

In the High Court of Judicature at Madras

Reserved on : 21.12.2016	Delivered on : 09/2/2017
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Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Original Petition No.587 of 2015

M/s.RIO Glass Solar SA, rep.by its
Power of Attorney Agent Mr.Jose
Maria Villanueva Fernandez

...Petitioner

Vs

Shriram EPC Limited, Chennai-8.

...Respondent

PETITION under Section 47 of the Arbitration and Conciliation Act, 1996 to pass an order that the foreign award dated 12.2.2015 be deemed to be a decree of this Court and a direction to enforce and execute the said award as decree in favour of the petitioner and as against the respondent along with cost in entirety, cost of the petition be provided for.

For Petitioner :	Mr.Hiroo Advani for Mr.S.R.Ragunathan
For Respondent :	Mr.Vishnu Mohan for M/s.R.Parthasarathy & Rahul Balaji

ORDER

This is a petition filed under Section 47 of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act) seeking an order that the

foreign award dated 12.2.2015 shall be deemed to be a decree of this Court and for a direction to enforce and execute the said award as a decree in favour of the petitioner and against the respondent along with costs in its entirety.

2. The petitioner is a company registered in Spain. The respondent is a private limited company registered under the Companies Act, 1956 with the registered office in Tamil Nadu. The petitioner is engaged in the manufacture of thermo solar parabolic mirrors and supplies mirrors to projects situated in including but not limited to Spain, USA, Algeria, Morocco, India and China. The petitioner is stated to have held negotiations during 2007 for the manufacture and supply of parabolic mirrors for use in the construction of thermo solar power plant located at Khasra No.08 Village Nokh, Tehsil Pokran, District Jaisalmar, India, with an initial plan for an agreement between M/s.Abhijeet Project Limited (hereinafter called APL), M/s.Corporate Ispat Alloys Limited (hereinafter called CIAL), the respondent herein (hereinafter called Shriram), M/s.Ener-T (hereinafter called ET) and the petitioner.

3. Pursuant to discussions, an agreement was entered into on 30.11.2011 and executed in counterparts as of 30.11.2011, 19.12.2011 and 02.1.2012 and the petitioner agreed to manufacture and sell and the Shriram agreed to purchase parabolic mirrors for a consideration of € 8,399,244.67 for the use in the construction of thermo solar power plant in India. The

agreement contains an arbitration clause in Clause 17.13, which provides that all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (hereinafter called the ICC). In paragraph 4(e) to (j) of the petition, the breach committed by the Shriram has been set out and under what circumstances the petitioner submitted a request for arbitration dated 14.5.2013 to the ICC claiming € 5,682,2014.21 representing the price of delivery and four other related claims.

4. Though the petitioner, in their request for arbitration dated 14.5.2013 and in its First Memorial, claimed that the APL, the CIAL and the Shriram were jointly and severally liable, in its Second Memorial, they stated that the Shriram is solely liable for the amounts claimed as hereunder :

"(i) € 1,928,729.06 towards the outstanding payment for delivery four;

(ii) € 1,455,800.00 towards storage fees owing in relation to delays to delivery one, two, three and four as calculated upto April 4, 2014, which amount continues to accrue at € 12,000 per week in relation to delivery four, which remains in storage;

(iii) € 235,950.00 towards the full value of racks for the initial upfront delivery of 1,330 mirrors and deliveries one, two and three, which have never been returned;

(iv) € 108,033.00 towards damages for the additional time the racks were occupied in Spain which amount continues to accrue at € 3,328.00

per month in relation to delivery four which remains in storage; and

(v) € 97,053.00 towards lost executive time, additional costs and associated and other expenses by the respondent's breaches and delays."

5. The petitioner's contention is that the Shriram, the ET and the petitioner had agreed not to make the ET a party to the arbitration proceedings on the basis that the Shriram would take no point on the absence of the ET from the arbitration and did not contend that the ET was in any way responsible for the amounts as claimed by the petitioner.

