

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : May 11th, 2009

Pronounced on : May 18th, 2009

+ **FAO(OS) 210/2005**

M/s Goyal MG Gases Ltd. Appellant
Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. Vipul Gupta, Advocate

versus

M/s Double Dot Finance Ltd. Respondents
Through : Mr. Bishwajit Dubey, Advocate

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

% **JUDGMENT**

MUKUL MUDGAL, J.

1. This appeal has been filed challenging the judgment dated 3rd February, 2005 of the learned Single Judge passed in OMP No.76/2003, which OMP was

a petition under Sections 34 and 16 of the Arbitration and Conciliation Act, 1996. By the impugned judgment the learned Single Judge has allowed the objections of the respondent-objector and has set aside the Award dated 29th November, 2002 of the Arbitrator Shri Yogeshwar Prasad who was a senior counsel of the Supreme Court.

2. The appellant filed before the Arbitrator, being its appointee, a claim seeking balance dues claimed to be payable to it on an Inter Corporate Deposit (hereinafter referred to as “ICD”) of Rs.1 crore given by the appellant to the respondent under the ICD Agreement dated 27th March, 1998. The appellant had recovered an amount of Rs. 1,15,00,000/- (less TDS) as full and final settlement under a duly signed receipt dated 1st February, 1999 which receipt specifically mentioned that the amount received by the appellant was in full and final settlement of all its dues. The aforesaid amount of Rs.1,15,00,000/- was received by the appellant during the pendency of proceedings before the Division Bench of the Madras High Court in OSA 5/1999. The original proceedings which were filed by the appellant before the learned Single Judge sought the winding up of the respondent herein on account of its failure to pay the ICD amount. The said winding up petition was dismissed by the learned Single Judge of the said High Court. Hence the appeal before the Division Bench of the Madras High Court. After receiving an amount in settlement of Rs.1,15,00,000/-, the appellant, besides signing the receipt dated 1st February,

1999, also unconditionally withdrew its appeal pending before the Division Bench of the Madras High Court. It is only thereafter that the appellant came up with the case that the receipt of 1st February, 1999 was signed by it under duress and coercion and therefore it invoked the Arbitration Clause in the ICD Agreement dated 27th March, 1998. The appellant appointed as Arbitrator, its nominee, and which the appellant under the Arbitration Clause was empowered to do unilaterally. The Arbitrator was therefore the sole appointee/nominee of the appellant.

3. The learned Single Judge by the impugned judgment has held that there was no coercion or duress exercised against the appellant when the receipt dt 1.2.99 was signed receiving the amount of Rs.1,15,00,000/-. The learned Single Judge in the impugned judgment has held as under :

“Coming to the question as to what is “coercion or “duress” in commercial contracts, we may refer to the Privy Council case “Pao On and others Vs. Lau Yiu and Another” reported in 1979 (3) of England Reporter Page-65. Economic duress in commercial context was dealt with by their Lordships and it was held that in contractual relations, a mere financial pressure is not enough. It was also held that the question as to whether at the time the person making a contract allegedly under coercion had or not any alternative course open to him which could be an adequate legal remedy and whether after entering into the contract, he took steps or not to avoid it are matters which are relevant for determining as to whether he acted voluntarily or not. It was also held that the compulsion has to be of a nature which deprives a party of his freedom of exercising free will leaving no alternative course open to him. Therefore, the ‘coercion’ or ‘duress’ required for vitiating ‘free consent’ has to be of the category under which the person under ‘duress’ is left with no other option but to give consent and is unable to take an independent decision, which is in his interest. Bargaining and

thereafter accepting an offer by give and take to solve one's financial difficulties cannot be treated as 'coercion' or 'duress' for the reason that in trade and commerce every day such situations arise and decisions are taken by parties some of which they might not have taken but for their immediate financial requirements and economic emergencies."

