OCD-9

ORDER SHEET

AP/722/2022

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SREI EQUIPMENT FINANCE LIMITED
Versus
SMS LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 27th July, 2023.

Appearance:
Mr. Rudrajit Sarkar, Adv.
Mr. Aditya Kanodia, Adv.
Mr. Nilkant Basak, Adv.
...for the petitioner

Mr. Soumabho Ghose, Adv.
Mr. Soumalya Ganguli, Adv.
Ms. Tiana Bhattacharya, Adv.
...for the respondents

The Court: The present application is for setting aside of an Award dated 25th August, 2022 under Section 34 of The Arbitration and Conciliation Act, 1996 passed by a learned Sole Arbitrator whereby the respondent (who was also the respondent in the arbitration) was directed to pay interest on the unpaid dues of the petitioner at 8% per annum with effect from 1st February, 2022 till the date of the Award within one month from the date of publication of the Award.

The petitioner is the award-holder and was the claimant in the arbitration. The petitioner is unhappy with the extent of relief given to the petitioner particularly in relation to the quantum of interest awarded on the unpaid dues of the respondents.

The transaction between the parties, in brief, relates to a Master Facility Agreement dated 1st January, 2020 by which the petitioner lent money to the respondents of approximately Rs.219 crores. The revised agreement provided for interest of 12.99% in the Schedules to the Agreement. The respondents defaulted on their payment obligations to the petitioner and the parties entered into a Settlement Agreement in the form of a letter dated 30th November, 2020. The letter/ agreement, which was entered into after meetings and negotiations between the parties, recorded certain revised terms on which the respondents were to settle the outstanding dues with the petitioner in full and final settlement of the petitioner's claims.

The respondents say that this Agreement novated the Master Facility Agreement including all the payment terms thereof while the petitioner says that the payment terms between the parties were revised save and except the agreed rate of interest. In essence, the petitioner sticks to the 12.99% interest while the respondents intend to sustain the 8% interest awarded by the learned Arbitrator on the unpaid dues of the petitioner.

The only issue, therefore, is whether the impugned Award should be set aside on the quantum of 8% interest awarded to the petitioner.

Learned counsel appearing for the petitioner/ award-holder and for the respondents have made their respective submissions. Counsel appearing for the petitioner has placed emphasis on the point that the Arbitrator could not travel beyond the contract and the agreed rate of interest while counsel for the respondents submits that interpretation of the second Agreement dated 30th November, 2020 is a matter within the domain of the Arbitrator.

The specific words used in the Agreement dated 30th November, 2020 would reveal and reflect the intention of the parties as to the payment terms. This was also the view of the Arbitrator.

The essential terms of this Agreement have been set out in the impugned Award and records that both the parties had agreed to valuation of the assets acquired by the respondents under the Master Facility Agreement and that the value had been ascertained at Rs.140 crores. The petitioner agreed to the respondents paying an amount of Rs.140 crores in full and final settlement of the petitioner's claim under the Master Facility Agreement read with 7 no. of Schedule VII to the said Agreement. It was further agreed that out of Rs.140 crores, Rs.90 crores would be paid by the respondents by December, 2020 and the remaining Rs.50 crores by way of ten monthly instalments of Rs.5 crores from April, 2021 onwards. The extracted portion further records that the settlement proposal was accepted by both the parties and the upfront payment of Rs.90 crores to be made by the respondents was confirmation of the settlement. The Agreement also records that except the payment terms modified and accepted by the parties, all other terms including the arbitration clause of the Master Facility Agreement would remain unchanged and binding on the parties.

The Award notes that the petitioner did not dispute the terms of the settlement which was arrived at after joint meetings held on 20th November, 2020 and 27th November, 2020.

The words used in the settlement agreement as contained in the letter dated 30th November, 2020 leaves little doubt that the petitioner agreed to accept Rs.140 crores from the respondent as full and final settlement of the respondent's dues. Significantly, the settlement agreement does not mention any rate of interest. Therefore, it can be presumed that the petitioner gave up any right as to the interest on Rs.140 crores including the interest of 12.99% as mentioned in the Master Facility Agreement.

The Arbitrator's views on the finding of the letter/settlement agreement dated 30th November, 2020 are recorded in detail in the impugned Award. The Arbitrator notes that once the parties entered into the settlement agreement, the terms thereof were binding on the parties and the petitioner cannot claim any amount of money in excess of the money which was settled to be paid by the respondent in the joint meetings held by the parties in November, 2020. The Arbitrator also refers to the reasons recorded in the letter dated 30th November, 2020 including of the assets delivered under the lease agreement being defective as well as the consequent losses to the respondent which necessitated the parties coming together for settlement of the outstanding amounts. The award further records that the petitioner may have agreed to the settlement for speedy recovery of the loan amount from the respondents.

The Arbitrator proceeds to hold that the respondent hence cannot be held liable to pay interest at the rate prescribed in the 7 no. of Schedule VII at 12.99% in the absence of any such provision in the Settlement Agreement.

The Arbitrator hence found that the respondents would be liable for 8% interest per annum since the Bank's rate of interest during the relevant period of time varied between 7% - 9% per annum. The respondents were accordingly directed to pay interest on Rs.49.04 crores at 8% per annum form 1st February, 2022 till the date of the Award within one month from the date of publication of the award failing which the liability of payment of interest would be at the same rate till the respondent makes payment.

The impugned Award is a well-reasoned award particularly with regard to the reason as to why the respondents were not liable to pay any interest on Rs.140 crores but liable for interest at 8% on the unpaid dues under the settlement dated 30th November, 2020. The view is founded on the statutory premise of Section 31(7)(a) of the 1996 Act which takes into account the current rate of interest.

The contention of the petitioner with regard to the operation of Section 31(7)(a) subject to the agreement by the parties becomes irrelevant in view of the settlement agreement arrived at between the parties on 30th November, 2020. The other objection with regard to the Arbitrator travelling beyond the contract also loses relevance since the parties agreed to abide by the agreement dated 30th November, 2020 thereby jettisoning the interest rate at 12.99% under the Master Facility Agreement.

Further, even if the learned Arbitrator came to an erroneous view as to the applicable rate of interest or a construction of terms of the settlement dated 30th November, 2020 that would be an error within the Arbitrator's jurisdiction and the Court exercising powers under Section 34 of the Act will not interfere with that view unless the view is found to be a perverse or an impossible view. This proposition was settled by Supreme Court in several decisions including in *Navodaya Mass Entertainment Limited Vs. J.M. Combines, (2015) 5 SCC 698* and *UHL Power Company Limited Vs. State of Himachal Pradesh, (2022) 4 SCC 116*.

The above discussion persuades this Court to hold that the petitioner has not been able to establish any grounds under Section 34 of the 1996 Act for interfering with or setting aside of the impugned Award.

AP/722/2022 is accordingly dismissed without any order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

sg/T.O.