6. The Arbitral Tribunal held that it has no jurisdiction in respect of claims against the APL and the CIAL for the breach of the multi party agreement (hereinafter called the MPA). The arbitral proceedings culminated in an award dated 12.2.2015 that the Shriram/the respondent herein is liable to pay to the petitioner the following sums :

"(i) € 4,366.598.7 consisting of damages amounting to € 4151571.52 and interest amounting to € 215,028.18;

(ii) € 363,175.32 in respect of legal and other costs of the arbitration

(iii) USD 87000 in respect of the fees and expenses of the Arbitral Tribunal and the administrative expenses of the ICC; and

(iv) simple interest @ 3.5% p.a. on the amounts outstanding under the award from the date of the award until payment."

7. The petitioner's case is that the Shriram is bound by the foreign award dated 12.2.2015, as it has become final and the petitioner is entitled to enforce the award in India and that the award has not been set aside or suspended by any competent court of the country, in which, the said foreign award was made and the enforcement is not contrary to any public policy in India. Therefore, in terms of Section 47 of the Act, the present petition has been filed.

8. The Shriram - the respondent, in their counter statement, would contend that the Arbitral Tribunal allowed the claims made by the petitioner overlooking the settled legal proposition and erroneously considering the scope of the agreement and rendered a wholly untenable, illegal, irregular, erroneous and unreasoned award, which is not only against the ICC Rules and English Law, but also against the public policy of India, equity, good conscience and natural justice under the provisions of the Act and that the Shriram was deprived of an opportunity to even cross examine the witnesses in the arbitration proceedings.

9. It has been further stated by the respondent that the impugned foreign award is unstamped and unregistered and requires to be stamped compulsorily under the provisions of the Indian Stamp Act and hence, its recognition and enforcement would be contrary to the fundamental law and the public policy of India and that the Arbitral Tribunal proceeded to alter the terms of the reference during the course of arbitration i.e. to say that the

petitioner proceeded to seek reference to arbitration against the APL and the CIAL as well with claims made jointly against all the respondents therein holding them jointly and severally liable. However, in the Second Memorial, which was taken note of by the Tribunal, the claim was restricted to the Shriram alone. Thus, the Tribunal allowed the petitioner to erode and alter the very basis of the reference to arbitration to the disadvantage of the respondent. There has been violation of the principles of natural justice, as the Shriram was not given an opportunity to present its case on several issues.

10. In the counter affidavit, it has been further stated that the award is further vitiated by non-joinder of necessary parties namely, the APL and the CIAL especially when the petitioner, in the arbitral proceedings, had raised claims against all parties making them jointly and severally liable. According to the respondent, the award is liable to be rejected in so far as it deals with the disputes, which are outside the scope of the request for arbitration and the Arbitral Tribunal failed to give reasons and erred in observing that '*it is not necessary to deal explicitly everything in this award, however it has all been taken into account.*'

11. In paragraph 27 to 38 of the counter statement, the Shriram set out as to how the findings of the Arbitral Tribunal on the factual aspects are not sustainable. With these averments, the respondent seeks to reject the petition filed under Section 47 of the Act.

12. A rejoinder has been filed by the petitioner. While denying the factual allegations, the petitioner seeks to rely upon the decisions in the case of

(i) ***Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc. [reported in 2012 (9) SCC 552]*** and

(ii) ***Shri Lal Mahal Ltd. Vs. Progetto Grano Spa [reported in 2014 (2) SCC 433]***,

to dislodge the defence raised by the respondent to resist the enforcement of the award.

13. Mr.Hiroo Advani, learned counsel appearing on behalf of Mr.S.R.Raghunathan, learned counsel on record for the petitioner, after setting out the factual matrix, which have been briefly stated in the preceding paragraphs, submitted that foreign awards are not required to be stamped in India and that Section 3 of the Indian Stamp Act speaks about execution and a foreign award, having been not executed in India, but only sought to be enforced in India, stamping is not required.

14. In support of the said contention, reliance has been placed on the decision of the Delhi High Court in the case of ***Naval Gent Maritime Limited Vs. Shivnath Rai Hanarain (I) Ltd. [reported in MANU/DE/2364/2009]*** and the decision of the Bombay High Court in the case of ***Vitol S.A. Vs. Bhatia International Limited [reported in MANU/MH/1615/2014]***.