"The legal position that emerges, therefore, is that the Arbitrator has jurisdiction to adjudicate a dispute in regard to the existence of 'full and final settlement'. In case the plea of 'full and final settlement' between the parties is accepted by the Arbitrator, no Award can be passed in favour of a claimant but in case this plea is rejected, the Arbitrator would be well within his rights to pass an Award in respect of the claims filed before him. The Arbitrator can go into the question as to whether the 'accord and satisfaction' recorded between the parties was voluntary or not inasmuch as 'free consent' remains the foundation of all agreements including the agreement in regard to the settlement of disputes between the parties. However, the plea of coercion, undue influence or duress raised by a party to challenge the 'accord and satisfaction' cannot be accepted lightly merely upon word of mouth. The facts and circumstances, material on record and conduct of the parties at the time of signing the settlement agreement and soon thereafter have to be looked into. It need not be stated that the burden to establish this plea remains on the party which raises it."

"If such pleas are sustained, the sanctity and purpose of 'amicable settlement' between the parties would stand totally eroded. Amicable resolution of disputes and negotiated settlements is 'public policy of India'. Section 89 of the Code of Civil Procedure, Arbitration and Conciliation Act, 1996 as well as Legal Services Authorities Act, 1995 call upon the Courts to encourage settlement of legal disputes through negotiations between the parties. If amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements and making payments thereunder as a shrewd party after entering into a negotiated settlement, may pocket the amount received under it and thereafter challenge the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment thereunder. This tendency has to be checked and such litigants discouraged by the Courts. It would be in consonance with public policy of India. The Arbitrator, therefore, had acted against public policy of India by accepting the plea as raised by the respondent No.1 and thereafter, passing an Award. The view taken by the Arbitrator was absolutely capricious, unfair and unreasonable and as

such, the impugned Award dated 29.11.2002 passed by him is liable to be set aside.”

4. We find that the learned Single Judge was perfectly justified in allowing the objections. The learned Single Judge has taken note of the following points to hold that there is no coercion or duress; (i) the receipt dated 1st February, 1999 clearly says that the amount received thereunder was in full and final satisfaction of all the claims of the appellant. (ii) On 11th February, 1999 the appellant withdrew its appeal unconditionally after having signed the receipt dated 1st February, 1999. (iii) The appellant had in the meanwhile encashed the pay order of Rs.1,13,95,000/- (that is Rs.1,15,00,000/- minus the TDS).

5. In addition to the above reasoning of the learned Single Judge which we fully affirm and reiterate, we find that at no point of time after 1st February, 1999 of having signed the receipt till as many as 10 days later on 11.2.1999, when the appeal was withdrawn, any notice or any communication whatsoever was sent by the appellant to the respondent that the receipt dated 1st February, 1999 has been got signed by it by the respondent under duress or coercion.

6. Thus there is no existence of ingredients as required by Section 15 of the Contract Act, 1872 in the facts of the present case to hold the existence of coercion. In our view on 27th January, 1999 the Division Bench of the Madras

High Court had recorded an order, the relevant portion of which order records as follows :-

“....both the parties have filed a memo, wherein the respondent has undertaken to pay a sum of Rs.1,15,00,000/- to the appellant on or before 2nd February, 1999 subject to the right of the appellant to work out his remedy for the balance in accordance with law. The memo is placed on record and the interim order dated 25th Jan, 1999 stands vacated. W.M.P.No.1101 of 1999 is disposed of in terms of the memo. Call the appeal on 5th Feb. 1999 AND THIS COURT DOTH FURTHER ORDER THAT THIS ORDER ON BEING PRODUCED BE FUNCTIONALLY OBSERVED AND CARRIED INTO EXECUTION BY ALL CONCERNED.”

7. The following unconditional receipt was only thereafter issued by the appellant on 1st February, 1999 :

“Accordingly on receipt of your pay order for Rs.11395000/- and subject to realization to your payment, the same would have been treated as having received as full and final settlement of your liability towards our inter corporate deposit.”

8. On 11th February, 1999 the following order was passed by the Division Bench :

“Counsel for the appellant submits that the matter has been settled out of Court and the Original Side Appeal is being withdrawn.

2. Original Side Appeal is dismissed as withdrawn. No costs. Connected Civil Miscellaneous Petition also are dismissed.”

Thus at least before the Division Bench on 11th February, 1999 the appellant could have complained about coercion but did not do so.

