



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 4th September, 2023

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Pronounced on: 2nd November, 2023

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FAO (COMM) 24/2023 & CM APPL. 3376/2023

DELHI DEVELOPMENT AUTHORITY

..... Appellant

Through: Mr.Vaibhav Agnihotri and
Mr.Shaurya Punj, Advocates.

Versus

M/S. GUPTA AND CO. AND ANR.

..... Respondent

Through: Mr.S.K.Jain, Mr.Akshu Jain and
Ms.Stuti Jain, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) read with Section 13(1)(A) of the Commercial Courts Act, 2015 has been filed by the appellant-DDA for setting aside the Order dated 14.09.2022, passed in OMP(COMM) 5 of 2021, by of the learned District Judge (Commercial Court), whereby the Objections preferred by the appellant under Section 34 of the Act, 1996 were dismissed on the ground of maintainability.

2. Facts in brief are that the respondent No.1-M/s. Gupta & Co. (*Claimant before the learned Arbitrator*) was awarded a Tender by the appellant-DDA (*Respondent before the learned Arbitrator*) vide Letter dated 10.03.1986, whereby the work awarded was to be completed by 20.03.1987. The work contract got completed on 29.08.1989. However, the completion



of works was not recorded and the respondent No.1's Final Bill was not prepared. The respondent No. 1 continued to pursue with appellant-DDA for the finalization of its bills and eventually, after much effort, Final Bill was prepared. The intimation regarding the same was given to the respondent No. 1 *vide* Letter dated 17.01.2011. However, the Bill was not in conformity with the measurements recorded by the DDA in various Measurement Books. Consequently, the amount was accepted by the respondent No. 1 under protest and thereafter, it submitted a Final Bill dated 31.01.2011 in accordance with its calculations and the measurements recorded in various measurement books. The appellant-DDA released the part payment in the sum of Rs.1,64,000/- *vide* cheque dated 16.03.2011.

3. The disputes persisted between the parties and the respondent No. 1 served a Legal Notice dated 11.07.2011 for recovery of the balance amount and raised 13 claims. The appellant-DDA responded to the said Notice admitting two of the claims, but denying the others *vide* its Letter dated 18.07.2011.

4. Consequently, the respondent No. 1 invoked Arbitration Clause and filed a petition under Section 9 of the Act, 1996, being OMP No. 514/2013, before this Court seeking directions to deliver the Measurement Books in the custody of the Chief Engineer, DDA. The petition under Section 9 of the Act, 1996 was disposed of by this Court *vide* Order dated 09.09.2013, *inter alia* recording the submissions of the appellant-DDA that six of the given Measurement Books would be produced before the learned Arbitrator while the balance three Measurements Books would be produced as and when directed by the learned Arbitrator. *Vide* its letter dated 12.07.2013, the appellant-DDA appointed Sh. Lakhvinder Chaudhary, S.E. (Arbitration),



DDA as the Sole Arbitrator and subsequently, on his transfer Sh.S.K.Jain, S.E.(Arbitration) was appointed as the Sole Arbitrator on 14.02.2014. The learned Sole Arbitrator *vide* his Award dated 09.06.2016 dismissed the claims of the respondent No. 1 on the ground of limitation.

5. The respondent No. 1, *vide* petition being OMP (COMM) 443/2016, challenged the arbitral Award dated 09.06.2016 under Section 34 of the Act, 1996, before the learned Single Judge. The Objections were allowed on 27.03.2019 and the first Award dated 09.06.2016 was set aside, granting liberty to the respondent No. 1 to take recourse an appropriate remedy in accordance with law.

6. The appellant-DDA filed an Appeal under Section 37 of the Act, 1996, being FAO(OS)(COMM) 275/2019, challenging the Order dated 27.03.2019 passed by the Learned Single Judge, but the same was also dismissed by the Division Bench of this Court.

7. The second round of litigation commenced and the appellant-DDA appointed the Learned Arbitrator on 23.05.2019 to adjudicate the disputes between the parties. The second Award in this matter came on 02.12.2020 whereby, against the claim amount of Rs.87,20,342/- along with cost and interest, the learned Arbitrator passed an Award in the sum of Rs.1,40,93,828/-.

8. The appellant-DDA, aggrieved by the said Award dated 02.12.2020, preferred the Objections under Section 34 of the Act, 1996 before the learned District Judge (Commercial Court) *vide* OMP (COMM) 5/2021 on 15.03.2021.