15. After referring to Section 48 of the Act, it is submitted that all the contentions raised by the petitioner are factual and these aspects cannot be gone into in a petition under Section 47 of the Act and no public policy issue has been raised except for vague averments. To support such a contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Shri Lal Mahal Ltd.,*** and the decision of the Bombay High Court in the case of ***Louis Dreyfus Commodities Suisse S.A. Vs. Sakuma Exports Limited [reported in MANU/MH/2613/2015].***

16. Mr. Vishnu Mohan, learned counsel appearing for the respondent/ Shriram submitted that various important grounds for opposing the enforcement of the award have been raised in defence and pointed out that as held by the Hon'ble Supreme Court in ***Shri Lal Mahal Ltd.,*** under Section 48(2)(b) of the Act, the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to

- (i) fundamental policy of Indian Law; or
- (ii) interest of India; or
- (iii) justice or morality.

17. The Hon'ble Supreme Court in a subsequent decision in the case of ***ONGC Vs. Western Geco International Ltd. [reported in 2014 (9) SCC 263]*** pointed out that the public policy of India fell for interpretation before this Court in the case of ***ONGC Ltd. Vs. Saw Pipes Ltd. [reported in 2003 (5) SCC 705]*** and after a comprehensive review of the case law on the

subject, it has been held as follows :

"In addition to narrower meaning given to the term 'public policy' in Renusagar Power Co. Ltd. Vs. General Electric Co. [reported in 1994 Supp. (1) SCC 644], it is required to be held that the award could be set aside if it is patently illegal and if it is contrary to the fundamental policy of Indian Law or the interest of India or justice or morality or in addition, if it is patently illegal. Illegality must go to the root of the matter."

18. The Hon'ble Supreme Court in the same decision, while answering the question as to what would constitute fundamental policy of India, referred to three distinct and fundamental juristic principles that may be necessarily understood as part and parcel of the fundamental policy of Indian Law, firstly that in every determination whether by a court or other authority that affects the rights of a citizen, the court or authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. Equally important is the principle that a court and so also a quasi judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Perversity or irrationality of decisions is to be tested on the touchstone of Wednsebury principles of reasonableness.

19. Therefore, it is submitted that the respondent is entitled to oppose the relief sought for raising all these contentions as pointed out by the

Hon'ble Supreme Court and the grounds of challenge are not restricted.

20. With regard to the aspect regarding the stamping of the foreign award by placing reliance on the decision in the case of ***SMS Tea Estates (P) Ltd. Vs. Chandmari Tea Company (P) Ltd. [reported in 2011 (14) SCC 66]***, it is submitted that having regard to Section 35 of the Indian Stamp Act, unless the stamp duty and penalty due in respect of an instrument is paid, the court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also, which is part of the instrument.

21. On the issue relating to stamping and registration of the award, reliance was also placed on the decision in the case of ***M. Anasuya Devi Vs. M. Manik Reddy [reported in 2003 (8) SCC 565]*** to support the proposition that the issue relating to non stamping can be raised only when the party seeks enforcement of the award. Thus, it is the submission of the learned counsel for the respondent that the agreement, though executed outside India, it has to be stamped when it comes into India and enforcement is sought for. The award, as mentioned in Entry 12 of Schedule 1 of the Indian Stamp Act, will include the foreign award and in this regard a reference was made to the decision in the case of ***SMS Tea Estates (P) Ltd.***

22. While distinguishing the decision of the Delhi High Court in the case of ***Naval Gent Maritime Ltd.***, it has been pointed out that it deals with only

the registration of the foreign award, but not pertaining to stamping.

23. The learned counsel for the respondent next proceeded to deal with the factual aspects and made elaborate submissions on the issue that when the petitioner submitted themselves for arbitration, in the First Memorial, the respondent has been made jointly and severally liable along with others namely APL and CIAL. But, in the Second Memorial, the respondent alone has been made solely liable and an award has been passed against the respondent alone, which is illegal.

