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

ARBITRATION PETITION NO. 1813 OF 2015

M/s. Creative Garments Pvt.Ltd. ...**Petitioner**
Versus
Mr. Harinarayan G. Bajaj ...**Respondent**

Mr. Rajeev Kumar, Senior Advocate, i/b Girish Kedia, for the Petitioner.

Ms. Sonal, a/w Kunal Dwarkadas, i/b Das Associates, for the Respondent.

CORAM : S.C. GUPTE, J.
DATE : 12th & 16th February 2016

P.C. :

1. This Petition impugns an Award passed by a Sole Arbitrator in the matter of disputes between the parties, under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***"). The disputes concern the Petitioner's failure to return certain shares pledged by the Respondent with the Petitioner under a loan Agreement.

2. The Petitioner and the Respondent entered into this loan

Agreement on 7th August 1995, under which a loan of Rs. 50,00,000/- was given by the Petitioner to the Respondent against pledge of 19,000 shares of Sesa Goa Limited (each of the face value of Rs. 10/-). Admittedly, the loan was fully repaid by the Respondent along with interest on 7th March 1996 and 24th June 1996. Against these payments, the Petitioner returned 10,000 shares in March 1996 and 5,000 shares in June 1996, respectively. The dispute pertains to 4000 shares, which were not returned, despite full repayment of the loan. Correspondence between the parties in 1998 indicates that the Petitioner had initially taken a position that these shares were withheld by it towards security for a loan of Rs. 1.00 Crore availed of by the Respondent's son, Shailesh Bajaj. There were criminal proceedings between the parties in the year 1998 in respect of failure of the Petitioner to return the shares. Though there was an offer by the Petitioner later to return the shares, that offer was on a condition that the Respondent should withdraw the criminal complaint. Since the criminal complaint was not withdrawn, the offer did not materialise. Subsequently, after payment by the Respondent's son, the Petitioner sent 4000 shares of Sesa Goa Limited along with duly executed Transfer Deed and also a cheque for the dividend received on the shares under the cover of its Advocate's letter dated 1st

September 2003 to the Respondent. Since the shares offered to be returned by the Petitioner were not the same shares which were pledged by the Respondent, the Respondent returned the shares together with the transfer form and dividend cheque under the cover of his Advocate's letter dated 9th September 2003. Subsequently, in 2006, the Arbitration Agreement was invoked by the Respondent and an application was made under Section 11 of the Act to the Court for appointment of an Arbitrator. In the reference filed before the Arbitrator, so appointed, the Respondent sought delivery of 1,60,000 shares of Sesa Goa Limited (of the face value of Rs. 1/- each), with duly signed Transfer Deeds and other accrued benefits till the date of delivery of shares to the Respondent. The Respondent also prayed for payment of accrued dividend, interest on the dividend together with other monetary claims. The Arbitrator, by his impugned Award, allowed the Respondent's claim for transfer and delivery of 1,60,000 shares, free from any encumbrance or Court or other proceedings, to the Respondent. The Arbitrator also directed payment of the dividends received by the Petitioner on these shares till the date of the statement of claim and an account of further dividends received subsequent to the filing of the statement of claim. The Arbitrator also directed delivery of bonus shares, if any, allotted in respect of the shares between the date of the statement of claim and the date of delivery. The Arbitrator also awarded interest on the dividend received at the rate of 18 per cent per annum upto 31st January 2009, aggregating to Rs. 5,42,470/-, and further interest on the dividend amount of Rs. 13,00,000/- at 18 per cent per annum from 1st February 2009 till the date of payment. This award is impugned by the Petitioner in the present Arbitration Petition.

3. Mr. Rajeev Kumar, learned Senior Counsel appearing for the Petitioner, assailed the impugned award before me on the following three grounds :-

(i) Firstly, it is submitted that the Respondent's claim for return of shares was barred by limitation under Article 70 of the Schedule to Limitation Act, 1963;

(ii) It is further submitted that the Petitioner did not have notice of certain hearings held before the learned Arbitrator;

(iii) Thirdly, it is submitted that the Arbitrator could not have, at any rate, awarded interest on the dividend, since there was an offer on the part of the Petitioner to refund the dividend received on the disputed shares.

