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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 3rd October, 2018

+ O.M.P.23/2018

DEVINDER KHOSLA Petitioner
Through Mr.Sourabh Malhotra and
Mr.Yatin Chadha, Advs.

versus

ANIL KHOSLA & ANR. Respondents
Through Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. No.13592-93/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P. 23/2018

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 29.06.2018 passed by the Sole Arbitrator confined to the issue that the Arbitrator has erred in holding that the claim of the petitioner towards properties not being covered in the Interim Award dated 08.03.2006 is beyond the scope of the reference.
2. To answer the above issue, the history of the litigation between the parties will have to be considered.

3. The parties to the petition are brothers who were carrying out Joint Partnership Businesses. As disputes arose between the parties, the parties entered into an Arbitration Agreement on 05.02.2006 which is reproduced hereinbelow:

“Arbitration Agreement

We Shri Devinder Khosla, Anil Khosla and Raman Khosla are the family members and are running/doing business jointly for the last about 35 years and now some differences amongst us have been cropped up and to resolve those differences so as to lead a proper family life in social manner so that there may not be any dispute in future or hassles, we have decided to appoint:

Shri Rajinder Kumar Bhardwaj, Shri Narinder Ahuja and Shri Prafool Mitra as Arbitrators to resolve the differences/ disputes in an amicable way. The said Arbitrators will be provided all the details of the properties, debits, credits etc. of all the firms/ businesses so as to enable them to resolve the disputes/differences as we could not resolve them of our own. We have put our signatures on this agreement on this 5th day of February, 2006. The said Arbitrators will resolve the dispute at the earliest.”

(Emphasis supplied)

4. The arbitration proceedings resulted in an Interim Award dated 08.03.2006, the relevant extract of which is reproduced as under:

“The parties desired to have their family business separated and distributed amongst them, which are enumerated as below:

- a) National Marble & Sanitary Store (Head Office)
C-25, Vasant Vihar Shopping Complex, New Delhi*
- b) National Marble & Sanitary Store (Branch)
T-1, Chirag Delhi, New Delhi.*

- c) National Marble & Sanitary Store (NCR)
DLF, Gurgaon, Haryana.*
- d) National Marble House
G-9, Hauz Khas, New Delhi.*
- e) Blue Circle Paint and Chemicals Industries
G-9, Hauz Khas, New Delhi.*
- f) A & P Stores Pvt. Ltd.
C-25, Basement Vasant Vihar Shopping Complex, New
Delhi.*

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Now since the parties have agreed that the existing assets and liabilities of the family businesses shall be separated and distributed amongst them as per agreed Schedule-A & Schedule-B, which shall form part of this award as agreed by the parties on 8th February, 2006, during the course of arbitration proceedings. Therefore, we do hereby award and direct that Schedule A&B which contain the agreed terms amongst the parties shall form part of this award and further direct that the items mentioned in Schedule-A shall be exclusive business assets of Sh. Devinder Khosla, Party No. 1 and liabilities mentioned as on date of the award in the said schedule shall be discharged by him. Similarly the items mentioned in Schedule-B shall be exclusive business assets of Sh. Anil Khosla & Sh. Raman Khosla jointly Party No. 2 and liabilities mentioned as on date of the award in the said schedule shall be discharged by them.”

5. The said Interim Award also sets out the immovable properties that fall in the share of the parties in form of Schedule A and Schedule B to the said Award.

6. The petitioner challenged the above Award by way of a petition under Section 34 of the Act being OMP No.320/2006. On

24.07.2006 in the said petition the following directions were passed with the consent of the parties:

“3. Learned counsel for the parties agree that OMP could disposed of with the following directions:

- (i) That the award dated 8th March, 2006 would be treated as an interim award.*
- (ii) That the parties accept the interim award in so far it declares the right of the parties in the businesses and immovable properties.*
- (iii) That in respect of apportionment of liabilities and the stocks, the liabilities and stocks need to be valued.*
- (iv) That amount recoverable from third parties need to be determined.*
- (v) Post valuation of the stocks, liabilities and assets the same would be apportioned in terms of the award dated 8.3.2006.*
- (vi) For a period of 2 weeks, all business premises would be kept locked and no stock would be removed till the Arbitrators value the same.*
- (vii) If learned Arbitrators complete the valuation before 2 weeks, on written orders by the Arbitrators permitting either party to operate from the business premises or use the stocks, same would be opened or used.*
- (viii) As per books of accounts, quantification of debts and liabilities of the various businesses would be completed within 2 weeks and debts payable dues recoverable would be apportioned by the Arbitrators.*
- (ix) Stocks brought in or removed by the parties post 8th March, 2006 till today would be accounted for before the Learned Arbitrators. Monies realised from the debtors of the businesses and monies paid over to the creditors of the businesses would also be accounted for before the learned Arbitrators within 2 weeks.*
- (x) Parties will co-operate with the Arbitrators in producing the books and relevant records. If any record is in electronic form, Arbitrators would be given access to computers.*

(xi) Today itself learned arbitrators would be permitted access to the records in the respective possession of the parties including records in electronic form.”

7. A reading of the above order would clearly show that the parties accepted the Interim Award in so far as it declared the rights of the parties in the businesses and the immovable properties. The only issue which remained was with respect to the division of the liabilities and stock that needed to be valued. For this purpose, the parties had been referred back to the Arbitrators with a direction to give a complete valuation.

8. One of the Arbitrators expressed his unwillingness to continue in the proceedings. On an Interim Application, being I.A. No.11619/2006, filed in the abovementioned petition, this Court by an order dated 23.11.2006, while appointing a Sole Arbitrator (who has passed the Award impugned in the present petition) *inter-alia* observed as under:

“9. Whether or not the consent recorded in the interim award which was questioned in the OMP was conditional upon the arbitratrors deciding the entire dispute in one go or not is itself a dispute of substantive nature.

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11. I dispose of the application recording consent of parties that a sole arbitrator be appointed. I appoint justice R.C.Chopra (Retd.), N-113, Greater Kailash-I, New Delhi-110048, Mobile No.9818097777, a former judge of this Court as the sole arbitrator to decide the disputes between the petitioners and the respondents. It would be within the mandate of the sole arbitrator to decide whether the consent given by the petitioners which formed the basis of the interim

award was conditional or not as pleaded by the petitioners.

12. If learned arbitrator holds that the consent granted was conditional, effect thereof would also be decided by the learned arbitrator."

9. The respondents challenged the above order by way of an Appeal, being FAO(OS) 755-56/2006. This Division Bench of this Court vide its order dated 04.08.2008 passed the following order:

"There is no dispute up to this extent. However, while making this appointment, the learned Single Judge also directed that - "it would be within the mandate of the sole arbitrator to decide whether the consent given by the petitioners, which formed the basis of the interim award was conditional or not, as pleaded by the petitioners". The appellant feels aggrieved by this direction, which has led to filing of this appeal.

It is the submission of Mr. Rakesh K. Khanna, learned senior counsel appearing for the appellant, that once an interim award was accepted by both the parties, as recorded in the order dated 24.7.2006, it was not open to the learned Single Judge to reopen the said issue and enlarge the scope of reference by permitting the arbitrator to decide as to whether the consent given by the respondent herein was conditional or not. He further submitted that this was not even the scope of the application filed by the appellant herein whereby they only wanted another arbitrator to be appointed so that the arbitration proceedings are concluded without any further delay.

We find force in this submission of learned counsel for the appellant. We have already reproduced the relevant portion of order dated 24.7.2006, which was also a consent order and consent of both the parties

was specifically recorded stating that both the parties accept the interim orders insofar it declares the right of the parties in the businesses and immovable properties. It is also not to be lost sight of that this order was passed in the OMP where the precise subject matter was the challenge to the said interim order as that was a petition filed under Section 34 of the Act. It was clear from the aforesaid consent order that the respondent herein, who had filed the said petition challenging the interim award, did not press the said petition and accepted the interim award. The OMP was disposed of on that date. In these circumstances, it was not open to the respondent to turn around and in an interim application filed by the appellant for appointment of the arbitrator re-open the issue of validity of the interim award.

