

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM

THE HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.SUNDAR

O.S.A.No.172 of 2011
and M.P.No.1 of 2011

Chennai Petroleum Corporation Limited,
536, Anna Salai,
Teynampet, Chennai-600 018,
rep. by its Deputy Secretary
Mr.M.Sankaranarayanan. ... Appellant

vs

1.M/s.Afcons Infrastructure Limited,
Afcons House,
16, Shah Industrial Estate,
Veera Desai Road,
Azad Nagar PO,
P.B.No.11978, Andheri (W),
Mumbai - 400 053.

2.Mr.S.N.Jha,
Sole Arbitrator,
now residing at 369-A, Sushant Lok,
Block-C, Phase 1, Near Water Tank,
Gurgaon - 122 002

formerly resided at C-31, Hauz Khas,
New Delhi - 110 016.

.. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 06.04.2011 in O.P.No.574 of 2007 on the file of this Court.

O.P.No.574 of 2007:-Petition filed under section 34 of the Arbitration and conciliation Act, 1996 to set aside the Arbitral Award dated 23.03.2007 in so far as it related to the Award of the sum of Rs.5,81,38,638/- with interest thereon as extended stay compensation (Claim No.3) by allowing this petition with costs.

For Appellant .. Mr.R.Senthil Kumar
For Respondents .. Mr.G.Masilamani
Senior Counsel
for Mr.D.Balaraman

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This appeal is directed against the judgment and order dated 06.04.2011 passed by the learned Single Judge disposing of an application filed by the appellant, Chennai Petroleum Corporation Limited under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") for setting aside the arbitral Award dated 23.03.2007 passed by the Sole Arbitrator, Mr.S.N.Jha.

2. By the order under appeal, the learned Single Judge has remitted the Award to the arbitral Tribunal for giving reasons for the conclusion arrived at while adjudicating the claim under the heading "claim for extended stay compensation".

3. It appears that the appellant, Chennai Petroleum Corporation Limited had floated a tender, inviting bids for construction work. The tender submitted by the first respondent-M/s.Afcons Infrastructure Limited was accepted.

4. The work commenced and was completed. However, as the work had been prolonged, there were certain claims inter alia for prolongation of the contract work as well as for additional work.

5. The following claims were referred to the Sole Arbitrator for adjudication:

Claim No.1 - Claim for payment for final bill

Claim No.2 - Remuneration for additional work carried out which was beyond the scope of the contract

Claim No.3 - For extended stay compensation

6. After pleadings were completed, the learned Sole Arbitrator, adjudicated the disputes and passed an Award, the operative part of which, is summarized herein below:

Claims of the 1st respondent	Claims	Awarded amount
Claim No.1	Rs.3,99,79,190/-	Rs.3,99,79,190/-
Claim No.2	Rs.5,33,35,836/-	Rs.1,84,04,239/-
Claim No.3	Rs.22,84,55,943/-	Rs.5,81,38,638/-

7. The appellant, Chennai Petroleum Corporation Limited accepted the Award in respect of Claim Nos.1 & 2, but raised a dispute with regard to the Award in respect of Claim No.3 of Rs.5,81,00,000/-. The application under Section 34 of the 1996 Act was filed for setting aside the Award of Rs.5,81,00,000/- in respect of the third claim.

8. Mr.R.Senthil Kumar, learned counsel appearing on behalf of the appellant, Chennai Petroleum Corporation Limited argued that the Award of Rs.5,81,00,000/- was clearly barred by the contract.

9. It is well settled that the Arbitrator is a creature of the contract and is bound and obliged to adjudicate the disputes in accordance with the contract. However, it is equally true that the interpretation of the contract is within the realm of the jurisdiction of the learned Arbitrator.

10. There can be no dispute that under the 1996 Act, an Award has to be reasoned unless the arbitration agreement dispenses with the requirement to give reasons or the award is on agreed terms, as per the requirement of Section 31(3). In the absence of reasons, this Court cannot assess whether the Arbitrator has ignored the contract altogether or has proceeded on the basis of his interpretation of the contract. The learned Single Judge found and it appears rightly that the Award in respect of the third claim of Rs.5,81,00,000/- was not supported by reasons and accordingly remitted the Award to the Sole Arbitrator under Section 34(4) of the 1996 Act for supply of reasons. Needless to mention, supply of reasons would also include the break up of the Award, if any.

11. In this case, the arbitration agreement did not dispense with the requirement to give reasons. A non-speaking award is ex facie liable to be set aside, unless it is an agreed award or unless the requirement to give reasons have been dispensed with. A non-speaking award is liable to be set aside on ground alone of the award not being supported by reasons, irrespective of the merits of the award. The award in this case was not based on any agreement. Further more, the arbitration agreement did not dispense with the requirement to give reasons.

12. Section 34(4) of the 1996 Act provides as follows:

"34. Application for setting aside arbitral award.-

(1) (3)

(4) On receipt of an application under subsection (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

13. We do not find any infirmity in the decision of the learned Single Judge to remit the Award of the learned Sole Arbitrator for supply of reasons, for this would save the award from ex facie illegality, and eliminate the ground for setting aside of the award. it is only when reasons are forthcoming that this Court can adjudicate the question of whether the learned Sole Arbitrator has in fact ignored the contract altogether or has proceeded on the basis of an interpretation of the contract and if so, whether the interpretation made of the contract is a reasonable interpretation or a patently absurd and/or perverse interpretation.

14. We do not deem it necessary to interfere with the order under appeal, except to direct that the application (O.P.No.574 of 2007) shall remain pending before this Court (Single Judge). The direction disposing of the application is set aside in view of the provision of Section 34 of the 1996 Act, which reads that the Court might, where it is appropriate to adjourn the proceedings for a period of time determined by it, in order to give the arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral Tribunal would eliminate the grounds for setting aside the arbitral Award. A non-speaking Award is liable to be set aside and supply of reasons would eliminate that ground for setting aside the arbitral Award.

15. The application under Section 34 of the 1996 Act pending before the learned Single Judge shall stand adjourned for a period of three months. The learned Sole Arbitrator shall within three months from the date of receipt of a copy of this order give reasons in support of the Award in respect of the third claim, which is under challenge in the application under Section 34 of the 1996 Act.

16. The appeal along with the connected application, if any, is disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bbr

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

Copy to:

Mr.S.N.Jha,
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now residing at 369-A, Sushant Lok,
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New Delhi - 110 016.

+1cc to M/S.D.Balaraman, Advocate Sr. 69275
+1cc to M/S.R.Senthil Kumar, Advocate Sr. 69249

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O.S.A.No.172 of 2011

RR(CO)
VR(23/10/2017)

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