

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.P. No.151 of 2010

Union of India, Rep.
By the Director of Supplies and Disposals,
Shastri Bhavan, 4th Floor,
No.26, Haddows Road,
Chennai – 600 0060. .. Petitioner

-vs-

1. M/s.Surya Laboratories rep. By its
Managing Director,
62, Sector – I,
Parwanoo – 173 220
Himachal Pradesh
2. Shri. B.L.Choudhary,
Additional Legal Advisor to
Govt. of India
Ministry of Law & Justice and
Sole Arbitrator,
DGS & D, 5, NI Buildings,
Parliament Street,
New Delhi – 110001. .. Respondents

Prayer: Petition filed under Section 34 (2) of the Arbitration & Conciliation Act, 1996 to set aside the award in Arbitration Case No.BLCC-73/2009 dated 05th day of October 2009 passed by the Sole Arbitrator Sri.B.L.Choudhary, Additional Legal Advisor to the Government of India, Ministry of Law & Justice and Sole Arbitrator, DGS & D, 5, NI Buildings, Parliament Street, New Delhi and to direct the respondent to pay the cost of the proceedings.

For Petitioner : M/s.R.Charubala
for Mr.R.Rabu Manohar

ORDER

This petition has been filed to set aside the award in Arbitration Case No.BLCC-73/2009 dated 05th day of October 2009 passed by the learned Sole Arbitrator.

2. The learned Sole Arbitrator has considered the entire pleadings and materials and accordingly, rejected the claim of the petitioner on the following reasons:

- i. That the claimant has failed to establish that the Order was issued on Sri Ram Products at 216, Shree Ram Nagar, on 13.09.1991, as the last date to place order for installment of 4,000 numbers out of 13,187 numbers lot. The last delivery of third installment of 4,000 kgs was 15.03.1991. Even if part quantity is 'barred', by term stipulated under Clause 14(7) (III) of DGS&D-68 (Revised), the whole R/P of larger quantity i.e. 13,187,kgs is not valid R/P. It is to be of only of quantity of which is within six months of date of breach. It makes different term.*

- ii. That if even one installment is not within six months of last agreed delivery date, the whole R/P cannot be valid, being not of the exact quantity and, therefore, not as per similar terms.
- iii. That the Respondent, in his additional submissions have filed the deviation on several terms of the contract awarded to Sri Ram Products than of Surya Laboratories and therefore R/P being not as per identical terms and some of the terms are material terms, R/P, being limited inquiry.
- iv. I therefore, 'reject' the claim of the claimant. I am fortified with these judgments of Hon'ble High Court of Delhi, in St.Gites & Company Vs. UOI reports in [(1995)(59) DLT 735].**
- v. The claimant has merely filed a document received from Sri Ram Products that 100% payment is received by them, for supply made. No proof of document from the office of Controller of Accounts with ledger and difference as calculated is filed/produced. The onus to prove of actual payment was on claimant and they failed to discharge it. The claimant has not even given any justification of not filing the best evidence available with them and why they rely upon other party letter. The authenticated document is not forthcoming.
- vi. Since I have 'rejected', the claim of claimant of Rs.1,42,303/- I 'reject', the claim of interest on it also.

N.SATHISH KUMAR, J.

msv

3. On perusal of the entire order of the Arbitrator, the Arbitrator deemed to be the Judge of the facts, has analysed the facts and contract and has reasonably interpreted the contract. It is not beyond the scope of the contract.

4. I am of the view that such award cannot be interfered merely on the ground that it is not in conformity with the agreement between the parties as well as with the Arbitration and Conciliation Act, 1996 and Indian Contract Act and the same is not patently illegal. Hence, I do not find any materials to interfere with the award passed by the Arbitrator.

5. Accordingly the original petition is dismissed. No costs.

26.06.2019

WEB COPY

msv
Index:Yes/No
Internet:Yes/No
Speaking order: Non-speaking order

O.P. No.151 of 2010