IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.1600 OF 2019
ALONG WITH
LD-VC-IA/1/2020

Antony Waste Handling Cell Ltd. ....Petitioner
vs
Bhiwandi Nizampur City Municipal Corporation ...Respondent

WITH
COMMERCIAL ARBITRATION PETITION (L) NO.71 OF 2020

Bhiwandi Nizampur City Municipal Corporation ....Petitioner
vs
Antony Waste Handling Cell Ltd. ...Respondent

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Mr. Pratik Sakseria, a/w. Mr. Saket Mone, Mr. Vishesh Kalra and Mr. Vishal Dushing, i/b. Vidhii Partners, for the Petitioner in CARBP No.1600/2019 and for the Respondent in CARBP(L) No.71/2020.

Mr. N.R. Bubna, for the Respondent in CARBP No.1600/2019 and for the Petitioner in CARBP(L) No.71/2020.

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CORAM : S.C. GUPTE, J.

DATED : 03 JULY 2020

ORAL JUDGMENT:

. Heard learned Counsel for the parties.

2. This interim application is moved in two commercial arbitration petitions. The commercial arbitration petitions are under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"). They are in the nature of cross-challenges by the parties to an arbitral award made by a sole arbitrator.

3. The disputes between the parties arose out of a contract for collection and transportation of municipal solid waste, the Respondent in Commercial Arbitration Petition 1600 of 2019 being the employer and the Petitioner the contractor. The Petitioner, who was the claimant before the learned arbitrator, claimed collection and transportation charges and damages on various counts. The Respondent defended the claim and also filed a counter-claim. There were in all nine claims of the Petitioner, referred to as Claim Nos. (A) to (I). The learned arbitrator, in his impugned award, awarded Claim No. (A) in the sum of Rs.4,27,82,376/- (towards pending bills), Claim No.(F) in the sum of Rs.2.29 lakhs (on account of damages for idling of assets due to premature termination of the contract and failure to take over assets in accordance with the provisions of Clause 3 of Chapter V of the contract) and costs quantified at Rs.32,50,000/-. The learned arbitrator also awarded interest on this amount at Rs.15.5 % p.a. upto the date of the award and thereafter at the rate of 16.5% p.a. till payment of realisation. The total claim awarded by the learned arbitrator in favour of the Petitioner along with interest amounted to Rs.15,46,06,143/- as of 21 January 2020. Insofar as the Respondent's counter claims are concerned, the same were rejected in toto by the learned arbitrator. The award has been challenged both by the Petitioner and the Respondent. Whereas the Petitioner has been aggrieved by rejection of its other claims, the Respondent Corporation has taken exception to the three claims awarded by the arbitrator, which have been referred to above, and rejection of its counter-claim.

4. During the pendency of these petitions, the parties were in

talks for a settlement. Towards that end, the matter was referred by the Respondent Corporation to a Senior Advocate of this Court for his opinion on the prospective settlement. The learned Senior Advocate *inter alia* opined that if the matter were to reach upto the Supreme Court, and if there were to be adverse decision, then the Corporation was likely to be saddled with huge financial liabilities. Learned Counsel also observed that there were no legal obstacles for the Municipal Corporation in taking a decision on the proposal of compromise made by the Petitioner contractor, though any such decision would have to be with the approval of the Corporation's standing committee. Taking this opinion into account, the Commissioner of the Respondent Corporation submitted the Petitioner's compromise proposal, proposing a sum of Rs.15 crores in full and final settlement of the impugned award, for a decision of the standing committee of the Respondent Corporation in accordance with Section 481(1)(h) of the Maharashtra Municipal Corporations Act ("MMC Act"). The standing committee, vide its Resolution No.190 of 2020, dated 18 February 2020, after deliberating upon the matter, sanctioned the compromise on terms and conditions set out in the resolution. The terms and conditions included the following :

"1. The contractor, M/s. Antony Waste Handling Cell Ltd., accepts the said dispute amount of Rs.15,00,00,000/- as full and final settlement.

2. Both the parties will withdraw the commercial arbitration petitions filed in the Hon'ble High Court and in future they will not make any Court claim or demand in this matter.

3. In accordance to the compromise, the agreement in this regard is being cancelled by mutual consent. It will not be treated as default of the contractor.

4. Approval of the Hon'ble High Court will be taken for these terms and conditions."

The standing committee *inter alia* made it clear that the decision reflected in its resolution would come into effect at the earliest, without even waiting for confirmation of the minutes.

