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

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Judgment delivered on: 15.03.2023

+ FAO(OS) (COMM) 267/2022, CM APPL. 39722/2022, CM
APPL. 39721/2022, CM APPL. 39723/2022 &CM APPL.
39724/2022

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Appellant

versus

SAHAKAR GLOBAL LIMITED & ANR. Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Manish K. Bishnoi and Mr. Nirmal Prasad, Advocates.

For the Respondents:Mr. Mukul Talwar, Sr. Advocate with Mr. Pawan Kumar
Bansal, Mr. Rahul Kumar Yadav and Mr. Ahsan Ul Haq,
Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant – National Highways Authority of India (NHAI for short) impugns judgment dated 01.06.2022 whereby the objections filed by the respondent under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) has been allowed and the entire award has been set aside based on an agreement of the parties recorded in order dated 24.03.2022.

2. The dispute between the parties arose out of a contract

agreement dated 18.03.2016 entered into between the parties with regard to the collection of User Fee at Palsit Toll Plaza. The disputes were referred to a three Member Arbitral Tribunal leading to rendering of an award dated 31.03.2021.

3. Though, the respondent had made several claims, some of the claims of the respondent were allowed and some were rejected. Respondent filed the subject objections before the learned Single Judge of this court impugning the award to the extent that it computed the compensation in favour of the respondent. The damages were dependent on the finding returned by the Arbitral Tribunal on the question of force majeure.

4. It may be noticed that the appellant never challenged the award when the Objection Petition under Section 34 of the Act was listed before this court on 24.03.2022, the following order was passed:

“3. After some arguments, the learned counsel for both parties state that they are agreeable that the Arbitral Award may be set aside by reserving all rights and contentions of the parties.

4. One of the disputes before the Arbitral Tribunal was whether there was any force majeure event warranting an award for compensation. The Arbitral Tribunal has accepted that there was one. The petitioner challenges the quantification of damages based on the aforesaid finding. The respondent’s contention that there was no force majeure event was rejected by the Arbitral Tribunal. The respondent contends that the Arbitral Tribunal’s decision to the effect that there was a force majeure event is erroneous.

5. Although the respondent has not challenged the award, Mr. Talwar, learned senior counsel appearing for the petitioner

submits that there is no objection if the entire award is set aside and the parties are relegated for re-adjudication of their disputes before the Arbitral Tribunal. He suggests that given the value of the claim, the disputes be referred to a sole arbitrator.

6. Mr. Banerjee learned counsel for the respondent, seeks time to take instructions in this regard.”....

5. The contention of the appellant is that the counsel for the appellant never agreed to the setting aside of the award or allowing of the objections filed by the respondent under Section 34 of the Act but had sought an adjournment to take instructions. He submits that thereafter, the counsel was informed that the Competent Authority of the appellant had already accepted the award and decided to implement the same.

6. Learned counsel submits that though the court was informed that the appellant had not agreed to the setting aside of the award by consent, in the impugned order the court has held that there was an agreement of the appellant for setting aside of the entire award and consequently, the award has been set aside.

7. Learned Senior Counsel appearing for the respondent submits that the order dated 24.03.2022 is explicit and it records three things (i) setting aside of the award on the challenge under Section 34 as raised by the respondent, to which it is contended that there was a clear agreement between the parties that the same be set aside reserving all rights and contentions of the parties; (ii) concession given by the respondent that even on the issues decided in favour of the

respondent i.e., the finding of force majeure clause, the award be set aside and remitted in toto; (iii) given the value of the claim the disputes be referred to a sole Arbitrator instead of three Member Tribunal.

8. Learned Senior Counsel submits that it was only with regard to the third aspect i.e., reference of the disputes to a Sole Member Tribunal that the counsel for the Appellant had sought time to take instructions.

9. Learned Senior Counsel further submits that at no point of time did the appellant ever instruct the counsel that the concession given on 24.03.2022 was unauthorized or not agreed to even at a later point of time. He submits that it is only when the counsel changed that the submission was made however, the court rightly negated the same.

