
(2007) 12 DEL CK 0070
In the Delhi High Court
Case No : OMP No. 218 of 2007

Gujarat Bullion Refinery Pvt. Ltd.

APPELLANT

Vs

Hindustan Copper Ltd.

RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 5

Citation : (2008) 100 DRJ 153

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : D. Moitra, for the Appellant; Saurabh Ahuja, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The respondent-Company, a public sector undertaking, placed an order on the petitioner on 10.01.1990 for sale of copper from the location of the respondent at Khetri, Rajasthan. The agreement contained an arbitration clause providing for sole arbitration by the Chairman of the respondent or any other officer nominated by him. In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, the Chairman of the respondent was authorized to appoint another arbitrator. The jurisdiction of the Courts was vested in either Calcutta or New Delhi Courts.

2. The Contract resulted in disputes between the parties and a petition was filed in this Court by the petitioner being OMP No. 100/1996. In the said matter an ex parte Order was passed on 07.05.1999 which was sought to be recalled on an application by the petitioner since the respondent had appointed one of its own officers Sh. T.P.Girish as the sole arbitrator. However, the said arbitrator proceeded with the matter.

3. The parties entered appearance but the proceedings could not be concluded. The Minutes of the Arbitration Proceedings of 27.04.2001 show that the arbitrator sought consent for extension of time and while the respondent granted

its consent, the petitioner failed to give the consent. The arbitrator thus observed that the arbitration proceedings stand concluded. There was a silence on the part of the respondent thereafter for a period of more than six years.

4. The respondent apparently addressed a letter dated 22.02.2007 to the petitioner in the following terms: "WHEREAS, Sh.T.P.Girish, Executive Director (Commercial), Hindustan Copper Limited, "Tamra Bhavan", 1 Ashutosh Chowdhury Avenue, Kolkata - 700 019 was appointed as the Sole Arbitrator by the Chairman-cum-Managing Director, Hindustan Copper Limited vide Order dated 14.03.1995 to adjudicate the disputes and differences between the parties in connection with the above referred matter. AND WHEREAS, Sh. T.P.Girish, the Sole Arbitrator concluded the arbitration proceeding, but could not publish the Award. Now, on the request to continue the job of Sole Arbitrator for publishing the Award, the said Arbitrator has showed his inability to continue as Arbitrator due to his poor health and submitted his resignation letter dated 14.02.2007 from the post of Sole Arbitrator in the above matter. NOW, Therefore, I, Satish C.Gupta, Chairman cum Managing Director, Hindustan Copper Limited, "Tamra Bhavan", 1 Ashutosh Chowdhury Avenue, Calcutta - 700 019 do hereby appoint Sh. D.N.Verma, Assistant General Manager (HR), "Tamra Bhavan", 1 Ashutosh Chowdhury Avenue, Kolkata - 700 019 in place of Sh. T.P.Girish as the Sole Arbitrator to adjudicate the said disputes as referred to above. Sh. Verma will start the arbitration proceedings from the stage where Sh. Girish, the earlier Arbitrator, left the same. The parties are directed to make further reference, if any, to the Sole Arbitrator."

5. The aforesaid letter was not received by the petitioner as it was sent at an earlier address of the petitioner. The second letter at the new address was served under the cover of the letter dated 05.03.2007. The petitioner objected to the same and thereafter filed the present petition.

6. It is inter alia the case of the petitioner that for a period of six years no proceedings were filed before this Court seeking either the termination of the mandate of the earlier arbitrator or for appointment of a new arbitrator. The respondent has claimed that the earlier arbitrator never published the award and resigned only on 14.02.2007 when he retired from service. It is also claimed that the petitioner raised frivolous disputes in respect of the extension of time and the lapse of time cannot destroy the rights of the parties.

7. The legal position in respect of such matters has been discussed at length in the judgment of this Court in Laldee Private Limited Vs. Union of India (UOI) and Others, where in a similar situation in view of lapse of considerable time, the designated authority sought to appoint another arbitrator on account of negligence and refusal of the arbitrator to so act. An earlier judgment in OMP No. 53/1995 titled M/s Stelco Tubes (P) Ltd v. Union of India decided on 10.09.2005 was taken note of as also a Division Bench judgment of this Court in Union of India Vs. Som Nath Chadha and Co., wherein it was held that the very object of arbitration stands defeated if there is no speedy end of the strife. Thus in case a

party unreasonably neglects to promote the conduct of arbitration proceedings, the said party cannot avail of the remedy of the arbitration where there is no reasonable Explanation forthcoming for the inordinate delay. The Apex Court in *Amarchand Lalitkumar Vs. Shree Ambica Jute Mills Ltd.*, held that the expeditious commencement of arbitral proceedings is a must as delay defeats justice and equity. Thus, If a party sleeps over its right over a long period of time, the court would be justified in exercising its discretionary power and exercise jurisdiction u/s 5 and 12(2)(b) of the Indian Arbitration Act, 1940 ("the said Act" for short) to permit rescinding of the arbitration agreement and declare that the arbitration agreement shall cease to have effect with respect to the differences and disputes referred to in the notice and relieve the parties from the arbitration agreement.

8. In my considered view the factual matrix of the present case is within the aforesaid parameters and thus the present petition u/s 5 read with Sections 11 and 12 of the said Act is liable to be allowed. In the present case also the respondent on the one hand has been negligent to prosecute the arbitration proceedings for a long period of time and on the other hand now seeks to invoke the jurisdiction of arbitration by appointing another arbitrator after sleeping over its rights for over six years. On being asked, learned Counsel for the respondent is unable to give any satisfactory Explanation for this inordinate delay other than stating that the respondent-Company was in a financial difficulty for some years and since the financial health of the company has been restored, the arbitral proceedings are sought to be again commenced.

9. In my considered view, this can hardly be a ground for re-starting the arbitration proceedings.

10. It was known as far back as 27.04.2001 that the petitioner was not willing to extend the time period for publishing the award. No application was filed seeking extension of time before this Court for the arbitrator to make and publish the Award. Now after the lapse of six years under the guise of the arbitrator having resigned vide the letter dated 14.02.2007, a new arbitrator is sought to be appointed. Such a course of action would not be permissible as in a way it is an attempt to defeat the requirement of seeking extension of time before the earlier arbitrator which right was never exercised by the respondent for over six years.

11. The very basis for arbitral proceedings as a method of adjudication of disputes is frustrated by such lapse of time. The present petition is thus allowed and the appointment of the new arbitrator and the commencement of arbitration proceedings stand revoked.