

(2006) 02 DEL CK 0085

In the Delhi High Court

Case No : A.A. No. 106 of 2004 and I.A. No. 51 of 2005

Oswal Woollen Mills Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Arbitration Act, 1940 — Section 16, 30, 33

Citation : (2006) 02 DEL CK 0085

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Shiv Khorana, for the Appellant; U.L. Watwani, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

IA No. 51/2005 (Under Sections 16, 30 and 33 of the Arbitration Act, 1940) IN ARB.P. No. 106/2004

1. The disputes between the parties in relation to the retention of amount by the respondent being the balance price of 5% payment and security deposit of Rs. 1,19,771/- and Rs. 2,35,000/- respectively was referred to the arbitration of Dr. Gita Rawat, Sole Arbitrator-I in terms of the letter dated 20.11.2003. The Arbitrator has made and published her Award dated 18.03.2004 and the petitioner aggrieved by the same has filed objections under Sections 16, 30 and 33 of the Arbitration Act, 1940 (hereinafter to be referred to as, "the said Act") to the extent that the Arbitrator has failed to award interest on the awarded amounts.

2. In view of the aforesaid, the controversy is extremely limited and learned counsel for the parties advanced submissions on the basis of the contents of the Award, the objections and the reply thereto in this behalf.

3. Learned counsel for the petitioner contends that in the concluding paragraph while making the Award in respect of reliefs (a) and (b) and granting the said

two amounts, interest has been denied. The Arbitrator has observed that The claim of interest cannot be allowed due to reasons given in para (d) . Learned counsel invited the attention of this Court to what has been set out in para (d), which reads as under:

(d) The interest in respect of such withholding amount arises if such withholding amount has not been "duly notified" as such the words "duly notified" are very significant in the sense that the same is obligatory upon the Government to notify the withholding to the firm/claimant and in the absence of the same interest cannot be denied to the firm/claimant.

4. A reading of the aforesaid shows that the Arbitrator has found that in the absence of the respondent withholding the amount when the same has not been "duly notified", interest cannot be denied to the petitioner. Learned counsel submits that the finding, thus, arrived at in clause (d) was for grant of interest while in the prayer clause while dealing with the issue, interest has been denied on the reasoning of clause (d).

5. Learned counsel for the respondent on the other hand, contends that the Award has to be read as a whole and if the contents of para (e) are considered, the rationale for non-grant of interest would be clear. The said para (e) is as under: (e) It appears from the record that no notice for withholding the amount of the firm/claimant has been given to him by the UOI/Respondent in terms of the condition of "Duly Notified" but the Annexure-C filed in support of counter-reply by the UOI may be treated as sort of notice as the contractor/firm was aware of withholding the amount.

6. In my considered view, there appears to be an obvious mistake since certainly para (d) does not give reasons why interest should not be granted. On the other hand, it gives reasons why interest should be granted. This may possibly be due to some typographical error.

7. In view of the aforesaid position, there are two options open to the Court - first would be to remand the matter back to the Arbitrator and second would be to peruse the Award as a whole and consider whether any interest ought to be granted in view of the findings arrived at by the Arbitrator.

8. Taking into consideration the long-time which has already passed in this dispute starting from mid-1980s, I see no purpose in remanding the matter back to the Arbitrator and consider it appropriate to peruse the Award and take into consideration the reasoning given by the Arbitrator.

9. A reading of clause (b) shows that the Arbitrator has come to the conclusion that the powers can be exercised under clause 18A of the contract regarding lien in respect of a claim in other contract. This clause is, in fact, the sub- stratum of the contention of learned counsel for the respondent and has been reproduced in the reply as under: 18--A LIEN IN RESPECT OF CLAIMS IN OTHER CONTRACTS:

Any sum of money due and payable to the contractor (including the security

deposit returnable to him) under the contract may be withheld or retained by way of lien by the purchaser or Government or any other person or persons contracting through the Secretary against any claim of the purchaser or Government or such other person or persons in respect of payment of a sum of money arising out of under any other contract made by the contractor with the purchaser of Government or with such other person or persons.

10. A reading of the aforesaid clause shows that such retention can take place, but it is also not in dispute that the requirement is that the contractor should be "duly notified". The Arbitrator in sub-para (e) has taken note of the communication of the respondent dated 21.01.1988 informing the petitioner about the same. This letter is, thus, deemed to be the letter whereby the petitioner was "duly notified". This finding, thus, cannot be interfered with.

11. A perusal of what is recorded in sub-para (b) would show that the Arbitrator has come to the conclusion that the power of withholding the amount comes to an end the moment the claim of the Government of India is determined by the Arbitrator. The Arbitrator states, Since the Award has not been made Rule of the Court by the Hon"ble Court and is pending with it, it cannot be said that the dispute could not be treated to have been determined by the Arbitrator . The finding of the Arbitrator, thus, is that once the Award is rendered, the disputes are determined and there cannot be a retention beyond the said date. The findings recorded in sub-para (c) show that the Award is dated 13.12.1992 whereby the matter in issue stood settled. No doubt, the matter was apparently pending before the Bombay High Court for making the Award Rule of Court, but the records produced before the Arbitrator did not show the conclusion of the said proceedings. The findings arrived at by the Arbitrator, however, is that pendency of such proceedings before the High Court would be of no effect as the disputes stood determined on the conclusion of the arbitration.

12. I am of the considered view that the finding of the Arbitrator is that on rendering of the Award dated 13.12.1992, the disputes stood determined. In view of the aforesaid findings arrived at by the Arbitrator, the Arbitrator ought to have granted interest on the awarded amount from 14.12.1992 till the date of payment. The respondent has placed on record the receipt issued by the petitioner which shows that the cheque dated 20.10.2004 was issued, which was received on 01.11.2004 The interest is, thus, liable to be paid till 20.10.2004

13. The question, thus, arises as to the rate of interest. Taking into consideration the prevailing rates of interest as well as the nature of dispute, I consider it appropriate that the petitioner shall be entitled to interest @ 9% p.a. from 14.12.1992 till 20.10.2004

14. The application is accordingly allowed.

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15. The Award dated 18.03.2004 of the Sole Arbitrator-I, Dr. Gita Rawat is made

Rule of the Court with the modification that the petitioner is held entitled, in addition to what is awarded under the said Award, to interest @ 9% p.a. simple interest from 14.12.1992 till 20.10.2004 The amount be remitted within 60 days from today. The parties are left to bear their own costs.

16. Decree-sheet be drawn up accordingly.