

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 91 OF 2017
WITH
NOTICE OF MOTION NO. 23 OF 2017
IN
COMMERCIAL ARBITRATION PETITION NO. 91 OF 2017

Yashwant Dairy Farm & Ors.	...Petitioners
Versus	
M/s.HDB Financial Services Ltd.	...Respondent

Mr. Atul Damle, Senior Advocate a/w Mr. Subhash Bane for
the Petitioners
Mr. Devendra Nawalkar i/b Ashish Agrawal for the
Respondent.

CORAM: M.S.SANKLECHA, J
DATED: 14th September, 2017

PC:-

1. This Petition under Section 34 of the Arbitration and Conciliation Act 1996 (the Act) challenges the Arbitral Award dated 7th June, 2016 passed by the sole Arbitrator. By the impugned award, the Petitioners have been directed to pay to the Respondent an amount of Rs.2,40,60,308/-together with

further interests on the aforesaid amount at 18 % per annum from the date of the Award till payment.

2. The grievance of the Petitioners is that the impugned Arbitral Award has been passed in breach of principles of natural justice. Thus hit by Section 34(2)(iii) of the Act.

3. An dispute arose between the parties in respect of loan granted to the Petitioner by the Respondent under an agreement dated 28th February, 2015 which inter alia provided for settling the same by Arbitration. Therefore, on 22nd March, 2016 the Respondent herein after having called upon the Petitioner to pay the disputed amount of Rs. 2.34 crores alongwith interest thereon invoked the Arbitration Clause in the loan agreement dated 28th February 2015. Thus, the dispute was referred to the Arbitral Tribunal consisting of sole Arbitrator, appointed by the Respondent.

4. Thereafter, on 11th April, 2016, the sole Arbitrator addressed a letter to the parties communicating his

acceptance/consent to act as an Arbitrator to adjudicate the dispute arising between them out of the loan agreement dated 28th February, 2015. The aforesaid letter also records that the statement of claim alongwith the documents in support had been submitted by the Respondent. The same was also enclosed alongwith the above communication dated 11th April 2016. The parties were informed that the hearing of the Arbitral dispute is fixed on 23rd April 2016.

5. On 23rd April 2016 as is evident from the Roznama annexed to the Petition, the Petitioner was duly represented by Petitioner No.3, who specifically took time to file his written statement on behalf of the Petitioner. The hearing was adjourned to 25th May 2016.

6. On 25th May 2016, none appeared on behalf of the Petitioner. Therefore, the hearing of the dispute was adjourned to 1st June 2016, to enable the Respondent to lead its evidence.

7. On 1st June, 2016 also the Petitioner chose to remain absent. The evidence of the Respondent was taken on record and the hearing was adjourned to 7th June, 2016 for final argument. On 7th June, 2016 also the Petitioner did not attend the hearing and the Arbitral Tribunal passed impugned award on 7th June, 2016.

8. The grievance of the Petitioner is that the manner in which the proceedings was conducted by the Arbitral Tribunal, did not provide enough opportunity to the Petitioners to present their version of the dispute arising out of the loan agreement dated 28th February, 2015. In support of it, its principal submission is one of breach of natural justice. It is pointed out that Arbitral Tribunal accepted to act as an Arbitrator on 11th April, 2016 and on the same day, sent notices to the parties, fixing the date of the hearing on 23rd April 2016. The aforesaid expedition betrays an undue hurry on the part of the Arbitrator to decide the dispute. This is further supported by the fact that no notice was specifically given to the Petitioner that the Arbitral dispute would be

decided ex-parte, in case the Petitioner fails to attend. Thus, the order is unsustainable and should be quashed and set aside.

9. I am unable to understand the grievance of the Petitioner that there has been breach of natural justice only because the Arbitrator acted as expeditiously in entering open the Reference and deciding the same after giving notice to the Petitioner. In fact, the date on which he gave his consent to act as an arbitrator, entitled him to commence the proceeding by issuing notices. There is no requirement in law to wait before issuing notices fixing the first hearing of the dispute on 23rd April, 2016. On that day the Petitioner did attend the hearing represented by the Petitioner No.3 in particular and sought time to file the written statement. In the presence of Petitioner No.3 the date of the next hearing of the Arbitral dispute was fixed on 25th May, 2016. This is evident from the signature of Petitioner No.3 on the Roznama. However, thereafter, the Petitioners chose to remain absent on 25th May, 2016 and even thereafter. There is nothing on record to

indicate that the Petitioners attempted to contact the Arbitrator to find out the next date of hearing and progress of the arbitration. Therefore, even if one assumes that on 25th May, 2016 the Petitioners could not attend the hearing on account of some difficulty, nothing prevented them from finding out the next date of hearing. The Petitioner clearly chose to ignore the Arbitration Proceeding. On such conduct of deliberate non participation in the Arbitral proceedings, it is not open to complain that there has been a breach of Principles of natural justice. Opportunity was available to the Petitioner to appear and put forth its case before Arbitral Tribunal which it chose not to do.

10. In the above view, the impugned order does not warrant any interference. Accordingly Petition dismissed.

11. Parties states that by order dated 21st March 2017, of this Court, the Petitioners were directed to deposit an amount of Rs.25,00,000/- in Court. The same was deposited by the Petitioners in this Court for ad-interim stay of the

enforcement of the impugned award, pending consideration of this Petition.

12. Now that the Petition is dismissed, the Respondents are entitled to make an application for withdrawal of the aforesaid amount of Rs.25,00,000/-to the Prothonotary and Senior Master of this Court.

13. In view of the dismissal of the Petition, the Notice of Motion also does not survive, hence, dismissed as infructuous.

(M.S.SANKLECHA, J.)