

Rajdhani Dal Mill Vs. Mmtc Ltd.

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Court : Delhi

Decided On : Oct-19-2001

Reported in : 2002(61)DRJ758

Judge : O.P. Dwivedi, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11 and 11(6)

Appeal No. : AA No. 161/2000 and I.A. 811/2000

Appellant : Rajdhani Dal Mill

Respondent : Mmtc Ltd.

Advocate for Def. : Sanat Kumar and ; Sanjay Sharma, Adv.

Advocate for Pet/Ap. : Rajeeve Mehra, Adv

Disposition : Petition dismissed

Judgement :

O.P. Dwivedi, J.

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act. Briefly stated the case of the petitioner is that the parties entered into a contract for the sale and purchase of 5700 MT of wheat @ of Rs. 6700/- per MT on the terms and conditions contained in the contract No. MMTC/Wheat/WFP/MP/98/2 dated

12.2.98. As per the terms of the contract, the wheat was to be delivered at DDU WEFP Project godowns at Hoshangabad, Mandla Bilaspour. According to the petitioner the date on which the goods were offered for inspection was to be considered as the date of the delivery but the defendants have taken the date of actual inspection to be date of delivery as a result of which the respondents have calculated the late delivery charges/penalty charges. According to the petitioner, it completed the contract in all respects, but the respondents have withheld the payment of Rs. 17,20,236.28 on the ground that the goods have been late delivered and, therefore, the respondents are entitled to levy the penalty. The petitioner contention is that the contract was completed in time and the delay, if any, has been caused due to the negligence on the part of the respondents as the defendants have from time to time changed the destination station which they could not do as per the terms of the agreement. It is alleged that during the pendency of the contract, the respondent instructed the plaintiff that instead of delivering the goods at Mandla and Kankar, the goods should be delivered at Jabalpur and Seoni due to the non-availability of space in the godowns of WFP at Mandla and Kankar. The petitioner accordingly followed the instructions and in doing so it suffered a loss of Rs. 4,90,700/-. Besides the petitioner also suffered loss of Rs. 3,27,250/- on account of change of destination. It is further pleaded that a sum of Rs. 63,404.70 towards the price of the goods is still outstanding against the respondents. The petitioners are entitled to recover an amount of Rs. 4,47,221.48 on account of late payment. The said contract contains an arbitration clause which reads as under:

'All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of their contract or the breach thereof shall be settled by arbitration in accordance with the rules of arbitration of the Indian Council of Arbitration and award made in pursuance thereof shall be binding on the parties'

2. Since the respondents failed to make payment of the outstanding dues the amount of Rs. 30,40,812.46, the petitioner invoked the arbitration clause by sending a notice but there was no response from the respondent side, and hence this petition for referring the dispute to the arbitration by directing the Indian

Council for Arbitration by directing the Indian Council for Arbitration to appoint an Arbitrator in terms of the Arbitration Clause contained in the agreement dated 12th February, 1998.

3. The respondents have contested the petition mainly on the ground that all disputes between the parties already stand settled mutually. It is pleaded that in March, 1999 a mutual settlement took place between the parties under which a sum of Rs. 1,26,553/- was found due and payable to the petitioner which amount was duly paid and accepted by the petitioner vide letter dated 18th March, 1999. However, on the request of the petitioner respondent again approached WFP and WFP further agreed to refund a sum of Rs. 149110.22 which was offered to the applicant. It is thus submitted that the matter stands mutually settled between the parties and there remained no arbitration dispute which could be referred to the arbitration and hence this petition under Section 11 of the Arbitration Act is not maintainable. In the rejoinder the petitioner has denied that there was any mutual settlement or that a sum of Rs. 1,26,553/- was accepted in full and final settlement of all claims by the petitioner against the respondent.

4. Learned counsel for the respondents has placed on record three letters dated 12th March, 1999, 18th March, 1999 and another dated 18th March, 1999 which appear at pages 2, 3, and 4 of the list of documents dated 27th November, 2000 filed by the respondents. The correctness of these letters was not disputed before me by the petitioner at the time of the arguments. The first letter dated 12th March, 99 appearing at page 2 of the documents was written by the respondents conveying to the petitioner that as per their account books only a sum of Rs. 1,26,553/- is outstanding and payable to the petitioner towards full and final settlement of the account under the said terms. This letter was received by the petitioner's representative Along with copy of the statement of account as is clear from the endorsement made by the petitioner's representative on the copy of the said letter. Vide second letter dated 18th March, 1999 copy whereof appears at page 3 of the list of documents, the respondents wrote to the petitioner that the cheque for Rs. 1,26,553/- is towards full and final settlement of accounts in respect of the contract, is being sent. This cheque was also received by the petitioner's representative under his signature and an endorsement was made on the copy of

the letter to the effect that the statement of account received from the respondents tallies with the petitioner's statement. It will be relevant to produce the contents of this letter here:-

