



2024:DHC:577-DB



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

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Date of Decision: 23.01.2024+ **FAO (COMM) 40/2023 and CM Nos.7329/2023, 7330/2023 and 7331/2023****M/S EXOTIC BUILDCON PVT LTD**

..... Appellant

Through: Mr Nityanand Singh and Ms
Aachal, Advocates.

versus

**M/S MEDORS BIOTECH PVT LTD THROUGH
ITS DIRECTOR SH. R. C. SHARMA**

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal impugning an order dated 21.12.2021 (hereafter '**the impugned order**') passed by the learned Commercial Court in ARBTN No.644/2018 captioned **M/s Exotic Buildcon Pvt. Ltd. v. M/s Medors Biotech Pvt. Ltd.**, whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an arbitral award dated 07.02.2018 (hereafter '**the Arbitral award**'), was substantially rejected.

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By: DUSHYANT
RAWAL
Signing Date: 29.01.2024



2. The impugned order indicates that the learned counsel for the appellant had fairly conceded that the scope of Section 34 of the A&C Act was limited and the findings returned by the Arbitrator could not be assailed. The appellant had confined its challenge to the Arbitral award on two fronts. First, that the name of the respondent company had been struck off from the Register of Companies by an order dated 30.06.2017 passed by the Registrar of Companies (ROC) under Section 248(5) of the Companies Act, 2013 (hereafter '**the Companies Act**'). And second, that there was a calculation error in the amount awarded. The Arbitral Tribunal had awarded a sum of ₹39,26,242/- in favour of the respondent. However, according to the appellant, the correctly calculated amount is ₹37,51,579/-.

3. The learned Commercial Court had rejected the appellant's contention that the Arbitral award was required to be set aside on the ground that the proceedings had been initiated by the ROC for striking off the respondent's name from the Register of Companies. The learned Commercial Court had referred to Section 250 of the Companies Act and had noted that the certificate of incorporation of the respondent company would be deemed to be cancelled from the date mentioned in the notice under Section 248(5) of the Companies Act except for the purpose of realising the amount due to the company and/or for payment of discharge of its obligations. Thus, the proceedings for realising the amounts due to the respondent would not be affected.

4. Insofar as the calculation error is concerned, the learned counsel



for the respondent had readily conceded to the same. Accordingly, the arbitral award for a sum of ₹39,26,242/- was confined to ₹37,51,579/- and was set aside to extent of the amount awarded in excess of the said sum.

5. The appellant has confined the present appeal to challenging the Arbitral award and the impugned order on the singular ground that the name of the respondent was struck off from the Register of Companies.

6. It is contended on behalf of the learned counsel for the appellant that it was incumbent on the respondent to take steps for restoration of its name on the Register of Companies and thereafter, to proceed with the arbitral proceedings.

7. There is merit in the contention that once the name of a company is struck off from the Register of Companies, the company is required to take effective steps for its restoration in order to pursue its claims. However, we are unable to accept that the Arbitral award can be set aside on the said ground. It is material to note that the parties were referred to arbitration by this Court on 13.07.2015¹. The Statement of Claims was filed in September, 2015, which is prior to 30.06.2017.

8. It is also relevant to note that during the material time, a large number of companies, which had not complied with the provisions of the Companies Act were struck off from the record of the Register of

¹ I.A.No.47111 in CS (OS) 3135 OF 2014



Companies. The notification dated 30.06.2017, which is relied upon by the appellant, also indicates that 22864 number of companies were struck off.

9. The respondent company and its Directors have the right under the Companies Act to seek restoration of the name of the company after fulfilling the statutory compliance.

10. In *Value Advisory Services v. ZTE Corporation*², this court had rejected the objection to enforcement of an arbitral award on the ground that the name of the award holder was struck off the Register of Companies after the arbitral proceedings had commenced but the petitioner had pursued its claims in the arbitration. The petitioner had filed a petition for restoration of its name in the Register of Companies after the arbitral award was rendered. The Special Leave Petition preferred against the said decision before the Supreme Court was rejected³.

11. Keeping the aforesaid in mind, we are unable to accept that any interference in the Arbitral award would be warranted on the said ground and at this stage.

12. The learned counsel for the appellant submits that the Arbitral award is liable to be set aside on the ground of suppression of material facts. We are not persuaded to accept the said contention.

13. The appeal is, accordingly, dismissed. The pending applications

² AIR ONLINE 2018 Del 3345

³ Order dated 06.07.2017 in SLP NO.17087/2017



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are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

**JANUARY 23, 2024
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