10. In support of the contentions, learned counsel for the appellant has produced correspondence in the form of trail mail dated 30.08.2022 and 01.06.2022 exchanged between the appellant and its earlier counsel.

11. Perusal of order dated 24.03.2022 clearly shows that in paragraph 3 extracted hereinabove, there is a clear agreement between the parties that the entire Arbitral award be set aside, however, reserving all rights and contentions of the parties.

12. Paragraph 4 of order dated 24.03.2022 records that one of the disputes before the Arbitral Tribunal was as to whether there was any

force majeure event warranting any award or compensation. The finding of the Tribunal is in favour of the respondent that there was a force majeure event, the only issue remaining, thereafter, was the quantification of damages based on the finding of force majeure.

13. The contention of the appellant (respondent before the learned Single Judge) that there was no force majeure event was rejected by the Arbitral Tribunal. Counsel for the appellant had contended on 24.03.2022 that the Tribunal's decision to the effect that there was a force majeure even was erroneous.

14. The tenor of paragraph 5 clearly shows that in view of the contention of the counsel for the Appellant - NHAI (respondent before the learned Single Judge) that the findings on force majeure was erroneous, the Senior Counsel for the respondent (objector before the learned Single Judge) conceded to the entire award being set aside including the setting aside of the finding of force majeure which was in favour of the respondent, so that the entire issue could be re-adjudicated before the Arbitral Tribunal.

15. We notice from the correspondence produced by the appellant, that on 24.03.2022 when the above referred order was passed, an email was sent by then counsel for the appellant stating that he had specifically submitted that the case of the respondent (objector) was not covered under force majeure clause 25 which as per the counsel persuaded the court to agree that the findings of the Tribunal were indeed wrong and it prompted the court to agree to take up the

contention raised by the counsel in response to which the Senior Counsel appearing for the respondent (objector) gave his consent for setting aside the entire award.

16. The counsel for the appellant in his communication stated that he had informed the court about the communication dated 05.03.2022 of the appellant whereby the appellant had communicated that it had accepted the award passed by the Arbitral Tribunal for release of payment.

17. The communication further records that the court was pleased to record that the matter could be again remanded for adjudication by a Sole Arbitrator to which the Senior Counsel for the respondent (objector) had agreed but the counsel for the appellant sought for some time to seek instructions.

18. The email further states that the order of the court was not available and would be forwarded later. The order was thereafter forwarded by an email dated 05.04.2022.

19. Pursuant to the email of 05.04.2022 informing the appellant communicating the order dated 24.03.2022 to the appellant, a letter dated 08.04.2022 was sent by Appellant to the counsel stating that the competent authority had accepted the award and that the High Court may be informed about the development and necessary action towards disposing of the matter be taken.

20. Thereafter, the matter was listed on 26.04.2022 when once

again the counsel for the appellant sought time to take instructions.

21. A communication dated 26.04.2022 was addressed by the counsel to the appellant, wherein it was stated as under:-

“During the course of arguments, the undersigned apprised the Hon’ble Court about the contents of the letter dated 08.04.2022, in terms whereof the undersigned apprised the Hon’ble Court that the NHA has agreed to abide with the order of the Arbitral Tribunal and are willing to release the money to the other side and have also apprised them qua it. However, the Sr. Adv appearing for the other side apprised the Hon’ble Court that the other side has not yet received any money and also they were willing to challenge the Award of the Arbitral Tribunal on merits. As such in response the undersigned was constrained to seek some more time with respect to what is recorded in paragraph 5 of the last order dated 24.03.2022. Kindly revert to the same so that the undersigned is able to make a statement to that effect and proceed accordingly with the instant matter.”

22. Perusal of the communication clearly shows that the communication dated 08.04.2022 was brought to the notice of the court and thereafter, the counsel had sought time to take instructions with regard to the paragraph 5 of the order dated 24.03.2022.

23. No further communication has been produced by the appellant to show that they ever objected to or informed the counsel that they had not consented to the setting aside of the award as agreed to on 24.03.2022 as specifically recorded in paragraph 3 of the said order.

