

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.223 OF 2018
WITH
NOTICE OF MOTION (L). NO.297 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.223 OF 2018

Cedar Infonet Pvt. Ltd. ... Petitioner
Vs.
L and T Finance Limited and others ... Respondents

Mr. Rohan Sawant a/w. Ms Krushi Bartiwala and Ms Warisha Parkar i/b.
ALMT Legal Parinam Law Associates for Petitioner.
Ms S. I. Joshi a/w. Mr. Anand Poojari, Ms Nikita Pawar and Ms Jalpa
Pithadia i/b. S. I. Joshi & Co. for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 11, 2019

P.C. :

Heard Mr. Sawant, learned Counsel for petitioner and Ms Joshi,
learned Counsel for respondent No.1 at length.

2. By this Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act'), the petitioner has challenged the award dated 27.04.2016 made by the sole Arbitrator in Arbitration Case No.696 of 2014. The Arbitral Tribunal made the following Award:

“a) Respondent No.1 (petitioner herein) do pay to the claimants (respondent No.1 herein) a sum of Rs.11,47,29,383.66/- (Rupees Eleven Crore Forty Seven Lacs Twenty Nine Thousand Three Hundred Eighty Three and Paise Sixty Six only) consisting of overdue loan amount, delayed payment charges as on 07.07.2014;

b) further, the Respondent No.1 (petitioner herein) do pay interest @ 15.5% p.a. on said sum of Rs.11,47,29,383.66/- from 8.07.2014 till payment and / or realisation;

c) Costs of this Arbitration fixed at Rs.72,500/- and fees

of the Arbitration fixed at Rs.1,00,000/- totaling to a sum of Rs.1,72,500/-. Parties to dispute are directed to bear said fees and costs equally in the ratio of 50% each by Claimants (respondent No.1 herein) and Respondents (petitioner herein). However, the claimants (respondent No.1 herein) are directed to initially make payment of the said Arbitration fees and costs and recover the balance from Respondents (petitioner herein).”

3. The petitioner has taken out Notice of Motion (L) No.297 of 2018 inter alia praying for stay of the award dated 27.04.2016 made by the Arbitral Tribunal. The Petition under Section 34 is instituted on 08.02.2018 challenging the award made on 27.04.2016. Ms Joshi has raised preliminary objection about the maintainability of this Petition on the ground that the Arbitration Petition is barred by limitation.

4. Mr. Sawant submitted that though the award was made on 27.04.2016, petitioner received signed copy of the award only on 16.11.2017, and therefore, the Petition filed under Section 34 is within limitation. He submitted that respondent No.1 claims to have effected service on the petitioner at the following address:

Cedar Infonet Pvt. Ltd.
C 160, Phase I, Okhla Industrial Area,
New Delhi 110 057.

5. He invited my attention to the Loan Agreement dated 12.03.2012, and in particular, Article 10 thereof. Article 10 dealing with Notices provided that any notice to the borrower (petitioner herein) by the lender (respondent No.1 herein) shall be in writing and / or in electronic form and posted, delivered personally or sent by e-mail, courier, registered post or under certificate of posting or facsimile transmission to the borrower's (petitioner's) last known address and / or the E-mail ID / address **as specified in Schedule hereto**, and for proving service by the lender (respondent No.1 herein), it shall be sufficient to show that it was

sent via electronic delivery or the envelope containing the notice was properly addressed and posted / delivered / sent to the said address / Email ID / facsimile number.

6. He invited my attention to the Schedule appended to the loan agreement and in particular the name and address of the borrower (petitioner herein), which is to the following effect:

Cedar Infonet Pvt. Ltd.
C 160, Phase I, Okhla Industrial Area,
New Delhi 110 020.

7. Mr. Sawant submitted that respondent No.1 claims to have sent communication dated 14.11.2014 referring the disputes to the Arbitral Tribunal to the petitioner at the following address:

Cedar Infonet Pvt. Ltd.
C 160, Phase I, Okhla Industrial Area,
New Delhi 110 057.

8. As against this, the pin code of petitioner's company is 110 020. He submitted that the said letter was not served on the petitioner. Respondent No.1 further claims that on 24.11.2014, letter was sent to the petitioner and others by speed post, which was also sent at the following address:

Cedar Infonet Pvt. Ltd.
C 160, Phase I, Okhla Industrial Area,
New Delhi 110 057.

9. Respondent No.1 claims that the said letter was refused on 05.12.2014. He has also invited my attention to the order dated 16.09.2015 passed by this Court (Coram : R. D. Dhanuka, J.) in Arbitration Petition No.332 of 2015. Respondent No.1 had instituted Petition under Section 9 of the Act seeking interim measures i.e.

appointment of Court Receiver in respect of the properties described at exhibit-F to the Petition and seeking an order of deposit of the sum of Rs.11,47,29,383.66 ps. In paragraph 9, the contention of the respondent No.1 herein that the arbitral proceedings are concluded and award is awaited was recorded. The statement was seriously disputed by the respondents therein (petitioner and respondent No.2 herein).

10. Mr. Sawant further submitted that in any case, respondent No.1 could have served arbitration proceedings through email. Apart from this, respondent No.1 could have served Advocates appearing for the petitioner in Section 9 proceedings. In short, he submitted that the service was not effected on the petitioner. Respondent No.1 did not send notices through email and also did not serve any proceedings on the Advocates representing the petitioner in Section 9 proceedings in this Court, though the respondent No.1 was aware that petitioner is represented by Advocates in this Court.

