

(2004) 02 DEL CK 0068
In the Delhi High Court
Case No : EFA (OS) No. 11 of 2002

National Buildings Construction Corporation Ltd.	APPELLANT
Vs	
Lloyd Insulations India Ltd.	RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Citation : AIR 2004 Delhi 235 : (2004) 1 ARBLR 306 : (2004) 1 AWC 906 : (2004) 73 DRJ 142

Hon'ble Judges : Ramesh Chand Jain, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Chetan Sharma and Manoj Kumar Das, for the Appellant; Neelam Rathore, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Jain, J.—"Can a part of the arbitral award be enforced during the pendency of an application u/s 34 of the Arbitration & Conciliation Act, 1996 (for short the 'Act') seeking the setting aside of the other part of the award", is the short but important question which we have been called upon to answer in the present appeal.

2. The facts giving rise to the present appeal are in a narrow compass. Disputes and differences having arisen between the parties, the matter was referred to the arbitral tribunal constituted by the sole arbitrator namely Mr. Justice P.K. Bahri. Several claims and counter-claims were preferred by the parties before the arbitrator. The learned arbitrator vide his award dated 9th January, 2001 awarded a sum of Rs.13,97,072.24 in favor of the claimant Lloyd Insulation (India) Ltd. and a sum of Rs.9,85,316/- towards counter-claim in favor of M/s. National Buildings Construction Corporation Ltd. with the following break-up:-

"28. AMOUNT DUE TO THE CLAIMANT

(i) Rs. 1,84,059.24 Balance payment of the first contract.

(ii) Rs. 26,831.00 Refund security deposit in the first contract.

(iii) Rs. 11,76,182.00 Amount of Bank guarantee.

(iv) Rs. 10,000.00 Earnest Money Deposit.

Rs. 13,97,072.24

AMOUNT DUE TO THE RESPONDENT

(i) Rs.6,08,471/- Amount paid to the claimant on second contract.

(ii) Rs.3,76,845/- Cost of dismantling the defective work. 29. Thus the claimant is entitled to recover Rs.13,97,072 - Rs.9,85,316 = Rs.4,11,756/-."

In paragraph No.39 of the award, the arbitrator concluded as under:-

"39. I make the award as follows:-

1. That the respondent shall pay to the claimant a sum of Rs.4,11,756/- (Four Lac Eleven Thousand Seven Hundred and Fifty Six Only).

2. That the respondent shall pay interest at the rate of 12% p.a. on the said amount from the date of the award till payment.

3. That the parties shall bear their own costs."

3. Respondent M/s.Lloyd Insulations (India) Ltd. took out the execution of the said award claiming a sum of Rs.16,79,548/-, (i.e. principal awarded sum of Rs.13,97,072.24 and Rs.2,82,476/- being interest @ 12% per annum from the date of the award till 15th September, 2002) with further interest @ 12% per annum till payment and sought attachment of the bank account of the judgment debtor M/s.National Buildings Construction Corporation Ltd. to that extent. Vide the impugned order dated 8th October, 2002, the learned Single Judge has allowed the prayer of M/s.Lloyd Insulations (India) Ltd. and directed the issue of warrants of attachment against the judgment debtor for the said sum. It is pertinent to note that M/s.Lloyd Insulations (India) Ltd. also filed an OMP being No.131/2001 u/s 34 of the Act for setting aside the portion of the award rejecting their claims at Serial Nos.2,4,5,6, 8 & 9 under the purchase order dated 16th March, 1992 and claims Nos.2 & 4 under the purchase order dated 29th August, 1992 and the claim for pendente lite and future interest @ 21% per annum on the outstandings till realisation. The objections also sought to set aside the portion of the award which has awarded counter-claim of Rs.9,85,316/- against two heads in favor of M/s.National Buildings Construction Corporation Ltd. The said OMP is pending decision before the learned Single Judge. No application u/s 34 of the Act was moved by M/s.National Buildings Construction Corporation Ltd. challenging any part of the award dated 9th January, 2001.

