IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:26.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

<u>O.P No.243 of 2015</u>

1.M/s.SVR Super Speciality Hospital
Rep. By its Partner E.Ravinder Reddy
No.7-1-79, A&B,
Dharam Karan Road,
Ameerpet, Hyderabad – 500 016.

2.E.Ravinder Reddy

3.E.Sandhya Rani ... Petitioners

Vs.

1.M/s.Reliance Capital Ltd.
Rep. By its Authorised Representative
Regd Office at H Block, I Floor,
Dhirubhai Ambani Knowledge City
Koparkhairane, Navi Mumbai – 400 710
Having its State/Branch Office at
No.10-A, Haddows Road,
Nungambakkam, Chennai – 600 006.
2.Shri D.Saravanan
Sole Arbitrator,
Orient Chambers
No.90, (Old No.73), 4th Floor,
Armenian Street,
Chennai – 600 001. ... Respondents

Original Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 praying to set aside the impugned award dated 03.01.2015 made in A.C.P.(RCL) No.80 of 2014, passed by the 2nd respondent herein.

For Petitioners : Ms.Vasudha Thiagarajan

For 1st Respondent : Mr.Kiran M
for Mr.K.Moorthy

ORDER

Ms.Vasudha Thiagarajan, learned counsel on record for three petitioners and Mr.Kiran M, learned counsel representing the counsel on record for the contesting first respondent are before me in this web-hearing on a video-conferencing platform. Both learned counsel agreed for main OP being taken up for final hearing, being heard out in this virtual hearing, on this basis the main OP is being taken up and heard out.

2. Captioned 'Original Petition' ('OP' for the sake of brevity) is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 996)' and this Act shall hereinafter be referred to as 'A

and C Act' for the sake of brevity and convenience. Captioned OP has been filed assailing 'an arbitral award dated 03.01.2015 bearing reference No.A.C.P. (Reliance) No.80 of 2014' (hereinafter 'impugned award' for the sake of brevity) made by an 'Arbitral Tribunal' ('AT' for sake of brevity) constituted by a sole Arbitrator. To be noted, this sole Arbitrator, who constituted the AT/made the impugned award, has been arrayed as Respondent No.2 in captioned OP and there is no disputation or disagreement before me as between the two learned counsel that the presence of respondent No.2 is not necessary for disposal of captioned OP owing to the nature of grounds that have been canvassed in captioned OP.

3. Owing to captioned OP being an application under Section 34 of A and C Act, factual matrix in a nutshell would suffice. Facts are that first petitioner firm is represented by the second petitioner; that petitioners 2 and 3 as co-borrowers with petitioner No.1 as borrower entered into a 'Loan Agreement dated 05.09.2008 bearing Reference No. RLMEHYD000116109' (hereinafter 'said contract' for the sake of brevity and convenience); that the petitioners were given a loan of

Rs.21,77,997/- by contesting first respondent under said contract for purchase of medical equipment; that the petitioners were liable to repay this loan together with interest/finance charges and insurance charges in 49 monthly instalments; that the said contract contains an arbitration clause (Clause No.38); that contesting first respondent alleging delay/default in payment of monthly instalments triggered the arbitration clause owing to which AT was constituted; that AT entered upon reference; that AT made the impugned award dated 03.01.2015 after full contest; that vide the impugned award, AT *inter alia* directed payment of Rs.10,73,629/- together with interest; that the petitioners, who were respondents before AT have presented captioned OP on 23.03.2015 in this Court assailing the impugned award.

4. It is necessary to mention that vide earlier proceedings in captioned OP, records of the AT were requisitioned and the same are now before this Court. Said contract, which was marked as an exhibit before AT, forms part of the records of AT and there is no disputation or disagreement as between the two learned counsel before me that certified copies of said contract have since been furnished to both sides by the Registry.

5. As already mentioned supra, instant OP i.e., captioned OP has been presented on 23.03.2015 and is therefore governed by the pre 23.10.2015 regime qua A and C Act. In other words, A and C Act as it stood prior to amendment vide Act, 3 of 2016 which kicked in with retrospective effect from 23.10.2015 will govern the case on hand.

6. Notwithstanding very many averments/contentions raised in the petition, learned counsel for petitioners focussed her submissions on the argument that impugned award is in conflict with public policy of India. In other words, this is the lone ground on which impugned award is being assailed before this Court.

7. Learned counsel for petitioners, drawing the attention of this Court to a communication dated 16.07.2014 being a communication from the contesting first respondent to the first petitioner submitted that even according to the contesting first respondent, the principal outstanding was 'NIL' (0.00) as of 16.07.2014 and therefore the claim is clearly not tenable atleast in terms of numbers. It was also submitted that there is no provision for what has been described as LPP charges. This Court is informed that LPP charges denote 'Late Payment Penalty'.

