
(2008) 04 DEL CK 0130

In the Delhi High Court

Case No : IA No. 1022 of 2001 and CS (OS) No. 1596A of 2005

Union of India (UOI)

APPELLANT

Vs

Beatty Chemicals

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Arbitration Act, 1940 — Section 14, 17

Citation : (2008) 2 ARBLR 371 : (2008) 102 DRJ 546

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

Bench : Single Bench

Advocate : Saurabh, for the Appellant; Shiv Khorana, for the Respondent

Judgement

S.N. Aggarwal, J.—The Union of India being the petitioner herein has filed an application under Sections 14 and 17 of the Arbitration Act, 1940 seeking directions to the arbitrator (respondent No. 2) to file the award dated 28.05.1999 with the arbitration proceedings in this case and to make the award rule of the court.

2. In response to notice of this petition being sent to the arbitrator, the arbitrator (respondent No. 2) filed the award in original along with the arbitration proceedings before this Court in the present suit. Notice of filing of the award was sent to the respondent being the contractor. The respondent filed objections against the said award and those objections, filed by the respondent were registered as is No. 1022/2001.

3. By this judgment, I would like to decide the objections (IA No. 1022/2001) filed by the respondent against the arbitral award dated 28.05.1999 made and published by the sole arbitrator-Ms. Shail Goel.

4. Briefly stated the facts of the case are that the petitioner had awarded a contract to the respondent for supply of 278 numbers of extinguishers, fire foam 50 litre capacity on 15.10.1990. In terms of Clause 16 of the said contract, the respondent was required to furnish the advance sample of extinguisher, fire foam

50 litre capacity to the petitioner within six weeks from the date of the contract. The time period prescribed in the contract for furnishing the advance sample by the respondent was extended from time to time. The respondent is alleged to have furnished the advance sample for approval to the petitioner on 20.12.1991 but the said sample was rejected. Later on, vide communication dated 29.01.1992 addressed by the petitioner to the respondent the condition for furnishing the advance sample was waived and the delivery period for supply of stocks, i.e. extinguisher, fire foam 50 litre capacity was rescheduled and the respondent was given time for supply of stocks up to 30.07.1992 subject to levy of liquidated damages and certain other conditions. The conditions imposed for re-scheduling delivery period was allegedly not acceptable to the respondent and, Therefore, the stock in question was not supplied by the respondent to the petitioner. The contract in question was cancelled by the petitioner on 12.10.1992 and the said cancellation resulted into disputes and differences between the parties under the contract. The parties while entering into the contract in question had agreed for referring their disputes under the contract for arbitration to a sole arbitrator to be appointed by the DGS&D in terms of Clause 24 of the General Conditions of Contract between the parties.

5. Since the disputes and differences arose between the parties under the contract, the said disputes were arbitrated by Ms. Shail Goel appointed as sole arbitrator by DGS&D in terms of Clause 24 of the contract. The petitioner had made a claim of Rs. 5,19,454.20p. with interest at 12% p.a. against the respondent before the arbitrator and this claim was on account of alleged loss suffered by the petitioner for non-supply of stocks by the respondent. The respondent had also filed a claim to the tune of more than Rs. 5 lakhs before the learned arbitrator.

6. The learned arbitrator vide impugned award has allowed the claim of the petitioner in full, i.e. to the tune of Rs. 5,19,454.20p. with interest at 12% p.a. from the date of award till the date of realisation whereas the claim of the respondent has been rejected in toto.

7. In terms of arbitration agreement between the parties, the parties had agreed that if the value of the claim in a reference before the arbitrator exceeds Rs. 1 lakh, the arbitrator was required to give a reasoned award. A perusal of the impugned award would reveal that the learned arbitrator has not given any reason for allowing the claim of the petitioner and rejecting the claim of the respondent. The impugned award is thus contrary to the express terms of the contract between the parties.

8. Mr. Khorana, learned Counsel appearing on behalf of the respondent has contended that this Court has already set aside an identical award given by the same arbitrator in case titled Union of India (UOI) Vs. Shree Shankar Vijay Timber Industries, . This factual contention urged on behalf of the respondent is not disputed by the counsel appearing on behalf of the petitioner. Under the circumstances, I am of the view that in order to maintain parity and even

otherwise since the impugned award is contrary to the express terms of the arbitration agreement between the parties, the said award is liable to be set aside and the matter is remitted back for reconsideration before the learned arbitrator.

9. In view of the above and having regard to the facts and circumstances of the case, the objections are allowed. The impugned award is set aside. The case is remitted back for rehearing and for passing of a reasoned award before the learned arbitrator. The court has been informed that Ms. Shail Goel who has passed and published the impugned award has since retired and, Therefore, the petitioner through DGS&D is hereby directed to get this case re-decided from another arbitrator in terms of Clause 24 of the contract between the parties. The petitioner shall send a notice of appointment of another arbitrator to the respondent within a period of six weeks from today. In view of the above, the present petition stands disposed of.