(1985) 11 DEL CK 0036

In the Delhi High Court

Case No : Suit No. 536A/85

The Fort William Co. Ltd. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Citation : (1986) 2 ARBLR 43 : (1986) 29 DLT 240

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : J.C. Batra and Santosh Kalra, for the Appellant; R.K. Anand and S.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

M.K. Chawla, J.—The Fort William Co. Ltd. is the petitioner. Their application is u/s 20 of the Arbitration Act praying for the issuance of directions to respondent No. 2, Director General of Supplies and Disposal, to file contract containing arbitration clause and reference of disputes, mentioned in the petition, to arbitration.

2. As per the averments, the petitioner and respondent No. 2 entered into an agreement whereby respondent No. 2 placed an order for the supply of wire rope on the petitioner Co. on 19-6-76. The petitioner Co. accepted the offer and a regular contract was executed. The petitioner Co. executed the order in full. The Director General of Supplies and Disposal made 98% payment of the bill amounting to Rs. 1,20,186/-. Respondent No. 2 later on raised a false and frivolous claim against the petitioner Co. by imposing a liquidated damage amounting to Rs. 10,034/- on account of allegedly late supply of material. The petitioner Co. refuted the contention as a result of which dispute has arisen between the parties. By virtue of Clause 24(i) of the General Conditions of the contract the disputes are liable to be referred to the sole arbitration of an officer in the Ministry of Law appointed by the Director General of Supplies and Disposal. inspire of service of the legal notice on the respondents, they have not

cared to appoint the arbitrator and left with no other option the petitioner has filed the present petition.

3. Respondents, in reply, raised there preliminary objections, inter alias alleging that the petitioner has not specified the disputes in the petition, and as such the petition is not legally maintainable; that the petitioner is not entitled for the relief prayed for in the petition and that the petitioner has not disclosed the valuation, the jurisdiction and the cause of action in the petition itself. On merits, however, the respondents admitted the execution of the contract, placing of the order for the supply of wire rope and its delivery to the consignee. They have, however, taken up the stand that part of the supplies were made after the contracted delivery period had expired. The respondents, under these circumstances, were justified in claiming the liquidated damage and retaining back the amount of Rs. 10,034/-.

4. I have heard the arguments of the learned counsel for the parties and with their help gone through the record carefully.

5. At the outset it may be stated that the parties do not deny the execution of the agreement containing an arbitration clause by which the petitioner Co. was asked to supply wire rope. It is also not disputed that as per the terms and conditions of the contract mutually agreed between the parties, the petitioner Co. dispatched the contracted goods to the consignee. These goods have since been accepted. The respondents have also made 98% payment of the total amount of the bill.

6. The dispute is only regarding the imposition of liquidated damages amounting to Rs. 10,034/- by the respondents for the late supply of the contracted goods to the consignee. Whether the respondents are justified in accessing this damage is a question which can be only gone into by the arbitrator, to be appointed by the Director of General Supplies and Disposal as per Clause 24(i) of the General Conditions of the Contract governing the contracts placed by the Central Purchase Organisation of the Government of India.

7. Learned counsel for the respondents has raised the objection that this Court has no jurisdiction to entertain the present petition as the disputes relate to a sum of Rs. 10,000/- and odd only. This objection has no merits as pecuniary jurisdiction has to be judged from the contract by virtue of which the petitioner Co. was required to supply the contracted goods. The contract in question admittedly was for more than Rs. 1 lakh or so. Furthermore, the cause of action has arisen in favor of the petitioner as and when the respondents withheld the amount in contravention of the terms and conditions of the contract, which fact is specifically mentioned in the petition itself.

8. At this stage, it will be relevant to keep in mind that in the connected suit between the same parties bearing suit No. 537A of 1985 concerning the similar contract, has already been referred to the sold arbitrator. In the reply, almost similar defense was raised by the respondents. inspire of preliminary objections,

the respondents thought it fit to refer the matter to an arbitration. Similar objections now sought to be raised to defeat the claim of the petitioner in this case cannot be given much weight. Even otherwise, these objections have been raised only with a view to delay the disposal of this petition. Once the respondents do not raise any objection on the merit of the dispute, the technicalities should not prevail.

9. As a result of the above discussion, I see no force in the objection. The petition is allowed. The respondent No. 2, Director of General Supplies & Disposal, Parliament Street, New Delhi, is directed to appoint an arbitrator within one month from today to enter upon the reference and decide the disputes mentioned in the petition. The respondents shall also be at liberty to file the counter claim, if they so desire. The award be made within a statutory period of 4 months from the date the learned arbitrator enters upon the reference.