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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 21st February, 2018

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O.M.P. (COMM) 85/2018 & IAs 2479-2480/2018

ADARSHA TRACTORS, & ORS. Petitioners

Through: Mr.Yogesh Raavi, Adv.

versus

NEW HOLLAND FIAT (INDIA) PRIVATE LIMITED

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

IA 2479/2018

Exemption allowed subject to all just exceptions.

IA 2480/2018

This is an application seeking condonation of 9 days delay in re-filing the petition.

For the reasons stated in the application, the delay of 9 days is condoned.

Application stands allowed.

O.M.P.(COMM.) 85/2018 & IA 2480/2018

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenging the arbitral award dated 29th September, 2017 passed by

the Sole Arbitrator in the arbitration proceedings between the parties.

2. The dispute between the parties arise out of the relationship of the respondent as a manufacturer of tractors and other agricultural equipment and the petitioner as a dealer of the respondent for Koratla (Mandai), Karimnagar (District), Andhra Pradesh (now Telangana).

3. The relationship between the parties had started through the Letter of Intent dated 9th January, 2001 whereby the petitioner had been appointed as an authorized dealer/authorised service representative by the respondent. A Written Dealership Agreement dated 16th May, 2009 was also executed between the parties. The respondent, claiming that certain amounts were due and payable by the petitioner from this relationship, had raised claims before the Sole Arbitrator. The same has resulted in the Impugned Award by which the Arbitrator has awarded the following amounts in favour of the respondent:-

“RELIEFS:

From above discussion, the Claimant is entitled to the following reliefs:

1. *Rs.6891033/- along with the interest @18% p.a. with effect from 1.10.2014 till the date of realization.*

2. *Rs.3 lacs, (being the amount paid by the Claimant towards the respondent's share of Arbitral Fee) with interest @ 18% p.a. from the date of this Award till date of realization.*

3. *Rs. 3 lacs towards the cost and fee of Arbitration proceedings with interest at 18% p.a. from the date of this Award till the date of realization.”*

4. The contention of the counsel for the petitioner is that prior to the execution of the Agreement dated 16th May, 2009, there was no written agreement executed between the parties which would have authorized or made the respondent entitled to claim any interest over the amounts due and payable by the petitioner. He further submits that the Arbitrator has erred in relying upon the Confirmation Letters that were executed by the respondent confirming the balance outstanding on particular dates without appreciating that the petitioner had also protested against the amounts claimed by the respondent by way of separate letters written with such letters of confirmation. He further submits that the Arbitrator has erred in law in relying upon Section 31(7) of the Act for granting claim of interest.

5. I have considered the submissions made by the counsel for the petitioner, however, I am unable to agree with the same. The Arbitrator in the impugned award has relied upon *inter alia* Minutes of the meeting held between the parties on 25th September, 2003 wherein, the petitioner had acknowledged the outstanding amount payable by him to the respondent and such amount had included the interest component as well. The Arbitrator has also relied upon a letter dated 18th December, 2004 whereby the petitioner had requested the respondent to waive of the interest charged for the period from 1st July, 2003 to 3rd September, 2004. Various other letters written by the respondent prior to the execution of the agreement dated 16th May, 2009 have also been relied upon by the Arbitrator to finally conclude that, even prior to the execution of the agreement dated 16th May, 2009, there was an understanding between the parties on payment of

the interest by the petitioner to the respondent on the amounts remaining outstanding from the petitioner.

