



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.08.2022

+ **FAO (OS) (COMM) 45/2018****WISHWA MITTAR BAJAJ & SONS**

..... Appellant

versus

BPTP LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Raghavendra M Bajaj, Mr Shreyas Mehrotra, Mr Tushar Kalsotra, Mr Kumar Karan and Mr Pranav Gupta, Advocates.
 For the Respondent : Mr Manish Sharma, Advocate.

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HON'BLE MR JUSTICE VIBHU BAKHRU**HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

VIBHU BAKHRU, J

1. Wishwa Mittar Bajaj & Sons (hereafter '**the appellant**') has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act (hereafter '**the A&C Act**') impugning an order dated 21.12.2017 (hereafter '**the impugned order**') passed by the learned Single Judge, whereby the appellant's application under Section 34 of the A&C Act, seeking to set aside an arbitral award dated 14.07.2017 (hereafter '**the impugned award**'), was rejected.

FACTUAL CONTEXT

2. On 18.04.2007, the respondent issued a Letter of Intent and



awarded the work of construction of Towers (G, H, J & K) for Group Housing Project at Sector-82, Faridabad (hereafter '**the Project**') to the appellant. Subsequently, on 19.04.2007, the respondent issued a Work Order in favour of the appellant for completion of the Project. In terms of the Work Order, the effective date of commencement of works was 21.04.2007 and the scheduled date of completion of works was a period of twenty-one months from the date of possession of the site. The contract value of the Project was approximately ₹16,48,14,449/-.

3. The execution of the works was prolonged beyond the agreed period of twenty-one months. The contract between the parties was foreclosed on 11.05.2010. On the same day, the appellant also signed an Indemnity cum Undertaking. The said undertaking stipulated that the appellant would be given an ad-hoc payment of ₹15,00,000/- and the said amount would be disbursed within a period of twenty days from the date of signing of the final bill. The relevant terms of the Indemnity cum Undertaking executed between the parties, is set out below: -

“WHEREAS the indemnifier has expressed its inability to proceed with the contract and has requested the indemnified vide its letter dated 10th May, 2010 to foreclose the contract and upon the said request, the indemnified has agreed to foreclose the contract vide its letter dated 11th May, 2010.

WHEREAS pending joint measurement of the work in order to ascertain the work completed by indemnifier and the reconciliation of accounts, the Indemnifier has requested the indemnified to release/pay an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) to settle the



accounts with labour/staff, suppliers, sub-contractors etc in respect of the said Contract.

AND WHEREAS on such request the Indemnified has agreed to pay the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) in two installments of Rs.10, 00,000/- (Rupees Ten Lakhs Only) and Rs.5, 00,000/- (Rupees Five Lakhs Only) each to the indemnifier. The Indemnified is handing over a cheque of amount of Rs.10, 00,000/- (Rupees Ten Lakhs Only) vide cheque no. 368046 dated 11th May 2010 drawn on Punjab National Bank, Connaught Place, New Delhi 110001 Branch to the Indemnifier at the time of execution of the present Indemnity cum undertaking.

The balance amount of Rs.5,00,000/- (Rupees Five Lakhs Only) shall be released and paid by the Indemnified on the Documentary proof shown by the Indemnifier to the Indemnified that the earlier amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) was utilized by the Indemnifier for the purpose meant for as per the Terms of present Deed.

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1. That Indemnifier undertakes to utilize the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) received from the Indemnified, exclusively to settle the accounts with labour/staff, suppliers, sub-contractors etc and that the amount shall be utilized for the said purpose only.

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6. That the Indemnifier undertakes that it shall fully co-operate with the Indemnified for joint measurements, reconciliation of RMC and steel and shall assist the



Indemnified to prepare the Final Bill. The Indemnifier undertakes that it shall assist the Indemnified in order to ensure that the joint measurements, reconciliation of RMC and steel and the final bill is prepared/completed within 30 days from the date of the present deed. The Indemnifier agrees, understands and undertakes that it shall receive the payments as per joint measurements and as per the terms and conditions of the Contract within 20 days after the signing of the final bill. The Indemnifier undertakes that it shall not approach the Indemnified with any request for release of any further amount before the terms and procedure, as stated herein above, are completed and fulfilled”.