24. In this regard, the learned counsel for the respondent referred to various paragraphs and the findings rendered by the Arbitral Tribunal. It has been further submitted that there is no opportunity given to cross examine and no investigation has been done. Reliance was also placed on the decision rendered in the case of ***Interbulk Trading SA, Switzerland Vs. Adam and Coal Resources Private Limited (O.P.Nos.438 and 439 of 2014 dated 09.12.2016)***.

25. In reply, the learned counsel for the petitioner submitted that the decision of the Hon'ble Supreme Court in ***Shri Lal Mahal*** holds the field and in terms of the said decision, the factual contentions raised by the petitioner cannot be adjudicated by this Court, as the award has become final. Further, with regard to the factual contentions, it was submitted that the arbitration claim arose under Clause 17 of the agreement and not under the MPA and that the Arbitral Tribunal was perfectly justified in making the respondent

liable. Furthermore, there is no claim under the MPA and the learned counsel invited the attention of this Court to paragraph 193 of the award, which gives conclusion on this aspect.

26. With regard to other factual issues, it was submitted that the Tribunal considered those aspects and rendered findings. In fact, the learned counsel referred to certain paragraphs of the arbitral award to substantiate his contentions and submitted that there is no violation of the principles of natural justice and that the respondent had full opportunity to oppose the Second Memorial, which, in fact, they have done. Therefore, it was submitted that the above original petition may be allowed and Shriram may be directed to disclose the assets to enable the petitioner to execute the award.

27. Heard the learned counsel for the parties and perused the materials placed on record.

28. This is petition under Section 47 of the Act seeking enforcement of the foreign award. The said provision lays down procedural requirements that need to be complied with by a party in order to enforce the award. The Hon'ble Supreme Court in the case of ***S.M.D.Kiran Pasha Vs. Government of Andhra Pradesh [1990 (1) SCC 328]*** observed that enforcement means to impose or to compel an obedience of law. Section 48 of the Act deals with conditions for enforcement of a foreign award. The Hon'ble Supreme Court in the decision in ***Shri Lal Mahal***, considered the scope of enquiry before the Court, in which, a foreign award, as defined in Section 44

of the Act, is sought to be enforced. The three decisions, which were considered by the Hon'ble Supreme Court, are in the cases of (i) ***Renusagar Power Co. Ltd. Vs. General Electric Co. [reported in 1994 Supp. (1) SCC 644]***; (ii) ***Saw Pipes Ltd.;*** and (iii) ***Phulchand Exports Ltd. Vs. O.O.O. Patriot [reported in 2011 (10) SCC 300]***.

29. In ***Renusagar Power Co. Ltd.,*** one of the questions framed for determination is 'what is meant by public policy in Section 7(1)(b)(ii) of the Foreign Awards Act'. While explaining the expression 'public policy', it was held as follows :

"This would imply that the defence of public policy which is permissible under Section 7(1)(b)(ii) should be construed narrowly. In this context, it would also be of relevance to mention that under Article I(e) of the Geneva Convention Act of 1927, it is permissible to raise objection to the enforcement of arbitral award on the ground that the recognition or enforcement of the award is contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon. To the same effect is the provision in Section 7(1) of the Protocol & Convention Act of 1937 which requires that the enforcement of the foreign award must not be contrary to the public policy or the law of India. Since the expression "public policy" covers the field not covered by the words "and the law of India" which follow the said expression, contravention of law alone will not

attract the bar of public policy and something more than contravention of law is required.

.....

This would mean that "public policy" in Section 7(1)(b)(ii) has been used in a narrower sense and in order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Since the Foreign Awards Act is concerned with recognition and enforcement of foreign awards which are governed by the principles of private international law, the expression "public policy" in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality."

