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

ARBITRATION PETITION NO.696 OF 2012

M/s.Bengal Mills Stores Supply Co. & Ors. ...Petitioners
V/s.
New India Co-op. Bank Ltd. & Ors. ...Respondents

Mr.Sanjay Jain i/b Mr.Nitesh Bhutekar for the Petitioner.

Mr.Vatsal Shah i/b M.M.K. Law Associates for the Respondent .

CORAM : R.D. DHANUKA, J.
DATE : 25TH MARCH, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioners have impugned the arbitral award dated 3rd May, 2012 allowing some of the claims made by respondent No.1 bank. Some of the relevant facts for the purpose of deciding this petition are as under :

2. Respondent No.1 and respondent Nos.2 to 4 were the original respondents in arbitration proceedings, whereas respondent No.1 was the original claimant.

3. It is the case of respondent No.1 bank that the petitioners had applied for cash credit facility and letter of credit against security

of stocks, book debts and collateral security of mortgage of residential property on 5th July, 2004. Respondent No.1 bank sanctioned the said facility on 16th July, 2004. Dispute arose between the parties in the month of January, 2007. On 29th May, 2007, respondent No.1 bank recalled the loan amount in respect of the outstanding dues. In the month of June, 2007, respondent No.1 bank filed statement of claim *inter-alia* for a sum of Rs.1,06,49,883/- with interest. Respondent No.1 bank thereafter issued a notice under Securitization Act against the petitioners. Those proceedings are separately pending. On 30th August, 2007, the petitioners filed their written statement in arbitration proceedings. It is the case of the petitioners that in the month of September / October, 2007, the petitioners offered one time settlement of Rs.80.00 lakhs to respondent No.1 bank, which was refused by the bank.

4. In the month of February, 2009, the petitioners filed an application in the arbitration proceedings *inter-alia* praying for direction against one of their debtors M/s.Dolphine Offshore to deposit their entire dues which were payable to the petitioners by the said parties to respondent No.1 bank. Pursuant to the said application, respondent No.1 bank called upon M/s.Dolphine Offshore to pay to the bank a sum of Rs.87.00 lakhs on behalf of the petitioners. It is the case of the petitioners that respondent No.1 bank

however, settled the said outstanding to the tune of Rs.62.00 lakhs as against Rs.87.00 lakhs. It is the case of the petitioners that during the period between 2008 and 2011, respondent No.1 bank received payments from the debtors of the petitioners to the extent of Rs.71,60,166/-. The petitioners also claim to have made further payment of Rs.4.00 lakhs to respondent No.1 bank.

5. In the month of November, 2011, the petitioners filed an application against respondent No.1 bank to accept Rs.30.00 lakhs and to settle the matter as and by way of one time settlement.

6. The parties led oral evidence before the learned arbitrator. On 3rd May, 2012, the learned arbitrator rendered an award directing the petitioners and respondent Nos.2 to 4 to pay a sum of Rs.1,06,49,883/-.

7. During the pendency of this petition, respondent Nos.2 to 4 who were sought to be impleaded as the petitioners in the arbitration proceedings declined to pursue the petition as the petitioners. This Court thus permitted the amendment to arbitration petition and transposed those petitioners as respondent Nos.2 to 4.

8. Mr.Jain, learned counsel for the petitioners invited my attention to the impugned award as also the record in the present proceedings. He submits that though the learned arbitrator has referred to and summarized some of the submissions in the

impugned award, has not dealt with all such submissions in the impugned award.

9. Learned counsel submits that though no power of attorney was given by the petitioners to the said M/s.Dolphine Offshore but the power of attorney which was given to respondent No.1 bank, instead collected the entire amount due and payable by the third party to the petitioner, respondent No.1 recovered only part of the amount in full and final settlement.

10. Learned counsel for the petitioner submits that though respondent No.1 has received substantial amount from the petitioners and the said third party admittedly, respondent No.1 bank did not give any credit in respect of the said amounts. Even the learned arbitrator did not consider the payment received from the petitioners and their creditors in the impugned award.

11. Mr.Shah, learned counsel for respondent No.1 bank on the other hand submits that whatever amount the bank has received from the petitioners and their creditors, if such credit is not given by the bank, the bank is ready and willing to give such credit to the petitioners. He submits that thus this issue can be considered at the stage of execution of the award.

12. Learned counsel submits that though the petitioners have raised various issues and the learned arbitrator has not specifically

dealt with those issues as canvassed by Mr.Jain, learned counsel for the petitioners, the same will not have any bearing on the merits of the matter.

13. Learned counsel also invited my attention to paragraph 34 of the written statement filed before the learned arbitrator and submits that the petitioners did not dispute the loan taken by them but disputed only interest and capitalization of penal interest. He submits that respondent No.1 bank had properly debited to the account of the petitioners rate of interest in accordance with the loan agreement and as per the RBI guidelines.

14. A perusal of the impugned award indicates that the learned arbitrator has referred to various submissions advanced by the petitioners and raised in the written statement at pages 4 and 5 of the impugned award. A perusal of the award however, indicates that out of the several issues raised by the petitioners, the learned arbitrator has only dealt with two of the issues and that also without rendering sufficient reasons. The learned arbitrator, in my view, has wrongly construed the proposal made by learned counsel for the petitioners for paying the amount of Rs.26.00 lakhs in full and final settlement if time was granted of six months. The learned arbitrator has also referred to the RBI directives in the impugned award, which was not produced by either party.

15. Learned counsel for respondent No.1 bank has fairly admitted that certain amounts received by respondent No.1 bank from the petitioners, credit in respect thereof has not been given by the learned arbitrator in the impugned award.

16. Insofar as the submission of learned counsel for respondent No.1 bank that whatever amounts are paid by the petitioners and credit in respect of which is not given by the learned arbitrator in the impugned award from the gross amount claimed by respondent No.1 bank is concerned, the same can be considered by the Execution Court is concerned, I am afraid I cannot accept such submission. The learned arbitrator has directed the petitioners to pay a sum of Rs.1,06,49,883/- with further interest thereon which does not include the amount paid by the petitioners to respondent No.1 bank.

17. In my view, the learned arbitrator was bound to consider the submissions once advanced by the parties in the impugned award. The impugned award is thus not in accordance with the submissions made by the parties before the learned arbitrator. I am not inclined to accept the submissions of learned counsel for respondent No.1 bank that if the Court comes to the conclusion that certain submissions are not considered by the learned arbitrator, the matter can be referred to the learned arbitrator under section 34(4) of

the Arbitration & Conciliation Act, 1996 for the purpose of eliminating the ground of challenge under section 34 of the said Act in the facts of this case.

18. In my view, the award as it stands, it will not be an executable award. The award is in violation of principles of natural justice and thus deserves to be set aside. In my view, the petitioners had disputed the liability.

19. I therefore, pass the following order :-

- a). The impugned award dated 3rd May, 2012 is set aside.
- b). The arbitration petition is made absolute in aforesaid terms.
- c). There shall be no order as to costs.

(R.D. DHANUKA, J.)