9. Therefore the invocation of the arbitration clause contained in the ICD Agreement dated 27th March, 1998 after having received the entire amount in full and final settlement was clearly an abuse of process of law by the appellant more so because the Arbitrator was to be the nominee of the appellant and was not to be a person to be jointly appointed by the both the parties. As rightly held by the learned Single Judge if such pleas as urged by the appellant are allowed to be taken up, it will be a grave travesty of justice and no settlement would be sacrosanct.

10. The learned counsel for the appellant has strongly relied upon question No.11 which was put before the Arbitrator to the witness of the respondent and which reads as under :

“Question No.11 : Is it correct that you have refused to deliver the Draft and the Cheque without the delivery of the letter dated 1.2.1999 and receipt dated 1.2.1999?”

Answer: It is true that we needed a receipt at the time of handing over of the payment as the same would be required to be produced before the Court in Madras. We had not made a pre-condition for the letter.”

In our view there is nothing illegal or coercive about a debtor who is seeking to pay his creditor to ask for a receipt for the same against the delivery of the pay order which was to be made in full and final settlement of the dues. This question and answer cannot under any circumstance prove that the

appellant had received the amount under coercion or duress. Besides the above the appellant is not a widow or an illiterate workman who had been forced/duped into signing a receipt. The appellant is a corporation which is no stranger to litigation and thus was deemed to be fully aware of signing a full and final settlement without any reservation. The appellant knew fully well that the order of 27th January, 1999 of the Madras High Court granted the appellant a sum of Rs.1,15,00,000/- with a right to work out his remedy for the balance in accordance with law. Nevertheless in spite of knowing the above order it chose to give an unconditional receipt on 1st February, 1999.

11. We may also reproduce para 32 of the Arbitrator's Award which reads as follows :-

“The opposite party have cited some judgments-none of them apply to the facts of the case in hand, and are distinguishable.”

In our view the Arbitrator was not a layperson in law but was in fact a practising senior advocate of the Supreme Court well versed in law. The judgments relied upon by the respondent could not have been brushed aside with such a laconic statement. In our view the paragraph 32 was itself sufficient to throw considerable doubts about the approach adopted by the learned Arbitrator.

12. A reading of the Award of the Arbitrator also shows that the relevant points which were determinative of the issues as stated in para 4 above with regard to the receipt of Rs.1,15,00,000/- by the appellant in full and final settlement have been unnecessarily given a go by and only a lip service has been paid to the same by referring to the same without discussing as to how the same are not important or clinching. We are conscious of the position in law relied upon by the appellant by citing **M/s. Hindustan Tea Co. v. M/s. K.Sashikant & Co. and another, AIR 1987 SC 81** to the effect that no interference with the award is warranted on the ground that the Arbitrator arrived at a wrong conclusion or failed to appreciate the facts. **Municipal Corporation of Delhi v. M/s. Jagan Nath Ashok Kumar and another, AIR 1987 SC 2316** was also cited to urge that the reasonableness of the reasons for the award cannot be challenged. However, in the present case the Arbitrator has failed to follow the law laid down in **Nathani Steels Ltd. vs. Associated Constructions, 1995 Supp (3) SCC 324** to the effect that once there is a full and final settlement such a dispute does not remain an arbitrable dispute by merely observing that the cases cited are distinguishable without stating any reasons therefor. Thus this Court is sustaining the judgment of the single judge as we are satisfied that the dispute was finally settled and could not have been arbitrated upon. However in the facts of the present case we are also of the view that the findings of the Arbitrator are grossly unconscionable and do not

even deal with the legal position espoused by the respondent before the Arbitrator. The award is thus vitiated as no reasonable person could have arrived at the conclusion of coercion arrived at by the Arbitrator and the learned Single Judge was justified in allowing the objections preferred by the respondent.

13. Accordingly, the present appeal which is a gross abuse of process of law is dismissed with costs of Rs.50,000/-. The costs shall be paid within a period of four weeks from today, failing which the same shall carry interest at the rate of 9% per annum.

Ordered accordingly.

MUKUL MUDGAL,J

VALMIKI J. MEHTA, J

MAY 18th, 2009
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