

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 13.01.2023

+ **FAO(OS) (COMM) 356/2019**

M/S DELHI PAPER PRODUCTS CO.PVT.
LTD

..... Appellant

versus

UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sandeep Sharma, Senior Advocate with
Mr Ravinder Singh, Ms Raveesha Gupta,
Mr Srisatya Mohanty, Ms Kanchan
Semwal, Mr Sanjeev Kaushik and Mr
Shreyas Awasthi, Advocates.

For the Respondent : Mr Vivek Goyal, CGSC with Mr Gokul
Sharma, Advocate

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present intra-court appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning a judgement dated 01.11.2018 (hereafter '**the impugned judgement**') in OMP 1195/2012. The respondent had filed the said application (OMP 1195/2021) impugning the arbitral award dated 06.06.2012 (hereafter '**the impugned award**') under Section 34

of the A&C Act. By the impugned judgement, the learned Single Judge allowed the said application and set aside the impugned award.

Factual Context

2. The appellant is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 19, I.G.I, Gurgaon Road, Kapashera, New-Delhi-110037. It is involved in the business of supply of paper products (that is, fax rolls, computer paper, photocopier paper etc.) to various government departments and their ministries in India under annually renewed rate contracts with the Directorate General of Supplies and Disposal (DGS&D).

3. On 08.09.2000, the respondent awarded the appellant a Rate Contract bearing PP-3/RC-06011800/062000/Photocopier Paper/2000-2001/D-0488/DPPC/158 (hereafter '**the contract**') for the supply of photocopier paper for the period of 2000-2001.

4. On 21.03.2001, the Controller of Stores (SF) South Central Railway, Secundrabad (hereafter '**the consignee**') placed the following Supply Orders with the appellant:

Supply Order No.	Date	Value in Rs.
P.P.83.00.1130. <u>90515</u>	21.03.2001	5,84,100
P.P.83.01.1004.2. <u>90516</u>	21.03.2001	1,37,610
P.P.83.01.1132.2. <u>90517</u>	21.03.2001	4,25,919

5. The contract was short-closed with effect from 08.08.2001, by an amendment dated 27.07.2001. The appellant had made the supplies against the Supply Order no. 90515. However, the supplies made against the said Supply Order were allegedly found to be defective and were returned. The dispute between the parties, essentially, relates to supplies against the Supply Order nos. 90516 and 90517. Whereas the appellant claims that it had made supplies against the said Supply Orders and had collected the said supplies back at the instance of the consignee, the respondent states that the appellant had not made any supplies against those Supply Orders (Supply Order nos. 90516 and 90517). The respondent alleges that although the appellant had not made the supplies, it had collected 95% of the consideration by furnishing inspection notes carrying forged signatures and rubber stamps of the consignee.

6. On 14.11.2022, the respondent issued a show-cause notice making allegations to the aforesaid effect and calling upon the respondent to provide reasons why the business dealings with the appellant should not be banned. The appellant responded to the aforesaid show cause notice. The appellant claimed that it had supplied the goods but, subsequently, the same were returned back. The respondent (Ministry of Commerce and Industry) was not satisfied with the said response and passed an order dated 30.12.2002, effectively blacklisting the appellant and proscribing any commercial/business dealings with the appellant and its subsidiaries, if any. The said order dated 30.12.2002 (hereafter '**the Blacklisting Order**') was operative

for a period of ten years commencing from the date of the order – 30.12.2002.

7. The Blacklisting Order indicates that the respondent had discovered that the appellant had not made supplies against the Supply Orders in question but, on the basis of the forged inspection notes, had collected payments for the said supplies. The appellant had thereafter refunded the amounts so collected. The respondent concluded that the appellant had collected advance payments fraudulently and had also furnished forged inspection notes.

8. The appellant assailed the Blacklisting Order by filing a petition before this Court (CWP No. 583/2003). The said writ petition was rejected by the learned Single Judge of this Court by an order dated 28.02.2003. The appellant preferred an appeal against the said order before the Division Bench of this Court (LPA No. 236/2003), however, the appellant withdrew the said appeal on 03.04.2003.

9. Thereafter, the appellant filed another petition being CWP No.269/2004, which was also rejected by an order dated 13.01.2004. The appellant appealed the order dated 13.01.2004 before the Division Bench of this Court (RFA No.148/2004), however, that appeal was also dismissed by an order dated 15.04.2004.

10. The appellant filed a Special Leave Petition being SLP(C) No. 16441 of 2004, in the Supreme Court of India, impugning the order dated 15.04.2004. The said SLP was disposed of by the Supreme Court on 11.10.2004, with the following observations:

“Considering that disputed questions of fact are involved, the writ jurisdiction might not have been the proper course, we leave it open to the petitioner to file suit/arbitration petition if he so desires. The suit/arbitration petition will undoubtedly be decided without being influenced by any observations in these proceedings.”