30. In **Saw Pipes Ltd.**, the scope of the court's jurisdiction under Section 34 of the Act was under consideration. The Hon'ble Supreme Court considered the meaning that can be assigned to the phrase 'public policy of India' occurring in Section 34(2)(b)(ii) of the Act being alive to the subtle distinction in the concept of "enforcement of the award" and "jurisdiction of the court in setting aside the award" and the decision in **Renusagar Power**

Co.Ltd. and held in **Saw Pipes Ltd.**, as follows : _

"The term 'public policy of India' in Section 34 was required to be interpreted in the context of the jurisdiction of the court where the validity of the award is challenged before it becomes final and executable in contradistinction to the enforcement of an award after it becomes final. Having that distinction in view, with regard to Section 34, this Court said that the expression 'public policy of India' was required to be given a wider meaning. Accordingly, for the purposes of Section 34, this Court added a new category - patent illegality - for setting aside the award. While adding this category for setting aside the award on the ground of patent illegality, the Court clarified that illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that the award is against public policy. Award could also be set aside if it was so unfair and unreasonable that it shocks the conscience of the court."

31. Thus, after referring to the above decisions, it was pointed out that while accepting the narrower meaning given to the expression 'public policy' in **Renusagar Power Co.Ltd.** in the matter of enforcement of foreign awards, there was a departure from the said meaning for the purposes of jurisdiction of the court in setting aside the award under Section 34. It was further pointed out that what has been stated by the Court in **Renusagar**

Power Co. Ltd. with regard to the Foreign Awards Act , must apply equally to the ambit and scope of Section 48(2)(b). Thus, following the decision in **Renusagar Power Co. Ltd.**, it was held that for the purposes of Section 48(2)(b), the expression 'public policy of India' must be given a narrower meaning and the enforcement of a foreign award would be refused on the ground that it is contrary to public policy of India, if it is covered by anyone of the three categories enumerated in **Renusagar Power Co. Ltd.**

32. It was further pointed out that although the same expression 'public policy of India' is used both in Sections 34(2)(b)(ii) of the Act and 48(2)(b), the concept of public policy in India is same in nature in both the Sections, but its application differs in degree in so far as these two Sections are concerned. The application of 'public policy of India' doctrine for the purposes of Section 48(2)(b) is more limited than the application of the same expression in respect of domestic arbitral award.

33. The contention advanced on behalf of the appellant therein that the expression 'public policy of India' under Section 48(2)(b) is an expression of wider import than the 'public policy' in Section 7(1)(b)(ii) of the Foreign Awards Act was not accepted and it was held that the decision in **Renusagar Power Co. Ltd.** must apply for the purposes of Section 48(2)(b) of the Act and in so far as the proceeding for setting aside the award under Section 34 is concerned, the principles laid down in **Saw Pipes Ltd.**, would govern the scope of such proceedings. Therefore, it was held in paragraph 29 as follows:

*"We accordingly hold that enforcement of foreign award would be refused under Section 48(2)(b) only if such enforcement would be contrary to (1) fundamental policy of Indian Law; or (2) the interests of India; or (3) justice or morality. The wider meaning given to the expression 'public policy of India' occurring in Section 34(2)(b)(ii) in **Saw Pipes Ltd.** is not applicable where objection is raised to the enforcement of the foreign award under Section 48(2)(b)."*

34. In terms of the above decision, the enforcement of the foreign award could be refused under Section 48(2)(b) only if it is contrary to the (a) fundamental policy of Indian Law (b) interests of India and (c) justice or morality. It was further held that Section 48 of the Act does not give opportunity to have a second look at the foreign award in the award enforcement stage, that the scope of enquiry does not permit review of the foreign award on merits and that the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed. Paragraphs 45 and 47 of the judgment read as follows :

"Moreover, Section 48 of the 1996 Act does not given an opportunity to have a 'second look' at the foreign award in the award enforcement stage. The scope of inquiry under Section 48 does not permit review of the foreign award on merits.

Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy.

....

While considering the enforceability of foreign awards, the Court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed. Under Section 48(2)(b), the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to : (1) fundamental policy of Indian Law; or (2) the interests of India; or (3) justice or morality. The objections raised by the appellant do not fall in any of these categories and, therefore, the foreign awards cannot be held to be contrary to public policy of India as contemplated under Section 48(2)(b)."

