

(2007) 10 DEL CK 0161
In the Delhi High Court
Case No : OMP No. 561 of 2006

National Research Development Corporation	APPELLANT
Vs	
Pulver Ash Project Limited	RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Limitation Act, 1963 — Article 37, 5

Citation : (2007) 10 DEL CK 0161

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Ashwini Mata and Joydeep Sharma, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The parties entered into an agreement dated 01.11.1989 for license to use, exploit and practice the know-how and the processes of manufacture of Fly-ash Bricks and to sell and vend commercially the article so manufactured, such license to use of technology being supplied by the petitioner herein. It is the case of the petitioner that the royalty was not paid by the respondent in terms of the agreement and in view of the existence of an arbitration clause between the parties, the disputes were referred to the sole arbitration of Justice R.P. Gupta (Retd.)

2. The learned Arbitrator has made and published an award dated 30.6.2006 making an award of Rs. 6,12,762/- in favor of the petitioner along with interest and costs.

3. The petitioner is still aggrieved by the award inasmuch as the arbitrator has rejected the claim of the petitioner for royalty between the period 01.4.1994 to 30.9.1996.

4. The discussion in respect of the aforesaid is contained in paras 62 to 65 of the award. The arbitrator has held claim for royalty for the said period to be barred

by time on the ground that the amount was payable on a six monthly basis and on the payment not being so made, the cause of action arose in favor of the petitioner on each such occasion. The commencement of production was in the year 1994 and, thus, it was held that the cause of action would arise within a period of three years of the same unless the petitioner was not aware of such commencement of production. The undisputed position which emerged was that the petitioner did have knowledge of commencement of the production.

5. The learned arbitrator has also gone into the question that when initially vide a letter dated 18.12.1997 the arbitration clause was invoked, no arbitrator was appointed nor was a claim referred to arbitration and, thus, the vital step for commencement of the production did not take place. In sum and substance, the conclusion of the arbitrator is that since the royalty was payable on a six monthly basis and six monthly statement had to be sent by the respondent the cause of action would have arisen when such payment was not made and statement not sent.

6. Learned Counsel for the petitioner contends that the aforesaid conclusion is contrary to the settled legal position and relied upon the judgment of this Court in CS (OS) 931A/1997, decided on 01.3.2007 between the same petitioner, though with a different respondent. The factual matrix and the terms of the license are identical. The payment was not made for different six monthly periods and on the facts of the said case a similar question of limitation arose for consideration. A plea was sought to be advanced that the commencement of limitation under Article 37 of the Limitation Act, 1963 (hereinafter referred to as the Limitation Act) does not depend upon accrual of right to sue for the whole amount and when Installment becomes payable on the default committed, the limitation so commences. On the other hand, the opposite party (petitioner herein) contended that the only article dealing with such a claim for accounts are contained in Part I of the Schedule to the Limitation Act.

7. On a consideration of the aforesaid plea, it was held that since the arrangement was akin to a partnership and it was only from the date of dissolution that the royalty would accrue, it is Article 5 which would apply. In case the agreement was determined, the right to sue would arise on that date but if the agreement was not determined, such right to sue would only arise on the expiry of the period of the license agreement and once the claim is filed within three years of such period, the same could not be barred by limitation. This Court observed that though an option was available for determination of the agreement on account of non-payment of royalty as per Clause (5) of the agreement between the parties [Clause (7) in the present case], it was open for the party to determine the agreement on account of non-payment of royalty. In case of such termination, cause of action would have arisen at that time itself.

However, the petitioner in his wisdom permitted the agreement to continue and in such a case, it would not be the residuary clause which would apply but instead Part I of the Limitation Act dealing with the position analogous to a suit

for accounts would apply. Thus, it is only on the agreement coming to an end that the petitioner would be entitled to claim accounts and such accounts could be claimed for the whole period of agreement. A contrary view would imply that on each default, the petitioner would be required to file a separate petition for reference of all disputes to arbitration and the said view was held not to be acceptable.

8. I am, thus, of the considered view that the issue is no more rest integra in view of the judgment in CS(OS) 931A/1997 and, thus, the petitioner cannot be held dis-entitled to the claim for the period between 01.4.1994 to 30.9.1996 on grounds of limitation.

9. The award is set aside to the above extent and the petitioner may approach the arbitrator for quantification of the amount for the period which was held to be barred by time.

10. The petition is allowed to the aforesaid extent, leaving the parties to bear their own costs.