(1994) 04 DEL CK 0014

In the Delhi High Court

Case No : Suit No. 582-A of 1989

National Research Development Corporation — APPELLANT

Vs

Vibronics (P) Ltd. — RESPONDENT

Date of Decision : 29-04-1994

Acts Referred:

Citation : (1994) 2 AD 589 : (1994) 2 ARBLR 3 : (1994) 54 DLT 562

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : P.N. Bhardwaj, for the Appellant; C.L. Khanna and A.L. Wahi, for the Respondent

Judgement

Mr. J. K. Mehra, J.—This is a petition u/s 20 of the Arbitration Act, 1940. The petition was filed on 23.2.1989. According to the allegations in the plaint and in the petition, the petitioner had entered into a license agreement with the respondents on 3.12.1975, being Exhibit P-5 whereby the petitioner granted a license to the respondents about the process for manufacture of ultrasonic probes for non-destructive testing (Vig), Angle Beam Probes, Surface Wave Probes and Normal Beam Probes etc. The petitioner under the said agreement was to supply the technical know how on the said process, which is claimed to be an invention of the petitioner. The agreement was to run for a term of seven years to be computed from the date of the start of manufacture by the respondents and the respondents were to pay to the petitioner a royalty @ 5% of the net ex-factory sale price of the material manufactured by it and marketed by it for a period of seven years. The royalty was to be paid every half year, i.e., on 1st April and 1st October each year. In the event of default in payment of such royalty, the respondents agreed to pay interest on the amount of royalty @ 15% p.a. It is an admitted case that no royalty was paid by the respondents to the petitioner on the plea that they did not go into manufacture of any products making use of the petitioner''s invention covered by the said license agreement. Having failed to obtain any payment and also a response to their demand for payment, the present petition was filed for filing of an agreement and invoking the arbitration clause No. 11 of the said agreement and reference of the disputes between the parties to the Arbitrator.

2. Notices were issued and the respondents on appearing before the Court took up several preliminary objections, but at the time of hearing, only two were argued. One that the claim in the present case is hopelessly time barred. It is settled law that the question as to whether the particular claim is barred by limitation, is a matter for the Arbitrator to consider and decide. A reference in this behalf may be made to the decision of the Hon''ble Supreme Court in the case of Mohd. Usman Military Contractor, Jhansi Vs. Union of India (UOI), Ministry of Defence, . This has been consistently followed in The Vulcan Insurance Co. Ltd. Vs. Maharaj Singh and Another, . The next question that comes up for decision in this case is whether the petition u/s 20 has been filed within time. The respondents have pressed that the agreement which was entered into in 1975 had come to an end in 1982 after a period of seven years and since no production could be undertaken by them on the basis of the invention covered by the said agreement, there could be no question of any payment of royalty or a dispute arising in this matter. The law on the question is well settled by the Hon''ble Supreme Court in the case of Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, , Our High Court in the case of Puran Chand Nagia Vs. The Aviation Employees Cooperative House Building Society, , has also followed the law laid down in the aforesaid Supreme Court''s judgment. The question was further considered by Division Bench of this court in the case of Union of India v. Vijay Construction Company AIR 1981 Del 193, wherein the Division Bench of this court considered the question of limitation in filing the petition u/s 20 and held that the cause of action accrues to a party to the contract containing the arbitration clause on the date when the contract was rescinded by other party thereto and the limitation of three years has to be counted from that date and not from the date of notice when that party serves a notice on the other party requiring the appointment of the Arbitrator. In the present case, there is no plea of agreement having been rescinded. The plea of the respondents is that nothing whatsoever had fallen due for payment as production could not be stated. Such assertion could strengthen the argument that the petition is not maintainable being premature. The respondents cannot avail of the ratio of the judgment cited by it in the case of S. Rajan v. State of Kerala. It is not disputed that the license agreement was to continue even after the expiry of the term of the agreement according to provision to the agreement. The objection of the respondents is not that there is no accrual of cause of action in favor of the petitioner for a reference, but that the agreement came to an end in 1982 and three years'' period is to be reckoned from 1982. Nothing was addressed regarding the effect of proviso. For that reason also, the objection on the question of limitation in filing Section 20 petition would not be construed from 1982. In fact, from the correspondence. Exhibits P-10 and P-11, it appears that the respondents had advertised their products in a magazine, namely

Purchases Volume VI published in December, 1983 wherein the respondents had claimed that they are manufacturing ultrasonic flaw detectors ranging from O. 5 to M.H.Z. It is stated by Counsel for the petitioner that they acquired the knowledge of commencement of manufacture of these probes from the said advertisement in December, 1983 and the respondents, as per the terms of the agreement, were to continue paying royalty in terms of the agreement for a period of seven years, at least from the date the respondents had advertised that they were manufacturing such products. If the period of seven years is computed from 1983, the liability to pay royalty would have come to an end in 1990 only and not in 1982. Since the petition has been filed in 1989, I am satisfied that the same is within time and in view of the allegations and counter-allegations, there also exists a dispute regarding the payment of royalty as the petitioners have asserted that the production started in 1983 and consequently royalty became payable which has been denied by the respondents. The only disputes that can be referred in the present case are :

(1) Whether the respondents are liable to pay a sum of Rs. 1,05,000/- by way of royalty and interest under the agreement dated 3.12.1975, and

(2) Whether the claim of the petitioner is barred by limitation ?

3. In the light of the above discussion, I am satisfied that the petitioner has made out a case for the petition being allowed. Accordingly, I direct tiling of the agreement and order the disputes to be referred to the sole arbitration of the Chairman, petitioner corporation in terms of clause-II. The said Arbitrator will also decide whether the claim of the petitioner is within limitation. The reference should be made within two months from this date and the Arbitrator should make and publish his award within four months of the date he inters upon reference. The suit is disposed of in the above terms with no order as to costs.

4. Petition allowed.