
(2015) 02 BOM CK 0006

In the Bombay High Court

Case No : Arbitration Petition No. 1629 of 2014

Adityasai Cotspin Pvt. Ltd.

APPELLANT

Vs

Louis Drayfus Commodities India Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 31(5), 34, 34(3)

Citation : (2015) 02 BOM CK 0006

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Niranjan Lapasia and Nikita Gada, for the Appellant; Simil Purohit instructed by Purohit and Co., Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioner has impugned the arbitral award dated 28th May, 2012 allowing the claims made by the respondents.

2. Mr.Purohit, learned counsel appearing for the petitioner has raised a preliminary objection about the maintainability of this petition having been filed after three months from the date of getting the signed copy of the award and contending that the petition is barred by law of limitation.

3. Mr.Lapasias, learned counsel appearing for the petitioner has made following submissions :-

(a) The contract between the petitioner and the respondents was admittedly not signed by the respondents themselves but was signed by the agent of the respondents. The petitioner was not a member of the Cotton Association of India and was not governed by the bye laws of Cotton Association of India.

(b) The arbitration proceedings held at Mumbai is contrary to the sales contract which provides that the court in New Delhi alone would have the exclusive

jurisdiction to deal with any matter arising out of arbitration proceedings or the award.

(c) Learned counsel that the learned arbitrator did not render any opportunity to the petitioner to file written statement or to represent itself before the learned arbitrator at the time of hearing. In the impugned award the learned arbitrator has summarized the case of the petitioner though petitioner had not filed any written statement and was absent which shows non application of mind on the part of the learned arbitrator.

(d) Since there was no agreement between the parties or in any event the agreement was void, the entire arbitration proceedings were vitiated and thus the award is nullity. Even if the petitioner not having filed petition within the time prescribed, this court has power to set aside the award being nullity.

(e) In so far as issue of limitation raised by the learned counsel for the respondents is concerned, it is submitted by the learned counsel for the petitioner that under section 34(3) read with section 31(5) of the Arbitration and Conciliation Act, 1996 since signed copy of the award was not received by the petitioner from the arbitrator himself, the limitation under section 34(3) for filing petition for impugning the award did not commence and thus petition is not barred by law of limitation. It is submitted that even if the Cotton Association of India rules of arbitration are applicable to the parties, since Rule No. 68 which provides that in case of any inconsistency in those rules qua the provisions of the Arbitration and Conciliation Act, 1996 and the Rules, if any, made thereunder, the rules of Arbitration of the Cotton Association of India shall prevail is contrary to the provisions of Arbitration and Conciliation Act, 1996. No reliance thus on the rules of arbitration framed by Cotton Association of India can be placed.

4. Mr.Lapasias learned counsel does not dispute that under the rules of arbitration framed by the Cotton Association of India, the court at Bombay will have jurisdiction to entertain this petition.

5. Mr.Purohit, learned counsel for the respondent no. 1 on the other hand invited my attention to the sales contract annexed at Ex.A to the petition and submits that the sales contract has been admittedly signed by the petitioner. It is submitted that the petitioner has acted upon the said sales contract. The respondents have sold various items under the sales contract to the petitioner. Under the sales contract, the petitioner as well as the respondents became subjected to the rules of arbitration framed by Cotton Association of India including the arbitration agreement. It is submitted that these rules framed by Cotton Association of India are statutory rules and thus even if there is any inconsistency between these rules and the provisions of Arbitration and Conciliation Act, 1996, these statutory rules will prevail.

6. In so far as issue of limitation raised by the learned counsel is concerned, it is submitted that under the rules of arbitration framed by the Cotton Association of India, the Cotton Association has deputed a secretary for providing all

administrative assistance to the arbitral tribunal including for taking the steps for constitution of the arbitral tribunal for the adjudication of the dispute, all the assistance for issuing various notices from time to time, arrangement for holding of arbitration meetings and also for issuing intimation that the learned arbitrator had made an award. In support of this submission, the learned counsel invited my attention to Rules 18, 57 and 58 of the rules of arbitration of Cotton Association of India. It is submitted that under Rule 57, the secretary of the Cotton Association has been empowered to countersign the award and is authorised to give notice in writing to the parties of the making and signing thereof and also to furnish a true copy of the award to the parties by registered post/UCP/courier service etc. only when the arbitration cost has been paid to the Association by the parties is concerned. It is submitted that since the parties have agreed to subject themselves to the rules of arbitration of Cotton Association of India, the service of the impugned award by the Association through the secretary of the Association upon the petitioner would commence limitation on the date of service of such copy of the award from the Association. It is submitted that in view of such rules, the arbitrator personally is not required to effect any service of the arbitral award on each of the party.

7. In so far as submissions of the learned counsel for the petitioner that there was violation of principles of natural justice by the learned arbitrator is concerned, my attention is invited to the notices issued by the Association from time to time calling upon the petitioner to remain present personally or through authorized representative and more particularly on 13th January, 2012 and 27th January, 2012. The learned counsel invited my attention to the endorsement made by the Postal Department stating that the petitioner had refused to accept those two notices served at the same address of the petitioner as shown by the petitioner in the cause title of the petition.