'We are pleased to enclose cheque No. 204976 dated 18.3.99 drawn on SBI for Rs. 1,26,553 towards full and final settlement of accounts for total material delivered under our contract for supply of 5700 MT of wheat in Madhya Pradesh. After this payment there shall no further payment due from us for material delivered. At your request we have already written to WFP for refund of any amount deducted by them towards late delivery charges, variation in specifications, SGS charges etc. Any amount received by us from WFP for deductions made by them shall be paid to you after retaining the amount due to us. Pending receipt of claim from WFP you will not raise any claim on MMTC and MMTC shall not be liable to pay you anything except the amount received by us from WFP for the said deductions.'

5. From a bare reading of these letters, it becomes clear that MMTC after examining its accounts had offered to the petitioner a sum of Rs. 1,26,553/- in full and final settlement of all claims in respect of the contract and this figure was accepted by the petitioner vide endorsement made on letter dated 18th March, 99. The petitioner's representative also gave a writing to the effect that the said amount of Rs. 1,26,553 had been accepted in full and final settlement of the claim. It is thus clear that the matter has been mutually settled between the parties. Learned counsel for the petitioner however contended that this amount was accepted only in full and final settlement of the claim in respect of the amount which had been received by MTC from WFP towards supply of 5700 tones of wheat. According to the learned counsel for the petitioner, the amount was not received in full and final settlement of all the claim against the contract. I have given my careful consideration to the submission made by the learned counsel for the petitioner and in the light of the material available on the record I find myself unable to accept this interpretation of the admitted letter. As already stated, vide their letter dated 12th March, 1999 MMTC clarified to the petitioner that according to its account book only a sum of Rs. 1,26,653/- remains to be paid to the petitioner towards full and final settlement of the amount under the contract. The

receipt of this letter is not disputed by the petitioner. Then in the second letter dated 18th March, 1999 again MMTC has made the position very clear by writing that a cheque of Rs. 1,26,553/- is being sent in full and final settlement of the account for the total material supplied under the said contract. While receiving the cheque, the petitioner's representative made an endorsement on the copy of the letter that the statement of account tallies with their accounts. While accepting the cheque the petitioner's representative also confirmed that the said amount has been received in full and final settlement in a written note dated 18th March, 1999 which appears at page 4 of the list of documents. It clearly shows that the said amount was accepted towards full and final settlement of all claims under the contract. If the petitioner had any reservation on this score, it would not have accepted the amount of Rs. 1,26,553 which was sent in full and final settlement of the account regarding the said contract. The petitioner not only accepted the cheque but also accepted the correctness of the statement of accounts and confirmed the receipt of the said cheque in full and final settlement. Whatever the dispute between the parties was, it was only in respect of the due payable under the said contract of the supply of 5700 tons of wheat. It could not be made referable to any other dispute between the parties had been brought to my notice. I have, therefore, no hesitation in concluding that the said cheque of Rs. 1,26,553/- was accepted by the petitioner's representative in full and final settlement of the outstanding dues under the contract.

6. Learned counsel for the petitioner referred the decision of the Supreme Court in the case of Konkan Railway Corporation Ltd. and Ors. v. Mehul Construction Co. : AIR 2000 SC2821 wherein it was held that while dealing with the petition under Section 11 of the [Arbitration and Conciliation Act, 1996](#) the Court is not supposed to decide the contentious issue, the proceedings being of administrative nature. In another decision of the Supreme Court in the case of Namet Resources Inc. and Anr. v. Essar Steels Ltd. 2000 (3) A. LR 342 (SC) it was held that the question as to the existence or validity of arbitration agreement shall be left open to be decided by the Arbitrator itself and such questions cannot be gone into under Section 11. As already observed in this case there is no dispute regarding the existence and validity of the arbitration agreement. While deciding the question of full and final settlement, this Court has not to examine any issue between the parties as to the

merits of the claim. In the case of Nathani Steels Ltd. v. Associated Constructions where the matter had been mutually settled between the parties, it was held that once the parties have arrived at a settlement in respect to any dispute and difference arising out of a contract and that dispute and difference is amicably settled by way of final settlement, by and between the parties, unless that settlement, by and between the parties, unless that settlement is set aside in proper proceedings it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and to proceed to invoke the arbitration clause. If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In that case the matter had been fully settled between the parties and the settlement was reduced into writing. Later on the respondent tried to wriggle out of the settlement on the ground that the same was arrived at under some mistake. Supreme Court deprecated such practice and held that there is no arbitrable dispute which would be referred to the Arbitrator.

7. In my view the dispute between the parties stands fully and finally settled between the parties as already observed and there is no arbitrable dispute which could be referred to the Arbitrator. This petition, therefore, fails and is dismissed.