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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 78/2016 & IA Nos. 4203/2016 & 4205/2016**

CENTRAL COTTAGE INDUSTRIES
CORPORATION OF INDIA LTD.

..... Petitioner

Through: Mr Shaurya Sahay, Advocate.

versus

M TEX EXPORTS PVT LTD.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J

1. The Central Cottage Industries Corporation of India Ltd. (hereafter 'CCIC'), a Government of India undertaking, has filed the present petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter 'the Act') assailing the arbitral award dated 21.12.2015 (hereafter "the impugned award") passed by the Arbitrator with respect to the disputes between CCIC and M. Tex Exports (P) Ltd. (hereafter 'MTEPL').

2. CCIC is, *inter alia*, engaged in the business of dealing in Handicrafts and Handloom products under the brand name of Cottage Industries. MTEPL is a company incorporated under the Companies Act, 1956. MTEPL has also leased a showroom located in Gurgaon. CCIC entered into a franchise agreement dated 27.09.2003 (hereafter 'the agreement') whereby MTEPL was appointed as a franchisee of CCIC.

3. In terms of the agreement, MTEPL was to use the showroom exclusively for the products of CCIC. CCIC agreed to provide a credit period of 180 days and MTEPL undertook to deposit the sale proceeds of the products in the account of CCIC, within the credit period, in the manner as specified in the agreement.

4. MTEPL delayed making payments as required under the agreement and according to CCIC, MTEPL also breached the agreement by running a parallel showroom. CCIC invoked the bank guarantees furnished by MTEPL. In view of the disputes between the parties, MTEPL invoked the arbitration clause and raised certain claims against CCIC. In terms of the agreement, CCIC appointed Sh. Alakh Kumar, Advocate as the sole Arbitrator for adjudicating the disputes that had arisen between the parties.

5. MTEPL filed its statement of claim before the Arbitrator which was contested by CCIC. In addition, CCIC also filed its counter claims. After considering the evidence and hearing the parties, the Arbitrator awarded a sum of ₹55,15,000/- along with interest at the rate of 18% per annum from the date of the claim petition till the date of payment in favour of MTEPL.

6. CCIC had invoked two bank guarantees furnished by MTEPL; one in the sum of Rupees one crore and the other in the sum of Rupees fifty lakhs. The arbitral tribunal found that at the time of invoking the bank guarantee of Rupees One Crore, a sum of ₹45,59,441.65/- along with interest was payable to CCIC and CCIC after recovering the aforesaid amount had refunded the balance to MTEPL. MTEPL's objections as to the amount of interest charged was rejected. The Arbitrator also found that MTEPL had breached

the agreement and therefore rejected its claims. However, in so far as the second bank guarantee is concerned, the Arbitrator noticed that CCIC had invoked the same on account of alleged losses and damages suffered by CCIC. In regard to that bank guarantee, the Arbitrator held that CCIC had failed to prove the losses suffered by it and, accordingly, rejected the counter claims preferred by CCIC. The Arbitrator has directed refund of the sum of ₹50 lakhs recovered by CCIC by invocation of the bank guarantees along with interest at the rate of 18% p.a. CCIC had also forfeited the security amount of ₹5,15,000/- , which is also directed to be refunded along with interest to MTEPL.

7. CCIC is aggrieved from the impugned award in as much as its counter claims have been rejected. The learned counsel appearing for CCIC submitted that although the Arbitrator had held that MTEPL was in breach of the agreement it had not awarded CCIC's counter claims with respect to the losses suffered by CCIC. He stated that CCIC had produced irrefutable evidence that it had fixed sales targets of ₹410 lakhs which would result in a profit of ₹70 lakhs. He pointed out that an affidavit to the aforesaid effect was filed and the witness was not cross examined on the said statement. He submitted that in the given facts, the Arbitrator's rejection of the counter claims on the ground that CCIC had not proved the losses suffered, was wholly unsustainable and contrary to records.

