
(2010) 03 DEL CK 0269
In the Delhi High Court
Case No : O.M.P. 298 of 2003

Elder Financial Services Ltd. APPELLANT
Vs
Pasupati Fabrics Ltd. RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 34, 34(2)

Citation : (2010) 03 DEL CK 0269

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Suresh Kumari, for the Appellant; Rajeev Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present petition has been filed u/s 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act, 1996") challenging the arbitral Award dated 10th February, 2003 passed by the Sole Arbitrator, Mr. Justice P.K. Bahri (Retd.)

2. Ms. Suresh Kumari, learned Counsel for petitioner-objector submits that there was no concluded Underwriters" Agreement executed between petitioner-objector and respondent-claimant.

3. Ms. Suresh Kumari further submits that the Arbitrator had no jurisdiction to decide the disputes between the parties as in accordance with the arbitration clause contained in the Underwriters" Agreement, disputes were to be adjudicated by an arbitration committee constituted by the Regional Stock Exchange. She points out that as the said committee had refused to act as the arbitrator, the only option available to respondent-claimant was to file a civil suit.

4. Ms. Suresh Kumari lastly submits that the Arbitrator could not have rejected petitioner-objector"s letter dated 20th April, 1996 terminating the Underwriters" Agreement as the said letter had been sent by registered post.

5. Having heard the parties, I am of the view that the scope of interference by this Court with an arbitral award u/s 34(2) of Act, 1996 is extremely limited. Supreme Court in Delhi Development Authority Vs. R.S. Sharma and Co., New Delhi, after referring to a catena of judgments including Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., has held that an arbitral award is open to interference by a court u/s 34(2) of the Act, 1996 if it is contrary to either the substantive provisions of law or the contractual provisions and/or is opposed to public policy.

6. In fact, the Supreme Court in McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, has succinctly summed up the scope of interference by this Court by stating "the 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc...."

7. Upon a perusal of the Award I find that the Arbitrator has given cogent reasons for reaching the conclusion that there was a valid and binding contract executed between the parties. The relevant observations in the impugned Award are as under:

8. A half-hearted plea appears to be taken by the respondent that no concluded underwriter agreement has come into existence. Whereas in letters dated 15th March 1996 and 20th April 1996 the respondent clearly admitted that there has been arrived at an underwriter agreement dated 11th March 1996 between the parties. Moreover, in a writ petition filed by the respondent in the present matter before the Delhi High Court (RW-1/C-1) the respondent has again categorically admitted that an underwriter agreement dated 11th March 1996 was executed between the parties. Moreover, the claimant has proved on record resolution passed by the Board of Directors of the claimant by virtue of which the claimant had accepted the offer of the respondent and thus written communication dated 16th March 1996 was also sent to the respondent mentioning about acceptance of offer of the respondent. Shri P.K. Srivastava in his affidavit denied receipt of such letter but he admitted that respondent is maintaining the receipt register, which has not been produced to show that in fact such a letter, was not received by the respondent. Therefore, I do not find any merit in this plea of the respondent that communications sent by the claimant was not received by the respondent. Thus, I hold that there came about concluded underwriter agreement between the parties.

8. As far as the jurisdiction of the Arbitrator to decide the disputes between the parties is concerned, I find that the matter had been referred to the sole arbitrator by this Court vide order dated 18th October, 2000 in AA 204/1998 filed u/s 11(6)(c) of Act, 1996.

9. The said order was challenged by way of a writ petition being CW 7116/2002 on the ground that the learned Single Judge could not have appointed the

arbitrator as the arbitration clause in the Underwriters' Agreement contemplated adjudication of disputes by an arbitration committee of the Regional Stock Exchange. The said plea was rejected by a Division Bench of this Court. While dismissing the petitioner-objector's aforesaid writ petition vide order dated 21st November, 2002, the Division Bench observed as under:

The underwriting agreement between the parties contained an arbitration clause whereby disputes between them were to be referred to Arbitration Committee of the Regional Stock Exchange. It seems that respondent requested the Stock Exchange to do it but it declined. The Company, thereafter, filed IA No. 9871/2000 in AA No. 204/1998 in which Designated Authority appointed the arbitrator on noticing this refusal by ex parte order dated 18.10.2000. Petitioner sought reconsideration of this but failed. Hence this petition challenging appointment of Arbitrator.

L/C for petitioner has reiterated his stand that the Designated Authority could not have appointed the Arbitrator outside the terms of Arbitration agreement. The plea, in our view is misconceived because the Authority was competent to appoint the Arbitrator u/s 11(6) of the Act where the Arbitrator could not be so appointed because of the party's refusal or that of the Arbitrator. In the present case the Stock Exchange had declined to refer the dispute to the Arbitration Committee. Thus the Authority was justified in appointing the Arbitrator in the circumstances.

This petition accordingly fails and is dismissed.

10. Even a SLP (Civil) bearing No. 6309/2003 was dismissed by the Supreme Court vide order dated 4th August, 2003.

11. In fact, upon a perusal of the papers, I find that the respondent-claimant had invoked the arbitration clause vide its letter dated 17th May, 1997 and filed its statement of claims with the Deputy General Manager (Listing) of Delhi Stock Exchange Association Ltd. (in short "DSE) for adjudication by its arbitration committee. However, the Company Secretary, DSE vide its letter dated 26th November, 1997 refused to refer the disputes to the arbitration committee on the ground that DSE had never agreed to conduct the arbitration proceedings. Consequently, in my view, Section 11(6)(c) of Act, 1996 was clearly attracted to the facts of the present case and this Court was competent to appoint an arbitrator.

12. As far as petitioner-objector's submission that the Arbitrator had committed an error in not relying upon petitioner-objector's letter dated 20th April, 1996 is concerned, I am of the view that the Arbitrator and which cannot be entertained by this Court u/s 34 proceedings. Secondly, I find that the Arbitrator has given cogent and concise reasons for rejecting petitioner-objector's argument of termination of Underwriters' Agreement. The relevant portion of the impugned Award reads as under:

9. Two letters have been sent by the respondent dated 15th March, 1996 and 20th April, 1996, one under certificate of posting and the second one by registered post. Although, the claimant has denied the receipt of such letters yet for the sake of arguments that these letters have been received by the claimant even then I am of the view that the same does not help the respondent in escaping the liability under the underwriters' agreement. After a concluded contract had been arrived at between the parties, the respondent unilaterally could not have imposed any conditions contrary to the conditions mentioned in the written agreement. The respondent in his letter required the public issue to come out within 30 days of the date of the said letter whereas under the terms of the underwriter agreement the public issue was to be taken out within three months of the date of underwriter agreement and admittedly the public issue had come out within three months. There is no merit in the contention raised by the counsel for respondent that non-response from the claimant to the letter dated 15th March 1996 amounts to claimant giving its implied consent to the contents of the said letter. Where parties have entered a written agreement, it is obvious that any change in the terms of the agreement has to be a subsequent written agreement. There has been no such written agreement arrived at between the parties for making any change in terms of the original agreement. So there is no merit in the plea that any new term came to be agreed upon between the parties in terms of the respondent's letter dated 15th March 1996.

13. In view of aforesaid, present petition being devoid of merits is dismissed, but with no order as to costs.