6. I may only quote the relevant portion of the award passed by the Arbitrator in this regard:-

“15. It is admitted case of the parties that a meeting was held on 25.09.2003 to sort out the pending issues of the Respondent including its resignation letter. The Minutes of the Meeting duly signed by the parties is Exb. RW1/X1. In this document, the Respondent admitted and acknowledged the outstanding amount payable to the Claimant as Rs.44,22,613/- as indicated in the Claimant’s statement of accounts for quarter April-Jun 2003. While confirming this and expressing willingness to pay this amount, the Respondent requested for support from the Claimant stating having suffered losses. The Claimant agreed to give the support by concession to the extent of Rs.12,85,692/- thereby reducing the balance payable to Rs.31,36,924/-. The Claimant also agreed to provide Good Will incentive of Rs.9,76,956/- and special incentive including miscellaneous expenses of Rs.3,08,736/-. Further, the Claimant also agreed to waive the interest for quarter July 2003 to September 2003 and quarter October 2003 to December 2003. In addition, the Claimant also agreed to take return of Dead/Slow moving parts, after inspection and valuation. All these supports were linked with the return of above mentioned outstanding amount in phased manner in six installments, starting from 30.09.2003 and ending March 2004. In his own way of interpretation of above minutes, the Ld. Counsel of the Claimant submitted that the Respondent had agreed not to charge any interest from the Respondent on amounts outstanding at any point of time. I do not see any logic or reason of such an interpretation. The Minutes would evidence that the supports as agreed by the Claimant including waiver of interest, incentive etc. were linked with the payments of

outstanding amounts in installments.

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18. *From the correspondence between the parties it is evident that the interest was being levied by the Claimant on the delayed payments much prior to execution of Agreement on 16.05.2009 (Exb.RW1/X1). The Respondent vide letter dated 18th December 2004 (Exb. RW3/5A) had requested the Claimant for waiver of interest charged for the period from 01.07.2003 to 03.09.2004. In his cross-examination RW-3 stated that the company had been assuring that the interest will not be charged, but admittedly there was nothing in writing in this regard. In this context it is worthwhile to note that in answer to a question in cross-examination as to whether the Respondent paid the amount of Rs.83,32,431/- as mentioned by it in its letter Exb.RW3/5A, RW3 admitted that whole of it was not paid. There are numerous letters written by the Respondent to Claimant regarding for waiver of interest of the Pre-Agreement period of 16.05.2009. To note a few are dated 23.03.2005, 25.06.2005, 01.07.2005, 02.08.2005, 10.08.2005, 11.11.2005, 30.05.2006 and 17.12.2008. In its letter dated 17.12.2008 the Respondent humbly requested for waiver of interest as a special case. It is already seen from the Minutes of 25.09.2003 that interest was being levied by the Claimant on delayed payments in the year 2003. In fact RW1, had admitted in cross-examination that in October 2002, the Respondent owed Rs.44,22,616/- to the Claimant. This is the same amount which was inclusive of interest and is mentioned in Minutes of 25.09.2003 (Exb. RW1/X1) if there was no interest being levied by the Claimant, why would the Respondent request for waiver of interest on delayed payments.”*

7. The above finding being arrived at upon appreciation of evidence by the Arbitrator, it would not be open for this Court to re-appreciate the evidence as a Court appeal.

8. As far as the contention of the counsel for the petitioner that the Arbitrator has wrongly relied upon the balance confirmation letters written by the petitioner and has ignored the letters of protest written by the petitioner contemporaneously with balance confirmations, I have gone through these letters and as an example would quote from one of the letters relied upon by the counsel for the petitioner as under:-

“With reference to the letter under cited, it is submit that the outstanding to NHI in our books is Rs. 24,290,193/- as on 31st March, 2010, whereas the same is Rs.28,169,344 /- as per your books. The difference of Rs.3,879,151 /-in between both books is interest debited on the account. The details are shown at Annexure.

A copy of the balance confirmation letter (your letter dated 7th March, 2010) is enclosed herewith.”

9. The said letter does not make any protest against charging of the interest but only states that difference in the accounts is due to the respondent showing the interest as an outstanding in its books of account, while the same is not being considered by the petitioner in its own books of accounts as outstanding.

10. In my opinion the above would not amount to a protest on the right of the respondent to charge interest from the petitioner on the amount outstanding from the petitioner to the respondent.

11. Such right to charge interest would even otherwise be a right in equity as held by the Supreme Court in ***Dushyant N.Dalal & Anr. vs. Securities & Exchange Board of India*** (2017) 9 SCC 660.