4. Certain bills submitted by the appellant to the respondent for payment were subsequently revised. Thereafter, on 11.04.2011, the Director of the appellant company signed a Settlement Agreement, an Affidavit and an Indemnity Bond as full and final settlement for an amount of ₹3,07,491/-. After receiving the said payment, by a letter dated 21.04.2011, the appellant raised the claim for the balance payment in terms of the original bill. Further, the appellant alleged that it had executed the Indemnity cum Undertaking dated 11.05.2010 and the Settlement Agreement under duress, coercion and protest.

5. In view of the disputes between the parties, by a letter dated 30.07.2011, the appellant invoked the agreement to refer the disputes to arbitration, in terms of Clause 67.1 of the General Conditions of the contract. Thereafter, the appellant filed an application under Section 11 of the A&C Act [being Arb. P. 353/2011] seeking appointment of an arbitrator. The respondent opposed the said application on the ground



that in terms of the Settlement Agreement executed between the parties, there were no arbitrable disputes and the contract stood discharged by accord and satisfaction.

6. This Court, by an order dated 28.09.2012, appointed the sole arbitrator (the Arbitral Tribunal) and directed the Arbitral Tribunal to first examine whether there was a full and final settlement of the appellant's claims or whether the Settlement Agreement, Indemnity Bond and affidavits were executed under duress and coercion, before considering the claims preferred by the appellant. The relevant extract of the order dated 28.09.2012, is set out below: -

“10. The question that arises in the present case is whether the Court can come to a definite conclusion at this stage one way or the other that the Petitioner was made to sign the settlement deed, indemnity bond and affidavit dated 11th April 2011 under duress and coercion. Given the documents and affidavits filed by the parties, it appears to the Court that the answer to that question will necessarily involve examination of witnesses as well as the documents in light of their depositions. Since it is not possible for the Court to conclusively hold at this stage that the Petitioner's plea is “an afterthought, make-believe or lacking in credibility”, the appropriate course would be to permit the parties to raise this as one of the first issues to be decided in the arbitral proceedings. In other words, the learned Arbitrator to be appointed by the Court will first determine whether there was a full and final settlement of the Petitioner's claims as contended by the Respondent, or whether the settlement deed, indemnity bond and the affidavit were executed under duress and coercion as contended by the Petitioner. Depending upon the answer to the said issue, the learned Arbitrator will proceed further to consider the claims of the Petitioner.”



ARBITRATION

7. Before the Arbitral Tribunal, the appellant raised several claims amounting to approximately ₹5.5 crores. The appellant claimed that on account of duress and coercion, it was forced to sign the Settlement Agreement, Indemnity cum Undertaking and thus, the same are not binding. It had further contended that the delay in completion of the work was on account of reasons attributable to the respondent.

8. The respondent contested the claims raised by the appellant and contended that there are no arbitrable disputes as the contract between the parties stood discharged by accord and satisfaction. The respondent further averred that the contention of the appellant in regard to duress, coercion and undue influence was merely an afterthought to extract more money from it.

9. The Arbitral Tribunal held that the appellant had failed to establish on record that the Settlement Agreement signed by it was on account of any coercion, duress or undue pressure exercised by the respondent. The Arbitral Tribunal found that after the foreclosure of the contract, the appellant had successively revised the Final Bill, which was presented to the respondent and the same was not under coercion, duress or undue pressure but after 'negotiations' between the parties. The Arbitral Tribunal further observed that mere scaling down of a demand would not constitute that a party was under pressure, coercion or duress.

10. The Arbitral Tribunal held that the difference between the



demand raised by the appellant by its letters dated 14.02.2011, 30.03.2011 and 05.04.2011 and the amount disbursed by the respondent on 11.04.2011, in terms of the Settlement Agreement, was not so large to hold that the respondent had exercised pressure, coercion or duress upon the appellant for signing the Settlement Agreement.

11. The Arbitral Tribunal also held that the appellant had failed to prove that it had signed the Settlement Agreement on account of facing acute financial emergency. The Arbitral Tribunal, accordingly, held that in view of the settlement between the parties, nothing remained due to the appellant; therefore, the claims filed by the appellant were neither maintainable nor arbitrable.