5. It is the Petitioner's case that though, in pursuance of the aforesaid resolution, consent terms in the nature of minutes of order were finalised between the parties, the same could not be filed before this Court, since this Court was taking up only extremely urgent matters as a result of the outbreak of Covid-19 pandemic. On 1 June 2020, the Petitioner, through its Advocate, requested the Commissioner of the Respondent Corporation to conclude the compromise by consent minutes. The request was made purportedly on the basis that the Petitioner, who was running essential services, was gravely effected in revenue and and the proposed compromise would help the Petitioner overcome the difficulties due to the lock-down. Since, around 2 June 2020, this Court started taking up regular admission matters for the year 2019-2020, on or about 11 June 2020, a praecipe was moved by the advocates of the Petitioner requesting this Court to take up the petitions on 12 June 2020 for filing of consent terms in the nature of minutes of

order. The praecipe included a draft of those consent minutes, which the parties had agreed to sign and execute. This Court required the parties to move the Court with signed compromise. The consent minutes were, accordingly, circulated between the parties. On or around 16/17 June 2020, the Commissioner of the Respondent Corporation signed the consent minutes of order, which minutes were, thereafter, forwarded to the Petitioner and the respective Advocates of the parties for their signatures. On 20 June 2020, the consent minutes were duly signed by all parties and advocates. A circulation was thereupon sought for disposal of the commercial arbitration petitions in terms of the minutes on 23 June 2020, which was a scheduled date for urgent hearings through video conferencing in the particular week. Since the matter could not be taken up on that date, a request was made to the Court to take up the matter on the following date, i.e. on 26 June 2020. The matter was, accordingly, listed before this Court on 26 June 2020. On that date, learned Counsel for the Respondent Corporation sought time to take instructions from the Respondent Corporation's new Commissioner. (On 20 June 2020, in the afternoon, after the matter of signing of consent minutes of orders was duly concluded by the parties, the then Commissioner of the Respondent Corporation had handed over the charge of his office to the new Commissioner.) This Court, by its order dated 26 June 2020, noted learned Counsel's request concerning approval of the new Municipal Commissioner for the settlement to go through. The Court was of the view that the request was highly curious. The Court noted that the settlement had been arrived at the level of the standing committee of the Respondent Corporation and after passing of a resolution by the standing committee, which resolution was signed and also counter signed by the Municipal Commissioner; and that it was difficult to see how the Municipal Commissioner could reconsider this entire settlement and choose to overturn it if he so desired. Though the Court was prima facie of the view that the Municipal Commissioner could not wriggle out of a binding contract between the parties, in view of the fact that learned Counsel for the Respondent Corporation was unable to get in touch with the newly appointed Municipal Commissioner, purely by way of indulgence, the matter was stood over to the following date. On the following date, i.e. 30 June 2020, when the Court took up the matter, it was kept back for instructions of the Municipal Commissioner. Learned Counsel for the Respondent Corporation, after taking instructions from the Municipal Commissioner, informed the Court that the Commissioner was not inclined to proceed with the consent terms. Considering the fact that the compromise of the pending petitions had become a subject matter of controversy, this Court stood over the matter to today's date to enable the Petitioner contractor to take out an appropriate application under Order 23 Rule 1 of the Code of Civil Procedure for recording of the compromise.

6. The Petitioner has now moved its application for recording of the compromise. The Respondent Corporation has filed its reply. The parties have been fully heard on the application through video conferencing.

7. It is pertinent to note that compromise by or on behalf of the Respondent Corporation is governed by Section 481(1)(f),(h) and (i) of the MMC Act. Clause (f) of sub-section (1) of Section 481 authorises the

Commissioner to withdraw or compromise any claim of the Corporation for a sum not exceeding five hundred rupees or, with the approval of the Standing Committee, if such claim were to exceed five hundred rupees. So also, under Clause (h) the Commissioner is authorised to admit or compromise any claim or legal proceeding brought against the Corporation or the Commissioner or a municipal officer or servant, in respect of anything done or omitted in pursuance of a contract entered into with the Corporation. Likewise, under Clause (i) the Commissioner can institute or prosecute any suit or withdraw from or compromise any suit or claim, other than a claim of the description specified in clause (f), which has been instituted or made in the name of the Corporation or of the Commissioner. This scheme of Section 481(1)(f), (h) and (i) makes it clear that any claim made by the Corporation against any person for any sum exceeding five hundred rupees or any suit or claim or legal proceeding brought against the Corporation by any person can be compromised by the Municipal Commissioner with the approval of the standing committee.