11. The appellant did not take any immediate steps thereafter, however, it invoked the arbitration agreement in the year 2009 and thereafter, filed a petition in this Court under Section 11 of the A&C Act, seeking appointment of a sole arbitrator (Arbitration Petition no.282/2009). The respondent resisted the said petition on account of the claims being barred by limitation, however, the Court allowed the said application but kept the question of limitation open to be decided by the Arbitral Tribunal.

12. On 02.02.2010, a sole arbitrator (the Arbitral Tribunal) was appointed to adjudicate the disputes between the parties. The appellant raised the following claims before the Arbitral Tribunal:-

“(A) Declare that the impugned blacklisting order was illegally passed and is in contravention of the DGS&D terms.

(B) That an Award be passed against the Respondent for the said sum of Rs 3,11,74,531.37 (Rs. Three Crore, Eleven Lakhs, Seventy Four Thousand, Five Hundred and Thirty One Rupees and Thirty Seven Paise Only) on account of financial injury caused due to the impugned blacklisting order.

(C) Pendent elite interest on the award @ 33%.

(D) From the grant of the award till its enforcement @

33% as per the provisions of the MSME Act, 2006.

(E) For cost of this reference till the award is granted by this Hon'ble Tribunal.”

13. The Arbitral Tribunal delivered the impugned award on 06.06.2012. The Arbitral Tribunal accepted the appellant's claim that it had made supplies against the Supply Orders and inspection notes submitted by it were not forged. The Arbitral Tribunal reasoned that the respondent had neither submitted specimen signatures of the person who was the consignee's signatory at the material time nor any opinion from the forensic expert to establish that the signatures on the inspection notes did not belong to the consignee's signatory. The Arbitral Tribunal also found that the process for collecting advance payments did not require inspection certificates from the consignee and therefore, there could be no reason for the appellant to forge inspection notes for collecting advance payments.

14. Insofar as the controversy whether the appellant had made any supplies against the Supply Orders in question is concerned, the Arbitral Tribunal found in favour of the appellant that it had made the supplies.

15. In view of its findings, the Arbitral Tribunal directed that the Blacklisting Order dated 30.12.2002 be withdrawn. The Arbitral Tribunal awarded an aggregate sum of ₹5,63,529/- against the appellant's claim for value of the stores supplied against the Supply Orders that were improperly cancelled (Supply Order nos. 90516 and 90517). In addition, the Arbitral Tribunal awarded interest at the rate of 1.5 times of the SBI's rate for the period till 16.06.2006 and three times

the rate as specified by the Reserve Bank of India for the period after 16.06.2006. The interest was calculated in terms of the provision of interest on Delays Payments to Small Scale & Ancillary Undertaking Act, 1993 and Micro, Small & Medium Enterprises Development Act, 2006.

16. The Arbitral Tribunal awarded a sum of ₹28,22,152/- (being 50% of the amount of interest of ₹56,44,304/-). The appellant had claimed an amount of ₹56,44,304/- on the ground that the concessions, as available to the SSI unit, were denied to the appellant on account of the Blacklisting Order passed by the respondent. Consequently, it could not enter into a settlement with the Oriental Bank of Commerce. And, if it had entered into the settlement, the said bank would have waived the outstanding interest to the tune of ₹56,44,304/-. In addition, the Arbitral Tribunal awarded a sum of ₹45 lacs on account of the respondent's claim for loss on account of short closure of the contract and ₹12,24,238.50/- on account of litigation expenses. The Arbitral Tribunal also awarded 18% interest on the amount awarded against the Claim nos.2, 4 and 6.

17. The respondent assailed the impugned award on several grounds including that that the claims are barred by limitation; that the Arbitral Tribunal could not have examined the question of fraud or forgery as such disputes are not arbitrable; that the Arbitral Tribunal had erred in holding that the Blacklisting Order was not justified; and, that the appellant was not entitled to any damages.

18. The learned Single Judge did not accept that the claims made by the appellant were barred by limitation or that the disputes raised were not arbitrable. However, the learned Single Judge accepted the appellant's contention that the Arbitral Tribunal had grossly erred in finding that the supplies were made against the Supply Orders nos. 90516 and 90517 and that the Blacklisting Order was not justified. The learned Single Judge held that the finding of the Arbitral Tribunal that deliveries were made by the appellant, was contrary to record.

19. The Arbitral Tribunal referred to the Investigation Report dated 23.07.2001 and reasoned that there was no possibility of an Investigation Report regarding the quality of the supplies if the same had not been made. The learned Single Judge found that the said reasoning is *ex facie* erroneous as the Investigation Report related to supplies made against the Supply Order no. 90515 and not Supply Orders bearing nos. 90516 and 90517.