4. Mr.Chetan Sharma, learned Senior Advocate appearing for the appellant has sought to assail the impugned order as illegal and inequitable on a variety of grounds. In the first place, his submission is that the concluding portion of the

award would show that the award in favor of M/s.Lloyd Insulations (India) Ltd. is for a sum of Rs.4,11,756/- only and interest which amount the appellant is prepared to pay to the respondent but according to him the effect of the impugned order is far reaching inasmuch as the appellant is not only required to pay the said amount but to pay a much large amount, i.e. Rs.16,79,548/- which they are not legally liable to pay more particularly in view of the pendency of the objections u/s 34 of the Act filed by M/s.Lloyd Insulations (India) Ltd. In this connection, he has referred to Section 36 of the Act and submitted that once an application to set aside the arbitral award u/s 34 of the Act is pending, no part of the award is enforceable. In any case, his next submission is that if M/s.Lloyd Insulations (India) Ltd. seeks the execution of the award, M/s.National Buildings Construction Corporation Ltd. is entitled to set off of the amount awarded in their favor and for recording the satisfaction of the decree to the extent of the amount awarded in their favor in view of the provisions contained in Order XXI Rules 18 & 19 CPC. On the other hand, Ms.Neelam Rathore, Advocate appearing for the respondent has urged that the part of the award in favor of the respondent not being under challenge u/s 34 of the Act, has become final and enforceable. Further, that the appellant is not entitled to claim any adjustment/set off or record satisfaction in regard to the amount awarded by the arbitrator by way of counter-claim as the same has not yet attained finality and being under challenge by the respondent through OMP.

5. We have given our thoughtful consideration to the rival contentions of the counsel for the parties. So far as the first contention with regard to the enforceability of the award during the pendency of the objections u/s 34 of the Act is concerned, it may be noted at once that the award of the arbitrator in this case is not entirely in favor of one party but it is in favor of both the parties as it has allowed some claims as well as some counter-claims. The appellant M/s.National Buildings Construction Corporation Ltd. did not challenge any part of the award by filing objections within the stipulated period as provided u/s 34(3) of the Act and, Therefore, the award so far as it has allowed certain claims of the claimant M/s.Lloyd Insulations (India) Ltd., has attained finality and has become capable of enforcement as a decree in accordance with the Code of Civil Procedure. However, the award of counter-claim in favor of M/s.National Buildings Construction Corporation Ltd. has not yet attained finality and it is not enforceable, it being the subject of challenge in the application u/s 34 of the Act. It is, Therefore, not possible to hold that the entire award has not become final and is not enforceable unless the application u/s 34 of the Act is disposed of. We are clearly of the opinion that that part of the award which is not under challenge has become final and is enforceable u/s 36 of the Act irrespective of the pendency of the application u/s 34 of the Act challenging and seeking the setting aside of the other part of the award.

6. So far as the next contention in regard to the set off/satisfaction of the decree of M/s.Lloyd Insulations (India) Ltd. is concerned, suffice it would be to notice that the provisions of Order XXI Rules 18 & 19 CPC are attracted only when there

are two existing final decrees, one in favor of the decree holder and the other in favor of judgment debtor. As noticed above, since as yet there is no final decree in favor of M/s.National Buildings Construction Corporation Ltd. in respect of the counter claim awarded in their favor, so, in our opinion, the appellant is not entitled to invoke the said provisions of Order XXI Rule 18 CPC. We, Therefore, see no force in the contention of the appellant that the appellant can at best be asked to deposit a sum of Rs.4,11,756/- along with interest and not the entire amount awarded in favor of M/s.Lloyd Insulations (India) Ltd. along with interest at this stage. In our opinion, the impugned order is legally justified and does not suffer from any illegality which calls for any interference by this Court.

7. Mr.Chetan Sharma, learned Senior Advocate appearing for M/s.National Buildings Construction Corporation Ltd. has lastly urged that in case the appellant is asked to deposit the entire awarded amount and the interest and in case the respondent failed in their objections u/s 34 of the Act, the appellant would be entitled to a refund of Rs.9,85,316/- and interest thereon and in that event it may be very difficult for the appellant which is a Government Corporation to recover the amount from the respondent. We may notice here that at the time of issuing notice in the appeal, a direction was given to the appellant to deposit a sum of Rs.5,00,000/- in the Court and later the amount was ordered to be released in favor of the respondent subject to furnishing a security to the satisfaction of the Registrar General of this Court. In view of the position that the total balance amount which the appellant may be called upon to deposit in pursuance of the impugned order and the appellant admits its liability to pay a sum of Rs.4,11,756/- with interest to the respondent we deem it proper to secure the interest of the appellant, in case the appellant is held entitled for refund of the same on the rejection of the objections of the respondent u/s 34 of the Act.

8. In the result, this appeal being devoid of any merits is hereby dismissed. The interim order stands vacated and the appellant is directed to deposit the balance amount in the Court pursuant to the impugned order within two weeks from today. The amount so deposited may be released to the respondent on the respondent furnishing a further property security to the extent of Rs.6 lacs to the satisfaction of Registrar General of this Court. We are limiting the security to Rs.6 lacs only as the respondent has already furnished security to the extent of Rupees Five Lacs.