8. The Association also informed the petitioner about the appointment of the arbitrator on 1st March, 2012 and also on 28th March, 2012 and requested him to remain present. The petitioner refused to accept even those notices.

9. It is submitted by the learned counsel that though signed copy of the award was served upon the petitioner but refused and since the petitioner did not impugn the said award within the time prescribed, the respondents filed execution application against the petitioner. The petitioner in the said execution application had raised an issue that the entire arbitration proceedings had culminated into void award and thus no execution proceedings could be initiated. It is submitted that the executing court has already negated this submission made by the learned counsel. The petitioner has now impugned the order of executing court before the higher court.

10. I will first decide whether the petition filed by the petitioner under section 34 is within time or not. It is not in dispute that the learned arbitrator has rendered an award on 28th May, 2012. A perusal of the sales contract clearly indicates that the parties have subjected to the arbitration in accordance with the rules

and bye laws of Cotton Association of India. It is also not in dispute that the sales contract has been acted upon. A perusal of the sales contract clearly indicates that the same is signed by the petitioner.

11. It is not disputed by the petitioner as is clear from the averments made in paragraph (9) of the petition that the copy of the award had been served upon the petitioner by the Secretary of the Cotton Association of India. It is also not in dispute that the petitioner has not filed this petition within the period of three months from the date of service of signed copy of the award from the secretary of the Association.

12. Under section 34(3) of the Arbitration and Conciliation Act, 1996 the application for setting aside the award has to be made within three months from the date of receiving the arbitral award. Under section 31(5) of the Arbitration and Conciliation Act, 1996, a signed copy has to be delivered to each party.

13. A perusal of the rules of arbitration framed by the Cotton Association of India which are statutory rules clearly provides for the procedure required to be followed for appointment of the arbitrator, for hearing, for recording evidence and also for delivery of award. The Cotton Association of India has deputed a secretary for the purpose of providing administrative assistance to the learned arbitrators who are on the panel of the Cotton Association of India. A perusal of Rules 57 and 58 clearly indicates that once an award is made by the learned arbitrator, the secretary of the Association has to countersign the award and has to give notice in writing to the parties of the making and signing thereof and to intimate the amount of fees and charges payable in respect of the arbitration and the award. The fees to the arbitrator is paid by the Association on receipt of the award and on the requisite deposit made by the parties. It is thus clear that when the parties deposits the fees of the learned arbitrator as intimated by the secretary of the Association, the secretary is authorised to furnish a true copy of the award to the parties either by registered post or UCP or courier. The secretary of the Association has admittedly forwarded true and signed copy of the impugned award to the petitioner.

14. In my view once the parties are agreed to proceed with the arbitration in the mode and manner prescribed in the rules of arbitration framed by the Cotton Association of India for all the purposes, the said procedure will have to be followed and would be binding on the parties to the arbitration. In my view there is no inconsistency in the rules of arbitration framed by the Cotton Association of India with the provisions of Arbitration and Conciliation Act, 1996. Be that as it may, even if there is any inconsistency, these rules will prevail.

15. Since the petitioner has not filed this petition under section 34 within three months from the date of service of the signed copy of the award from the Secretary of the Association who is authorised to serve copy of the award on behalf of the arbitrator, the petition is barred by law of limitation and cannot be entertained.

16. In so far as submission made by the learned counsel for the petitioner that since the entire proceedings were void initio for various reasons canvassed by the learned counsel and thus even if the petition is not filed within time, this court has jurisdiction to entertain such petition is concerned, I am afraid I cannot accept this submission of the learned counsel. Even if there did not exist any arbitration agreement according to the petitioner, it was for the petitioner to raise such issue before the learned arbitrator under section 16 of the Arbitration and Conciliation Act, 1996 and the petitioner not having raised such issue before the learned arbitrator though notices were served upon the petitioner from time to time, this issue cannot be allowed to be raised for the first time in this petition under section 34 of the Arbitration and Conciliation Act, 1996. I am thus not inclined to accept these submissions in this petition which is barred by law of limitation. Be that as it may, a perusal of the sales contract clearly indicates that the said contract has been signed by the petitioner. The respondent no. 1 has not disputed the authority of the signatory of the sales contract by the agent of the respondent no. 1.

17. In so far as judgment of the Supreme Court in case of The State of Maharashtra and Others Vs. Ark Builders Pvt. Ltd., relied upon by the learned counsel for the petitioner is concerned, in view of the fact that the parties in this case are governed by the statutory arbitration under the provisions of the rules framed by Cotton Association of India, this judgment does not apply to the facts of this case and does not assist the petitioner.

18. In so far as other submissions made by the petitioner on validity of the award is concerned, since the petitioner is barred by limitation, I do not propose to deal with those submissions.

19. Petition is accordingly dismissed with cost quantified at Rs. 25,000/-payable by the petitioner to the respondents within two weeks from today.