4. The submission of learned Counsel on limitation is that under Article 70, the period of limitation for a Suit to recover movable property deposited or pawned from a depository or pawnee is three years and it begins from the date of refusal after demand; that there was a refusal on the part of the Petitioner on 27th March 1998, when it addressed the letter – **Exhibit RW8** to the respondent, and even thereafter, upto the date three years prior to invocation of the arbitration agreement by the Respondent. The crucial question before the Arbitrator was, whether there was refusal on the part of the Petitioner within the meaning of Article 70 at any time prior to three years of invocation of the arbitration agreement. The learned Arbitrator, after considering the material on record, came to a conclusion that though the Petitioner raised the plea of limitation, all along the material period and even during the arbitration proceedings it was ready and willing to return the shares with bonus, and pay dividend received by it on the shares with interest; that sometimes the offer was conditional (i.e. subject to criminal proceedings initiated by the Respondent against the Petitioner being

dropped), whilst on several occasions, it was unconditional; but that at no stage did the Petitioner refuse to return 4,000 shares of the Respondent or the bonus shares or the sub-divided shares with the dividends. Insofar as the letter dated 27th March 1998 (**Exhibit RW8**) is concerned, the learned Arbitrator was of the view that this letter merely stated that the shares were being treated as a security for the loan granted to the Respondent's son, but there was no refusal. In fact, subsequently, by notice dated 1st September 2003 (**Exhibit RW 24**), the Petitioner clearly and unconditionally stated that in view of payment made by the Respondent's son, it was forwarding 4,000 shares kept as a security for the claim against the son, along with transfer deeds and called upon the Respondent to accept the same. The learned Arbitrator even noted that as late as in the Written Statement filed by the Petitioner in the Arbitration reference and even in the course of arbitration proceedings, there was a reiteration of the offer to deliver 1,60,000 shares.

5. Whether or not there was a refusal to return shares within the meaning of Article 70 is a question of fact or at any rate, a mixed question of law and fact. The conclusion of the learned Arbitrator on this question is based cogent reasoning after

considering the material on record and applying the relevant provisions of law. The conclusion is supported by evidence on record; it takes into account all relevant material; and it does not consider any non germane material. Learned Counsel for the Petitioner relied on judgment of our Court in the case of ***State Bank of India & Ors. Vs. Dileep Balkrishna Nevatia & Ors.***[1], in support of his contention that "***without prejudice***" offer, though not necessarily containing the remark "***without prejudice***" does not amount to an offer to return the shares. This contention was particularly in the context of the Written Statement and offers made in the course of arbitration proceedings. These statements and offers were noted by the learned Arbitrator to buttress his conclusion that there never had been a refusal to return the shares. Essentially, the conclusion is based on there being no refusal three years prior to the invocation of the arbitration agreement. The offers for return of shares during this material period cannot be termed as "***without prejudice***" offers. They were either conditional or unconditional, as discussed by the learned Arbitrator in his award. At any rate, this is not only a possible view, but a plausible view. The impugned award cannot be said to be vitiated on account of that view. The facts of the other case cited by

1 2015 Law Suit (Bom) 2306.

learned Counsel for the Petitioner, namely, the case of ***Viswanadha Venkata Yegneswara Sastry Vs. Sait Dinesh Kumar Jain & Anr.***[2], are clearly distinguishable. There two Courts below had come to a concurrent finding that the silver articles pledged by the Plaintiff were refused to be returned by the Defendant more than three years prior to the filing of the Suit. In that case, the Defendant had actually sold the pledged articles and told so to the Plaintiff. This was treated as a refusal to return the articles. These facts have no bearing on the facts, in our case and the decision cannot support the Petitioner.

6. The other ground, that the Petitioner had no notice of some hearings, has no substance either. The learned Arbitrator's reference to the meeting of 22nd February 2015 where the hearing was said to held, when the arguments were actually heard on 13th March 2015, clearly appears to be a typographical error. Learned Counsel for the Petitioner submitted that no reply claiming this reference to be a typographical error is filed by the Respondent. That may be so. But merely because of that, it would be a far cry to suggest that the award is vitiated, because a hearing was actually held behind the back of the Petitioner on 22nd February 2015.

7. The conclusion of the learned Arbitrator on interest also

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cannot be faulted within the parameters of Section 34. Essentially, what the learned Arbitrator has held is that the Petitioner had unjustly derived the benefit of the dividend amount; and though the Petitioner did make an offer to return the dividend amount, it was subject to an untenable condition that the criminal proceedings be withdrawn by the Respondent. This is a perfectly reasonable and legitimate conclusion to draw. No fault can be found with it.

8. In the premises, there is no merit in the Petition and the same is dismissed.

9. No order as to costs.

[S.C. GUPTE, J.]