11. Mr. Sawant further submitted that so far as the contention of the first respondent that the award was served on the petitioner on 17.05.2016 is concerned, the acknowledgement shows that the company was sealed at the relevant time. He submitted that as the proceedings were served only on 16.11.2017, the Petition instituted under Section 34 is well within limitation.

12. On the other hand, Ms Joshi submitted that Section 3 of the Act lays down that unless otherwise agreed by the parties, (a) any written communication is deemed to have been received if it is delivered to the addresses personally or at his place of business, habitual residence or mailing address, and (b) if none of the places referred to in clauses (a) can be found after making a reasonable inquiry, a written

communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it. She submitted that from time to time, notices were sent to the petitioner. Some notices were refused. Some notices were accepted. She further submitted that when Section 9 Petition was heard by this Court on 16.09.2015 though submission was made on behalf of the respondent No.1 herein that the arbitral proceedings are concluded and award is awaited, that time also, petitioner and respondent No.2 did not make any grievance that the arbitral proceedings were not served on them. She submitted that the award was deemed to have been served on the petitioner on 17.05.2016. In view of Section 34(3) of the Act, the Arbitration Petition instituted on 08.02.2018 is barred by limitation.

13. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the record shows that on 14.11.2014, respondent No.1 addressed a letter to the sole Arbitrator and copy whereof was sent to the petitioner and the second respondent. By that letter, the disputes were referred to the Arbitral Tribunal. The letter was received by the petitioner on 22.11.2014. On 22.11.2014, the Arbitrator addressed a letter to the respondent No.1 and petitioner directing the parties to comply the directions. Respondent No.1 was directed to file their Statement of Claim within six weeks. The petitioner and the respondent No.2 were directed to file reply within 6 weeks. Rejoinder, if any, within a period of two weeks. The said letter was sent at the address of the petitioner, extracted hereinabove. The said letter was refused on 05.12.2014. Respondent No.2 received that letter. On 25.11.2014, respondent No.1 submitted Statement of Claim before the sole

Arbitrator. Copy whereof was forwarded to the petitioner and the second respondent. Respondent No.1 filed affidavit of service dated 10.05.2015. In paragraph 1, it is asserted that respondent No.1 had sent a consignment containing the copies of statement of claim to the parties through Speed Post at the address of both the respondents (petitioner and second respondent herein). The consignment was sent through Speed Post AD to the petitioner at their registered office. Along with that affidavit, original AD card was annexed. The said letter is duly received by the petitioner on 24.12.2014.

14. On 09.03.2015, the Arbitral Tribunal informed the parties that the next meeting is fixed on 01.04.2015 at 5.40 p.m. The said letter was sent to the petitioner, which was received on 14.03.2015. Subsequently, on 10.04.2015, the Arbitral Tribunal sent letter fixing date of meeting on 06.06.2015 at 5.40 p.m., which was also received by the petitioner. On 27.04.2016, the Arbitral Tribunal forwarded a copy of the award made on 27.04.2016, which was attempted to be delivered to the petitioner on 17.05.2016 and there is endorsement that the company is sealed.

15. It has come on record that another company by name, Tulip Telecom Company is also having registered office at C-160, Okhla Industrial Area, Phase-1, New Delhi 110020, which is the address of the petitioner also. By Notification dated 12.02.2015, the Official Liquidator as Provisional Liquidator was appointed on that Company. In other words, petitioner was not under liquidation. Mr. Sawant also stated that petitioner is not under liquidation.

16. That apart, as mentioned earlier, on 16.09.2015, this Court passed order in Arbitration Petition No.332 of 2015. In paragraph 9, the submission made on behalf of the first respondent that arbitral

proceedings are concluded and award is awaited and that submission disputed by the respondents was also recorded. It is relevant to note that if at all the petitioner and the second respondent were really not served with the notice issued by the first respondent and the sole Arbitrator from time to time, surely they would have made grievance when order on Section 9 Petition was passed by this Court on 16.09.2015.

17. Section 3 of the Act reads thus,

“3. Receipt of written communications.- (1) Unless otherwise agreed by the parties,-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clauses (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.”

18. Mr. Sawant submitted that respondent No.1 did not effect service either through email or on the Advocate appearing for the petitioner in this Court in Section 9 proceedings. I do not find any merit in this submission. As mentioned earlier, the loan agreement provided that the service is to be effected on the address mentioned in the Schedule. Accordingly, the notices were consistently sent on the address of the petitioner. Mr. Sawant submitted that the pin code is 110020 and as against this, all the communications were sent on the pin code 110057, and therefore, it cannot be said that the service was effected on the correct address of the petitioner. I do not find merit in this submission

also. As mentioned earlier, all along, the proceedings were served on the petitioner. On some occasions, they refused to accept service and on some occasions, they accepted service. Despite service, they refused to participate before the Arbitral Tribunal. The award is made on 27.04.2016 and the Petition is presented on 08.02.2018. In view of Section 34(3) of the Act, it cannot be said that the Petition is presented in this Court within the limitation. Hence, Petition fails and the same is dismissed.

19. In view of the dismissal of the Petition, nothing survives in Notice of Motion (L) No.297 of 2018 and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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