THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.08.2007

+ **CS(OS) 1999A/2000**

PUSHKAR PAINT INDUSTRIES ... Petitioner

- versus -

UNION OF INDIA ... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Shiv Khorana.
For the Respondent/UOI : Mr Shambhu Sharan with Mr Gunjan Kumar.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner has filed objections (IA No.352/2001) in respect of the award dated 28.04.2000 made by the sole arbitrator (Mr D.R. Gupta, Chief Manager Information Technology, Rail Coach Factory, Kapurthala). Objections have also been filed on behalf of the respondent (Railways) being IA.No. 355/2001. The petitioner was only aggrieved with regard to the rejection of its claims towards interest. However, Mr Shiv Khorana, who appears on behalf of the petitioner, now states that he is ready and willing to give up this objection. The only question, therefore, that survives for

consideration are the objections of the respondent as contained in IA 353/2001. On 24.03.2005, the following issues were framed :

> "1. Whether the impugned award dated 28.04.2000 is liable to be set aside or modified on the grounds raised in the objections?
>
> 2. Relief."

2. In order to decide the said issues, it would be necessary to narrate the sequence of events leading to the making of the award. On 26.08.1993 the respondent placed an order on the petitioner for supply of 85,377 ltrs of paint at the price of Rs 34.22 p per liter. According to the purchase order, the petitioner was to supply 18000 ltrs. per month and to complete the entire supply by 31.3.1994. On 17.11.1993 the respondent sought to change the delivery period by issuing a letter of that date. According to the letter dated 17.11.1993 the delivery schedule was to be altered so as to ensure supplies of 35,377 ltrs of paint by 31.3.1994 and the balance 50,000 ltrs of paint by 30.6.1994. However, the petitioner did not agree to this change in the delivery schedule and, therefore, the original schedule was maintained.

3. On 14.12.1993, 6000 ltrs of paint was supplied and by 31.3.1994 the petitioner had supplied a total quantity of 55,200 ltrs of paint. On 15.4.1994 a letter was written by the respondent to the petitioner not to make any further supplies. Subsequently, the respondent changed its mind and on 22.4.1994 issued a letter to the petitioner requiring it to supply the remaining

quantity of approximately 30,000 lts of paint in 5 equal installments of 6000 ltrs each month commencing from June and ending in November, 1994. On 27.4.1994, the respondent sought to reduce the price of the paint. The petitioner did not agree to this. Thereafter, the respondent also withdrew its request for reducing the price and permitted the petitioner to supply further quantities. On 4.6.1994, 12000 ltrs of paint were supplied by the petitioner to the respondent which they ultimately accepted in July 1994. However, 18000 ltrs of paint which were also sent along with the same supply were returned by the respondent. In September, 1994 the respondent indicated to the petitioner that they were now willing to accept 18,000 ltrs of paint, provided the same was delivered by 31.3.1995. However, the petitioner did not accept this request and submitted its claim for arbitration.

4. The claims were under six heads. Insofar as the claim Nos 1 and 2 are concerned, they are related. Claim No.1 was to the following effect : - *who shall bear the cost of 3 trucks of material which reached RCF on 12.6.1994 and were returned* and claim No.2 was as under :- *who shall bear the both way freight and related charges for above 3 trucks*. Claim No. 3 was rejected so was claim Nos 4 and 5. Insofar as claim No.6 was concerned that was with regard to interest at the rate of 23% per annum. The same was limited to only 12 % per annum and that, too, if the payment was not made within three months. Anyhow, the objection which the petitioner had with respect to

interest has been given up. So, in this petition, we are only concerned with the findings of the arbitrator insofar as claim Nos 1 and 2 are concerned. The said two claims had been discussed by the learned arbitrator in the award in the following manner :-

> "Claim No.1
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> Who shall bear the cost of 3 trucks of material which reaches RCF on 12.6.94 and were returned.
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> This claim is to be viewed in terms of the various correspondence and breaches as claimed by the claimant and denied by the respondent. The action of the respondent restricting the delivery to 35,377 ltr upto 31.3.94 and balance 50,000 lt. upto 30.6.94 vide their letter dtd 17.11.93 totally negates the stipulation of 18,000 lts./month with delivery to commence after 45 days of the date of placement of purchase order.
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> The unilateral amendment issued on 27.4.94 reducing the qty. from 85,377 ltr. to 59,764 ltr and reduction in rate is also against the contractual law as invoking the clause of 30% reduction in quantity on total ordered quantity is bad in law as 55,200 ltr. were already supplied to the consignee before March '94 and accepted by them. It is significant to note here that DCOS/RCF/KXH had over-stepped his jurisdiction (C-7 & C-8) in advising the firm not to dispatch the material in the month of April '94 and then laying down the delivery schedule totally different from what was given by the Purchase office. The balance quantity was also lying ready duly inspected with the claimant and was dispatched within the delivery period of 30.6.94 as fixed by the respondent vide their letter dtd 17.11.93. It is also to be noted that the consignee had overstepped his jurisdiction in accepting the quantity unto 67200 liters against amended quantity of 59764 liters. The respondent's subsequent action vide their amendment dated 7.9.94 enhancing quantity to 67,200 liters and simultaneously indicating that the delivery schedule of 38,000 liters unto Nov '93 was not adhered to is also incorrect as by their earlier amendment dated 17 Nov '93 they

had asked for only 35,377 liters unto March '94 but had already accepted 55,000 liters. The net impact of this amendment was that the quantity was restored to 67,200 liters which was already accepted by the consignee. The respondent's further action in reinstating the contract vide their letter dtd 31.1.95 was also meaningless as by that time the claimant had asked for appointment of the arbitrator to resolve the dispute as the contract had become null and void.

It was contended on behalf of the respondent that the company could have supplied the material after amendment dated 31.1.95. I do not find much force in this argument as the material was manufactured in February 1994, cleared after inspection in March 1994 and was returned back by the respondent for no technical fault. In my view the chances of the material getting rejected on account of keeping properties as specified in item xii of table I of IS 2074-1992 were quite high due to transit time involved, acceptance of material etc. This contingency for which very high probability exist would in any case have led to a dispute besides the liability on account of freight from Lucknow to Kapurthala about which no mention was made in the amendment order dated 31.1.95.
In view of the foregoing discussion the claim of the claimant of Rs.6,47,716.00 as cost of material is allowed.

Claim No.2

Who shall bear the both way freight and related charges for above 3 trucks.

This claim essentially flows from reference 1 – who will bear the cost of the material? As already brought out in claim No.1, as the action of the respondent was illegal in returning the trucks within the delivery period specified by them, the cost of the freight charges have to be borne by the respondent only. Total amount payable on this account will be Rs.51000/- [Rs.9000x3 =27000+Rs.7000x3 (ex. Kapurthala to Lucknow) as mentioned in goods receipts + Rs.1000x3 = 3000 for halting charges for 3 days.)]"

5. Reading the discussion and the conclusion arrived at by the learned

Arbitrator, I do not see any reason as to why the award should be interfered with. The petitioner had supplied 18000 ltrs of paint in June 1994 itself after the respondent had permitted the petitioner to supply the same. The fact that the same were returned as also the fact that the paint had a limited shelf life meant that the petitioner incurred a loss and the arbitrator has only compensated the petitioner for the same. I see no reason to interfere with the award. The objections filed on behalf of the respondent are dismissed. The award is made a rule of the court with future interest at the rate of 8% per annum. A decree be drawn up accordingly. The award shall form part of the decree.

BADAR DURREZ AHMED
(JUDGE)

August 07, 2007
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