

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.04.2014

+ **FAO (OS) 169/2014**

SHIV RATTAN MOHTA

... Appellant

versus

**NATIONAL RESEARCH DEVELOPMENT CORPORATION &
ORS** ... Respondents

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sudhir Kumar Sharma

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR.JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been preferred from the judgment dated 29.01.2014 delivered by a learned Single Judge of this Court in CS (OS) 1202/2009 and several objections filed by the parties in the form of IAs in respect of an Award dated 28.05.2009.

2. The learned Single Judge by virtue of the impugned judgment has remitted the matter in part to the learned Arbitrator in the following manner:-

“15.8 In these circumstances, I am clearly of the view that insofar as award dated 28.05.2009 allows claim/prayer (a), it will have to be sustained. It is ordered accordingly. However, to the extent the award dated 28.05.2009 declines relief to NRDC with regard to royalty claimed for the period November, 1991 to 07.04.1994, it would have to be set aside. In consonance with the same, the decision taken to deny NRDC’s claim for interest on royalty for the said period and costs, is set aside. Therefore, first part of claim/prayer (b), which is extracted hereinbelow; claim/prayer (c) relating to interest and claim/prayer (d) relating to costs are remitted to the learned arbitrator for re-examination:

“...An Award for a minimum amount of Rs.6,00,000/- on account of royalty due to the claimant from the respondents for the period when the respondents started commercial production of the licenced product till the date of termination of the Licence Agreement...”

15.9 The necessary consequences of this would be that defendant nos.3’s objections contained in IA No.13663/2010 are dismissed. Resultantly, IA No.13664/2010 has been rendered infructuous and the same is accordingly dismissed as having become infructuous.

16. The suit, IA No.12111/2009 and IA No.13665/2010 are accordingly, disposed of in the above terms. Consequently, the registry is directed to dispatch the arbitration record to Mr. Dinesh Dayal, ADJ (Retd.). The learned arbitrator shall render his findings in terms of the directions issued hereinabove based on the record already available with him as expeditiously as possible. In the circumstances, parties are, however, left to bear their own costs.”

3. This case has a chequered history and it would be appropriate to set out some facts. Earlier an award had been made by late Shri S.R. Goel, the learned Arbitrator on 19.03.2001. That became the subject matter of CS (OS) 808A/2001 before a learned Single Judge of this Court. The decision in that matter was rendered on 10.04.2008. The learned Single Judge by virtue of the said decision dated 10.04.2008 had partly set aside the award dated 19.03.2001 and had directed the Arbitrator to render a fresh finding on claim (a) and consequent directions on claim (b) concerning royalty and interest.

4. In the said decision dated 10.04.2008, itself, the said claim (a) and claim (b) were set out as under:-

“(a) That the respondent – firm be directed to furnish the true and correct statement of accounts and the statement of its manufacturing activity from the time of start of its production under the licenced

agreement till the respondents continuing, utilizing and exploiting the knowhow.

(b) An award for a minimum amount of Rs.6 lakhs on account of royalty allegedly due to the respondent for the period when latter started commercial production of the licenced product till termination of agreement and further award of damages quantified at Rs.55,000/- per month for the illegal use of manufactured products “SIG Contacts”

5. It is evident that claim (a) related to issuance of a direction to the respondent/appellant herein to furnish the true and correct statement of accounts and statement of its manufacturing activity from the time of start of its production under the licenced agreement till the appellant continued to utilize and exploit knowhow. As regards claim (b) it is evident that it has two parts. The first part pertained to a claim for a minimum amount of Rs.6,00,000/- on account of royalty allegedly due to the respondent herein for the period when the appellant started commercial production of the licenced product till the termination of the agreement (i.e. November, 1991 to 07.04.1994). The second part of claim (b) pertained to the award of damages for the alleged illegal use of manufactured products “SIG contacts”. The second part of claim (b) is not an issue and that stands concluded. It is, therefore, clear that insofar as the present appeal is concerned, by virtue of the judgment dated 10.04.2008 the learned Single Judge had remitted the matter to the Arbitrator partly to the extent of rendering a fresh finding on claim (a) and for consequent directions on

claim (b) concerning royalty and consequent interest. In other words, the Arbitrator had to determine as to whether a direction could be issued to the appellant to furnish the true and correct statement of accounts and the statement of the manufacturing activity as indicated above. The Arbitrator had also to determine as to whether consequent directions were necessary concerning royalty and consequent interest thereon.

6. By virtue of an interim award dated 17.12.2008 the subsequent Arbitrator (Mr S.R. Goel had since expired) on remand held as under:-

“27. I therefore find that the respondent is liable to submit the true and complete statement of account and the statements of its manufacturing activity from the date of start of its production of SIG contracts under the licence agreement till the respondent continue using, utilizing and exploiting the process Knowhow which was assigned to be in the licence by the claimant.”

7. In other words, by virtue of the interim award dated 17.12.2008, the learned Arbitrator had allowed claim (a) in favour of the respondents. Subsequently, the final award was passed on 28.05.2009 wherein the learned Arbitrator reiterated the earlier finding whereby claim (a) was allowed in terms of the earlier decision dated 17.12.2008. However, in respect of claim (b), the learned Arbitrator rendered a NIL award. The learned Arbitrator further held that in the circumstances of the case, the question of award of any interest to the claimant/respondent did not arise.

8. Since both the appellant and the respondents were partly aggrieved by the award dated 28.05.2009, their objections were placed before the learned Single Judge in the form of separate IAs in CS (OS) 1202/2009. Incidentally, we may note that the proceedings in this matter were under the Arbitration Act, 1940.

9. We have already indicated that the learned Single Judge by virtue of the impugned judgment dated 29.01.2004 has not disturbed the finding of the learned Arbitrator insofar as claim (a) is concerned. However, with regard to the first part of claim (b) which pertains to the consequent royalty, the matter has been remitted to the Arbitrator for considering the same. The Arbitrator has also been directed to compute the interest, if any, to be awarded.

10. Considering the aforesaid facts and circumstances we are not inclined to interfere with the direction and the decision of the learned Single Judge in the impugned order dated 29.01.2014. What the learned Single Judge has done is to essentially reiterate the direction given in the earlier round by virtue of the judgment dated 10.04.2008 with regard to the consequent direction to be issued in respect of the first part of claim (b) pertaining to royalty and the consequent direction pertaining to interest. We make it clear that insofar as claim (a) is concerned, that issue stands settled and the claim has been allowed and confirmed by the Court. It is only the consequent direction pertaining to royalty as contained in the first part of claim (b) which needs to be re-examined by the learned Arbitrator and also the issue of consequent interest and the question of costs.

11. With these observations, the appeal is dismissed.

BADAR DURREZ AHMED, J.

SIDDHARTH MRIDUL, J.

APRIL 01, 2014
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