SECTION 34 OF THE A&C ACT

12. The appellant challenged the impugned award by filing an application under Section 34 of the A&C Act [being OMP (COMM) no. 427/2017 captioned ***Wishwa Mittar Bajaj & Sons (Constructions) Pvt Ltd v. BPTP Ltd.***]. The appellant assailed the impugned award on the ground that the Arbitral Tribunal had failed to take into account certain documents that were placed before it and rendered the impugned award solely on the ground that the appellant had signed the said Settlement Agreement. The appellant referred to the decision of the Supreme Court in ***ONGC v. Western Geco International Limited: (2014) 9 SCC 263*** and submitted that the impugned award was perverse and liable to be set aside.

13. The learned Single Judge examined the contentions advanced on



behalf of the appellant and found the same to be unmerited. The learned Single Judge referred to paragraphs 26 to 41 of the impugned award and found that the Arbitral Tribunal had considered the correspondence exchanged between the parties.

14. The learned Single Judge referred to the decisions of the Supreme Court in *National Insurance Company Limited v. Boghara Polyfab Private Limited: AIR (2009) SC 170*; *Union of India and Others v. Master Construction Company: (2011) 12 SCC 349*; and *New India Assurance Company Limited v. Genus Power Infrastructure Limited: (2015) 2 SCC 424*. The Court concluded that a bald plea of fraud, coercion, duress or undue influence is not enough to undo settlement agreements.

15. The learned Single Judge, accordingly, held that the amount, as stipulated in the Indemnity cum Undertaking and Settlement Agreement, did not justify a presumption of undue influence and coercion being exercised on the appellant and further, the correspondence exchanged between the parties also did not give any hint of coercion being exercised on the appellant.

SUBMISSIONS

16. Mr Raghvendra Bajaj, learned counsel appearing for the appellant, submitted that the Arbitral Tribunal had erred in ignoring the evidence and material regarding coercion, duress and undue pressure exerted on the appellant prior to foreclosure of the contract. He pointed out that the Arbitral Tribunal had found that the controversies regarding



work and payments prior to foreclosure of the contract were not material to adjudicate the disputes between the parties. He emphasized that the appellant's case was that the respondent had withheld the payments due to it over a period of time, compelling the appellant to continue under sustained pressure and threats. He stated that there were communications on record indicating that the appellant had protested against the threats issued by the respondent.

17. He referred to the decisions of the Supreme Court in *Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49* and *Ssangyong Engineering and Construction Company Ltd. v. National Highways Authority of India: (2019) 15 SCC 131* and contended that ignoring vital evidence would render the arbitral award susceptible to challenge under Section 34 of the A&C Act.

18. Next, he submitted that the Arbitral Tribunal had ignored the directions issued by this Court in the order dated 28.09.2012, passed in Arb. P. 353/2011. By the said order, the appellant's application under Section 11 of the A&C Act was allowed. He submitted that while allowing the said application, the Court had expressly stated that the answer to the question whether the appellant had signed the Settlement Agreement, Indemnity Bond and Affidavit dated 11.04.2011 under duress and coercion would necessarily involve examination of witnesses as well as the documents in the light of their deposition. He submitted that the Arbitral Tribunal was, thus, required to examine the deposition of witnesses and decide the question in the light of their testimony. He contended that the Arbitral Tribunal had failed to do so



and therefore, the impugned award is liable to be set aside.

REASONS AND CONCLUSION

19. The first and foremost question to be examined by the Arbitral Tribunal was whether the Settlement Agreement, Indemnity Bond and Affidavit dated 11.04.2011 were executed by the appellant under coercion and undue influence. The Arbitral Tribunal noted that in terms of the Settlement Agreement, the appellant had agreed to receive a sum of ₹3,07,491/- in full and final settlement of all its claims. Pursuant to the parties entering into the Settlement Agreement, the respondent had handed over a cheque dated 31.03.2011 for the aforesaid amount to the appellant. The appellant had also executed documents (Indemnity Bond and affidavit) confirming that it had no claims against the respondent in respect of the contract in question.

