

(2009) 03 DEL CK 0220

Delhi High Court

Case No: OMP 374 of 2005

V. Arindam Const Pvt. Ltd.

APPELLANT

Vs

Ircon International Ltd. and
Another

RESPONDENT

Date of Decision: March 31, 2009

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Sanjoy Ghose, for the Appellant; Chandan Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shiv Narayan Dhingra, J.

By this Petition u/s 34, the petitioner has assailed an award dated 1st July, 2005 passed by the sole Arbitrator on the ground that the learned Arbitrator wrongly rejected a part of the claims of the petitioner and allowed only a part of the claims.

2. A contract was entered into between IRCON International Limited and the petitioners, M/s. V. Arindum Construction Pvt. Ltd. and Vinod Kumar (a Joint Venture) for supply of boulders to the respondent. The boulders were to be supplied for use in Bangladesh. The boulders were to be loaded in India in railway wagons and were to be received in Bangladesh. The contract provided for 15% of the voids in the loaded boulder. The quantity in cubic meters was to be measured at both the places, that is at the time of loading and at the time of unloading the wagons. All wagons after loading in India were sealed and the seal was taken off at the time of unloading the wagons.

3. It was found that the shrinkage in the quantity received at Bangladesh was much more than 3% permissible shrinkage as per contract and it went upto 19% in some cases. The measurements were taken in India at the time of loading in presence of the representatives of both the parties and recorded. However, the measurements

in Bangladesh were taken by the representative of the respondent at the time of unloading, in terms of the contract. The contract did not provide for joint measurement in Bangladesh.

4. The contention of the petitioner is that the measurement in Bangladesh was taken by unskilled labours and not by some supervisor who was skilled in taking measurements and the shrinkage of around 19% shown at the time of receiving the material could not have been there. The respondent had paid to the petitioner on the basis of measurements taken at the receiving end resulting into raising of a dispute by the petitioner. The learned Arbitrator considering the fact that the measurements at the receiving end were taken by unskilled labours devised a formula of taking average of the measurement taken at the loading time and taken at the unloading time and awarded an additional amount to be paid to the petitioner on the basis of this average. The petitioner has contended that this average arrived at by the learned Arbitrator was not a proper method/formula and the petitioner was entitled for payment in accordance with the measurement done on Indian site at the time of loading. This is the main ground of challenge to the award.

5. I consider that this contention of the petitioner must fail. The contract specifically provided that the maximum voids at the time of loading should not exceed 15%. It was for the petitioner to ensure at the time of loading that the loading is done in such a manner and boulders of such sizes are adjusted in the wagons in such a manner that the voids among different boulders was not more than 15%. The contract also provides that the shrinkage in the volume should not be more than 3% than what was loaded when the boulders are received in Bangladesh. If the voids are not taken care of at the time of loading and the persons who load the boulders do not adjust the boulders in such a manner that there are minimum voids and not more than 15% voids, the volume is bound to shrink much more than 3% by the movement of the wagons and by vibrations which are produced during the movement of the wagons. Since the shrinkage in volume had gone upto 19%, this only shows that precautions were not taken by the petitioner at the time of loading to ensure voids to be 15% or less. There is no force in the plea of measurement being wrongly taken at Bangladesh by unskilled labour. The wagon base has standard measurement and for finding volume only height of boulders was to be measured. Not much of the skill or expertise is required in measuring height of level of boulders in the wagon.

6. I therefore consider that no fault can be found with the award given by the Arbitrator, on this ground. The Arbitrator rather devised a formula which was in favour of the petitioner and not against the petitioner.

7. The petitioner drew my attention to a document called PA-34 which petitioner placed before the Arbitrator during arguments. This document was not part of the documents relied upon by the petitioner or proved during evidence and was rightly

not considered by the Arbitrator. According to the petitioner this document showed the quantity of boulders received at Bangladesh was more than the quantity as pleaded by the respondent. I consider unless this document was put to the respondent during the proceedings before the Arbitrator, no reliance can be placed on this document at this stage. The Arbitrator rightly did not consider this document.

I find no merits in the objections raised by the petitioner. The petition is hereby dismissed.