

(1998) 10 DEL CK 0030
In the Delhi High Court
Case No : Suit No. 605-A of 1996

Victor Cable Industries Limited		APPELLANT
	Vs	
Delhi Electric Supply undertaking and others		RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Citation : (1998) 76 DLT 740

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. Rajiv Nayyar, Mr. Sudhanshu Batra and Mr. Sanjay Dua, for the Appellant; Mr. Jayant Nath, for the Respondent

Judgement

Dr. M.K. Sharma, J.—In relation to contract for supply of 90 kilometers of underground electric cables contained in Purchase Order dated 11.3.1992 issued by the respondents, the petitioner made supplies of entire goods. While effecting the aforesaid supplies in terms of the Purchase Order, disputes arose between the parties and, Therefore, the petitioner filed a petition in this Court u/s 20 of the Arbitration Act being Suit No. 1055/1994.

2. This Court by order dated 8.11.1994 directed for appointment of an arbitrator in accordance with the arbitration agreement between the parties. In terms of the aforesaid direction, the respondent No.3 was appointed as the sole arbitrator by order dated 21.12.1994. The respondent No.3 entered upon the reference and after giving detailed hearing and after receiving evidence on record made and published his award on 6.2.1996. The aforesaid award was filed in this Court as against which objections have been filed by both the parties. Objection filed by the petitioner is registered as I.A. 12810/1996 and the objection filed by the respondents is registered as I.A. No. 2228/1996.

3. By this order, I propose to dispose of both the aforesaid objections as also the suit registered in this Court.

4. Mr. Rajiv Nayyar, senior counsel appearing for the petitioner and Mr. Jayant

Nath, counsel appearing for the respondents have taken me through the contents of the award passed by the arbitrator.

Mr. Rajiv Nayyar at the very outset fairly stated that he does not wish to press for the objections filed by the petitioner. He also submitted that the arbitrator who has passed the award in the instant case was a technical person and was appointed by the respondents themselves. He also submitted that there was no requirement under the agreement or otherwise for the arbitrator to give any reason for his award. He submitted that in spite of the aforesaid position, the arbitrator has chosen to give his reasons for the award which does not suffer from any infirmity. He further submitted that the Court should approach an award with a desire to support, if that is reasonably possible, rather than to destroy it by calling it illegal. He also submitted that even if on the materials on record a different view could have been taken, the award is not liable to be struck down on that count.

Mr. Jayant Nath, counsel appearing for the respondents on the other hand submitted that the aforesaid award was passed in violation of the provisions of Section 59 of the Sales of Goods Act. He further submitted that the arbitrator misconducted in giving his award, particularly, in holding that for the damage suffered by the respondents for supply of sub-standard material, deduction could be allowed only to the extent of 10%. According to him, even while doing so the arbitrator failed to state that 5% awarded by him as damages would be recoverable by the respondents not on the Purchase Order of Rs.4.9 crores but only to the extent of the claims of the claimant of Rs.98 lacs. He further submitted that the arbitrator as a matter of fact found that the material supplied by the petitioner was of poor quality, but, failed to give any reason for not upholding reduced price to the extent of 25% of the Purchase Order as claimed by the respondents, but, holding the respondents entitled to recover damages only at 5%.

5. In the light of the aforesaid submissions, I have also perused the decisions relied upon by the learned counsel appearing for the petitioner in the case of Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others, and State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, as also the decision of this Court in Kuldip Kumar Suri Vs. Delhi Development Authority and others; reported in 1985 Delhi 82 and Jagdish Chander Vs. Hindustan Vegetable Oils Corpn. and another reported in AIR 1990 204. In Bijendra Nath Srivastava (Dead) Through Lrs. (supra) the Supreme Court has held that the award given by an arbitrator who is a technical person should normally not be interfered with as it is not for the Court to reappreciate the evidence and give a contrary finding to that given by an expert arbitrator. It is also true as has been held in the aforesaid decisions of the Supreme Court that an award is not invalid merely because by a process of inference and argument, it might be demonstrated that the arbitrator has committed grave mistake in arriving at his conclusion. It is settled law that the reasonableness of the reasons given by the arbitrator cannot

be challenged and that the arbitrator is the sole judge of the quality as well as the quantity of the evidence and it would not be for the Court to take upon itself the task of being a Judge of the evidence before the Arbitrator.

