

* IN THE HIGH COURT OF DELHI AT NEW DELHI
F-119 (Not reportable)
+ O.M.P. 10 of 2007

VEDA RESEARCH LABORATORIES LTD. Petitioner
Through: Mr. Rajesh Banati with
Mr. Arpit Bhargava, Advocates.

versus

SURVI PROJECTS Respondent

Through: Mr. George Thomas with
Ms. Joji Sunil and Mr. Abin
Mathew, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **07.11.2012**

1. The challenge by the Petitioner, Veda Research Laboratories Limited ('VRL'), in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an impugned Award dated 28th September 2006 passed by the learned arbitral Tribunal ('Tribunal') in the dispute between the Petitioner and the Respondent, M/s. Survi Projects, arising out of an agreement dated 31st January 1998 entered into between the parties for construction of factory building of VRL at Noida.

2. The work was to commence on 1st February 1998 and was to be completed by 30th August 1998 for the value of Rs. 1,25,56,948 after adjusting a rebate of 2% of the value of the works quoted.

3. The case of the Respondent was that the work could not be completed within time on account of delays and breaches of contract committed by

VRLI from time to time. This resulted in huge increase in cost of construction, labour, equipments and other goods. The Respondent also alleged that VRLI was responsible for non-payment and delay in payment of running account ('RA') bills.

4. Claim No. 1 by the Respondent was for the balance amount due under the certified bills. According to the Respondent, the total certified work already done by the Respondent was Rs. 1,23,04,565 out of which Rs. 60,300 being the duplicate amount and Rs. 5 lakhs of retention money were to be deducted. The Respondent acknowledged payment of Rs. 40,60,3340 by VRLI leaving a balance of Rs. Rs.75,99,264. The case of VRLI on the other hand was that the value of the work done was Rs. 1,13,09,554 and the authority to certify the work was the Architect. The Architect certified the work done up to the 10th RA Bill but was thereafter removed by the VRLI and no other Architect was appointed in his place. Consequently, the 11th as well as 12th RA Bills were verified by the Site Engineer.

5. There was a controversy regarding payments made by IRL Marketing Pvt. Ltd. ('IRL'). The witness of VRLI Mr. Arun Jain, RW-2 in his affidavit claimed that Rs. 14,34, 600 was paid to the Respondent by cheque and Rs. 8,85,000 in cash. It was stated that only the cheque payment was recorded in the account of IRL. However, he claimed that these entries were made for only adjustment though no work was done for IRL. On the other hand Mr. Neeraj Bhagat appearing on behalf of the Respondent

asserted that the work was done for IRL and the said payments were made by IRL and not by VRLL. He stated that one Mr. Saraswat of IRL had awarded a contract to the Respondent on behalf of IRL. Mr. Saraswat was also been dealing with the Respondent while executing the work of VRLL. The case of the Respondent was that the aforementioned two payments had been received for the work done for IRL.

6. The evidence in this regard was analysed in a great detail by the Tribunal. The documents in respect of payments of each of the RA bills that for paid were also analysed. The Tribunal declined to accept the contention of the VRLL that it had made payment of Rs. 6 lakhs by way of cash to the Respondent. The analysis in this regard by the Tribunal was as under:

“The Respondent in their written submission claimed to have paid Rs. 1,00,000 in cash on 3rd November 1999. This payment could not be a payment towards 12th RA Bill, for the 12th RA Bill itself was submitted on 24th December 1999. Payment by two cheques dated 3rd March 2000 for a sum of Rs. 1,68,000 and dated 6th March 2000 for sum of Rs. 24,600 has not been disputed. As regards other payments by IRL in cash for Rs. 2,00,000 on 7th April 2000 vide Ex.RW-3/17 and Rs. 3,00,000 on 10th June 2000 vide Ex. RW-2/7, allegedly made to Govind Sharma, there is no corroborative evidence; and it is oath versus oath. Besides, business relations had become so bitter that the Respondent had asked the Claimant to seek arbitration, subsequently payment of Rs. 5,00,000 in cash to an employee, in these specific circumstances does not appear to be plausible. Moreover, we have very serious doubts about signatures of Govind Sharma on these receipts. Accordingly, we are not inclined to accept these cash payments of Rs. 6 lakhs towards 12th RA Bill and we rejected uncorroborated payment of Rs. 6,00,000. Thus, a

sum of Rs. 10,81,659.70 paisa was payable under 12th RA Bill alone after deductions of Retention Money and Mobilisation Advance. We cannot be oblivious to the claim made in letters regarding “our long standing and overdue payments” and “This huge amount in addition to the balance payment against your certified bills.”

7. The Tribunal held that even after accounting the fact that VRLL had paid Rs. 1,08,37,634 (including cash payment of Rs. 6 lakhs) a sum of Rs. 20,06,631 was still payable under Claim No. 1. After accounting for the retention money of Rs. 5 lakhs it was held that the Respondent was entitled to Rs. 15,06,631.

8. The question arose whether payment was in fact made to Mr. Govind Sharma. It is pointed out by Mr. Rajesh Banati, learned counsel for VRLL, that by orders dated 11th December 2004 and 8th January 2005 the Tribunal had required specimen signatures of Mr. Neeraj Bhagat and Govind Sharma to be examined by a handwriting expert. This was in light of the assertion by VRLL that the payments had been made in cash to Mr. Govind Sharma. It is submitted by Mr. Banati that without waiting for the report of the handwriting expert, the Tribunal erroneously held that it had “serious doubts about the signature of Mr. Govind Sharma on the receipts” and rejected that VRLL had made cash payment of Rs. 6,00,000 towards the 12th RA bill.