9. The respondent No.1, aggrieved by the non-grant of pre-institution interest, also challenged the same Award dated 02.12.2020 and filed



Cross-Objections under Section 34 of the Act, 1996 *vide* OMP (COMM) 150/2021 before the Learned Single Judge. While considering the Objections of the respondent No. 1, the learned Single Judge in his Order dated 13.05.2021 observed that the claim of the respondent No.1- M/s. Gupta & Co. for pre-reference interest on the claim amounts was inadvertently not considered and ignored by learned Arbitral Tribunal. Therefore, the Objections of M/s. Gupta & Co., respondent No. 1 were allowed. However, the appellant-DDA submitted before the learned Single Judge of this Court that its Objections under Section 34 of the Act, 1996 in respect of all the claims are pending before the learned District Judge (Commercial Court) in respect of which, it was observed as under:-

“31. Mr. Jain, learned counsel appearing for the petitioner, submits that the District Judge would have no jurisdiction to entertain the said petition in view of Section 42 of the A&C Act. He submits that the petitioner had already moved this Court way back on 15.05.2013 by filing an application under Section 9 of the A&C Act (being OMP No. 514/2013), which was disposed.

32. In view of the above, this Court considers it apposite to set aside the impugned award to the extent that the Arbitral Tribunal has not considered the petitioner’s claim for pre-reference interest on Claims Nos. 1 to 4 awarded in its favour. It is so directed.

33. It is clarified that nothing stated in this order shall preclude the DDA from pursuing its petition to set aside the impugned award [OMP (COMM) 5/2021]”.

10. The learned Single Judge, therefore, while allowing the Cross-Objections under Section 34 of the Act, 1996 of respondent No.1-M/s.



Gupta & Co. in respect of pre-reference interest clarified that the Objections under Section 34 of the Act, 1996 filed by the appellant-DDA in OMP (COMM) 5/2021 before the learned District Judge (Commercial Court) would not be affected by the Order of the learned Single Judge and the question of maintainability may be raised by both the parties before the District Judge (Commercial Court).

11. The learned District Judge (Commercial Court), while considering the Objections under Section 34 of the Act, 1996 of the appellant-DDA, referred to Section 42 of the Act, 1996 and held that because the first petition i.e. under Section 9 and also subsequently, the applications/Objections under Section 34 had been filed and duly contested before this High Court, Section 42 of the Act, 1996 would be applicable and therefore, the Objections under section 34 of appellant-DDA should have been filed before this Court. Hence, the Objections under Section 34 of the Act, 1996 filed by appellant-DDA, were dismissed as not maintainable by the learned District Judge (Commercial Court).

12. **Aggrieved, the appellant-DDA has preferred the present Appeal** under Section 37 of the Act, 1996 read with Section 13(1)(A) of the Commercial Courts Act, 2015.

13. **Submissions heard of both the counsels for the parties and record perused.**

14. At the outset, it may be mentioned that confusion has arisen in regard to the maintainability of petition under Section 34 of the Act, 1996 on account of change in pecuniary jurisdiction and also because of one set of objections were filed under Section 34 by DDA before the learned District Judge (Commercial Court), while the Cross-Objections by the respondent



No.1-M/s. Gupta & Co. were preferred before this Court and were also entertained/adjudicated upon. However, while allowing the Objections of the respondent No. 1 M/s. Gupta & Co., the question of maintainability of Objections under Section 34 of the Act, 1996 before the learned District Judge (Commercial Court) was left open by the learned Single Judge of this Court.

15. **The short question for consideration before this court is whether the Objections under Section 34 of the Act, 1996, filed by the appellant-DDA, would be maintainable before the learned District Judge (Commercial Court) or were they required to be filed before this Court, since the earlier two Objections under Section 34 of the Act, 1996 had been entertained by this Court.**

16. **The Delhi High Court Amendment Act, 2015**, was notified on 10.08.2015 and was brought into force from i.e. **26.10.2015**, whereby the pecuniary jurisdiction of the District Courts of Delhi was enhanced from Rs. **20 lakh to Rs. 2 crore**. The relevant extract is reproduced as under-

“5. Jurisdiction of High Court of Delhi.—

(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court of Punjab.

*(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories **ordinary original civil jurisdiction in every suit the value of which exceeds [rupees two crore].**”*

17. The Commercial Courts Act, 2015, (*hereinafter referred to as “Act,*



2015”) was enacted by the Legislature and enforced w.e.f. **23.10.2015** to ensure that commercial cases are disposed of expeditiously. Section 12 of the Act, 2015 provides for determination of “***Specified Value***”. Section 12(2) further provides that *the aggregate value of the claim and the counter-claim in an arbitration of a commercial dispute shall be the basis for determination of whether the arbitration is subject to the jurisdiction of the Commercial Appellate Division or Commercial Court, as the case may be.*

18. Consequent to the establishment of the “Commercial Division” and the Act, 2015, Directions dated **17.11.2015** were issued by the Delhi High Court, with respect to filing of matters to be heard and decided by the Commercial Division and Commercial Appellate Division, which are reproduced as under: -

“As per Section 2(1)(i) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015, 'specified value' in relation to a 'commercial dispute' means the value of the subject matter in respect of a suit as determined in accordance with Section 12 which shall not be less than rupees one crore.