24. On 01.06.2022 the learned Single Judge has referred to the agreement of the parties as recorded on 24.03.2022 to the effect that

the arbitral award be set aside while reserving all rights and contentions of the parties. The court has noticed that the contention of the appellant (respondent before the learned Single Judge) was to the effect that the finding that there was a force majeure event was erroneous.

25. The court notices that the said submission was made before the court on 24.03.2022, well after the communication dated 05.03.2022 was issued accepting the award.

26. The court specifically notices that the question upon which instructions were to be sought by the counsel was with regard to the modalities for further reference through arbitration i.e., reference to a three Member Arbitral Tribunal or a sole Arbitrator.

27. The court has consequently set aside the order in terms of the agreement of the parties recorded in order dated 24.03.2022 leaving all the issues open.

28. We are in agreement with the view taken by the learned single judge that order dated 24.03.2022 categorically records the statement of the counsel for the parties that the parties agree to the setting aside of the award, however, the instructions, that were to be sought by the counsel for the appellant were only with regard to the modalities of fresh arbitration.

29. None of the correspondences produced by the appellant show that the appellant ever objected to such a statement being made by the

counsel or ever objected to setting aside of the award. In fact, the order to some extent enures to the benefit of the appellant in as much as the challenge of the appellant to the finding returned by the Tribunal that there was a force majeure event is also agreed to be set aside by the respondent while reserving all rights and contentions of the parties.

30. The appellant having agreed not only once but repeatedly to the setting aside of the award cannot be now permitted to withdraw from the said statement after the order is passed.

31. The submission of the learned counsel for the appellant that the concession was unauthorized also cannot be accepted, in view of the fact that the counsel specifically informed the appellant of the order which recorded the concession given and at no point of time appellant objected to the same or informed the counsel that the concession was not to be granted.

32. Learned counsel for the appellant relies on the judgment of the Supreme Court in *Himalayan Coop. Group Housing Society v. Balwan Singh and Ors.* (2015) 7 SCC 373 to contend that a lawyer must be specifically authorized to settle and compromise the claim and an advocate generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of a client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed.

33. The reliance by learned counsel for the Appellant is misplaced. Said judgment is not applicable to the facts of the present case.

34. In *Himalayan Coop. Group Housing Society* (supra) the issue before the Supreme Court was with regard to the expulsion of some of the members from the membership of the society.

35. The Registrar of Societies granted an opportunity to the members to pay the outstanding dues failing which their expulsion would come into effect. The defaulting members did not comply with the order, consequently their expulsion stood confirmed. The order of the Registrar was carried in an appeal by the respondent before the Presiding Officer, Delhi Cooperative Tribunal.

36. The appeal was thereafter, withdrawn and a revision petition was filed before the Financial Commissioner, Government of NCT of Delhi.

37. The Revisional Authority confirmed the expulsion of the members leading the members to filing a writ petition before the High Court. The writ court also came to a conclusion that the members had not made out a case for interference with the orders of the authority. Thereafter, a request was made on behalf of the members seeking issuance of directions to the society for consideration of their request to construct and allot additional quarters/ apartment to them. This offer was agreed to by the counsel appearing for the society. Consequently, the court issuing directions to the society for construction of additional quarters/apartments and their allotment to

the respondents.

38. It was in this context that the Supreme Court held that the counsel for the society was not authorized to make any concession and the request made on behalf of the members for construction of additional quarters/apartments was beyond the subject matter of the writ petition and the counsel was not authorized to make a statement on behalf of the society in matters of the said nature.

39. It was in that context that the Supreme Court held that the authorities/agency status afforded to lawyers to act or the clients was on the subject matter on the retainer.

40. In the present case, it is not in dispute that the subject matter of the objections was the impugned award and the question of *force majeure* event. Furthermore, as noticed hereinabove at no point of time have the appellant ever protested or objected to the concession having been given by the counsel as noticed in the order dated 24.03.2022. Consequently, Appellant cannot be permitted to wriggle out of the statement given by its counsel.

41. In view of the above, we find no merit in the appeal, the appeal is consequently, dismissed.

SANJEEV SACHDEVA, J.

VIKAS MAHAJAN, J.

MARCH 15, 2023/dss