

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 202 OF 2015

M/s.BJN Hotels Pvt. Ltd.

..... Petitioner

VERSUS

M/s.Evolution Hospitality Pvt. Ltd. & Anr.

..... Respondents

Mr.G.V.Bhagwat, i/b. Divekar & Bhagwat Co. for the Petitioner.

Mr.Devvrat Singh, a/w. Jithin Palakkal, i/b. Charvy Hatkangalekar for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 9th FEBRUARY, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 29th August, 2013 directing the petitioner to pay a sum of Rs. 5 crores with interest at the rate of 18% per annum from 1st July, 2011 till payment and/or realization and cost of Rs.1 lacs.

2. The parties had entered into various contracts for the execution of various works described in the settlement agreement.

3. Dispute arose between the parties. The petitioner had filed Arbitration Application No. 52 of 2010 and Arbitration Application No.53 of 2010 under section 11 of the Arbitration and Conciliation Act, 1996 in this court for appointment of arbitrator. The claim of the respondents was more than Rs.5,84,89,059/-.

4. On 6th July, 2010, the parties entered into a settlement agreement. Under the said settlement agreement, the petitioner agreed to pay to the respondents a sum of Rs.5 crore in full and final settlement on or before 31st March, 2011 in the manner prescribed under the said agreement. The petitioner however did not pay the said amount as agreed under the said settlement agreement. The dispute once again arose under the said settlement agreement.

5. The respondents filed an application under section 11 for appointment of the arbitrator. The matter was referred to Mr.Snehal Shah, counsel of this court.

6. The respondents filed statement of claim. The said claim was opposed by the petitioner on various grounds. The petitioner led oral evidence of two witnesses. The respondents did not examine any witness.

7. By an arbitral award dated 29th August, 2013, the learned arbitrator directed the petitioner to pay Rs.5 crores with interest at the rate of 18% per annum from 1st July, 2011 till payment and also arbitration cost of Rs.1 lakh.

8. The learned counsel appearing for the petitioner states that the said settlement agreement was signed by the petitioner due to compulsion and force and thus the said settlement agreement was not binding upon the petitioner. It is submitted by the learned counsel that though the petitioner had examined two witnesses who were present in the meeting in which said the settlement agreement was arrived at and the respondents did not examine any witness, the learned arbitrator however ignored this fact and rejected the evidence led by the petitioner and allowed the claims made by the respondents.

9. The learned counsel for the respondents on the other hand invited my attention to the fact that even before signing the settlement agreement, the respondents had already raised a demand for its legitimate dues against the petitioner. The respondents had already filed application under section 11 of the Arbitration and Conciliation Act, 1996 before this court. The petitioner never made any such allegation that the settlement agreement was signed by the petitioner under compulsion or force of any nature whatsoever. Even when the fresh application under section 11 was filed by the respondents, the petitioner never raised such issue. It is submitted that the allegations of compulsion and force made by the petitioner were made for the first time by the petitioner before the arbitral tribunal on 30th June, 2012 though the settlement agreement was entered into as far back as on 6th July, 2010.

10. It is submitted by the learned counsel that the learned arbitrator has considered the documentary as well as oral evidence lead by the petitioner and has rendered a finding which is not perverse and thus no interference is warranted under section 34 of the Arbitration and Conciliation Act, 1996.

11. A perusal of the settlement agreement clearly indicates that there was an existing dispute between the parties. The respondents had raised a demand in respect of the dues payable to the respondents by the petitioner. The respondents had already filed two separate applications under section 11 of the Act before this court. The parties thereafter entered into a settlement agreement. There is a reference to the balance amount due and payable to the respondents by the petitioner at Rs.5,84,89,059/- in the said settlement agreement. Under the said settlement agreement, the respondents has agreed to receive and the petitioner has agreed to pay a sum Rs.5 crores in full and final settlement as against the balance

amount of Rs.5,84,89,059/-. The petitioner however did not make any such payment though agreed. The said settlement agreement was signed by the authorised signatories on behalf of both the parties. Both the parties to the settlement agreement were private limited companies and they have acted under legal advice.

12. A perusal of the record indicates that though the said settlement agreement was arrived at on 6th July, 2010, for almost two years no allegation had been made by the petitioner of any force or compulsion on the part of the respondents. The allegations of the compulsion or force is made only for first time in the written statement filed on 30th June, 2012. No such allegation was made even when the respondents had filed application under section 11 when the payment under the settlement agreement was not made by the petitioner.

13. A perusal of the impugned award indicates that the learned arbitrator has dealt with the documentary evidence as well as oral evidence in the impugned award. The arbitral tribunal has come to the conclusion that neither the signatory Mrs.Nisha P.Nichani nor Mr.Manoj Nichani who had signed the settlement agreement on behalf of the petitioner entered the witness box. The witness was examined by the petitioner admitted in his cross examination that the settlement agreement was signed by Mrs.Nisha P.Nichani, the chair-person and executive director of the petitioner. The arbitral tribunal has held that the entire attempt of the petitioner to show pressure revolved around the transaction which the petitioner had intended to enter into with one Avasero Equity Holdings Pvt. Ltd. The said company was negotiating to buy a controlling shareholding of the petitioner company. There was no evidence to suggest that the respondents in any manner interfered with or attempted to delay the said transaction between the

petitioner and the said Avasero. The learned arbitral tribunal has also considered that the settlement agreement was not only signed by one of the principal officer of the petitioner but was also shown to the legal department of the petitioner before affixing the signature.

14. The learned arbitrator in my view has rightly rejected the hear say evidence of the witnesses examined by the petitioner. In my view the learned arbitrator has rendered findings of fact which are not perverse and thus cannot be interfered with under section 34 of the Arbitration and Conciliation Act. A perusal of the record indicates that the allegations of compulsion or force made by the petitioner were afterthought. I am thus not inclined to accept the submission of the learned counsel for the petitioner that there was any compulsion or force on the petitioner to enter into the said settlement agreement.

15. Petition is devoid of merits and is accordingly dismissed with cost quantified at Rs.25,000/- which shall be paid by the petitioner to the respondents within two weeks from today.

[R.D. DHANUKA, J.]