9. As regards the above submission, there is no hard and fast rule that the

Tribunal should necessarily call for the report of the handwriting expert. In the first place the rejection of the contention of VRLL that it had paid Rs. 6,00,000 in cash was not only account of the doubts concerning the signature of Mr. Govind Sharma. The principal ground was that the payment in cash was shown to have been made by IRL and not VRLL. Moreover, the claim of VRLL that it had paid Rs. 1,00,000 in cash on 3rd November 1999 was rightly disbelieved since the 12th RA bill was raised only on 24th December 1999. Consequently, this Court is not persuaded to hold that the Tribunal erred in rejecting the claim of VRLL that it paid Rs. 6,00,000 to the Respondent in cash.

10. It was contended by Mr. Banati that since the total work certified by Architect up to the 10th RA bill was Rs.1,13,09,554, the total amount after accounting for the retention money of Rs. 5,00,000 and mobilization advance of Rs. 3,00,000 came to Rs. 1,21,09,554 and not Rs. 1,22,44,265. Even if credit for the cash payment of Rs. 6,00,000 was not given, the amount due would be in the range of Rs. 10,00,000 and not Rs. 15,06,131. In reply, it is pointed out by Mr. George Thomas, learned counsel for the Respondent, that the very same arguments were advanced before the Tribunal and rejected by it. The Tribunal examined the documents carefully and computed the amounts under claim No.1 after accounting for the payments already made.

11. A perusal of the impugned Award in respect of claim No.1 bears out the submission of the Respondent that the Tribunal undertook an elaborate exercise of analyzing the evidence on record. The statement of each of the witnesses was also carefully analyzed. The scope of the powers of this Court under Section 34 of the Act does not permit it to re-appreciate the evidence to come to a different point of view. The Architect had left after certifying the 10th RA bill. The work continued thereafter but no other architect was appointed. Therefore, the Site Engineer ('SE') took the measurements and passed the two bills. The SE certified the value of the work at Rs.1,23,04,565. After deduction of a sum of Rs.60,300, which was included twice, the net value of the work executed was determined as Rs.1,22,44,265. The Tribunal was within its powers to come to a conclusion about the doubtful nature of Mr. Govind Sharma's signatures. In any event VRLL was unable to effectively counter the assertion by the Respondent that the said payment was not for the work done for VRLL but for IRL. In the circumstances, the conclusion of the Tribunal in respect of claim No.1 cannot be faulted.

12. Claim No.2 was for unwarranted deductions in respect of 6 items for a total sum of Rs. 12,03,455. The Tribunal rejected Item No.1 concerning excavation of surplus earth. As regards fixation of steel windows under Item No.2, the Tribunal awarded the Respondent a sum of Rs. 4,70,087.

13. It was contended by Mr. Banati, learned counsel for VRLL, that there was a change in the specification with aluminum windows being asked to be substituted by steel windows. The windows were supplied by VRLL. The Respondent was only expected to affix the windows. It is submitted that the Respondent sought to charge VRLL for the cost of the windows themselves.

14. This Court has perused the relevant clauses of the contract. What was quoted for and awarded to the Respondent was the fixation of the windows and not their supply. The Award in respect of Item No.2 under Claim No.2 does not call for any interference. Likewise, the award of Rs. 1,84,164 under Item No.3 towards painting (Item No.58), the award of 25%, i.e., Rs. 14,575 in addition to the amount of Rs.29,150 already passed by the SE towards sanitary works under Item No.4, the award of 50% of the bill for painting of the roof and steel windows under Item No.5 and the award of Rs. 28,914 under Item No.6 for electric works are also supported by cogent reasons, based on the relevant clauses of the contract and the evidence on record. The impugned Award in respect of the said items does not call for interference.

15. Claim No.3 was towards escalation. Mr. Banati referred to Clause 7 of the letter dated 24th January 1998, which reads as under:-

“7. No escalation whatsoever shall be payable to you on any account

whatsoever due to market fluctuations or due to Governmental action and the price quoted by you is firm.”

16. As regards the above clause, Mr. Thomas has rightly pointed out that escalation would not be payable only on account of market fluctuations and governmental action. The exclusion is indeed in a narrow compass. Inasmuch as it is shown that the escalation was not due to either market fluctuations or governmental action, the claim for escalation could not have been rejected by referring to Clause 7.

17. The Tribunal found that payments by VRLL were erratic; supply of materials, such as cement and steel were often delayed and the issuance of necessary drawings and decisions of the Architect were tardy. In the circumstances, it was not possible for the Respondent to complete the project even as per the revised completion schedule submitted on 14th May 1998. The correspondence in this regard has been analyzed. The Tribunal has computed escalation only at 9% of the awarded works. The Award in respect of Claim No.3 is a detailed and reasoned one, based on the evidence and the clauses of the contract and calls for no interference.

18. Claim No.4 was for return of the retention amount of Rs. 5,00,000. The Tribunal held that Rs. 2,50,000 became payable on 1st January 2000 and the balance on 1st January 2001. It was noted that there was no direction issued by VRLL requiring removal of any defect in terms of Clause 4 of the contract. The defect liability period had also come to an end by the end of

2002. There is no legal infirmity in the impugned Award as regards Claim No.4.

19. The award of simple interest @ 12% p.a. on Rs. 32,33,634 with effect from 1st February 2000 till the date of the Award and thereafter till the payment of the balance amount also suffers from no illegality. The rejection by the Tribunal of the counter claims are supported by cogent reasons.

20. No ground for interference in the impugned Award is made out.

21. The petition is dismissed as such with no order as to costs.

S. MURALIDHAR, J

NOVEMBER 7, 2012

Rk/tp