreement, the relevant clause of which is as under:-

3. The Grantee will pay to the Corporation for 10 years a royalty at the rate of 5% on the net ex-factory sale price of the material, manufactured by him, in accordance with the said invention and marketed by him. Such royalties shall become due on the First of April and on the First of October in every year in respect of the articles manufactured and marketed or used by the Grantee during the preceding half year and shall be paid by the First day of May and First day of November of that year. In default of payment of such royalties on the due dates, the Grantee shall pay interest on the amount in default at the rate of Fifteen per cent per annum.

4. The learned Arbitrator found in favor of the claimed in the carefully reasoned impugned Award dated 18.3.1997. The claim of a sum of Rs.6,00,000/- was awarded by way of arrears of royalty and interest on the said amount at the agreed rate of 15% per annum with effect from 19.2.1996 was granted togehter with costs. The Award was filed before this Court along with an application, being I.A. No. 11742/97 dated 9.3.1997, u/s 28 of the Arbitration Act 1940 seeking an extension of time for making the Award till 18.3.1997.

5. The Respondent filed objections dated 20.8.1998 which reached the Registry of the Court on 27.8.1998.

6. The reference to the Sole Arbitration of Dr.K.S. Sidhu, Retired Judge of the Rajasthan High Court was made in terms of the orders dated 17.1.1996 of Arun Kumar, J. u/s 30 and 33 of the Arbitration Act, 1940 objections ought to have been filed within 30 days from the date on which the Objector gained knowledge of the filing of the Award. Summons were issued on two occasions, firstly on 19.1.1998 and secondly on 25.3.1998. According to the statement made by the Respondent before the Joint Registrar (O) on 23.7.1998, he had received notice of the filing of the Award as well as notice of I.A. 1174/1997 on the previous day. Accordingly, the objections styled as "Replication" ought to have been filed on or before 23.8.98, but as stated hereinabove these objections were received in the Registry on 27.8.1998. Ordinarily, the objections, having been filed beyond the period prescribed under the Limitation Act, did not call for any consideration. However, since the matter has been prosecuted by the Respondent in person, I have ventured to peruse them.

7. The Objector has impugned the Award firstly on the grond that the Arbitrator has been influenced by the letter dated 8.9.1981 whereas the agreement was signed on 23.10.1981. However, there is nothing to show that the Award is based on the letter dated 8.9.1981 and, Therefore, it cannot be assailed on this ground. Secondly, it has been alleged that the invention and process know how was not received, but it has been found to the contrary by the Arbitrator. No error apparent on the face of the record has been disclosed by the Objector Thirdly, it is asserted that there was no acknowledgement to pay any royalty, but the

finding on facts by the Arbitrator, contrary to this assertion cannot be assailed by way of objection since no arrear apparent on the face of the record is evident. Fourthly, in these objections the Objector has disclosed the turnover of Rs. 16,93,921.97 (Rs. Sixteen Lakhs Ninety three thousand Nine hundred twenty one and Ninety Seven Paise only) between 1979 to 1990. However, the Arbitrator has held, in the absence of production of accounts by the Objector, that it canot be believed that during the ten years the Objector''s production and savings were merely of Rs.20,00,000/- (Rs. Twenty lakhs only). This is again a finding of fact which cannot be assailed in the manner now been attempted to in these objections.

8. I have perused the carefully reasoned Award and find that the Arbitrator has not misconducted himself or the proceedings; the proceedings were not invalid for any reason and the Award has not been improperly procured or is otherwise invalid. I see no cause to remit the Award or to set it aside. The Objections filed by the respondent in the special circumstances of the case are rejected on merits, even though they were liable to be rejected as having been filed beyond limitation. Decree in terms of the Award is passed.

9. The Decree Sheet be drawan up accordingly.