

**(2021) 02 DEL CK 0128**

**In the Delhi High Court**

**Case No :** Original Miscellaneous Petition (COMM) No. 48 Of 2021, Miscellaneous Application No. 1846 Of 2021

Akshay Aluminium Alloys Pvt. Ltd

APPELLANT

Vs

Prrsaar Commodities (P) Ltd.

RESPONDENT

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**Date of Decision :** 08-02-2021

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 5, 17, 17(1)(ii)(e), 29A, 34, 34(2), 34(2A), 37  
Code Of Civil Procedure, 1908 — Section 151

**Citation :** (2021) 02 DEL CK 0128

**Hon'ble Judges :** Vibhu Bakhru, J

**Bench :** Single Bench

**Advocate :** Rupesh Kumar, Pravesh Bahuguna, Pooja Kashyap

**Final Decision :** Dismissed

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## **Judgement**

Vibhu Bakhru, J

1. The petitioner (hereinafter "AAAPL") has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996

(hereinafter the "A&C Act"), inter alia, impugning an award dated 21.10.2020 (hereafter "the impugned award") passed by the Arbitral

Tribunal (in Arbitration Matter No. MCX/ARB/5022A/19-20). The Arbitral Tribunal has, by the impugned award, awarded a sum of Rs. 2,81,21,667/-

to the respondent (hereinafter "PCPL") against a total claim of Rs. 2,84,86,676/- as the balance amount due for settlement of the contracts for

125 lots of Crude Oil Futures, at the rate fixed by the Multi Commodity Exchange of India Limited (hereafter "MCX")

2. MCX is a company incorporated under the Companies Act, 1956 and operates a Commodity Exchange. PCPL is a Trading Member (TM) of

MCX. AAAPL is a constituent (Client) of PCPL and has a commodity trading account with PCPL; it trades on the MCX through PCPL.

3. On 20.04.2020, AAAPL created long positions in Crude Oil Futures "that is, purchased contracts in Crude Oil Futures which were set to expire

on the same day on the MCX platform. However, the price of Crude Oil Futures traded on New York Mercantile Exchange (NYMEX) saw an

unprecedented fall to negative \$37.63. Thereafter, MCX settled the contracts expiring on 20.04.2020 first at Rs. 1/- vide its Circular no.

MCX/282/2020 and finally at negative Rs. 2,884/- per barrel vide its Circular no. MCX/MCXCCCL/282/0220. As a result, AAAPL suffered a loss of

Rs. 3,60,62,500.

4. MCX realised the entire financial obligation in respect of the contracts in question purchased by AAAPL in accordance with the settlement

mechanism (pay-in and pay-out) from PCPL, as per its aforesaid Circulars. In order to liquidate the debt balance in their account, PCPL squared off

AAAPL's outstanding positions in commodities of Zinc, Aluminium and Silver.

5. Concededly, the negative value of Crude Oil Futures was an aberration as the implication of the negative value would be that the person holding the

said commodity would have to pay an amount of Rs. 2,884/- per barrel as consideration for selling the commodity (Crude Oil) instead of receiving a

monetary consideration for the same.

6. In view of the above, both the parties filed separate Writ Petitions before this Court assailing the aforesaid Circulars issued by MCX (being M/s.

Prrsaar Commodity Pvt. Ltd. V. MCX & Ors.: W.P. (C) 3019/2020 and Akshay Aluminium Alloys LLP v. Securities Exchange Board of India &

Ors.: W.P. (C) 3008/2020).

7. Notwithstanding that PCPL had challenged the aforementioned Circulars, it sought recovery of the amount outstanding from AAAPL as it had

effected the payment for settlement of the contracts purchased by AAAPL. Before the Arbitral Tribunal, AAAPL filed an application under Section

17 of the A&C Act, seeking that the arbitral proceedings be listed after the decision is rendered by this Court in the two aforesaid Writ Petitions.

8. The Arbitral Tribunal rejected the said application as is expressly stated in its award dated 21.10.2020 (which has been impugned herein). The

Arbitral Tribunal found that it did not have the jurisdiction to allow the application

since it would amount to adjourning the proceedings sine die and the same was not a measure contemplated under Sub-clause (e) to Section 17(1)(ii) of the A&C Act. It held that considering various provisions of the A&C Act, such as Sections 5 and 29A, it would not be permissible to issue an interim order staying the arbitral proceedings. Moreover, even the Bye-Laws of the MCX, in terms of which the arbitral proceedings were being held, curtails the period for concluding arbitral proceedings to four months. The same can be extended by another four months but thereafter, the mandate of the Arbitral Tribunal would terminate. The Arbitral Tribunal also concluded that it does not have the inherent powers of a civil court, as are contained in Section 151 of the Code of Civil Procedure, 1908.

