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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.725 OF 2014

Risk Design & advertising Limited & Anr. ...Petitioners
V/s.
Y.T. Entertainement Ltd. & Anr. ...Respondents

Mr.Alokkumar M. Bagla with Ms.Sneha Jain for the Petitioners.
Mr.R.N. Narula with Mr.A. Dasgupta i/b Jhangiani Narula &
Associates for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 16TH FEBRUARY, 2015.

P.C. :-

1. By consent of the parties, the petition is heard finally at the admission stage.
2. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioners have impugned the arbitral award dated 7th December, 2013 allowing some of the claims made by the respondents.
3. On 26th December, 2007, petitioner no.1 and respondent no.1 entered into a finance agreement by which respondent no.1 agreed to give certain finance to petitioner no.1. On 8th May, 2008, an agreement was executed between respondent no.1 and One More Thought Entertainment Pvt. Ltd. (original respondent no.1 before the

learned arbitrator) to finance the said company. On 27th October, 2008, another agreement came to be entered into between the respondents and the said One More Thought Entertainment Pvt. Ltd.

4. On 7th April, 2009, the petitioners and the said One More Thought Entertainment Pvt. Ltd. executed an agreement with the respondents. Under the said agreement, the petitioners and the said company confirmed that they had received a total amount in the sum of Rs.7.250 crores from the respondents herein. The parties agreed and confirmed that they had mutually settled the matter in accordance with the terms and conditions recorded in the settlement. The petitioners and the said company agreed to pay a sum of Rs.5,01,00,000/- and the respondents agreed to accept the same in full and final settlement of their claims under the said three agreements in the mode and manner prescribed therein. It is not in dispute that petitioner no.1 and the said company have paid only Rs.11.00 lakhs, which was the first installment payable under the said settlement agreement to the respondents. The remaining cheques issued by the petitioners have been dishonoured.

5. Clauses 7 and 8 of the said agreement provided that the petitioners would not commit any default in making payment of any of the amounts agreed under the said settlement deed, otherwise the entire amounts payable under the agreements dated 26th December,

2007, 8th May, 2008 and 27th October, 2008 shall become forthwith due and payable. It was further agreed that if the petitioners and the said company fail to repay any of the installment as agreed, the amounts paid by the petitioners and the said company would stand forfeited and the letter of arrangement shall stand cancelled and terminated. It was provided that in addition to the said agreement, the respondents would be also entitled to enforce all the rights under the agreements dated 26th December, 2007, 8th May, 2008 and 27th October, 2008. Clause 13 of the agreement provides for arbitration in case of dispute. Petitioner no.2 executed a separate guarantee in favour of the respondents thereby unconditionally agreed and undertook to abide by the letter of arrangement and accepted all the terms and conditions contained therein acceptable to them and binding upon them.

6. In view of the defaults committed by the petitioners, the respondents invoked arbitration agreement. The respondents filed a petition in this Court under section 9 of the Arbitration & Conciliation Act, 1996. By an order dated 6th August, 2009, the learned single Judge of this Court granted various interim measures in favour of the respondents. The petitioners filed three separate appeals (Appeal Nos.398 of 2009, 399 of 2009 and 400 of 2009) arising out of the interim orders passed by the learned single Judge. By an order dated

17th December, 2009, the Division Bench of this Court disposed of all the three appeals, as withdrawn. It was recorded in the said order that there was no dispute that the dispute was arbitrable and that the learned arbitrator was duly appointed by the parties.

7. The parties led oral evidence before the learned arbitrator. By the impugned award, the learned arbitrator directed the petitioners herein to pay a sum of Rs.4,05,25,000/- with interest at 18% p.a. from 1st April, 2010 till 6th December, 2013 at the rate of 18% p.a. on the principal amount from 7th December, 20013 till payment.

