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Court : Delhi

Decided On : Feb-01-1993

Reported in : 1993(1)ARBLR454(Delhi); 1993(25)DRJ182

Judge : C.M. Nayar, J.

Acts : Arbitration Act, 1940 - Sections 30

Appeal No. : Suit No. 1392-A of 1989

Appellant : indu Engineering and Textiles Ltd.

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : R.K.Virmani and; V.K. Sharma, Advs

Judgement :

C.M. Nayar, J.

(1) This is a petition under Sections 14 and 17 of the Arbitration Act,1940,for directing Shri O.P.Goel, the sole Arbitrator in the matter,to file his award dated April 29,1989 along with all the relevant record of the case and making the Award a Rule of the Court.

(2) The brief facts of the case are that by an order dated January 6, 1988, in suit No. 1094-A/87, this Court had disposed of the petition under Section 20 of the

Arbitration Act, and an order was made that the arbitration agreement be filed in the Court and disputes, as referred to in paragraph 14 of that petition, be referred to the arbitration in terms of the arbitration clause. The Engineer Member of the D.D.A. accordingly was directed to appoint the Arbitrator within a period of one month from the date of receipt of the order dated January 6, 1988.

(3) In pursuance to the order of this Court dated January 6, 1988, the Engineer Member, D.D.A. appointed respondent no.2 as the sole Arbitrator to adjudicate upon the disputes, which had arisen between the parties. The arbitrator entered upon the reference on April 5, 1988. The following claims were made before the Arbitrator: Claim No.2 (a) Claim for Rs. 1,87,709.05 towards price escalation of Pig Iron by Rs.375.00 per Mt w.e.f 22.6.84 Claim No.3 (a) Claim for Rs.l,37,808.61 towards price escalation in the price of Pig iron by Rs.350.00 per M.T. w.c.f. 21.2.1985. Claim No.1(a) Claim for Rs.l,03,180.00 towards interest @18% p.a.for delayed payment of price escalation of Pig Iron which was increased w.e.f 24.7.83 whereas the escalation payment was made much late on 29.8.85 (b) Claim for Rs.l2,l 14.23 towards interest @ 18%p.a. for delayed payment of price escalation of Hard Coke which was increased w.e.f.8.1.84 and whereas escalation payment was made on 29.8.85 2 (b) Claim for interest @ 18%P.A. on the amount of claim 2(a) from the date it becomes due till date of payment thereof. 3 (b) Claim for interest @ 18%p.a. on the amount of claim no.3(a) from the date it becomes due till date of payment thereof.

(4) The Arbitrator made and published his Award on April 29, 1989, which is the subject matter of the present proceedings.

(5) The Award was filed in Court.Respondent has filed objections against the award under Sections 30 and 33 .of .the Arbitration Act. Petitioner filed reply to the objections. Respondent has filed rejoinder thereafter.

(6) The following issues were framed on February 20, 1991:

1. Whetherthe arbitrator misconducted himself or the arbitration proceedings? Opd 2. Whether the award is not a reasoned award? OPD. 3. Whether there are any errors of law apparent on the face of the award? Opd 4.Whether the arbitrator

erred in law in awarding interest? Opd 5.Whether the arbitrator exceeded his jurisdiction and/or terms of reference? Opd 6.Whether the petitioner is entitled to future interest at the rate claimed? Opd 7. Relief.

(7) The respondent/Objector filed affidavit of Shri B.K.Roy, Director (MM) DDA. by way of evidence.

(8) I have heard learned counsel for the petitioner as well as for the respondent. Claims No.2(a) & 3(a)

(9) By claim No. 2(a) the claimants claim Rs.l,87,709.05 towards price escalation of Pig Iron by Rs.375.00 per Mt w.e.f. 22nd June, 1984 and by claim No. 3(a) the claimants claim Rs.l,37,808.61 towards price escalation in the price of Pig Iron by Rs,350.00 M.T. w.e.f.21st February, 1985. The Arbitrator has held, as of fact,that both the parties agreed that there bad been escalation of price, as claimed by the Claimants/petitioners. The amount of such claim, in terms of the agreement, was accepted by both the parties at Rs-1,85,363.42. The admissibility was, however, contested by the respondents on the plea that the payment was rejected by the Director (M.M.)/DDA, on account of delay in performance of the contract. The Arbitrator further noticed that there had been delay in supplies by the petitioners and the supplies were to be phased as per requirements by the respondents. The extension of time had also been granted by the respondents and the grant of approval from the finance was only an internal matter and the same did not find any place in the terms and conditions of the contract.

(10) Learned counsel for the petitioner has referred to me various correspondence between the parties particularly to the communications of the respondents dated 11th October, 1983, 31st December, 1983, 27th April, 1984, 14th September, 1984, November 29, 1984, October 3, 1985 and June 16, 1988 respectively, wherein the respondents had asked the petitioners to withhold the supplies of the fittings from time to time till the clearance was given from their office. There is,therefore, no infirmity in the award of the Arbitrator in this regard. The supplies were to be phased as per the requirements of the respondents. Moreover, it is not open to this Court to go into sufficiency of reasons, given by the Arbitrator, who is the final Judge of fact. The findings of fact cannot be reviewed unless they are

unsupported by evidence and unless it appears from the Award itself that there was no evidence to support the finding. It is not open to the Court to examine the adequacy of evidence, which led the arbitrator to his findings of fact. Reference may be made in this regard to the Division Bench judgment of this Court in Delhi Development Authority,New Delhi v. M/s. Alkaram, New Delhi : AIR1982 Delhi365 and Delhi Development Authority v. M/s.Uppal Engineering Construction Co., New Delhi : AIR1982 Delhi425 .

(11) I do not find any error apparent on the face of the Award in respect of the above claims. Claim No. l(a)(b),2(b) and 3(b)

(12) The petitioners have claimed interest at the rate of 18 per cent per annum on delayed payments. The documentary evidence was produced before the arbitrator to show that petitioners have been paying interest at the rate of 18% per annum on borrowings from the Banks and they have paid interest at 16 1/2% per annum on quarterly rests. The Arbitrator noticed that the amount of interest calculated on the basis of 18 % has been accepted jointly by both the parties. The interest was calculated up to 25th April, 1988 as referred to in the Award. The amount of further interest in respect of claims 2(b) and 3(b) has been awarded at the rate of 15 per cent per annum as the contention of the respondents for reduction has been upheld by the arbitrator. There is thereforee, no force in the objections of the respondents as the interest has been correctly awarded due to delayed payments.

(13) The objections of the respondents are dismissed. The Award dated April 29, 1989, is hereby made Rule of the Court and decree in terms of the Award is passed. The Award shall form part of the decree. The petitioner shall also be entitled to interest at the rate of 15 per cent per annum from the date of decree till realisation. No order as to costs.

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