

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 292/2017**

% **14th July, 2017**

NEWGEN SPECIALTY PLASTIC LTD. Appellant

Through: Mr. Girish Chandra, Advocate.

versus

INTEC CAPITAL LTD. Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 24266/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. Appl. No. 24267/2017 (for condonation of delay of 20 days in re-filing the appeal)

For the reasons stated in the application the delay of 20 days in re-filing the appeal is condoned.

The application stands disposed of.

FAO No. 292/2017 and C.M. Appl. No. 24265/2017 (for stay)

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed

against the impugned judgment of the court below dated 6.3.2017 dismissing the objections filed by the appellant under Section 34 of the Act.

2. The facts of the case are that appellant/objector had obtained a loan from the respondent for purchase of equipments for his business. The loan advanced was for a sum of Rs.3 crores. Loan agreement was executed on 30.4.2014 and appellant had to repay the loan in 71 equated monthly installments of Rs.6,20,305/- each. The equipments purchased from the loan amount were hypothecated to the respondent. Appellant also tendered a collateral security for a sum of Rs.90,00,000/-, and which amount was to be returned with interest at the rate of 7% per annum for 51 months subject however to discharge of the obligations of the appellant under the loan agreement. Since the appellant failed to pay the monthly installments on time, hence there arose dues of Rs.2,80,25,074/-, and to recover which claim the respondent/lender invoked arbitration proceedings.

3. Appellant/applicant appeared in the arbitration proceedings on some dates but thereafter failed to appear and hence was proceeded *ex-parte*. The respondent thereafter led *ex-parte* evidence. The impugned award dated 11.2.2016 was then passed decreeing the recovery of the amount along with interest but subject to

adjustment to be granted to the appellant with respect to the collateral amount of Rs.90,00,000/-

4. Appellant challenged the impugned award dated 11.2.2016 passed against it *ex-parte* by filing objections before the court below under Section 34 of the Act, and which have been dismissed by the impugned judgment, hence the present appeal.

5. Once, it is established by the respondent by leading evidence that appellant had taken a loan, that there was default in repayment of the loan amount as there was default of the payment of monthly installments, i.e the respondent proved its claim in the arbitration proceedings, the impugned award dated 11.2.2016 could not have been interfered with by the court below under Section 34 of the Act. The court below could not have interfered with such an award not only because a court hearing objections under Section 34 of the Act does not sit as an appellate court to re-appraise the evidence as also findings of facts and conclusions, but also because even if the court below hearing objections was a civil court, yet the impugned award even as a decree could not have been set aside as the respondent's entitlement was proved for recovery of the amount taken as loan (but not repaid) with the agreed rate of interest.

6. Learned counsel for the appellant firstly argued that it was the duty of the respondent/lender first to adjust the amount due by sale of hypothecated equipments, however when I put a query to counsel for the appellant that whether the appellant had returned the machinery to the respondent, it is conceded that the machinery/equipment purchased by the appellant, by utilization of the loan granted, have not being returned to the respondent.

7. Learned counsel for the appellant then argued that the respondent is liable to adjust the security amount, and to which there is no dispute, because, arbitrator as per the impugned award while granting relief as per para 8 directed recovery of the amount due only after adjustment of the amount of Rs.90,00,000/-.

8. Though, learned counsel for the appellant argued that the amount of Rs.90,00,000/- had to bear interest, however, this plea could only have been taken before this Court if the appellant had taken such a plea in the arbitration proceedings, and substantiated the same, but once the appellant chooses to remain *ex-parte* in the arbitration proceedings, a plea on merits which is not raised before the arbitration proceedings cannot be raised before the court hearing objections under Section 34 of the Act and much less this appellate court heaving appeal against the dismissal of objections.

9. Accordingly, this Court cannot adjudicate the issues on merits which were not addressed in the arbitration proceedings.

10. In view of the above discussion, there is no merit in the appeal and the same is hereby dismissed. If course, it will always be open to the appellant to claim any adjustment for any amount which may have been paid towards the awarded amount during the pendency of the arbitration proceedings, and may be even thereafter, subject of course to establishing this aspect before the executing court or in other appropriate forum.

JULY 14, 2017

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VALMIKI J. MEHTA, J