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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 10, 2009
Date of Order: July 15, 2009

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M/s Delhi Paper & Product Company Ltd.
Through: Mr. Shiv Khorana, Advocate

15.07.2009
...Petitioner

Versus

Union of India
Through:

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition under Section 34 of the Arbitration & Conciliation Act, 1996 (for short, "the Act"), the petitioner has assailed the award dated 17th February 2009 on the ground that the learned Arbitrator wrongly rejected the claim of the petitioner on the ground that the store was offered by the petitioner after the validity of the rate contract. It is submitted that a concluded contract had come into operation between the petitioner and respondent when respondent received the supply order on 11th October 2002 and offered to supply the material. The arbitrator should have held that a concluded contract was there and hence should have awarded the claims of the petitioner.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent had entered into a rate contract with the petitioner for delivery of

paper. This rate contract was valid from 14th August 2001 to 1st August 2002. An official of the respondent dispatched a supply order for supply of material under the rate contract on 5th October 2002 which was received by the petitioner on 11th October 2002. The letter /supply order though was dispatched by respondent's official on 6th October 2002 but it was ante-dated as 27th July 2002. After the petitioner received this supply order on 11th October 2002, the petitioner wrote to the respondent's department that the material, as mentioned in the supply order, was ready for inspection. However, respondent never inspected the material and instead extended the delivery period up to 30th April 2003. Respondent vide another letter dated 2nd July 2003 cancelled the RC on the ground that its validity had already expired on 1st August 2002 and no delivery of material could be taken.

3. After this cancellation of RC, claimant protested and stated that it had manufactured the store and suffered losses and invoked the arbitration clause claiming loss of Rs.37 lac.

4. Learned Arbitrator observed that the rate contract was valid from 14th August 2001 to 1st August 2002 and there was no contract for supply of stores between the parties existing on 11th October 2002 i.e. after the expiry of the rate contract and the arbitration clause also ceased to exist. There was no valid and binding contract between the parties. The supply order did not constitute any valid contract between the parties and therefore no claim could be laid by claimant.

5. It is not disputed by petitioner that the rate contract entered into between petitioner and respondent come to an end on 1st August 2002.

Through the petitioner has not placed on record the rate contract but the general conditions of the rate contract of DG&SD provides a specific period up to which requisition under the contract can be placed on the contractor and this period was between 14th August 2001 and 1st August 2002. Another clause (clause 5) of the rate contract specifically provided that a requisition under the rate contract has to be so placed so as to reach the contractor on or before the last date on currency of the rate contract. Thus, requisition on the petitioner for supply of material had to reach the petitioner before 1st August 2002. If any requisition reached the petitioner after 1st August 2002, that could not be said to be under the rate contract. In the present case, the supply order/ requisition was dispatched on 5th October 2002, much after the expiry of the rate contract and had reached the petitioner on 11th October 2002. It is obvious that the rate contract was not in force at that time and had already come to an end by efflux of time. The arbitration clause of the rate contract had also come to an end. The supply order thus did not constitute a contract under the rate contract. The respondent was therefore not obliged to take any supply under the rate contract from petitioner and the cancellation letter issued by respondent was merely an intimation of something which had already happened i.e. rate contract having come to an end on 1st August 2002.

6. The contention of the counsel of petitioner is that the supply order in itself constituted a new contract and it was an offer made by respondent which was duly accepted by the petitioner by writing a letter that the petitioner was ready to supply the stores and the same should be inspected. If the supply order is considered as a separate offer and letter of the petitioner is considered as an acceptance even then petitioner has no case.

The supply order had no arbitration clause independent of rate contract. The supply order only was a requisition of the goods and if the letter written by petitioner was taken an acceptance, this would constitute a contract separate from the rate contract having no arbitration clause. The petitioner in that eventuality could not have invoked the arbitration clause and could not have laid any claim before the arbitrator. The very fact that the petitioner invoked the arbitration clause shows that the petitioner relied on the rate contract, that expired on 1st August 2002. Since the rate contract had already come to an end, no requisition could have been entertained by petitioner without asking the respondent to renew the rate contract so that he could supply the material. Since the rate contract was not renewed, no contract came into force between petitioner and respondent and the award made by the learned arbitrator is a valid award.

7. The petition is hereby dismissed. No orders as to costs.

July 15, 2009
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SHIV NARAYAN DHINGRA J.