8. I have heard the learned counsel for the petitioner at length.

9. Before proceeding to address the controversy, it would be necessary to refer to the counter claims preferred by CCIC which reads as under:-

"That it is further submitted that the Respondent is entitled to following claims from the claimant:

- I. Counter Claim No.1: Rs.20,00,000/- (Rupees Twenty Lakh only) i.e. the balance amount left over, after invoking the bank guarantee of Rs.50 Lakhs, out of Rs.70,00 Lakhs being the loss suffered by the Respondent due to parallel showroom run by the claimant in the name of 'Craft Traditions' selling handicrafts items because of which the sales were adversely affected and could not meet even the targets.
- II. Counter Claim No.2 : Rs. 50,00,000/- (Rupees Fifty Lakh only) being the damages for the loss of the goodwill due to parallel showroom run by the claimant in the name of 'Craft Traditions' selling handicrafts items in violation of the agreement.
- III. Counter Claim No.3. Rs. 20 lakh (Rupees Twenty Lakh only) towards legal expenses payable by the Respondent to the lawyers engaged by it on account of filing of false and frivolous case.
- IV. Counter Claim No.4. Rs. 25,00,000/- (Rupees Twenty Five Lakh only) being the loss of the goodwill on account of the shoddy service provided by the Claimant to the various Customers of the counter claimant due to which the reputation of the Respondent suffered heavily."

10. The only evidence relied upon by CCIC to establish that it had suffered losses is the affidavit filed on its behalf. The relevant extract of the said affidavit is as under:-

"I say that the claimant achieve the turnover of Rs.422.19 Lakhs in 2009-2010 and with net profit Rupees 69.07 lakhs whereas in the financial year 2010-2011, turnover target was fixed for Rupees 410 lakhs projecting a net profit Rs.70

lakh. The claimant miserably achieved meager sum of Rs.9.9 lakhs only for the said financial year. An account statement shows the loss @ 16.86% being the gross margin on the projected sales of Rs.410.00 Lakhs amounting to Rs.70.00 Lakhs."

11. It is apparent from the above that the loss as referred to by CCIC in the above quoted passage is a loss of profits of Rs.70 lakhs on account of failure on the part of MTEPL to achieve the given target. Admittedly, there is no evidence provided by CCIC as to its profit margins. The affidavit filed on behalf of CCIC only affirms that it had projected a profit of Rs.70 lakhs.

12. More importantly, although the affidavit filed on behalf of CCIC does states that it had suffered a loss on account of non-achievement of targets by MTEPL, it is seen that counter claims preferred by CCIC did not include any claim for loss of profit on account of failure on the part of MTEPL to meet the specified targets. On the contrary, the principal claim advanced by CCIC was that it had suffered losses on account of a parallel showroom being run by MTEPL. Indisputably, CCIC had not led any evidence in regard to the loss suffered on account of MTEPL running a parallel showroom. The affidavit relied upon by CCIC - the relevant extract of which has been reproduced above - does not pertain to the loss on account of running of a parallel show room.

13. In the aforesaid circumstances, the arbitrator concluded that the CCIC had failed to produce any evidence in support of its counter claims. The relevant extract of the impugned award reads as under:-

"After considering the entire record, evidence, documents

and the arguments, I have come to the conclusion that it is the Claimant who has committed the breach of the contract firstly by not paying the amount admittedly due and outstanding to the respondent and secondly by violating the terms of the agreement and in particular clause 5.4, 6.9, 6.10, 6.11, 7.1, 7.11, 7.17 etc. That is by running a parallel showroom in the name and style of M/s Craft Tradition against the terms and conditions of the agreement. Moreover, the Claimant was supposed to work in the interest of the Company and give results in terms of the various clauses of the agreement which would tantamount that the claimant was required/expected to achieve higher target(s) which the claimant admittedly failed to achieve."

14. It is well settled that the approach of the Courts while considering a petition for setting aside an award under Section 34 of the Act is one of non-interference. The arbitral award cannot be challenged except on the limited grounds as specified in Section 34(2) of the Act. In the present case, I am unable to accept that any of the grounds specified under the said section have been established.

15. The conclusions arrived at by the Arbitrator are neither perverse nor illegal. I find no infirmity with the aforesaid view. In any event, there is no reason to hold that the impugned award is in conflict with the public policy of India as is claimed by CCIC.

16. The petition is, accordingly, dismissed. Pending applications are also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 08, 2016

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