35. Once we steer clear of the legal position, what is required to be gone into is as to whether the foreign award, which is sought to be implemented by the petitioner, is contrary to the fundamental policy of Indian Law, the interests of India, justice or morality, apart from the above three factors, the Court cannot make a roving enquiry into the merits of the matter nor could it apply the decision in the case of **Western Geco**

International Ltd., which arose out of the proceedings under Section 34 of the Act. Even in paragraph 35 of the decision, the Court was answering the issue as to what would constitute the fundamental policy of Indian Law and one of which was to adopt a judicial approach in the matter. Therefore, in the considered view of this Court, the decision in **Western Geco International Ltd.**, does not lend support to the case of the respondent.

36. With regard to the other legal objection raised by the learned counsel for the respondent, it is with regard to stamping of the award and on account of the award not being stamped, it is unenforceable. To support such a contention, reliance was placed on the decision of the Hon'ble Supreme Court in the cases of **M.Anasuya Devi** and **SMS Tea Estates (P) Ltd.**

37. Firstly, **M.Anasuya Devi** arose of a proceeding under Section 34 of the Act and this decision has been relied on to support the proposition that the issue pertaining to stamping can be raised only when the award is sought to be enforced. However, in the considered view of this Court, the decision in the case of **M.Anasuya Devi** cannot be made applicable to the facts of the present case, as the Court was not considering a petition seeking implementation of a foreign award, which was sought to be resisted by the respondent raising various contentions including the aspect regarding stamp duty.

38. In **SMS Tea Estates (P) Ltd.**, two questions arose out of a proceeding under Section 11 of the Act for appointment of an arbitrator. The

Hon'ble Chief Justice of the Gauhati High Court dismissed the application holding that the lease deed was compulsorily registrable under Section 17 of the Registration Act and under Section 106 of the Transfer of Property Act and having not been registered, no term in the lease deed could be relied for the purpose and therefore, concluded that the lease deed could not be relied upon for seeking arbitration. While examining the correctness of the same, the Hon'ble Supreme Court framed the question as to whether the arbitration agreement in an unregistered instrument, which is not duly stamped, is valid and enforceable. After taking into consideration Sections 33 and 35 of the Indian Stamp Act, it was pointed out that unless the stamp duty and penalty due in respect of the instrument is paid, the Court cannot act upon the instrument.

39. Firstly, it has to be pointed out that the said decision does not deal with enforcement of foreign award and no objection appears to have been raised by the respondent when the arbitration claim was laid before the Arbitral Tribunal. Therefore, to state that the agreement itself is not enforceable, that too at this stage of the matter, cannot be permitted, as it would be beyond the scope of Section 48 of the Act.

40. In fact, the Hon'ble Supreme Court in the decision in the case of ***Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. [reported in 2001 (6) SCC 356]***, while considering the position with regard to four Enactments namely 1940 Act, 1937 Act, the Foreign Awards Act and the 1996 Act, it was

held that the object of the Act is to minimise the supervisory role of the Court and to give speedy justice and whatever procedure was under the old Enactment cannot be insisted upon under the New Act. One important observation made in the said decision was with regard to the difference under the Foreign Awards Act and the 1996 Act namely that while under the Foreign Awards Act a decree follows, under the 1996 Act, the foreign award is already stamped as the decree and that the party holding the foreign award can apply for enforcement of it, but the Court, before taking further effective steps for the execution of the award, has to proceed in accordance with Sections 47 to 49. Once the Court decides that the foreign award is enforceable, it can proceed to take further effective steps for execution of the same and there arises no question of making foreign award a rule of court/decree again.

41. In ***Naval Gent Maritime Ltd.***, the Delhi High Court was dealing with a similar objection as raised by the respondent/the Shriram in this petition about non stamping of the award. The Court, after referring to the decision of the Hon'ble Supreme Court in the case of ***Harendra H.Mehta Vs. Mukesh H.Mehta [reported in 1999 (5) SCC 108]***, held that foreign award would not require registration and can be enforced as a decree. The relevant portions read as follows :

"In view of the above judgment, the foreign award would not require registration and can be enforced as a decree. In any case, the issue of

stamp duty cannot stand in the way of deciding whether the award is enforceable or not. Supreme Court in M.Anasuya Devi and Anr. Vs.M.Manik Reddy and Ors. MANU/SC/0837/2003 : 2003 (8) SCC 565 had observed that at the time of deciding objections under Section 34 of the Arbitration and Conciliation Act, 1996, the Court cannot set aside the award for want of stamping and registration. I consider that the Court while deciding enforceability of foreign award under Sections 47 and 48 cannot hold the award non enforceable on the ground of award being not registered or unstamped.

