Vidya Amin

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

ARBITRATION PETITION NO. 109 OF 2015

Jaishankar Mishra & Anr. ... Petitioners
Vs.
M/s. Seatek India ... Respondent

Mr. Rajendra R. Mishra, Advocate for the petitioners.
Mr. Sudhan Y. Amare, Advocate for the respondent.

CORAM: **R.D. DHANUKA, J.**
DATE : **6th May, 2015**

P.C.:

By this petition filed under section 34 of Arbitration and Conciliation Act, 1996, the petitioners have impugned the arbitral award dated 7th October, 2014 passed by the learned Arbitrator directing the petitioners to pay an amount of Rs.1,40,00,000/- with simple interest thereon @ 12% from 30th June, 2010 till payment.

2. The petitioners were the original respondents in the arbitral proceedings whereas the respondent herein was the original claimant.

3. The petitioners were engaged in the business of dredging and procured work order dated 4th May, 2010 from ABG Shipyard Ltd. for dredging work in Dahej, Gujarat. It is the case of the petitioners that on the basis of the said work order in favour of the petitioners issued by the said ABG Shipyard, the parties to this petition entered into a Memorandum

of Understanding dated 22nd June, 2010. Under the said agreement, the petitioners and respondent agreed to work on mutual profit sharing of 50% each. The respondent agreed to pay a sum of Rs.2,10,00,000/- to the petitioners. It is not in dispute that pursuant to the agreement, the respondent has already paid a sum of Rs.1,10,00,000/- to the petitioners. It is, however, the case of the respondent that a further sum of Rs. 30,00,000/- also had been paid to the petitioners through Mauritian company and thus the petitioners were paid a sum of Rs.1,40,00,000/- under the said Memorandum of Understanding.

4. It is the case of the respondent that the petitioners did not pay any profit to the respondents though the work under the said work order issued by the said ABG Shipyard Ltd. in favour of the petitioners had started. It is also the case of the respondent that the said ABG Shipyard Ltd. had issued letter of credit in favour of the petitioners, however, the petitioners did not issue any back to back letter of credit in favour of the respondent. The dispute arose between the parties and were referred to the learned Arbitrator. The respondent filed a statement of claim interalia praying for return of the said amount of Rs.1,40,00,000/- with interest before the learned Arbitrator. The above claim was resisted by the petitioners on various grounds. By the impugned award dated 7th October, 2014, the learned Arbitrator has directed the petitioners to return the said amount of

Rs.1,40,00,000/- with interest @ 12% p.a. from 30th June, 2014 till payment.

5. Mr. Mishra, learned counsel appearing for the petitioners submitted that the respondent did not invest the entire amount. He submitted that under the provisions of Memorandum of Understanding entered into between the parties, the respondent was entitled to share 50% of the profit only upon the completion of the said project. He submitted that the work under the said order issued to the petitioner by the said ABG Shipyard Ltd. was not complete and thus, there was no question of sharing any profit or returning of any amount to the respondent. The learned counsel for the petitioners submitted that admittedly, the sum of Rs.30,00,000/- was not paid by the respondent to the petitioners and thus, the order to that effect could not have been passed by the learned Arbitrator. He submitted that though the petitioners had applied for issuance of summons upon the said Mauritian Company, the learned Arbitrator did not issue any witness summons and accepted the case of the respondent that the said amount of Rs.30,00,000/- was paid by the respondent to the petitioners while awarding the entire claim of Rs.1,40,00,000/-.

6. Mr. Amare, learned counsel for the respondent supported the findings recorded by the learned Arbitrator in the award and submitted that

such findings being not perverse, this Court cannot interfere with such findings of facts.

7. It is not in dispute that the petitioners had obtained a work order from ABG Shipyard Ltd. for dredging work in Dahej, Gujarat. On the basis of the said work order in the hands of the petitioners, the parties had entered into Memorandum of Understanding. Under the said Memorandum of Understanding, the respondent had invested sum of Rs,1,40,00,000/-. So far as payment of Rs.1,10,00,000/- is concerned, the petitioners have not disputed the receipt of the said amount from the respondent under the said Memorandum of Understanding.

8. In so far as payment of Rs.30,00,000/- is concerned, the respondent has proved before the learned Arbitrator that the said amount was though routed through Mauritian Company, which was wholly owned subsidiary of Del Seatek India Pvt. Ltd., the said payment was made on behalf of the respondent to the petitioners. It is not in dispute that the petitioners have received the said advance amount of Rs.30,00,000/-. It is also not in dispute that the said Mauritian Company which was wholly owned subsidiary of Del Seatek India Pvt. Ltd., has not preferred any separate claim against the petitioners for the said amount.

9. A perusal of the award indicates that the learned Arbitrator has dealt with the entire pleadings, documents and oral evidence. The learned Arbitrator has rendered finding that ABG Shipyard Ltd. had opened the letter of credit in favour of petitioners and said fact was suppressed by the petitioners. It is also held that once the letter of credit was opened by the said ABG Shipyard Ltd., the petitioners were contractually liable to open back to back letter of credit with respondent as beneficiary. The witnesses examined by the petitioners also admitted before the learned Arbitrator that it had proceeded with the work of dredging without execution of back to back letter of credit.

10. The learned Arbitrator has rendered the finding of fact after considering the pleadings, documents and oral evidence which, in my view, is not perverse and thus this Court cannot interfere with such finding of fact under section 34 of Arbitration, 1996.

11. A perusal of the award indicates that the learned Arbitrator has interpreted the terms of Memorandum of Understanding dated 22nd June, 2010 which interpretation, in my view, is a possible interpretation and thus, cannot be substituted by another interpretation by this Court under section 34 of Arbitration Act, 1996.

12. In so far as submission of the learned counsel for the petitioners that learned Arbitrator ought to have issued witness summons to said Mauritian company is concerned, the petitioners ought to have filed appropriate proceedings under section 27 of the Arbitration Act, 1996 for issuance of witness summons.

13. Be that as it may be, since the petitioners have not disputed the receipt of Rs.30,00,000/- from the said Mauritian Company, which was wholly owned subsidiary of Del Seatek India Pvt. Ltd., in my view, no prejudice has been caused to the petitioners.

14. The petition is devoid of merits and is accordingly dismissed. No orders as to costs.

(R.D. DHANUKA, J.)