20. The learned counsel appearing for the appellant submitted that the learned Single Judge grossly erred in re-appreciating the evidence placed on record. He contended that it was not permissible for the court to re-appreciate or re-evaluate the evidence and re-adjudicate the dispute. He submitted that learned Single Judge had erred in faulting the Arbitral Tribunal's finding that the appellant had made delivery of goods, on the ground that the same is contrary to record. He submitted that there was ample evidence on record to show that the appellant had made the supplies as claimed and the Arbitral Tribunal's finding was based on appreciation of such evidence. He submitted that the

Investigation Report dated 23.07.2001 was not the only document referred to by the Arbitral Tribunal for arriving at its conclusion. And, even if the said document is ignored, there was sufficient material on record for the Arbitral Tribunal to have accepted the appellant's claim that it had made supplies against the Supply Orders in question.

Reasons & Conclusions

21. The respondent has not challenged the impugned judgment and therefore, it is not necessary for this Court to examine whether the disputes are arbitrable or whether the challenge to the Blacklisting Order was barred by limitation. The principal question to be addressed is whether the Arbitral Tribunal's finding that the Blacklisting Order was unjustified is unsustainable.

22. It is important to note that the Blacklisting Order was passed as the respondent found merit in the allegation that the respondent had submitted forged inspection notes in respect of the supplies against the Supply Order nos. 90516 and 90517. The consignee had clearly stated that the signatures appearing on the inspection notes, furnished by the appellant, did not belong to any official of the consignee and the rubber stamps on the inspection notes were not those of the consignee. The Arbitral Tribunal had accepted the appellant's claim that the inspection notes were genuine; they were signed by the concerned official; and duly stamped by the consignee on the ground that the respondent had failed to produce any material, which established to the contrary. The Arbitral Tribunal had faulted the respondent for not producing

signatures of its officers or a forensic report. This approach is erroneous. The onus to prove that the inspection notes furnished were genuine rested with the appellant. The respondent had denied that the inspection notes were signed by any of its officials or that it was using the stamps, the impressions of which were found on the inspection notes, at the material time. Admittedly, the appellant had not taken any steps for discovery or production of any documents or material to establish its claim that the signatures of the consignee's official on the inspection notes were genuine and the stamps were in use by the consignee at the material time. It was for the appellant to have led evidence to show as to how and on which date it had come in possession of the inspection notes, as well as establish that the same were signed by the consignee's authorized signatory.

23. Insofar as the question whether the appellant had delivered goods against the Supply Orders in question is concerned, the Arbitral Tribunal concluded that it had done so. The reasons for arriving at such a conclusion are set out in paragraph nos. 20 and 21 of the impugned award, which read as under:-

“20. The documents so exhibited by respondent show a joint investigation report dated 23.07.2001 showing a quality re-inspection of stores at consignees godown, there by establishing the presence of stores in consignees godown. A question so arises as to how the supplies can be taken up for joint investigation once the supply order has been cancelled on 13.07.2001 and the claimant has been asked to lift back the supplies. Further facts so established on appreciating the evidence on record the fact that the

receipt portion of the Inspection No (Advance Payment Copy) reflects a similar receipt on all the three I/ Note of the three supply orders i.e. 90515, 90516 & 90517.

21. I state that the Respondent has not submitted any material evidence specifically rebutting the claims. On the other hand the Claimant has demonstrated its case on the basis of relevant evidence including copies of the I/Notes. Delivery challans and even stamps of the commercial taxes officer on the state Border of Andhra Pradesh. Considering this I hold that the Claimant did in fact effect delivery of the supply orders to the consignee and hence effectively the I/Note endorsements would be signed by the Consignee. Also if the stores were not received, how could they have been lifted back. The consignee issued letter dated 04.09.2002 to the respondent informing a withdrawal of their complaint. This communication to the respondent has not found any mention in the show cause dated 14.11.2002 issued to the claimant or the proceedings done on 30.12.2022. This ignorance of this important communications from the consignee absolving the Claimant from the complaint well proves the claimants allegations of prejudice by the Respondent.”

24. It is apparent from the above that the Arbitral Tribunal had primarily relied on the Joint Investigation Report dated 23.07.2001, which indicated that the stores were inspected at the consignee’s godown. The Arbitral Tribunal reasoned that such an investigation would be possible only if the goods were supplied. The Arbitral Tribunal had reasoned that the inspection reports for all the three Supply Orders (that is, Supply Order nos. 90515, 90516 and 90517) reflected similar receipts. Further, the appellant had also produced certain

documents bearing the stamp of Commercial Tax Officers on the state border of Andhra Pradesh. The Arbitral Tribunal found that the said documents indicated that the goods have been dispatched.