It is settled law that a foreign award can be enforced or executed in the same proceedings as was held by the Supreme Court in Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. MANU/SC/0329/2001 : 2001 (6) SCC 356. The present award was passed in England and it became binding between the parties since its validity was not assailed by the judgment debtor in England. The judgment debtor did not assail the award under Section 48 raising grounds as given in Section 48 of the Act or produce any evidence in respect of any of the grounds available to the judgment debtor to resist the execution of the award. The issues argued by the judgment debtor were on the basis of intrinsic material available on record. I find no force in any of the issues raised by the judgment debtor. The present award is held

executable. The bank guarantee issued by the judgment debtor in favour of the petitioner/decreed holder and being renewed from time to time under the directions of the Court is allowed to be encashed by the decree holder. After getting the bank guarantee encashed, if any further amount remains to be paid by the judgment debtor, decree holder would be at liberty to take steps for further execution."

42. In the light of the above decisions, the contentions raised by the respondent that the foreign award is unenforceable on account of non stamping, stands rejected.

43. This leaves us with only one question, which largely revolves around the merits of the case and incidentally seeks to touch upon the various issues to demonstrate that there has been a violation of the principles of natural justice and that the foreign award is illegal.

44. The principal submission on the said aspect pertains to the First Memorial submitted by the petitioner, in which, the respondent along with APL and CIAL were made jointly and severally liable. However, while filing the Second Memorial, the respondent alone was made solely liable. This, according to the learned counsel for the respondent, goes to the root of the matter, thereby, affecting the very validity of the award and lack of opportunity to the respondent to contest the same.

45. On a perusal of the impugned award, factually it appears otherwise

and the Arbitral Tribunal considered this objection and rendered its finding from paragraph 179 onwards and ultimately held that APL and CIAL are not parties to the arbitration agreement in Clause 17 of the arbitration agreement. This arbitration had commenced under the agreement and the agreement alone and accordingly, the Arbitral Tribunal held that it has no jurisdiction in respect of the claims against APL and CIAL.

46. Admittedly, the award has become final and the respondent has not challenged the same. Any endeavour of this Court to go into the factual aspects would amount to sitting in judgment over the award passed by the Arbitral Tribunal. This has been frowned upon by the Courts in several decisions, some of which have been referred to above.

47. The contention stating that there was no opportunity to cross examine and other related matters are all touching upon the merits of the award and in this petition under Section 47 of the Act, seeking enforcement of the award, all that is required to be seen is as to whether the award is (a) contrary to the fundamental policy of India. The respondent has not been able to substantiate such a plea while resisting the petition under Section 47 of the Act; (b) contrary to the interests of India. No arguments were advanced on this aspect; (c) contrary to justice or morality. The plea of violation of the principles of natural justice, the lack of opportunity, etc., are sought to be read into this aspect by stating that the fundamental policy of India as well as the public policy of India having not been defined, one of the

pre-requisites is to have a judicial approach. When such judicial approach is lacking in a quasi judicial decision, the same can be interfered with.

48. However, this Court would, once again, point out that the present proceeding is not a proceeding to set aside the award under Section 34 of the Act. In the preceding paragraphs, the distinction between both the provisions have been brought out by placing reliance on the decisions of the Hon'ble Supreme Court. Therefore, the respondent cannot seek to import the principles of challenge to an award under Section 34 of the Act, into these proceedings where a foreign award is sought to be implemented.

49. For all the above reasons, the objections raised by the respondent have to necessarily fail and accordingly, the above original petition is allowed as prayed for. Shriram is be directed to disclose the assets to enable the petitioner to execute the award.

09/2/2017

Index : Yes
Internet : Yes

RS

T.S.SIVAGNANAM,J

RS

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