8. Learned counsel also drew the attention of this Court to pleadings before AT i.e., petitioners' pleadings captioned 'counter reply' and more particularly to paragraph 22. Referring to paragraph 22 of the petitioners' (respondents before AT) pleadings before AT, it was submitted that cheques issued by the petitioners were dishonoured on 63 occasions and if cheque bounce charges are levied at the rate of INR Rs.450/- per dishonour, it comes to Rs.28,350/- whereas the contesting first respondent has shown only a claim of Rs.14,322/- under this head. Adverting to this, it was submitted that it is a bad accounting system that has been followed by the contesting first respondent.

9. In response to the above, learned counsel for contesting first respondent submitted that with regard to LPP (Late Payment Penalty), though there is no specific clause in said agreement, communications have been sent to the petitioners, they have agreed, it therefore forms part of the transaction between the parties, owing to this LPP has become part of said contract, the communications and acceptance by petitioners were placed before AT, which on appreciation of this evidence, has ultimately

made the impugned award. With regard to the cheque bouncing charges and plea of bad accounting system, learned counsel for contesting first respondent submitted that argument of the petitioners is in the nature of an appeal, it turns on the merits of the matter, but AT has made the impugned award after considering the accounts statements before it.

10. This takes this Court to the impugned award. A perusal of the impugned award reveals that as many as 10 exhibits viz., Exhibits A1 to A10 have been marked on the side of contesting first respondent (Claimant before AT) and one exhibit viz., Ex.B1 has been marked on the side of the petitioners (respondents before AT) and therefore there was documentary evidence before AT. The records of AT placed before this Court also reveal that such documentary evidence was before the AT. A careful perusal of the impugned award reveals that impugned award does deal with both the LPP and cheque bouncing charges plea. This is contained in paragraph 5(b)(iv) of the impugned award which reads as follows:

> '(iv) Now coming to the other objection, the respondents dispute the claim of additional finance charges at 36% per annum; claim

of cheque bouncing charges at Rs.450/- as the same is usurious and unconscionable. In this respect, under the loan application in reference the respondents categorically agreed to pay the delayed payment interest at that 3% per month on its unpaid EMI/outstanding amount and Rs.450/- towards cheque bouncing charges for each of the cheque dishonored. The first schedule to the loan agreement also contemplates the payment under such heads. Admittedly, the respondents had committed default and even the respondents themselves states that on 63 occasions the cheques issued by them got bounced. So long as the respondents pay the installments on due dates payment of additional finance charges would not occur. So also, payment of cheque bouncing charges would not occur in the event of honoring the cheque on due date. On the other hand, in the case on hand, the respondents themselves warranted to such a situation by leaving the cheques dishonored repeatedly. Having agreed to the terms and conditions of the agreement and executed the same way back in the year 2008 with open eyes it is not now open to the respondents to go back and question the same. This tribunal is a creature of the contract. That be so, this tribunal is bound to travel within the four corners of the agreement. Therefore, the claim of LPP charges; cheque bouncing charges are in accordance with the terms and conditions of the loan agreement. Therefore, this tribunal comes to an irresistible conclusion that the claim in this regard of the claimant is justified and valid in law.'

11. To be noted, paragraph 5 of the impugned award is captioned 'Issues, Discussions and Findings', Sub paragraph (b) therein is captioned 'Whether the respondents are liable to pay the sum of Rs.10,73,629/- to the claimant arising out of the default in payment of installments as per the Loan Agreement in reference?'

12. A perusal of paragraph 5(b)(iv) of the impugned award (extracted and reproduced supra) reveals that AT has considered both the points urged before this Court, there was documentary evidence before AT and AT has taken a view. This Court is unable to persuade itself to believe that the view taken by AT is such that no reasonable person would take such a view. In other words, this Court is unable to persuade itself to believe that the view taken by AT qua the two pronged submissions are implausible. Therefore, this Court is of the considered view that there is no scope for judicial intervention under Section 34 of A and C Act qua impugned award as proceedings under Section 34 are summary proceedings as laid down by Hon'ble Supreme Court in ***Fiza Developers*** case [***Fiza Developers and Inter-Trade Private Limited Vs.***

AMCI (India) Private Limited reported in ***(2009) 17 SCC 796***], which was reiterated as a step in the right direction by Hon'ble Supreme Court in ***Emkay Global*** case being ***Emkay Global Financial Services Ltd. v. Girdhar Sondhi reported in (2018) 9 SCC 49.*** To be noted, this ***Fiza Developers*** principle was further reiterated recently by Hon'ble Supreme Court in ***Canara Nidhi Limited case [M/S. Canara Nidhi Limited vs M. Shashikala reported in 2019 SCC Online SC 1244].***

In the light of narrative thus far, instant OP fails and the same is dismissed. There shall be no order as to costs.

26.08.2020

Note to Office: Registry is directed to return the records of the Arbitral Tribunal to the second respondent under due acknowledgement.

Speaking Order : Yes/ No
Index : Yes / No

sgl/gpa

M.SUNDAR, J.

sgl/gpa

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