9. The Arbitral Tribunal considered the disputes and after hearing the parties, passed the impugned award in favour of PCPL. It awarded a sum of Rs. 2,77,74,674/- on account of the amount due as on 22.04.2020 and Rs. 3,46,993/- as interest at the rate of 12% p.a. Thus, the Arbitral Tribunal awarded a total sum of Rs. 2,81,21,667, including interest in favour of PCPL. The Arbitral Tribunal rejected the claim for pendente lite and future interest and also rejected PCPL's claim for penalty. In addition, the Arbitral Tribunal held that if the amount realised from AAAPL is in excess of what is due for settlement of the contracts in question, based on the outcome of the two aforesaid Writ Petitions pending before this Court, PCPL would reimburse any excess amount realised by it to AAAPL.

10. Mr. Rupesh Kumar, learned counsel appearing for AAAPL, has assailed the impugned award on the following grounds. First, he contended that the award ought to be set aside as the Arbitral Tribunal had not decided the AAAPL's application under Section 17 of the A&C Act and had proceeded to decide the main dispute. He submitted that in this manner, the Arbitral Tribunal had effectively deprived the petitioner from availing its rights of filing an appeal under Section 37 of the A&C Act.

11. Next, he submitted that the Arbitral Tribunal ought to have appreciated that AAAPL's claim rested entirely on the Circulars issued by MCX. He submitted that by an order dated 13.05.2020 (passed in S.B. Civil Writ Petition No. 5568/2020), the High Court of Rajasthan has restrained MCX from taking any coercive measures against the investor. In view of the foregoing, the Arbitral Tribunal should have stayed the proceedings. He

earnestly contended that the Arbitral Tribunal could not have held that AAAPL was liable to pay dues. Since the Circulars issued by MCX

and their validity are under challenge before various courts, no legally enforceable debt or obligation arose and thus, AAAPL could not be directed to

pay the awarded amount. He also contended that the Arbitral Tribunal erred in holding that PCPL was entitled to reimbursement of the money paid by

it to MCX from AAAPL.

12. The contentions advanced on behalf of AAAPL are without any merit. Section 17 of the A&C Act empowers the Tribunal to issue orders of

interim measures of protection. In the given facts where the Arbitral Tribunal had proceeded to hear the disputes on merits, there was no necessity of

the Arbitral Tribunal to pass any interim orders. More importantly, the Arbitral Tribunal had explained that it was not empowered to defer the arbitral

proceedings or stay the same pending adjudication of the writ petitions filed before this Court. Further, the subject matter of the writ petitions was

which was a challenge to the circulars issued by MCX was also beyond the scope of the controversy before the Arbitral Tribunal.

13. Essentially, PCPL's role as a trading member of MCX was that of a broker; it is AAAPL that had entered into the contract on the platform of

MCX. PCPL as trading member of MCX was liable to comply with the settlement as fixed by MCX. The value for settlement of the contract in

question (Crude Oil Futures) had been fixed by MCX by ascribing a value of negative Rs. 2,884/- per barrel. PCPL was thus, required to honour the

settlement, failing which it would have been in default. Since the underlying contract had been entered into by AAAPL, there can be no dispute that

AAAPL was required to bear the loss arising from the transaction just as it would have reaped the profits had the settlement amount been in its

favour. Thus, under no circumstances could AAAPL avoid its liability to PCPL for the contracts entered into by AAAPL as there was no default or

deficiency on the part of PCPL. PCPL on its part was only entitled to its brokerage/ commission.

14. The contention that the Arbitral Tribunal had acted in haste and had decided the PCPL's claim without considering the merits of the dispute is

also unmerited. There was no dispute as to the amount due in respect of the contract entered into by AAAPL. And the Arbitral Tribunal was not

concerned with AAAPL's grievance regarding the circular issued by MCX fixing a negative value for settlement of the contract. Thus, the

essential facts for addressing the controversy are not disputed. It is relevant to note that even before this Court, it has not been canvased that there is

any dispute regarding the amount payable by AAAPL, if the Circulars issued by MCX are applied. It is also not disputed that the contracts entered

into on the platform of MCX were settled as per the settlement procedure (pay-in and pay-out) of the said Exchange. And, PCPL had honoured the

commitments in respect of the transactions entered into by AAAPL in 125 lots of Crude Oil Futures.

15. The contention that the impugned award could be faulted as petitioner's right to file an appeal under Section 37 of the A&C Act against any

decision regarding its application under Section 17 of the A&C Act had been truncated, is plainly bereft of any merit. It is also not disputed that

AAAPL had been afforded the opportunity of being heard on the merits of the claim made by PCPL and the said contentions advanced have been

addressed. Thus, this Court is not persuaded to accept that any principle of natural justice has been violated in any manner.

16. The grounds on which an arbitral award can be assailed are limited. Plainly, none of the grounds as urged on behalf of AAAPL falls within the

scope of Sub-sections (2) and/or (2A) of Section 34 of the A&C Act. This Court, thus, finds no reason to interfere with the impugned award.

17. The petition is, accordingly, dismissed. The pending application is also disposed of.