

(2015) 07 DEL CK 0208
In the Delhi High Court
Case No : OMP No. 308 of 2015

Saumya Mining Ltd. and Others

APPELLANT

Vs

S.E. Investments Ltd.

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13, 30, 34
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 96(3)

Citation : (2015) 07 DEL CK 0208

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Rudrajyoti Nath Ray and Amit Bikram Das, for the Appellant; P. Nagesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J—This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "the Act") impugning the Award dated 1.12.2014.

2. I need not go into the merits of the matter in detail inasmuch as, the Award which is challenged is a consent Award and against a consent Award no objections can be filed under Section 34 of the Act.

3. The facts of the case are that the respondent herein had given a loan to the petitioner no. 1 and in such transaction the other petitioners stood as guarantors. The loan granted was for a sum of Rs. 5 crores and on various defaults having occurred, respondent for seeking payment served a legal notice upon the petitioners dated 29.1.2014. Thereafter on account of failure of the petitioners to pay the amount due, arbitration was invoked and a statement of claim was filed before the Arbitrator for a sum of Rs. 3,72,57,889/- alongwith future interest thereon.

4. Petitioners herein, respondents in the arbitration proceedings, duly appeared and initially filed an application for the arbitrator to recuse himself. Petitioners

herein filed this application under Section 13 of the Act before the Arbitrator on 30.7.2014. Thereafter the next date was fixed on 11.8.2014 and a further date was then fixed for 27.8.2014. Then again another date of 8.9.2014 was fixed. After arguments on this application under Section 13 of the Act, the Arbitral Tribunal vide its order dated 8.10.2014 dismissed the application under Section 13 of the Act.

5. On 18.10.2014, petitioners herein filed an application requesting the Arbitral Tribunal to facilitate the initiation of settlement process and accordingly the Arbitral Tribunal fixed 7.11.2014 for the said purpose and which hearing was adjourned to 13.11.2014. On 13.11.2014, a settlement was arrived at whereby with respect to the claim amount of Rs. 3.72 crores alongwith future interest as stated above, it was agreed that the petitioners herein were only to pay a sum of Rs. 2.4 crores in two installments in the months of January and February of this year viz 2015. In view of the agreement the petitioners herein thus were the beneficiaries of reduction of a substantial amount from the claimed amount. This order dated 13.11.2014 passed by the Arbitrator reads as under:-

"ORDER

13.11.2014, 2.15 PM

Mr. Satish Jadon, Company Secretary, Appeared on behalf of Claimant.

Mr. Amit Bikram Das appeared on behalf of all Respondents.

Today both parties discussed a settlement.

The settlement figure arrived at between both parties is Rs. 2.40 Crores.

Payment Schedule will be as follows:-

First Installment of the Settled Figure amounting to Rs. 1.20 Crores shall be paid on or before 01.01.2015.

Second & Final installment of the Settled Figure amounting to Rs. 1.20 Crores shall be paid on or before 15.02.2015.

If Respondents fail to adhere to the Payment Schedule, the original claim shall stand allowed.

Both the parties are directed to pay the requisite arbitration fees on the next date of hearing.

The Consent Award will be passed on the next date of hearing 28.11.2014 at 11.00 A.M. The venue shall remain the same."

6. It is not disputed that representative of the respondent herein and the petitioners" advocate duly signed this order and consequently this order is an agreement in writing signed between the parties satisfying the requirements of Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC).

7. Pursuant to the order dated 13.11.2014, the arbitrator fixed the date of 28.11.2014 as a date for passing of the consent Award and also for payment of his fees. On 28.11.2014, the matter was reserved and thereafter the consent Award/the impugned Award dated 1.12.2014 was passed by the Arbitrator, and which is challenged in these proceedings.

8. The contention of the petitioners is that the consent order passed on 13.11.2014 reproduced above, was only a talk and a proposal for settlement and the talks/settlement did not fructify into an agreement/settlement. It is argued that petitioners after the order was passed by the Arbitrator on 13.11.2014 wrote to the arbitrator an email dated 28.11.2014 contending that there was only a proposal as recorded in the order of the Arbitrator dated 13.11.2014 and that there was no final agreement between the parties, and hence the order dated 13.11.2014 should not be taken as a consent order and it should only be taken as a proposal.

9. Before this Court, counsel for the petitioners has very vehemently argued relying upon the email dated 28.11.2014 that the petitioners' consent has not been obtained to the order dated 13.11.2014 and nor is the order dated 13.11.2014 an agreement inasmuch as the same was only a proposal, and so clearly stated by the petitioners in the email dated 28.11.2014.

10. I am unable to agree with the arguments urged on behalf of the petitioners, inasmuch as, there is no doubt whatsoever as to the language of the order passed by the Arbitrator on 13.11.2014 and which language clearly shows that there is no proposal but a final agreement between the parties. It is also not in issue that this order of the Arbitrator dated 13.11.2014 was signed by both the parties. And, as already stated above, petitioners got a substantial reduction in the total amount payable whereby the claim amount of Rs. 3.72 crores alongwith future interest was got settled only at a sum of Rs. 2.4 crores i.e the claim amount was reduced by over Rs. 1.4 crores. Obviously, petitioners, after the settlement, have turned dishonest and are wanting to wriggle out of the settlement as recorded in the order dated 13.11.2014. Once there is an agreement and settlement, merely because one of the party wants to back out of the same by stating that the settlement was not a settlement but only a proposal, the same cannot be allowed to be done, inasmuch as, a settlement is a contract and a contract cannot be unilaterally avoided. Any endeavor to unilaterally avoid the settlement does not mean that there is no settlement but that only means that one of the parties wants to breach the agreement. Therefore, endeavor of the petitioners in seeking to back out of its agreement and refusing to pay the amount to the respondent is impermissible in law.

11. At this stage, I may refer to Section 96(3) of the CPC and which reads as under:-

"96. Appeal from original decree."(1) xxx

(2) xxx xxx xxx

(3) No appeal shall lie from a decree passed by the Court with the consent of parties."

12. As per this provision, no appeal lies against a judgment which is a consent judgment and therefore on similar principles once there is a consent Award, objections cannot be filed against such an Award. The rationale of disallowing a party to challenge a consent order is that a challenge is only to an order which is contested and against which a party would have grievance, and to a consent order or an Award there cannot be any grievance because the same is passed as per the consent of the parties. Hence, the objections filed under Section 34 of the Act are clearly misconceived.

13. I may note that the provision of Section 30 of the Act envisages and permits settlement during the arbitration proceedings.

14. In view of the above, the petition is dismissed. No costs.