On a combined reading of Section 2(1)(c) and (i) and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015, all suits and applications relating to commercial disputes i.e. disputes that fall within the definition of Section 2(1)(c) of the value of rupees one crore and above shall be heard and disposed of by the Commercial Division of this Court.”

19. Thereafter, the Delhi High Court vide its Notification No.27187/DHC/Orgl. dated **24.11.2015**, in exercise of its powers conferred under Section 4 of Delhi High Court (Amendment) Act, 2015, issued the following directions:



*“(i) All suits or other proceedings pending in the Delhi High Court on the Original Side up to the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts. (ii) All suits or other proceedings **the value of which exceeds rupees one crore but does not exceed rupees two crores**, other than those relating to commercial disputes **the specified value of which is not less than rupees one crore** (as defined in The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015), pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.”*

20. Subsequently, the Legislature enacted the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (*hereinafter referred to as the “Amendment Act, 2018”*), enforced from **03.05.2018**, which reduced this pecuniary value of ‘commercial disputes’ to **Rs. 3 lakhs**, thereby bringing in a wider array of disputes within the ambit of the Commercial Courts. Consequently, *vide* Circular/Notification dated **04.07.2018** the Lt. Governor of GNCTD, in exercise of powers under Section (3) (1) specified that pecuniary value of Commercial Courts, at the District Judge Level, shall be between **3 lakhs to 2 crores**.

21. In view of the above, it emerges that the Delhi High Court (Amendment) Act, 2015, enhanced the pecuniary jurisdiction of the District Courts from **1 crore to 2 crores**, only with respect to Original Civil Jurisdiction. However, as per the High Court Notifications/directions dated **17.11.2015** and **24.11.2015**, the commercial matters, valued between Rs.1 Crore to Rs. 2 Crores, were to be tried by the High Court during the **period**



from **24.11.2015 to 04.07.2018**. The Amendment Act, 2018 and the Notification/Circular dated **04.07.2018** increased the pecuniary jurisdiction of commercial courts at the District Level, enabling them to adjudicate commercial disputes valued between **3 lakhs to 2 crore rupees**.

22. In view of these orders, the pecuniary jurisdiction of the District Courts has been enhanced in the Commercial matters to Rs.2 Crores. However, the commercial matters between Rs.1 Crore to Rs.2 Crores were to be tried by the High Court between the date from 24.11.2015 till 04.07.2018.

23. In the present case, the Objections pertain to claim amount of Rs. 87,20,342/- and the awarded amount of Rs. 1,40,93,828/-, as per the Award dated 02.12.2020. It is clear from the above discussion that the Commercial Courts set up in the District Courts have the pecuniary jurisdiction to entertain the disputes of commercial nature which have a pecuniary value upto to Rs. 2 Crores, **after 04.07.2018**. Since, the present challenge is in respect of an amount less than Rs. 2 Crores, the Objections are therefore maintainable before the learned District Judge (Commercial Court). **While considering the Cross-Objections in OMP 150/2021 preferred by respondent No. 1-M/s. Gupta & Co. before this Court, the learned Single Judge had left the question of maintainability of the Cross-Objections of appellant-DDA pending before the learned District Judge (Commercial Court) open, to be decided in accordance with the law.**

24. In the present case, the pecuniary jurisdiction to entertain the **Objections against the claim which is less than Rs.2 Crores is with the District Courts**. The learned Single Judge while disposing of the cross-objections in regard to pre-reference interest, specifically protected the right



of the appellant/DDA to pursue its petition to set aside the impugned Award. The jurisdiction to entertain the Objections under Section 34 of the Act, 1996, are parallel between High Court and District Court and is determined by the specified value. Therefore, DDA has rightly invoked the jurisdiction of District Courts to challenge the Award with the specified value of Rs. 87,20,342/- and Award amount of Rs. 1,40,93,828/-.

25. Therefore, in the peculiar facts and circumstances of this case, we find that the Commercial Division of the District Courts has the pecuniary jurisdiction to entertain the Objections under Section 34 of the Act, 1996 filed by the appellant-DDA.

26. We hereby remand this case to be placed before the learned District & Sessions Judge, Rohini, Delhi to assign it to a Commercial Judge for adjudication on merits.

27. The parties are directed to appear before the learned District & Sessions Judge, Rohini, Delhi on 06.11.2023.

28. The Appeal is accordingly disposed of along with pending applications, if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

NOVEMBER 2, 2023
akb/jn