Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

CHAMBER SUMMONS NO. 29 OF 2016

IN

EXECUTION APPLICATION NO. 24 OF 2017

IN

ARBITRATION AWARD DATED 11TH JANUARY 2016

IPS Integrated Project Services LLC, formerly known as IPS-Integrated Project	…Applicant
Versus	
Balvant D Mehtalia	…Judgment Debtor
And	
IPS Mehtalia Pvt Ltd	...Respondent

Mr JP Sen, Senior Advocate, *with Chirag Mody, Vikrant Singh Negi, & Rishabh Jogani, i/b DSK Legal, for the Applicant.*
Mr Nikhil Sakhardande, *with Sonali Mathur & Tanvi Dattani, i/b AZB Partners, for the judgment debtor, Balvant Mehtalia.*

CORAM: G.S. PATEL, J
DATED: 17th February 2017

PC:-

1. The Chamber Summons is filed by the Decree Holder (“**IIPS**”), which seeks execution of an arbitration Award dated 11th

January 2016. Before the Arbitral Tribunal (Mr Justice SM Variava was the sole Arbitrator), IIPS was the 2nd Respondent. The judgment debtor, Balvant Mehtalia ("**Mehtalia**") was the claimant. The 1st respondent to the arbitration is and the present Respondent in this execution application, an Indian company ("**IPSMPL**").

2. The Award itself is an extraordinarily elaborate and detailed decision of nearly 400 pages. There were several rival claims before the sole Arbitrator. These related *inter alia* to Mehtalia's employment, the termination of his services, the terms of compensation, remuneration, and other monetary claims. The learned Sole Arbitrator framed and decided nine separate issues, including a claim in damages.

3. Paragraph 521 of the Award reads:

> "521. For reasons set out above an Award is passed in favour of the Claimant and against 1st Respondent Company as follow:
>
> (a) In a sum of Rs. 84,39,515/- towards salary for the months January 2011, February 2011 and 7 days of march 2011. the Claimant will now be entitled to encash the Bank Guarantee for Rs. 85 lakhs given by Respondents pursuant to Order of the Bombay High Court dated 18th February 2014 (Ex.R-164).
>
> (b) In a sum of Rs. 2,46,55,389/- towards Bonus for the Financial Years 2011-2012 and 2012-2013.
>
> (c) In a sum of Rs. 8,62,081/- towards additional Bonus

> An Award is also passed in favour of the Claimant and against 2nd Respondent.
>
> (a) In a sum of Rs. 10,50,45,484/- as damages for wrongful termination .
>
> (b) It is Awarded/directed that the 2nd Respondent shall purchase, immediately, the second tranche of 9% shares for the price of Rs.2,65,11,449/-. On receipt of this amounts the Claimant will hand over to the 2nd Respondent duly executed Share Transfer Forms and the original Share Certificates."

4. This is also followed by an Award in favour of IPSMPL against Mehtalia, with which I am not concerned today.

5. Mehtalia held 9% of IPSMPL's equity, some 900 shares. The Award required him to transfer these to IIPS (the 2nd respondent before the Arbitrator) for Rs. 2,65,11,449/-. In paragraph 524, the learned Sole Arbitrator disallowed interest on this amount. This amount of Rs. 2,65,11,449/- was the share transfer price that the learned Sole Arbitrator arrived at after making an adjustment against the contractual share transfer price of Rs. 6,80,00,000/-. The relevant finding in that regard set out at page 364 while considering the clause 3.4 of the Share Purchase Agreement:

> "... ... ... Whilst calculating the value of share of 1st Respondent Company these amounts were included in the value and paid to the Claimant. Thus if these were not recovered than the value of shares of 1st Respondent Company goes down to that extent. As Claimant has received payments on basis that these were included in the value, it was agreed that if these are not recovered then

> there would be deduction to that extant. Accordingly from the sum of Rs. 6,80,00,000/- requires to be reduced by the sum of Rs. 4,14,88,551/-. Thus after adjustment the 2nd Respondent has to pay to the Claimant a sum of Rs. 2,6,11,449/- towards the price of the 2nd tranche of shares. Whether Respondents are entitled to any further deduction is dealt with hereafter."

6. Today, IIPS seeks leave to deposit Rs. 2,65,11,449/- in Court; on such deposit, to have the Award and Decree marked fully satisfied; on such deposit, a direction to Mehtalia to deliver the 900 original share certificates he holds in IPSMPL to IIPS; and directions to Mehtalia to execute the share transfer forms and other documents to effect this share transfer.

7. No one challenged the Award.

8. What Mr Sakhardande for Mehtalia today says is that the execution of this part of the Award is "contrary to public policy". It is undisputed that all amounts awarded to Mehtalia and payable by IIPS have in fact been paid, acknowledged and receipted. What remains in execution of this award is payment of this amount of Rs. 2,65,11,449/- and the transfer of these 900 shares. Mr Sakhardande's submission is that this cannot be done without a specific permission from the Reserve Bank of India, and such a permission can only be obtained if the value of Rs. 2,65,11,449/- is found to be FEMA-compliant. He does not dispute that his client has not challenged the Award. He only submits that even in execution he can obstruct the execution of the Award by raising a plea that it is contrary to public policy. The consequence, according to him, is that Mehtalia would, despite the Award and notwithstanding its unchallenged direction, continue to hold 9% of IPSMPL's equity.

