

(1995) 11 DEL CK 0082

Delhi High Court

Case No: Suit No. 294 of 1991 and Interim Application No. 8690 of 1991

Nagina Enterprises

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision:** Nov. 8, 1995**Citation:** (1996) 61 DLT 17**Hon'ble Judges:** Manmohan Sarin, J**Bench:** Single Bench**Advocate:** Rajiv Mehra and Sohail Dutt, for the Appellant;

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### Judgement

Manmohan Sarin, J.

(1) The respondent Union of India, has filed its objection under Sections 16,30 and 33 of the Arbitration Act against the award dated 30.3.1990 made and published by Sh. Shiv prakash, sole Arbitrator. It was submitted by the Counsel for the parties that the arbitral proceedings be treated as evidence and apart from that no evidence was required to be led by any of the parties.

(2) The objections were Therefore, taken up for hearing at the request of the parties. The facts in brief giving rise to the present objections are as under :- (i) The petitioner had entered into a contract with the Union of India through the Director General Supplies and disposal for supply of five lakhs soap cakes @ Rs. 2.03 per lakh. The supplies were initially to be completed by 31.12.1984. The delivery period was extended at the request of the petitioner up to 12.3.1985. 2,10,000 soap cakes were offered for inspection on 11.3.1985, out of the above 1,80,000 soap cakes were accepted and 30,000 soap cakes were rejected as not being as per the specifications. The delivery date was thereafter again extended to 2.11.1985. The petitioner offered on 16.10.1985, 2,55,000 soap cakes, which were rejected on inspection as found to be containing certain glistening foreign material. The petitioner again, offered for inspection 17,000 soap cakes which were inspected and accepted on 6.3.1985. As a result of the aforesaid inspections 2,50,000 soap cakes had been accepted.

Thereafter, the time for the delivery was extended up to 31.12.1986. The petitioner again, offered 1,80,000 soap cakes, which were rejected by the respondent on the allegation that the stock rejected earlier had been re offered for inspection. In these circumstances, the respondent invited a Stand By Tender on 3.12.1986. Pursuant to which a risk purchase order was placed on 24.12.1986. It is significant that the risk purchase Stand By Tender had been invited and order placed, while the delivery period under the contract in question had not expired, the same being 31.12.1986.

(ii) Be it may, the petitioner again offered 30.12.1986, the balance quantity of soap cakes. These were rejected on 19.5.1987, on the ground that inspection facilities had not been provided by the petitioner. (iii) Disputes had arisen between the parties and the claims of the petitioner and counter claims of the respondent were referred to the arbitration of Shri Shiv Prakash Sole Arbitrator in accordance with the arbitration agreement. (iv) The claims of the petitioner were for the following items : (a) . ClaimNos. 1 & 2 refund of security deposit of Rs. 25,750.00 and interest thereon. (b) Claim Nos. 3 & 4 Rs. 28,000.00 balance price i.e. 5% of the stores supplied with interest thereon. (c) Claim Nos. 5 & 6 Rs. 1,40,394.00 being the amount withheld against admitted bills plus interest thereon. (d) Claim Nos. 7 & 8 Rs. 5,17,650.00 on account of loss suffered due to illegal rejection of stores/supplies plus interest thereon. (e) Claim No. 9 Rs. 6,00,000.00 towards loss of business and reputation .(f) Claim No. 10 Rs. 15,000.00 towards costs. The respondent preferred the following counter claims :- Counter Claim No. 1 Rs. 1,26,500.00 towards loss suffered in risk purchase of balance quantity of stock. Counter Claim No. 2 For adjustment of Rs. 25,750.00 against the amount under counter Claim No. 1. Counter Claim No. 3 Costs of Rs. 15,000.00

(3) The learned Arbitrator, who is the Additional Legal Advisor, Ministry of Law, after completion of pleading, adducing of documentary evidence and hearing the parties published the award on 30th day of March, 1990. The learned Arbitrator allowed Claim Nos. 1,3,7 and 8. Claim No. 7 was allowed subject to conditions as set out in award. Claim No. 8 for interest was allowed confined to reimbursement of actual interest paid. Interest claimed in respect of amounts of Claim Nos. 1,3 and 5 was disallowed. Claim No. 5 had been withdrawn. Costs of Rs. 5,000.00 were awarded. The counter claims of the respondent were rejected. The award is a reasoned one.

(4) The award is assailed on the grounds that the Arbitrator has failed to appreciate that risk purchase was justified due to petitioner's lethargy and conduct who failed to deliver despite extensions of delivery period. Further that the Arbitrator erred in disallowing the counter claims. The Arbitrator's finding that rejection of stores was unjustified was wrong. The Arbitrator did not appreciate that the petitioner had failed to provide inspection facilities. The security deposit had been duly forfeited and its refund was erroneous. The Arbitrator had acted unreasonably in allowing reimbursement of interest.

(5) I have heard the learned Counsel for the respondent Mr. Sohail Dutt, in support of the objections. Mr. Dutt, emphasized on the failure of the petitioner in adhering to the delivery schedule and offering the goods that deserved rejection. He submitted that in the circumstances, the respondent. Union of India, was justified in resorting to risk purchase, even though the delivery period was not yet over. A perusal of the objections as given in paras 10,11,12 and 13 of the objection petition reveals that the award of the learned Arbitrator is primarily being challenged as being unreasonable and as being erroneous. The findings of fact and conclusions of law are sought to be assailed.

(6) I am afraid these objections do not fall within the ambit of grounds specified in Section 30 of the Arbitration Act. This is not a Court of Appeal. The Arbitrator is master of law and facts. In this case, the award given by the learned Arbitrator is duly supported with reasons. In respect of the main claim i.e. Claim No. 7, the learned Arbitrator has held that the rejection of the goods on the ground that glistening foreign material was present is contrary to contractual specifications. The rejection of the last consignment on the ground that inspection facilities were not provided was factually incorrect as samples had been taken by the respondent. The award in respect of this claim provides for re inspection by an officer other than one stipulated in the contract, to be nominated by the respondent. As regards interest, the Arbitrator has rejected the claim for interest on the amounts claimed except for interest on Claim No. 7, in which case only reimbursement of interest actually incurred by the petitioner has been allowed. This cannot be faulted with. The award does not suffer from any error apparent on the face of the record or infirmity. The objections are without any merit and are liable to be dismissed and are so dismissed. The award is made rule of the Court. The petitioner is also awarded interest from the date of award till date of decree and realisation @ 15%, simple interest on the principal amounts payable under the award. Let a decree be drawn in terms of award which shall form part of the decree. The is and suit stand disposed of.