12. I may also note that the Arbitrator has also relied upon the cross examination of the petitioner's witness to conclude that not only was the books of accounts produced by the respondent not denied by the petitioner, but also the petitioner had admitted the amount owed by it to the respondent in the form of admitted failure to comply with the various efforts of settlement that had been arrived at between the parties during the currency of their relationship. I would again quote from the award in this regard:-

16. RW-1, who is the accountant of the Respondent, admitted that only first installment of Rs.5 lakh was paid. He stated that the other installments were not paid as per the schedule as the incentive of Rs.2 lakh was not paid by the Claimant. Though he volunteered that these installments were paid subsequently but could not inform the dates of payments. Then again he volunteered that there being a running account, the payments were made along with invoices, but he could not inform the details of invoices or the payments. It was specifically suggested to him that no payments were made as per the Minutes of 25.09.2003.

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19. It is noted above that it was undisputed that the Claimant was maintaining running account for its dealers including the Respondent, and the books of accounts were regularly maintained by the Claimant in the ordinary of its business. The Claimant has produced its statement of account relating to the Respondents in respect of Tractor and Spare Parts account for the period from January 2001 to 03.02.2016, and which is on record as Exb. CW2/8. It was also not the case of

Respondent in SOD nor put in cross-examination of CW2 that the Statement of Account was not properly maintained by the Claimant in its ordinary course of business. The same remaining un-assailed and rather admitted is, admissible in evidence. The entries of transactions with all calculations, being undisputed, also become admissible in evidence. This would evidence that the interest was being levied, and also apportioned from the payments received from the Respondent time to time from the very beginning of dealership, all to the knowledge of the Respondent.

20. There is still much more evidence against the Respondent Vide confirmation letters dated 07.04.2010, 07.10.2010, 08.04.2011, 07.10.2011 (Exb. CW2/1 to CW2/4), the Respondent through its Managing Partner (RW-1) confirmed the outstanding amounts payable to the Claimant as on 31.03.2010, 30.09.2010, 31.03.2011 and 30.09.2011 respectively. The amounts stated in these letters and confirmed by Respondent as correct are inclusive of interest, and correspond with the entries in Statement of Accounts of the Claimant. Other confirmations dated 07.04.2012, 09.10.2012 and 11.04.2013, which were denied by the Respondent initially, were admitted by the Respondent's witness (RW3) in his cross-examination. These are respectively Exb. CW1/X1 to CW1/X3. With regard to the amounts mentioned by the Claimant in these confirmation letters, the Respondent made endorsement of different amounts, the difference being of the interest as reflected in the Statement of Account of the Claimant. The Respondent had also vide separate letters, though belatedly objected about the levy of interest reiterating its previous stand of waiver of interest on account of various factors including that of slump in business, complaints and financial constraints. Be that as it may, the fact remains that all the confirmations noted above testify that the interest was being levied by the Claimant on the delayed payments even prior to be period of 16.05.2009 and it was admitted by RW1 that all these balance confirmations were received by the Respondent from the Claimant during the course of business transactions.

21. *The Respondent continuing to default in payments resulting in huge outstanding, a meeting was held between the parties on 24.01.2012, to discuss the plan to revive the business of dealership of Respondent. It is evident from the Minutes dated 25.01.2002 of this meeting that the Managing Partner (RW3) of Respondent admitted the outstanding as on 24.01.2012 of Rupees 2,36,77,594/- (Tractor Account) & Rupees 1,11,76,281/- (Spare Parts Account). The plea of RW3 that it was signed under protest, is not tenable, given the fact that the outstanding mentioned in this Minutes is nothing but as per record of the Statement of Account, and there was nothing on record of suggest pressure of any kind whatsoever on RW3.*”

13. In view of the above finding of the Arbitrator, I find no merit in the submission raised by the counsel for the petitioner on the applicability of Section 31 (7) of the Act. Section 31(7) empowers the Arbitral Tribunal to award interest from the date on which the cause of action arose, unless otherwise agreed between the parties. In the present case, the petitioner has not shown any agreement prohibiting grant of interest.

14. In view of the above, I find no merit in the present petition and the same is accordingly dismissed with no order as to costs.

NAVIN CHAWLA, J.

FEBRUARY 21, 2018
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