
(2009) 01 DEL CK 0182
In the Delhi High Court
Case No : O.M.P. No. 623 of 2007

Satish Chand Rajesh Kumar Pvt. Ltd.	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2009) 01 DEL CK 0182

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sanjay Bansal, for the Appellant; Adish Aggarwal and Aakash D. Pratap, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner was awarded a contract for construction of 60 numbers of single suits for four storeyed at Dev Nagar New Delhi vide contract No. 08/EE/LD/1997-98. A dispute arose between the petitioner and the respondent which was referred to the arbitration and the learned Arbitrator (respondent No. 3) gave its award dated 20th July, 2007 allowing part of the claims and dismissing some of the claims made by the petitioner. The petitioner has assailed this award in respect of claim No. 2, additional claim No. 1 and additional claim No. 2. The ground of assailing award as given by the petitioner under each claim is that the learned Arbitrator failed to appreciate the final bill of the petitioner, failed to appreciate the vital documents in the support of claims and failed to appreciate the EOT performa in which the claimants had not given any undertaking and was granted EOT without levy of compensation.

2. u/s 34 of the Arbitration and Conciliation Act, an award can be challenged on following grounds:

34(2) An arbitral award may be set aside by the court only if-

(a) The party making the application furnishes proof that-

- (i) A party was under some incapacity, or
- (ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
- (iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iv) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration:

Provided that, if the decisions on matter submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) The court finds that-

- (i) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) The arbitral award is in conflict with the public policy of India.

3. The petitioner has failed to make any of the grounds available to him u/s 34 for setting aside the award.

4. A perusal of claim No. 2 would show that under this claim petitioner had claimed Rs. 92,321/- on account of removal of extra earth. The learned Arbitrator observed that the petitioner had failed to substantiate this claim with documentary evidence and therefore did not award any amount. I find this is a sufficient reason to be given by the learned Arbitrator. If there is no evidence produced, the learned Arbitrator cannot record any other reason. Regarding additional claim No. 1, the learned Arbitrator had given reasons why the claimants was not entitled to the amount claimed on account of deviated quantities. The claimants had asserted his right to claim market rate for deviated quantities beyond admissible deviation. The learned Arbitrator observed that to claim extra rate, the claimants were required to demand the same with proper analysis at the time of executing such deviated quantities. Since the claimants failed to establish, through documentary evidence, if such a demand was made even within a reasonable period, the claim was disallowed. Similarly, additional claim No. 2 was disallowed. I consider that the plea taken by the petitioner that the learned Arbitrator had given no reasons while dealing with claim No. 2 and additional claims No. 1 & 2 is baseless plea. I find no force in the petition. The

petition is hereby dismissed.