We, therefore, set aside the afore-quoted portion of the order dated 23.11.2006 and hold that the learned arbitrator shall proceed with the arbitration in terms of order dated 24.7.2006.”

10. The petitioner filed an application seeking clarification of the above order, being C.M. Appl. No.17754/2008, which was also disposed of by the Division Bench of this Court vide order dated 17.04.2009 holding as under:

“CM Appl. No. 17754/2008 in FAO(OS) No. 755-56/2006

In our orders dated 04.08.2008 passed in the appeal, we were concerned with the issue as to whether the question of validity of the interim award be reopened before the arbitrator or not and we answered the same in negative. Orders in this behalf is very clear. It would be open to the arbitrator to proceed further in accordance with the directions contained in the last para of the orders, having regard to the aforesaid aspect

*along which is decided in the appeal.
CM disposed of.”*

11. A reading of the above orders clearly shows that the mandate of the Arbitrator was now confined only to proceed further with the directions given by the Single Judge of this Court in its order dated 23.11.2006 and no further. The petitioner sought to contend before the Arbitrator that there were other properties which were also jointly owned by the parties or had been bought out of the Joint Business funds. This clearly was beyond the scope of the limited reference that remained before the Arbitrator. The petitioner, in guise of this additional claim was seeking modification of the Interim Award dated 08.03.2006, which had become final. The earlier attempt of the petitioner to the same effect had also been rejected by the Division Bench of this Court vide its order dated 04.08.2008 referred hereinabove.

12. Learned counsel for the petitioner relying upon the judgment of the Supreme Court in ***H.L.Batra and Company v. State of Haryana and Anr.*** (1999) 9 SCC 188, submits that the Arbitration Agreement between the parties was wide enough to include the disputes raised by the petitioner with respect to these additional properties and therefore, it could not be held that the jurisdiction of the Arbitrator was confined in any manner.

13. In general circumstances this may have been correct. However in the present case, the narration of the above facts would clearly show that the jurisdiction of the Arbitrator appointed by this Court

was confined to the directions given by this Court vide order dated 23.11.2006 and the limited inquiry that remained.

14. In *H.L. Batra* (Supra) while making the reference, all disputes were referred to the new Arbitrator appointed by the respondent therein, which were not confined only to the claims that had been raised by the petitioner therein in the earlier arbitration proceedings. The said judgment would therefore have no application in the facts of the present case.

15. Learned counsel for the petitioner has further relied upon the judgment of this Court in *Rhiti Sports Management Pvt. Ltd. v. Power Play Sports & Events Ltd.* MANU/DE/1615/2018 and submits that a Final Award necessarily entails adjudication of all disputes in the case and therefore, it cannot be said that by mere passing of the Interim Award and the same having become final, the petitioner shall be barred from raising any further claims in the arbitration proceedings.

16. In my view, the Interim Award can decide certain issues finally. Once such Award become final, it cannot be reopened while passing the Final Award. In the present case, the only scope left after passing of the Interim Award was to make a determination of the stock and the liabilities of the partnership businesses of the parties and division thereof. To add properties into such dispute would clearly be a modification of the Interim Award already passed and was, therefore, rightly rejected by the Arbitrator.

17. Learned counsel for the petitioner has further relied upon the judgment of the Supreme Court in *Oil and Natural Gas Corporation*

Ltd. v. Western Geco International Ltd., MANU/SC/0772/2014, to contend that where the Arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the Award so passed would be contrary to the fundamental policy of Indian law.

18. I am unable to appreciate the relevance of the said submission to the facts of the present case. The Arbitrator has rightly held that his jurisdiction was confined by the order dated 23.11.2006 and therefore, there was no question of any other inference being drawn by him.

19. In view of the above, I do not find any merit in the present petition and same is accordingly dismissed, with no order as to cost.

NAVIN CHAWLA, J

OCTOBER 03, 2018/Arya