8. Mr.Bagla, the learned counsel for the petitioners submits that the petitioners were not the parties to the three agreements. It is submitted that under the settlement agreement dated 7th April, 2009, since the petitioners had committed defaults by making payment, the rights and obligations of the respondents, if any, revived under the agreements dated 26th December, 2007, 8th May, 2008 and 27th October, 2008, including the arbitration agreement recorded, if any, therein. It is submitted that under clause 13 of the deed of settlement, it was clearly recorded that in case of any dispute and difference between the parties, the same would be in relation to and in respect of the agreements dated 26th December, 2007, 8th May, 2008 and 27th October, 2008. It is submitted that thus there was no independent arbitration agreement in the settlement deed dated 7th April, 2009.

Since the petitioners were not parties to all the three agreements, the learned arbitrator did not have jurisdiction to award any claim against the petitioners under the deed of settlement dated 7th April, 2009. The learned arbitrator has acted without jurisdiction.

9. It is submitted by the learned counsel that the learned arbitrator has not referred to the oral evidence led by the petitioners in the impugned award and has not given the credit of the entire amount paid by the petitioners.

10. Mr.Narula, the learned counsel for the respondents supported the findings rendered by the learned arbitrator and invited my attention to the order passed by the leaned single Judge on 6th August, 2009 in Arbitration Petition No.387 of 2009 and also the order passed by the Division Bench on 17th December, 2009 in Appeal Nos.398 of 2009, 399 of 2009 and 400 of 2009. It is submitted that the respondents had invoked arbitration agreement under all the four agreements. He submits that the learned single Judge of this Court in its order dated 6th August, 2009 has rendered a finding that the clause in the deed of settlement should prevail and/or under which the parties should settle the dispute before the arbitral tribunal. My attention is also invited to the findings rendered by the Division Bench of this Court in which it is recorded that there was no dispute that the dispute was arbitrable and that the arbitrator has been already

appointed.

11. In my view, since the findings rendered by the learned single Judge in the order dated 6th August, 2009, holding that the rights and obligations of the parties were governed by the deed of settlement, including the arbitration agreement, I cannot accept the submission of the learned counsel for the petitioners that there was no arbitration agreement between the parties and/or that the claims were not arbitrable. A perusal of the order passed by the Division Bench clearly indicates that the disputes were arbitrable and the arbitrator was accordingly appointed by the parties.

12. In view of these two orders passed by this Court, the submission of the petitioners that there was no arbitration agreement, has no merits. The learned arbitrator in my view has rightly rendered a finding that the parties were governed by the deed of settlement which contained the arbitration agreement.

13. Mr.Bagla, the learned counsel for the petitioners could not dispute that the petitioners and the said company were the parties to the said settlement deed and the petitioners had not disputed the contents of the said document before the learned arbitrator. In my view since the petitioners themselves had admitted the liability in the said deed of settlement in the sum of Rs.5,01,00,000/-, the petitioners could not have disputed the said liability. It is not in dispute that the

respondents paid a sum of Rs.11.00 lakhs under the said settlement deed.

14. In my view the learned arbitrator has interpreted the terms of the agreement and considered the admissions of the petitioners recorded in the said deed of settlement and after giving credit of the amounts paid under these three agreements, has rightly directed the petitioners to pay a sum of Rs.4,05,25,000/-. The statement of the learned counsel for the petitioners that the learned arbitrator has not given credit of the sum of Rs.1.15 crores is disputed by the learned counsel for the respondents on the ground that the said amount was paid by the petitioners prior to entering into the deed of settlement and as a result thereof, the liability of the petitioners which was much more than Rs.5,01,00,000/- was scaled to Rs.5,01,00,000/-. In my view the submission of the learned counsel for the respondents deserves acceptance. Since the findings rendered by the learned arbitrator are not perverse and the learned arbitrator has considered the entire record, including the oral evidence, no interference is warranted under section 34 of the Arbitration & Conciliation Act, 1996. The petition is devoid of merits and is accordingly, dismissed.

No order as to costs.

(R.D. DHANUKA, J.)