6. In the light of the aforesaid legal position, I have scrutinised the contents of the award taking note of the submissions of the learned counsel appearing for the parties. The arbitrator is admittedly a technical person and was appointed by the appointing authority who was the Chief Engineer. The warranty period provided under the terms of the Purchase Order also admittedly expired prior to the levy of damages. On consideration of the evidence on record, the arbitrator found that the respondents has not come out with any specific performance/failure report of the used cable which was in use for approximately two years or so. In view of the terms and conditions stipulating warranty period as 18 months from the date of receipt of material at respondent's stores or 12 months from the date of commissioning he held that both the periods have expired, but, still then the respondents have not come out with any specific data about the failure of the cable supplied by the petitioner and that the deficiencies observed in testing have not affected the performance of the cables supplied significantly. He also as a matter of fact found that the petitioner could not be absolved of the liability to compensate the respondents adequately and accordingly, he allowed the respondents to make deduction of 5% as penalty for the deficiencies pointed out in the Test Report and 5% for the unsatisfactory performance.

Thus, the respondents were allowed total of 10% deduction from the total value of Rs.98,67,735.38 as against the claim of the respondents for deduction of 25% towards damages for entire supply of cables by the petitioner, although with regard to the balance supply no test report was obtained.

7. This Court cannot substitute the findings of the arbitrator that 10% deduction is reasonable on the facts and circumstances of the case. This Court substituting the said findings by reappreciating the evidence cannot and should not hold that the respondents are entitled to 25% deduction as that would be going beyond the jurisdiction of this Court as has been laid down in various decisions of the Supreme Court and this Court. I do not propose to venture into such an action also because of the fact that this Court is not a technically equipped person to determine as to what should be the actual percentage of deduction by way of damages, particularly, in view of the fact that the arbitrator appointed in the case was a technical person himself and had the capabilities and expertise to determine and to come to such findings.

8. Counsel for the respondents relied upon the provisions of Section 59 of the Sales of Goods Act to substantiate his submission that the respondents could set up against the seller breach of warranty in diminution or extinction of the price and that by demanding 25% the respondents have in fact invoked the provisions of Section 59.

9. Admittedly, the warranty period was over prior to levy of any damage by the

respondents. Even if the respondents have in terms of Section 59 of the Act set up against the petitioner (seller) the breach of warranty in diminution of the price, namely, by claiming 25% deduction from the actual price, the arbitrator, however, could still decide as to what is the extent of breach of warranty committed by the petitioner and while doing so if he determines the diminishing value at a particular price which is below the level as claimed by the respondents, it cannot be said that the arbitrator has committed any error in so determining.

10. The claim here of the respondents is for recovery/deduction of 25% of the total price of the Purchase Order whereas the arbitrator has in all granted 10% of value of the goods which were found to be sub-standard. Counsel for the respondents tried to argue that even 10% should have been levied by the arbitrator on the total contracting price and not on the value of the claim of the petitioner. In my considered opinion, the said submission cannot be accepted in view of the fact that the respondents found only a part of the entire supply to be sub-standard and, Therefore, the petitioner cannot be made liable to pay the deducted price from the entire supply made by them so long the respondents do not prove and establish that the entire supply made by the petitioner was sub-standard and/or did not meet the requirement of the Purchase Order, particularly when the warranty period had also expired.

11. The provisions of Section 59 of the Sales of Goods Act does not help the respondents in any manner nor it could be said that in view of the said provisions, the award requires interference. In the light of the aforesaid discussion, the award passed by the arbitrator stands upheld. The award is made a Rule of the Court. The petitioner shall also be entitled to interest at the rate of 12% per annum from the date of decree till realisation in terms of Section 29 of the Arbitration Act.