9. It is difficult to conceive of a more inequitable and unjust submission. This argument was available to Mehtalia not once but half a dozen times before concluding his claims and in his submissions before the Arbitrator; as an application for clarification even thereafter; and later, in a substantive challenge to the Award. Mehtalia chose to do none of this. He accepted, therefore, finding of the Arbitrator as to the correctness of the figure of Rs. 2,65,11,449/. It is not open to him to say now that this 'may' be undervaluation. If this argument is to be accepted, it would result in all manner of unworkable and absurd results. It would completely defeat the Award and would conceivably send the parties back to arbitration. This is apart from the fact that Mehtalia received and accepted everything awarded in his favour and did so unconditionally.

10. Mr Sakhardande invites attention to paragraph 477. This quotes article 3.5 of the Share Purchase Agreement. The relevant portion reads thus:

> "*The purchase price for all of the remaining Second Tranche Equity Shares owned by Mr. Balvant d. Mehtalia to be purchased in the Second Tranche shall be pursuant to the Terms of the Shareholders Agreement done as upon the issue of the Audit Report for the Year-Ended March 31, 2015 but in no case less than, Rs. 68,000,000/- (Rupees sixty eight million)...*"
>
> I see no substance in the submission that, for the minimum price of Rs. 6,80,00,000/- to apply, the Claimant should

> have completed his full term as Managing Director. The Article is to apply even if there was termination for cause. What the Article provides is that the price is to be fixed upon issue of the Audit Report for the year ended 31st March 2015 but the minimum has to be Rs. 6,80,00,000/-. This it could be higher but not less. In any case, as already stated, the termination appears to be to deprive Claimant of his just dues. Thus to accept Respondents' submission would be to give premium to dishonesty. It is held that the minimum price for the second tranche of shares had to b Rs. 6,80,00,000/- minus whatever amount can be legitimately deducted under the Agreements."

11. I fail to see how this is even remotely supports Mr Sakhandande's submission. The learned Sole Arbitrator clearly held the termination of Mehtalia's services to be wrongful, and then proceeded to hold that the minimum price for the second tranche of shares had to be Rs. 6,80,00,000/- less legitimate deductions under the Purchase Agreement. This process of arriving at the net figure was one the Arbitrator himself undertook. Not having challenged any of these findings, I do not think it is remotely possible for the Claimant to now raise an objection to the implementation of the Award. The question of undervaluation of FEMA-compliance was one that could have been taken in arbitration or at any time before the Award was passed or even in a challenge under Section 34.

12. Merely by saying that there is a "possibility" that there "might be" a "chance" of a "possible" undervaluation contrary to FEMA is no reason to obstruct implementation. Nothing is shown to demonstrate that there is in fact an undervaluation or that there is in fact a violation of any FEMA guidelines. Those guidelines, *prima* *facie*, must apply in an arms' length transaction between transacting parties and is meant of the protection of the Indian party to ensure that he gets a reasonable recompense for his shares. This question of ascertaining of fair value has been done by the learned Sole Arbitrator, and has been done in a far more elaborate, studied and careful manner than either Mr Sakhardande's client or any authority he cares to name are capable of doing. All that Mehtalia posits today is the purest speculation. The argument that the implementation is possibly barred by public policy is nothing but an argument that the Award is bad for being contrary to public policy. There is no distinction between the two. Whether he says so or no, what Mr Sakhardande would have me do is to go behind the decree and see if it was validly passed. That is something I will not do. I cannot. The law forbids it. Couching it as an objection to execution does not change the nature of the argument. It is nothing but a thinly — and poorly — disguised challenge to the award itself, and the time for that is now well in the past.

13. It is neither possible nor desirable for Courts under the Arbitration and Conciliation Act 1996 to constantly interfere with the implementation and enforcement of arbitral awards, particularly those that have become executable as decrees without any challenge.

14. The chamber summons is made absolute in terms of prayer clauses (a), (b), (c) and (d), which read thus:

> "(a) This Hon'ble Court permit the Decree Holder to deposit a sum of Rs. 2,65,11,449/- in this Hon'ble Court

towards the full satisfaction of the Arbitration Award dated January 11, 2016 passed by the Ld. Arbitral Tribunal;

(b) This Hon'ble Court upon the deposit of Rs.2,65,11,449/- treat the Arbitration Award dated January 11, 2016 and the decree be marked as fully satisfied against the Decree Holder;

(c) This Hon'ble Court upon the satisfaction of the Arbitration Award dated January 11, 2016 be pleased to direct the Judgment Debtor to hand over the 900 original share certificates bearing distinctive nos. 1 to 100 and 401 to 1200 held by the Judgment Debtor in the Respondent;

(d) This Hon'ble Court also be pleased to direct the Judgment Debtor to execute such statutorily required share transfer forms and other related documents in respect of the sale of shares to the Decree Holder."

15. The Applicant will deposit of Rs. 2,65,11,449/- in this Court on or before 3rd March 2017. On or before that date the Claimant/Judgment Debtor, Balvant Mehtalia will deposit the 900 original Share Certificates bearing distinctive nos. 1 to 100 and 401 to 1200 with the Prothonotary & Senior Master along with the necessary signed share transfer forms. After these deposits are made, Balvant Mehtalia will be at liberty to withdraw the amount deposited by the Applicant and the Applicant will be at liberty to receive from the Prothonotary & Senior Master the original Share Certificates and the signed share transfer forms and to lodge them with the authorities.

16. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

17. In view of this, the Execution Application does not survive and is disposed of accordingly.

(G. S. PATEL, J.)