8. The Respondent Corporation in the present case has not disputed the Petitioner's case that the compromise proposed by the Petitioner was approved by the standing committee and after approval of the standing committee was duly signed by the then Municipal Commissioner, the Petitioner contractor and the respective Advocates of the parties by 20 June 2020. The only ground on which the compromise is opposed before this Court (in its reply dated 2 July 2020) is that on and after 23 June 2020, that is to say, on the dates, when the consent minutes of order were moved before this Court and the matter was listed

for settlement, the Municipal Commissioner, who had signed the consent minutes of the order, was no longer holding the charge of Municipal Commissioner. The fact that the Municipal Commissioner had ceased to be of a Commissioner by the time the petitions were taken up for recording of the compromise between the parties is neither here nor there. Under Order 23 Rules 1 and 3 of the Code of Civil Procedure, all that this Court has to consider is whether it is proved to its satisfaction that the suit or claim has been adjusted wholly or in part by any lawful agreement or compromise in writing signed by the parties. If the Court finds such lawful agreement or compromise to its satisfaction, it must order such agreement or compromise to be recorded and pass a decree or order in accordance therewith so far it relates to the parties to such suit or claim. The proviso to Rule 3 of Order 23 requires the Court to decide whether such adjustment has been arrived at, whenever such adjustment is alleged by one party and denied by the other. This scheme of Order 23 Rules 1 and 3 envisages the Court's mandate to decide whether or not a lawful compromise has been arrived at between the parties. As we have noted above, the original compromise proposed by the Petitioner found favour with the Commissioner of the Municipal Corporation, who mooted a proposal for its approval by the standing committee of the Corporation; the standing committee, after seeking an opinion of a Senior Advocate of this Court, and after deliberating upon the matter, duly passed a resolution accepting the compromise subject to terms and conditions stated therein; the terms and conditions of the compromise have been duly reflected in the consent minutes of the parties; the consent minutes have been duly signed by the parties through their authorised signatories (by the Petitioner through its representative authorised by a duly passed resolution and by the Respondent Corporation through its Commissioner) and also by their respective Advocates. The compromise was, thus, already a concluded contract as of 20 June 2020 before the then Municipal Commissioner handed over his charge to the new Commissioner. The earliest that the matter could thereafter have been moved was on 23 June 2020, which was the immediately next scheduled date of hearings in this Court through video conferencing. Due to abundance of matters on that date, the matter was circulated on the following available date, i.e. 26 June 2020. If on this date, the new Commissioner, who had been placed in charge of the Corporation in place of the earlier, did not "wish to proceed further with proposed settlement", that does not in any way reflect on the factum of a concluded adjustment of the pending matter as noted above.

9. A Division Bench of this Court, in the case of **Dattatray s/o Anandgir Giri vs. The Aurangabad Municipal Corporation**[1] (para 11), *inter alia* noted that a decision by the standing committee of the municipal corporation in that case in a similar situation having already attained finality, the same could not have been turned down by the municipal commissioner, particularly when there was no specific challenge to the said decision by the Corporation or the Commissioner. The Court particularly observed that standing committee of a municipal corporation stood on a higher footing in hierarchy; its status was on higher pedestal compared to the municipal corporation; it was a higher authority recognised under the MMC Act. The Court, in the premises, noted that the decision of the standing committee could not have been

1 2015 (4) Mh.L.J. 905

reversed by a new incumbent Commissioner; it could be, if at all, reversed/varied/set aside only by the standing committee who had approved the decision.

10. In **Y. Sleebachen vs. State of Tamil Nadu**[2], the Supreme Court (in para 15) accepted the authority of the Government Pleader to enter into a settlement on behalf of the Government. What was alleged in that case before the Supreme Court was that no compromise was recorded or agreed upon before the court, which was contrary to the record of the court, which considered the ground of challenge as impermissible. The Court noted that there was not even an iota of pleading explaining as to how the Government Pleader was not authorised to record a consent or that he in any manner was lacking in authority or that he had acted improperly.

11. These authorities clearly support the Petitioner's case on compromise in these petitions. The compromise here is by a Standing Committee of the Corporation, an authority higher to the Commissioner. The resolution of the standing committee has been acted upon. The then Municipal Commissioner as well as the Corporation's advocate has signed the consent minutes of order. Nothing is shown before this Court to imply that resolution of the Standing Committee was not efficacious or that the then Commissioner or the Corporation's advocate either had no authority to sign the minutes or acted improperly in doing so.

12. As we have noted above, the dispute between the parties forming the present arbitration petitions was duly compromised by the

2 (2015) 5 Supreme Court Cases 747

parties after following due process of law. The compromise was duly signed by and on behalf of the respective parties and their Advocates. The matter was, thus, adjusted wholly by a lawful agreement or compromise in writing, which was signed by the parties, and there is no way the present Municipal Commissioner can back out of the compromise or oppose the application for recording the same.

13. In the premises, the interim application filed by the Petitioner is allowed in terms of prayer clause (a). In view of the compromise recorded today, there will be an order in terms of the consent minutes of order dated 20 June 2020 and the arbitration petitions are disposed of in terms thereof. The impugned award of the learned arbitrator is, accordingly, substituted by this order in terms of consent minutes. It is made clear that none of the observations of the arbitrator concerning either the Petitioner or the Respondent survives any longer.

14. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

(S.C. GUPTE, J.)

Smita Gonsalves

Digitally signed by Smita Gonsalves
Date: 2020.07.21 17:16:55 +0530