25. The appellant's contention that there was material on record other than the Joint Investigation Report, which had persuaded the Arbitral Tribunal to conclude that the goods were dispatched, is merited. However, dispatch of goods does not establish that the goods had been received by the consignee. Undisputedly, the Joint Investigation Report dated 23.07.2001 related to the investigation of goods supplied against Supply Order no. 90515 and not in respect of goods supplied against Supply Order nos. 90516 and 90517.

26. Indisputably, the evidence in the present case is sketchy. The appellant had not produced any material to establish that the signatures and stamps appearing on the inspection notes were genuine or otherwise in use. However, it is important to note that the Arbitral Tribunal found that the signatures appearing on the inspection notes relating to all the three Supply Orders were similar. The allegation of forged signatures and stamps, as set out in the show cause notice dated 14.11.2002, was confined to the inspection notes relating to Supply Order nos. 90516 and 90517.

27. It is clear that the impugned award is also based on material, which is extraneous to the controversy. As noted above, there is no dispute that the appellant had made supplies against Supply Order no. 90515 and the Joint Investigation Report pertains to supplies made

against that Supply Order. Thus, the said material is not relevant for considering whether the appellant had in fact supplied goods against Supply Order nos. 90516 and 90517.

28. The Arbitral Tribunal had also referred to the letter dated 04.09.2002, issued by the consignee, confirming as under:

“Further supplies are being received from the firm regularly and no misconduct has been observed on the part of the firm”

29. Although the Arbitral Tribunal has referred to certain material which may be relevant to the controversy, namely the inspection notes and the consignee’s letter dated 04.09.2002; it has relied mainly on the inspection report, which as stated above is not relevant for determining whether the appellant had delivered supplies against the Supply Order nos. 90516 and 90517. In the circumstances, we concur with the decision of the learned Single Judge that the Arbitral Tribunal had based its decision on irrelevant material and the impugned award cannot be sustained.

30. In view of the conclusion that the impugned award was contrary to record, the learned Single Judge did not examine the impugned award in respect of the separate claims. However, it would be apposite to examine the same as well.

31. The first claim made by the respondent related to non-payment for supplies against Supply Order nos. 50916 and 50917. The said Supply Orders were cancelled on the ground that the appellant had

failed to supply the goods. It was appellant's case that it had supplied the goods but the said goods were returned and the appellant was asked to pick up its goods from the consignee. The Arbitral Tribunal had found that the appellant was entitled to the value of the stores against the Supply Order nos. 90516 and 90517 as they were improperly cancelled. The Arbitral Tribunal awarded an aggregate sum of ₹5,84,100/- towards the full value of the goods allegedly supplied against the said Supply Orders. The said award is, *ex facie*, erroneous. First of all, the claim is clearly barred by limitation. The orders were cancelled in the year 2001 and even according to the appellant, the goods had been returned back in the year 2001. The appellant's claim is, essentially, one of damages based on return of the said goods. The appellant had invoked arbitration in the year 2009 and therefore, the said claim is clearly barred by limitation. The Arbitral Tribunal had found that invocation of arbitration was not barred by limitation as the appellant was aggrieved by the Blacklisting Order, which was continuing. The learned Single Judge found that the Blacklisting Order gave rise to a continuous cause of action. While the appellant's grievance regarding the Blacklisting Order may not be barred by limitation, its claim for damages on account of cancellation of Supply Orders and return of goods is clearly barred by limitation. The cause of action for claiming such damages had arisen when the Supply Orders were cancelled and the goods were allegedly returned.

32. The Arbitral Tribunal had also awarded an amount of ₹28,22,152/- on the ground that the appellant has been unable to settle

its accounts with its bankers as the bankers had not extended the concessions as available to an SSI unit on account of the Blacklisting Order. Plainly, the claim of damages is remote and is not a direct loss. The import of the Blacklisting Order was to proscribe any dealings with the appellant. The appellant's claim is on account of denial of concession by its bankers. We are of the view that amount of damages against this claim is remote and award of the same, in favour of the appellant, is fundamentally flawed.

33. The claim on account of losses suffered from short closure of various contracts (Claim no. 4) is also clearly barred by limitation. The cause of action for claiming such loss would arise on the date the contracts were closed. In addition, we are also at a loss to find any justifiable basis for quantification of the said loss in the impugned award.

34. For the reasons stated above, we are of the view that the impugned award is vitiated by patent illegality.

35. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

PURUSHAINDR KUMAR KAURAV, J

JANUARY 13, 2022
Ch/GSR