

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

ARBITRATION PETITION NO.161 OF 2017

Goejit Bnp Paribas financial Services Ltd. ... Petitioner.
V/s.
Sandeep Gurav ... Respondent.

**WITH
CHAMBER SUMMONS LODGING NO.448 OF 2017
IN
ARBITRATION PETITION NO.161 OF 2017**

Goejit Bnp Paribas financial Services Ltd. ... Petitioner.
V/s.
Sandeep Gurav ... Respondent.

Mr. Vaibhav Bajpai a/w Mr. Gaurav Jangle i/b I. V. Merchant
and Company, Advocates for the Petitioner.
Mr. Aliabbas Delhiwala a/w Mr. Gouresh C. Mogre, Advocates
for the Respondent.

**CORAM : M. S. SANKLECHA, J
DATE : 31st AUGUST, 2017**

P.C.:-

1. This Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') challenges the Arbitral Award dated 8th July 2016. By the impugned award dated 8th July 2016 the Petitioner's counter claim to the extent of Rs.15,80,889/- was dismissed. The Petition was admittedly filed on 15th November, 2016. Therefore, clearly beyond the

period of 3 months and further 30 days as provided under Section 34 (3) read with the proviso thereto of the Act. Thus, clearly beyond the period of limitation and therefore beyond the jurisdiction of this Court to entertain this Petition.

2. Mr. Bajpai, learned Counsel appearing for the Petitioner states that the Petitioner has taken out Chamber Summons in this Petition inter alia to bring on record the events subsequent to the Arbitral Award dated 8th July, 2016. The following events as set out in the Chamber Summons would establish that it has been filed within the period of limitation:

(a) Award dated 8th July, 2016 was received by the Petitioner on 13th July, 2016;

(b) On 8th August, 2016, the Petitioner filed an Application under Section 33(4) of the Act for the purposes of correcting the Award dated 8th July 2016. This was done after giving notice to the Respondent;

(c) On 26th August 2016, the Arbitral Tribunal rejected the Petitioner's Application dated 18th August, 2016 on the ground that same is in the nature of a review;

(d) This rejection was received by the Petitioner on 29th August, 2016.

Therefore, the relevant date computing the period of limitation would commence from 29th August, 2016. If it is so taken, the Petition has been filed on 15th November 2016 i.e. within three months period provided under Section 34 (3) of the Act.

3. It was agreed that we take into account the dates and events as set out in the Chamber Summons without carrying out the amendments in the Petition and consider the issue of limitation only.

4. The primary contention of the Petitioner is that the period of limitation under Section 34(3) of the Act is to be computed from the date of the correction of the award or passing of the additional award under Section 33(1) or 33 (4) of the Act. In this case it is submitted that the date of receipt of rejection of the application under Section 33(4) of the Act, should be the date from which the period of limitation commences.

5. In this case, the communication dated 26th August 2016 of the Arbitral Tribunal rejects the application dated 18th August 2016 filed under Section 33(1) and (4) of the Act. It clearly records that the application dated 18th August 2016 is rejected as it is in the nature of review of the award dated 8th July 2016, which it has no power to do.

6. The application dated 8th August, 2016 seeking a correction and passing of an additional Award on merits reads as under:

“With great reverence and decorum, it is humbly submitted that the Arbitral Panel had considered the wrong document for computing the counter claim of this Respondent. It is evident from the Ledger Statement (page no.19) that there is a clear debit balance of Rs.15,58,198.84/- in NSE F&O Segment in the Appellants Account.

*Further, it is noteworthy that the product wise consolidated ledger with fund transfer entries has been issued to the Appellant on quarterly basis and the ledger clearly shows the net debit in NSE F&O segment. The Appellant had not raised any dispute on fund transfer entries and debit in F&O segment. Annexure 1 is the document wherein the Appellant had authorized the Respondent to maintain a running account for the Appellant and Annexure 2 is the document which entitles the Respondent to adjust the surplus amount available on any segment against the dues to Respondent on any other segment across all segments of the Exchanges. It is pertinent to note that the Appellant had read, understood and acknowledged the aforesaid documents. Furthermore, as per the Exchange rules and regulations r/w SEBI circular dated 03.12.2009 (MIRSD/SE/Cir-19/2009) (emphasis supplied as **Annexure 4**), the client shall bring any discrepancy/dispute arising from the statement of account preferably within 7 working days from the date of receipt thereof, which the Appellant has not done.*

In view of the above, it is humbly prayed that the Arbitral Panel may kindly consider the request of this Respondent to correct the Award and pass an additional

*award on merits, allowing the counter claim of this Respondent by upholding the original award of the Sole Arbitrator; if otherwise this Respondent will be put to irreparable loss/damage. Copy of the Arbitration Appeal Award is annexed herein as **Annexure 5**.*

The request under Section 33 of the Arbitration and Conciliation Act, 1996 is made within the limitation period of 30 days from the receipt of the arbitral award. Copy of this request is sent to the Appellant for their notice.

Kindly acknowledge the receipt and take into the record of Arbitration.”

From the above, it is very clear that the Application filed by the Petitioner was in the nature of the review of the Award dated 8th July 2016. It does not seek to correct any clerical or typo error nor does it seek an Arbitral Award for having omitted to consider in the award under Section 33(1) or 33(4) of the Act. Merely invoking Section 33 of the Act in the Review Application will not make it an application under Section 33 of the Act. Thus, the communication/order dated 26th August, 2016 of the Arbitral Tribunal rejects the Application dated 8th August, 2016 on the ground that the same is in the nature of the review.

7. Further Mr. Delhiwala, the learned Counsel appearing for the Respondent draws attention to the decision of the Apex Court in the State of Arunachal Pradesh V/s. Damani Construction Co. reported in 2007 (10) SCC 742. In the above

case when an award is passed the only remedy is to move an application under Section 34 of the Act within a period of three months under Section 34(3) of the Act which by virtue of the proviso thereto is extended by further period of 30 days. The period of limitation would run/commence from the date of the Award. In the above case the Petitioner therein wanted the period of limitation to commence from the date of order of the Review Application under Section 33 of the Act was rejected. The Apex Court negated the same and held that Section 33 of the Act does not contemplate a Review Petition. It does not extend the time to file the Petition under Section 34 of the Act. In this case also I find that the Application dated 8th August, 2016, is a Review Application which was rejected by order dated 26th August, 2016. This application for review under Section 33 of the Act cannot extend the period of limitation. It is completely outside jurisdiction.

8. As against the above, Mr. Bajpai, the learned Counsel appearing for the Petitioner placed reliance upon the decision of Apex Court in Union of India V/s. Tecco Trichy Engineers & Contractors reported in (2005) 4 Supreme Court Cases 239, in support of his contention that the period under Section 33 (4) of the Act, limitation would start from the date the party receives the Award passed by the Arbitral Tribunal. This is not disputed before me. In this case the award was received on 13th July 2016 and the Petition has filed on 15th November

2016. Thus, clearly beyond the period of limitation under Section 34(3) read with the proviso thereto of the Act. In the above facts, I have found that the Application dated 8th July 2016 was correctly held by the Arbitral Tribunal to be a Review Application and outside the scope of its jurisdiction. Thus this Application for Review being outside the provision of the Act and the rejection of such an Application is not within Section 33 of the Act.

9. Therefore, the issue is concluded in favour of the Respondent by the decision of the Apex Court in Damani Construction Co. (Supra). Accordingly, the Chamber Summons as well as Petition is dismissed.

(M. S. SANKLECHA, J.)