20. After the contract was foreclosed on 11.05.2010, the appellant had executed an Indemnity cum Undertaking seeking release of ₹15 lacs for payment for labour, staff, supplies and sub-contractors. The appellant had acknowledged receipt of ₹10,00,000/- and confirmed a balance sum of ₹5,00,000/- remained to be paid. The said amount was required to be paid after the appellant had furnished proof of utilisation of the said amount of ₹10,00,000/-. Admittedly, the appellant had issued a letter dated 18.05.2010 confirming that it had utilised a sum of ₹10,00,000/- and requested for release of the balance payment of ₹5,00,000/-. There is no dispute that the said amount was subsequently released to the appellant.



21. On 01.06.2010, the appellant submitted the Final Bill for a sum of ₹64,28,369/-. The said bill was subsequently revised on 05.06.2010 to ₹63,54,500/-. Admittedly, there is correspondence on record evidencing that the appellant had submitted a statement of accounts. There are also communications issued by the respondent disputing the amount claimed by the appellant.

22. The Arbitral Tribunal had noted that the respondent had released part payments to the appellant on as many as seven occasions. On 30.03.2011, the appellant had sent a reminder seeking a payment of ₹4,09,000/-. Thereafter, the parties had entered into a Settlement Agreement, whereby the appellant had agreed to accept a payment of ₹3,07,491/-, in full and final settlement.

23. The Arbitral Tribunal had considered the material placed on record including the testimony of the witnesses examined on behalf of the parties.

24. The Arbitral Tribunal did not accept the appellant's contention that it had executed the Settlement Agreement, Affidavit, and Indemnity cum Undertaking, under undue pressure or coercion. The Arbitral Tribunal found that the conduct of the appellant in successively scaling down the amounts of the Final Bill did not support its allegations in regard to coercion, duress or pressure. The Arbitral Tribunal reasoned that the appellant could not have entered into a settlement to accept a small sum of ₹3,07,491/-, if its claims were as large as ₹5 to ₹6 crores.

25. This Court finds no flaw in the reasoning of the Arbitral Tribunal.



The value of the contract was ₹16,48,14,449/-. If the appellant's contention is accepted that it is entitled to a claim a sum of over ₹5 crores, as set out in its statement of claims; it is difficult to accept that in this context, the appellant would have given up its claims for receiving a relatively insignificant sum of ₹3,07,491/-.

26. The contention that the Arbitral Tribunal has ignored vital evidence, is unpersuasive. It is not necessary for the Arbitral Tribunal to give a finding on every piece of evidence or material that is placed on record. The Arbitral Tribunal has considered the material available on record and has taken an informed decision.

27. The reliance placed on the decisions of the Supreme Court in *Associate Builders v. Delhi Development Authority* (*supra*) and *Ssangyong Engineering and Construction Company Ltd. v. National Highways Authority of India* (*supra*), are misplaced. On the contrary, the said decisions make it amply clear that the court would not re-examine and re-appreciate the evidence to supplant its view in place of that of the Arbitral Tribunal.

28. In given cases, where the arbitral tribunal ignores unimpeachable evidence as to certain facts and renders a contrary finding, without any material supporting the same, the arbitral award may be amenable to challenge under Section 34 of the A&C Act. Clearly, this principle is not applicable where the arbitral tribunal has considered the material placed on record and has disregarded certain evidence as not material. Unless the party assailing the arbitral award is able to establish that this



decision is palpably erroneous and vitiates the award on the ground of patent illegality, no interference with the arbitral award would be warranted.

29. In the present case, the Arbitral Tribunal had found that the controversy prior to foreclosure of the contract was not relevant in the given circumstances of the case. The said decision is based on the Arbitral Tribunal's appreciation and evaluation of the evidence placed on record. It is apparent that the Arbitral Tribunal found that the correspondence, prior to foreclosure of the contract, was of little value in the context of the correspondence and the conduct of parties after foreclosure of the contract. This Court is unable to accept that the said view is palpably erroneous or one that no reasonable person could possibly hold.

30. The contention that the Arbitral Tribunal has disregarded the order dated 28.09.2012 passed by this Court in Arb. P. 353/2011, is also without merit. The Arbitral Tribunal has examined the material placed on record and has returned a finding after appreciating and evaluating the said material.

31. This Court finds no ground to accept that the impugned award is vitiated by patent illegality or otherwise is in conflict with the public policy of India. The learned Single Judge has rightly rejected the appellant's application for setting aside the arbitral award.

32. The present appeal is unmerited and is, accordingly, dismissed.



All pending applications are disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 22, 2022
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