

\$~27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(T)(COMM) 133/2018**

Date of Decision : 18th December, 2018

VISTAR METAL INDUSTRIES PVT. LTD. Petitioner
Through: Mr.Yashvardhan, Mr.Devender
Singh, Mr.Puneet Kumara,
Advs.

versus

PAISALO DIGITAL LTD. Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. No.17433/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 133/2018 & I.A. No.17434/2018

1. This petition has been filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking termination of the mandate of the Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Hypothecation/Loan Agreement dated 20.01.2015 executed between the parties.

2. The respondent had invoked the Arbitration Agreement contained in the abovementioned Loan Agreement vide its notice dated 26.09.2017. By a subsequent letter dated 27.09.2017, the respondent appointed a Sole Arbitrator exercising the power vested in it by the Arbitration Agreement.

3. The petitioner filed an application under Section 12 of the Act seeking certain disclosure from the Sole Arbitrator. The Arbitrator vide his order dated 14.06.2018 disposed of the application disclosing that this was the second case in which the respondent had appointed him as an Arbitrator. The relevant quotation from the order is as under:

“I have heard the authorized representative of the claimant and Ld. Counsel for the respondents. The disclosures sought by the respondents in the present application were already made by the present Arbitrator while attaching the disclosure with the consent letter dated 22.09.2017. However it is pointed out that it was the second occasion when the present Arbitrator simultaneously accepted the reference of the present case along with the other two cases of the companies of the respondents namely M/s Vaishnav Industries Pvt. Ltd. and M/s Vaishnav Metal & Power Pvt. Ltd. On the previous occasion the present Arbitrator had accepted the reference of M/s Nafto Gaz Constructions Ltd. the Arbitration of which was being conducted by the Arbitrator when the reference of the case of the respondents was referred to the present Arbitrator. No other case was held or decided by the present Arbitrator involving the present claimant or its sister concerns. The present Arbitrator has also not passed any award in favour or against the present claimant so far. The present Arbitrator has also not held any position with the claimant or its sister concerns and has no relations whatsoever with their business etc.”

4. The petitioner thereafter, filed an application seeking dismissal of the Statement of Claim on the ground that the Agreement being relied upon by the respondent was not adequately stamped. This application has been rejected by the Sole Arbitrator vide his order dated 11.09.2018 holding that the Agreement has been properly stamped.

5. Learned counsel for the petitioner submits that the mandate of the Arbitrator is liable to be terminated as the petitioner has serious apprehension on the fairness of the Arbitrator. He submits that the Arbitrator has been appointed by the respondent in three cases and therefore, in terms of Entry 22 of the Fifth Schedule to the Act, there is a reasonable ground giving rise to justifiable doubt as to the independent and impartiality of the Arbitrator.

6. He further submits that the Arbitrator has clearly erred in law in holding that the Agreement between the parties is duly stamped. He submits that the document in question is a Hypothecation Deed which has not been properly stamped in terms of the Notification dated 05.12.2014 issued by the office of the Divisional Commissioner, Delhi. Relying upon the judgment of the Supreme Court in *SMS Tea Estates Pvt. Ltd. vs. Chandmari Tea Company Pvt. Ltd.* (2011) 14 SCC 66 and of this Court in *Avantha Holding Ltd. vs. M/s Osian's Connoisseurs of Art(P) Ltd. & Anr.* 2012 SCC OnLine Del 2044, he contends that where the documents is deficiently stamped, the arbitration proceedings cannot take place and are liable to be terminated.

7. I have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

8. The Arbitrator by his order dated 11.09.2018 has held that the document in question is not a Hypothecation deed but a simple Agreement of loan and is therefore, properly stamped. The merit of the said finding cannot be challenged on an application under Section 14 of the Act. Section 14 of the Act is not to challenge the orders passed by the Arbitrator in the course of the arbitration proceedings. The question whether the order passed by the Arbitrator is correct or not, would necessarily have to be determined by the Court in a proper proceeding and I therefore, refrain from making any observations on the merit of the submission made by the counsel for the petitioner on this aspect. However, one thing is certain that this cannot be a ground for terminating the mandate of the Arbitrator at this stage.

9. As far as the submissions of the counsel for the petitioner that the Arbitrator has been appointed in three cases by the respondent is concerned, I find that this ground has not been urged before the Arbitrator in form of an application under Section 13(2) of the Act. In any case, the ground being urged by the petitioner falls under the Fifth Schedule to the Act and in terms of the judgment of the Supreme Court in ***HRD Corporation (Marcus Oil and Chemical Division) vs. Gail (India) Ltd. (Formerly Gas Authority of India Ltd.)*** (2018) 12 SCC 471 it has to be raised first before the Arbitrator and incase the petitioner is unsuccessful in such challenge, the same can be challenged only along with the challenge to the final Award.

10. In view of the above, I find no merit in the present petition and the same is accordingly dismissed.

11. Counsel for the petitioner submits that the petitioner had filed the present petition on 07.12.2018. The fact of filing of the present petition was informed to the Arbitrator and a request was made to the Arbitrator to adjourn the proceedings. However, the Arbitrator by his order dated 17.12.2018 has closed the right of the petitioner to cross examine the witness of the respondent who was present on that date. He submits that an opportunity be given to the petitioner to cross examine the said witness. He further submits that the petitioner is ready to pay the cost for the delay in the proceedings and has also consented to the extension of time for making of the Award by the Arbitrator.

12. In my view, this plea of the petitioner has to be considered by the Arbitrator. The petitioner shall be at liberty to file an appropriate application before the Arbitrator making similar request.

Dasti.

NAVIN CHAWLA, J

DECEMBER 18, 2018
RN