

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 655 OF 2014

M/s.Goyal Industries & Anr.

..... Petitioners

VERSUS

**M/s.Tata Capital Financial Services Ltd.
(formerly known as Tata Capital Ltd.)**

..... Respondents

Mr.Sandeep Kumar, i/b. Ms.Rohini Amin & Mr.Nishan Sangle for the Petitioners.

Mr.Premalal Krishnan, a/w. Mr.Sankalp Anantwar, i/b. India Law for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 28th APRIL, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioners have impugned the arbitral award dated 20th August, 2013 passed by the learned arbitrator directing the petitioners to pay a sum of Rs.33,89,673/- with interest at the rate of 13.62% per annum till payment and/or realization and also directing the petitioners to pay a sum of Rs.30,000/- as arbitration fees and Rs.40,000/- towards cost of arbitration. The learned arbitrator has also granted declaration in terms of prayer (a) of the statement of claim. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioners are the original respondents whereas the respondents were the original claimants in the arbitral proceedings.

3. The respondents had granted a loan to the petitioners. It is the case of the

petitioners that the petitioner no.1 had purchased machines/assets in the name of the petitioner no.1 from L & T Komastu Ltd. under its invoice dated 14th June, 2008 worth Rs.40,35,699/-. With other miscellaneous taxes, cost of the said machines was Rs.47,10,000/-. The petitioner no.1 had paid a sum Rs.8,09,650/- to the supplier and the balance amount was to be processed as and by way of loan in favour of petitioner no.1 by the respondents. It is the case of the petitioners that petitioner no.1 had regularly paid installments to the respondents and paid Rs.12,16,000/-. However due to bad financial market position during the relevant period, the petitioner no.1 had skipped to pay certain installments. The respondents thereafter repossessed the said machine which was returned by the respondents to the petitioners pursuant to the directions issued by Kulgaon Police Station on the petitioner no.1's executing bond of Rs.35,00,000/-.

4. Learned counsel appearing for the petitioners submits that the copy of the award was not served upon the petitioners by the learned arbitrator which shows misconduct on the part of the learned arbitrator. He submits that the officers who had filed statement of claim before the learned arbitrator on behalf of respondent were not authorized and thus no award can be rendered by the learned arbitrator based on such statement of claim. It is submitted by the learned counsel that the respondents had unilaterally changed the arbitrator without notice to the petitioners. He submits that during the pendency of the arbitration proceedings, the respondents had issued fresh demand notice to the petitioners and thus on that ground itself, the learned arbitrator could not have proceeded with the arbitration proceedings already initiated prior thereto.

5. Learned counsel appearing for the respondents on the other hand submits that two persons were authorized by the respondent company to sign and verify the

pleadings filed by the respondents and appropriate documents including the copy of the board resolution and the power of attorney were submitted before the learned arbitrator. Learned arbitrator has considered those documents.

6. Insofar as objection about the appointment of the second arbitrator raised by the petitioners by correspondence is concerned, it is submitted by the learned counsel that the petitioners had filed an application under section 16 before the learned arbitrator raising issue of jurisdiction or about his appointment which is rejected by the learned arbitrator by a separate order which has not been impugned by the petitioners. The petitioners thus cannot be allowed to raise this issue before this court under section 34.

7. Learned counsel invited my attention to the averments made by the petitioners in paragraphs 4(a) and 4(d) and would submit that it was the case of the petitioners themselves that the petitioners had paid only the amount of Rs.12,16,000/- as against the claim amount of Rs.47,10,000/-. The petitioners have thus admittedly committed default from 2009 onwards.

8. Insofar as issue of fresh notice issued by the respondents is concerned, it was the case of the respondents that the said notice was issued inadvertently and the same has been subsequently withdrawn and thus the existing arbitral proceedings between the parties were not affected. He submits that the learned arbitrator has considered the pleadings and documents and has rendered a findings of fact which are not perverse and thus no interference is permissible under section 34.

9. Insofar as first submission of the learned counsel for the petitioners that

copy of the award was not served upon the petitioners by the learned arbitrator and thus he has committed misconduct is concerned, the petitioners have impugned the said arbitral award which was rendered by the learned arbitrator. I do not find thus any substance in this submission of the learned counsel for the petitioners.

10. Insofar as submission of the learned counsel for the petitioners that the respondents had committed theft in the office of the petitioners and had removed the machines is concerned, it is not in dispute that pursuant to the directions issued by the concerned police station, the respondents have already returned the said machines to the petitioners. The learned arbitrator has dealt with this issue in paragraph (20) of the impugned award and has rejected this contention by rendering a finding of fact.

11. Insofar as submission of the learned counsel that the respondents had changed the arbitrator without any notice to the petitioners is concerned, a perusal of the impugned award indicates that the learned arbitrator has dealt with this issue in paragraph (22) of the impugned award. The learned arbitrator has referred to clause 23 of the agreement entered into between the parties which empowers the respondents exclusively to appoint an arbitrator. The learned arbitrator has noticed that the erstwhile arbitrator could not conduct any hearing for a period of 23 months and thus his mandate was terminated and in place of the said erstwhile arbitrator, the learned arbitrator who has rendered this award was appointed.

12. The petitioners had made an application in the month of October, 2012 under sections 12 to 16 of the Arbitration Act before the learned arbitrator raising various issues. A perusal of the compilation filed in this proceedings clearly indicates that the learned arbitrator has rejected the said application by a separate

order passed on 15th October, 2012 and has rendered various reasons for rejecting the said application. It is not in dispute that the petitioners have not impugned the said order passed by the learned arbitrator in the present proceedings. Be that as it may, a copy of the said order clearly indicates that the learned arbitrator has considered clause 23 of the agreement and has rendered a finding that the petitioners had submitted to the jurisdiction of the arbitration to be appointed by the respondents herein under clause 23 of the agreement. The learned arbitrator also gave detailed reasons about the other objections raised by the petitioners under sections 12 to 15 having found no substance therein. In my view no infirmity with the said order passed by the arbitrator can be found.

13. Insofar as issue about authority of the officer of the respondents in filing statement of claim and other pleadings is concerned, a perusal of the award indicates that in paragraph (23) of the impugned award, the learned arbitrator has considered a power of attorney dated 5th April, 2012 and the resolution dated 15th March, 2012 passed by the respondents authorising Mr.Kamlesh Parikh, Head Legal and authorising Ms.Kadambari Krishna Kishore to sign, initiate, file legal proceedings. In my view the learned arbitrator has rightly rejected this contention of the petitioners after perusing the resolution as well as power of attorney executed in favour of the officers who had signed the pleadings and representing the respondents company.

14. A perusal of the record clearly indicates that the petitioners themselves have admitted that they had committed default since 2009. It was the case of the petitioners themselves that the further installments could not be paid on account of bad financial market position during the relevant period. In my view, the learned arbitrator has considered all the documents and pleadings and has rendered

findings of fact which are not perverse and thus no interference with such findings of fact under section 34 of the Arbitration and Conciliation Act, 1996 is permissible. Petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]