

(2001) 11 DEL CK 0073

In the Delhi High Court

Case No : Suit No's. 1998 and 2335A/96

National Small Industries Corporation Ltd.

APPELLANT

Vs

Mahalaxmi Suppliers

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14, 30, 33

Citation : (2002) 61 DRJ 771

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Sanat Kumar, for the Appellant; Inderjit Sharma, for the Respondent

Judgement

J.D. Kapoor, J.—The award dated 10.4.1996 has been sought to be made rule of the court.

2. Through I.A. 7013/98, respondent has filed objections under Sections 30 & 33 of the Arbitration and Conciliation Act, 1996 whereby respondent assailed the award mainly on the ground that the Arbitrator has misconducted firstly by ignoring the letters sent by the respondent pointing out the defects in the equipment supplied by the petitioner to the respondent and secondly by completely overlooking Clause 6 of the lease agreement dated 22.5.1990 and has also not taken into account various payments made by the respondent from time to time and has Therefore misconducted himself on factual matrix.

3. The relevant facts need to be recapitulated in brief.

4. The respondent had applied for Equipment Leasing Plant of Tyre Retreading Complete with 30 KVA Generating Sect with Kirloskar Engine and Kirloskar Alternator on lease under the Equipment Leasing Scheme. After considering the application, lease agreement dated 22.5.1990 was executed between the parties. The machineries were supplied by the petitioner through their recognised agents M/s. Modern Metal Works on 5.8.1990 and 8.9.1990 to the respondent of the total value of Rs. 7,44,924/- and the total amount to be repaid was Rs.

8,94,000/- which as per the agreement was payable by the respondent by way of 20 quarterly Installments/rental of Rs. 44,700/- each w.e.f. 1.12.1990. An amount of Rs. 44,700/- was retained by the petitioner as interest free security.

5. Though it was specifically pointed out by the learned Arbitrator that respondent vide letters dated 5.10.1990, 16.10.1990 and 25.10.1990 certified that the machines were in good condition and were functioning very well and Therefore he had no objection to reply the balance amount to the supplier yet the respondent took the stand that it had sent various letters to the petitioner dated 7.1.1991, 25.1.1991, 15.2.1991 & 12.3.1991 stating that machineries supplied were so much defective that the respondent was unable to carry on their Unit of Tyre Retreading from the said plant and since the petitioner never got the machineries repaired it had resulted in great loss.

6. Unfortunately on 31.12.1993 fire took place in the plant and the machineries were burnt. However, it was revealed that machineries in question were insured for a lesser sum of Rs. 5,66,500 against the actual value of Rs. 8,94,000. The respondent could not pay the Installments in time as the machineries stopped working in January, 1991 and the petitioner took possession and got the machineries sealed from 23.12.1991 to February, 1993. Thereafter, seal was removed. Ultimately disputes between the parties were referred to the Arbitrator.

7. Perusal of the award shows that the Arbitrator has relied upon the certificates dated 5.10.1990, 16.10.1990 and 25.10.1990 furnished by the respondent that the machineries were in good condition and functioning very well apart from the inspection report dated 6.4.1992 made in the presence of respondent's representative showing that the machineries were found in good condition and in working order. The learned Arbitrator also observed that the machineries were insured as per norms of the Insurance Company and were not undervalued as alleged by the respondent. The learned Arbitrator has also relied upon the letter dated 17.11.1994 written by the respondent to the petitioner wherein it was stated that respondent had issued consent letter for settlement of the claim at Rs. 4,11,000/- despite the original claim of Rs. 9,34,012 and had raised objection to the settlement of the claim to the extent of Rs. 13,000/-.

8. It is contended by Mr. Inderjeet Sharma, learned counsel for the respondent that the learned Arbitrator misconducted himself by ignoring firstly the letters and complaints made by the respondent about the machineries supplied to it; secondly for undervaluing the insurance amount which resulted in loss to the respondent as he could not claim actual value of the machineries from the Insurance company; and thirdly the learned Arbitrator completely ignored Clause 6 of the lease agreement which provided that machines shall be got insured of its original value. The said clause of the lease agreement is as under:-

".....Under this agreement the Lesser shall get the equipment/machines insured against the risk of fire, riot strike and civil commotion and on that account the Lessee hereby stipulated to pay a total sum of Rs. 14899/- calculated at the

uniform rate of 2% of Rs. 7,44,924/- which is the cost price of the property. But such insurance charges shall be recoverable from the Lessee along with the monthly rental as and when the same became payable by the Lesser under this agreement. Non-payment of these insurance charges will be considered as a breach of very material term of this agreement...."

9. The board principles governing the acceptance, rejection or remand of the award as laid down in various authorities of the Supreme Court which I deem it needless to refer are that court should not scrutinise or examine the award as an appellate court nor should it re-appreciate or re-evaluate the evidence or material as assessed by the Arbitrator nor should it interfere with the interpretation of terms of any clause by the Arbitrator even if found to be erroneous. Unless and until there is perversity, bias, error or misconduct writ large on the face of the award, the court should always be reluctant to interfere with the award.

10. However, it is also settled law that if the Arbitrator ignores the crucial documents produced by the parties that may lead to just and fair decision, the award should be remitted to the Arbitrator for re-decision for taking into consideration the said document.

11. It is not disputed that respondent had issued certificates about the good condition of the machines supplied to it in October 1990. It was at a later stage and for the first time in January, 1991, respondent complained about the defects in machineries and about its working. The interpretation of Clause 6 providing for insurance of machineries by the Arbitrator is that the machineries were to be insured as per norms of the insurance company and Therefore such an interpretation cannot be interfered with.

12. As regards the various allegations that the Arbitrator has ignored the various payments made by the respondent from time to time as detailed in para 12 of the rejoinder, it is nothing but an after thought as no such averments were made before the Arbitrator not this fact was initially taken in the objections. Even if it is assumed that payments were made by the respondent from time to time but the very fact that the respondent by way of letter dated 17.11.1994 consented for settlement of the claim at Rs. 4,11,000/- despite the original claim of Rs. 9,34,012/- it clinched the whole dispute and Therefore the pleas of various payments made by the respondent from time to time was neither available to the respondent before the Arbitrator nor by way of objections.

13. In the result, I do not find any merit in the objections as the award does not suffer from the vice of bias, misconduct-legal or factual or any error apparent on its face. Objections are dismissed. Suit is decreed for Rs. 6,30,325.00 with pendente lite and future interest @ 21% per annum w.e.f. 2.1.1994 till realization. If the respondent fails to pay the awarded amount within one month, then the petitioner will be entitled for additional interest @ 12% till its realisation.

14. With this order, petition u/s 14 of the Arbitration Act being S.No. 1998/96

also stand disposed of.