

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ OMP No. 62/2009

27th October, 2009

UNION OF INDIA,
CANTEEN STORE DEPARTMENT ...Petitioner
Through: Mr. Dalip Mehra, Advocate

VERSUS

SHAMLI DISTILLERY AND CHEMICAL WORKS Respondent
Through: Mr. Shiv Khorana, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

% JUDGMENT (ORAL)

VALMIKI J. MEHTA, J.

1. This objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed against the Award dated

24.9.2008 passed by a sole Arbitrator in the dispute between the petitioner and the respondent.

2. The facts of the case are that a contract was entered into between the parties whereby the respondent agreed to supply to the petitioner two lakhs cases of bottled rum. The contract dated 19.4.1996 was entered into between the parties pursuant to the tender issued by the present petitioner. Award has been passed in favour of the respondent and against the petitioner whereby basically the claim of the petitioner for risk purchase has been rejected and the claim of the respondent for the value of the supply of goods has been accepted. The crux of the dispute between the parties was whether the period of contract in question was from 1.4.1996 to 31.3.1997 or from 1.4.1996 to 31.12.1997.

3. The counsel for the petitioner is very strenuously canvassed that the contract in question talks of supply of the rum cases for the years 1996 and 1997 and, therefore, the period of supply should be taken as ending on 31.12.1997. The objector's counsel accordingly contended that the respondent failed to supply the contracted quantity which was ordered upon him and, therefore, the objector was entitled to the

risk purchase cost of Rs. 12,19,064/-. The objection, in my opinion, is misconceived. A reference to the tender pursuant to which the contract was entered into between the parties specifically states that the tender was in respect of the supply of rum from 1.4.1996 to 31.3.1997. Therefore, if there is any ambiguity in the contract which specified the supply of rum for the years 1996 & 1997 help can be taken from the tender pursuant to which the contract is entered into between the parties. Even if we ignore the tender form, the Arbitrator has referred to the letter dated 31.3.1997 of the objector which was signed on 15.5.1997 and posted only on 23.5.1997 by which the petitioner sought to extend the delivery period from 31.12.1997 to 31.3.1998. The Arbitrator has justifiably held that if the contract was valid upto 31.12.1997 then there was no reason why a letter should be written as early as 31.3.1997 for allegedly extending the supply from 31.12.1997 to 31.3.1998. Clearly, therefore, no reliance can be placed on this letter dated 31.3.1997 of the objector for holding that the contract was not till 31.3.97 but till 31.12.97. After all, if the order was upto December 1997, why would an extension be called for in March 1997? The Arbitrator has further held that even assuming the

contract was extended upto 31.3.1998, the objector was found lacking in not having given import permits along with the indent and which permits were only for 19,800 cases which were duly supplied. Thus, the balance indents/demands being incomplete and not capable of performance without the import permits for the State where the rum was to be supplied it cannot be said that a valid order was placed. The Arbitrator has also further held that the objector failed to file the copy of the risk purchase contract by which the claim of risk purchase could be established. In view of the aforesaid facts, I do not find any error whatsoever in the reasoning or the decision of the Arbitrator for being interfered with under Section 34 of the Act.

4. The second contention of the objector was with respect to the counter claim of Rs. 21,08,423/- being allowed in favour of the respondent. This amount represents the value of the goods supplied to the objector by the respondent and which has been awarded in favour of the respondent by the Arbitrator. The Arbitrator has duly noted that the respondent has filed complete bill-wise details of the amount claimed and which has not been denied by the claimant. The Arbitrator has further noted that there is only a bald denial in the

pleadings of the objector for payment of this amount. Surely, if the respondent has supplied the goods it is entitled to payment once it is held that the objector is not entitled to withhold any amount on account of alleged risk purchase cost. No fault also can, therefore, be found with this portion of the Award.

5. The next objection which was pressed on behalf of the objector was the allowing of the amount of Rs. 1,82,320/- by the Arbitrator on account of the cost of labels and P.P. Caps incurred by the respondent for execution of the agreement. The Arbitrator in this regard has held that the labels and the P.P. Caps are such which could not be used because of the lack of orders by the objector and since they were specially made for the CSD Canteen of the objector they could not also have been used elsewhere. The Arbitrator has therefore awarded this amount in favour of the respondent and has taken into account the Chartered Accountant's Certificate certifying these expenses. The finding of fact in this regard cannot be said to be perverse which calls for interference by this under Section 34 of the Act.

6. Lastly, that takes me to the issue of interest. Whereas the respondent had claimed interest at 21% per annum the Arbitrator

allowed interest at two figures of 12% and 9%. Though this rate of interest is not such which calls for interference by this Court the counsel for the respondent has conceded that instead of two rates of interest, the respondent is agreeable to a single rate of interest of 9% per annum simple. Taking this concession on record, the Award is modified in that wherever the interest has been awarded at 12% in the Award the same should be read as 9% p.a. simple.

7. With the aforesaid observations, the present petition is dismissed with costs of Rs. 15,000/-.

VALMIKI J.MEHTA, J

October 27, 2009

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