2024:DHC:2481-DB

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

% *Date of Decision: 13.03.2024*

\+ **FAO (OS) (COMM) 95/2022**

M/S NCS SUGARS LIMITED & ANR. ..... APPELLANTS

Through: Mr Kumar Kislay, Adv. for Appellant no.1
Mr Mandeep Kalra with Mr Rishabh, Advs. for Appellant no.2

versus

M/S PEC LIMITED ..... RESPONDENT

Through: Mr Kaustabh Singh with Ms Surbhi Mehta and Mr Ishaan Mehrotra, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM Appl.20805-06/2024

1. Allowed, subject to just exceptions.

FAO (OS) (COMM) 95/2023 & CM Appl.20804/2024

2. This is an appeal preferred against the judgment of the learned Single Judge dated 22.10.2021. The learned Single Judge dismissed the petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 [hereafter referred to as, "1996 Act"] on a short ground that the said petition was filed beyond limitation prescribed under Section 34(3) of the 1996 Act.

2.1 The Section 34 petition had been preferred against the arbitral award dated 01.05.2018.

2.2 The record shows that the arbitration proceedings were conducted under the aegis of the Delhi International Arbitration Centre [in short, "DIAC"].

3. The short issue that arose for consideration before the learned Single Judge was whether the limitation for filing the petition under Section 34 of the 1996 Act commenced from 01.05.2018, i.e., when the award, which was engrossed on a stamp paper worth Rs.100/-, was concededly pronounced.

3.1 The record discloses that on the date when the award was pronounced, i.e., 01.05.2018, only the authorized representative of the respondent/claimant i.e., PEC Limited was present.

3.2 Since no representative on behalf of appellant no.1 was present, the signed award was dispatched by the DIAC to appellant no.1 *via* communication dated 23.05.2018.

4. It is not disputed that the Section 34 petition was instituted on 31.10.2019. The argument proffered on behalf of the appellants was that the petition was instituted within the period of limitation, as the award engrossed on a paper bearing the requisite stamp duty was received only on 01.10.2019. Therefore, according to the appellants, the action instituted under Section 34 of the 1996 Act was well within three months i.e., the period prescribed under Section 34(3) of the 1996 Act.

5. Mr Mandeep Kalra, who appears on behalf of appellant no.2, says that the award which was pronounced on 01.05.2018 was insufficiently stamped. Hence the award pronounced on 01.05.2018 was not an award in the eyes of law until it was engrossed on a paper bearing the requisite stamp duty. Mr Kalra stated that the appellant received the duly signed and stamped award *via* DIAC only on 01.10.2019.

5.1 Therefore, according to Mr Kalra, limitation for the purposes of Section 34(3) of the 1996 Act would commence from 01.10.2019, and not from 01.05.2018 as has been held by the learned Single Judge.

6. In support of his plea, Mr Kalra has drawn our attention to the copy of the e-stamp paper dated 28.08.2019 and the signatures of the learned Arbitrator appended therein.

6.1 Based on this document, the argument advanced was that the deficiency in stamp duty was cured with the payment of additional stamp duty amounting to Rs.11,58,516/-. Therefore, according to Mr Kalra, since this stamp paper bore the signatures of the learned Arbitrator, in law, a *viable* award emerged only thereafter, when the said award was received by the appellant (even as per the learned Single Judge) on 01.10.2019.

7. In furtherance of appellant no.1's case, arguments were advanced by Mr Kumar Kislay. Mr Kislay informs us that appellant no.1 is undergoing corporate insolvency resolution process (CIRP).

8. Mr Kislay also informs us that the respondent has lodged its claim with the Resolution Professional (RP).

8.1 It is Mr Kislay's submission that the moratorium ordered by the NCLT is in operation.

9. Before we proceed further, we may note one of the arguments advanced by Mr Kalra was that the award rendered by the learned Arbitrator was only *qua* appellant no.1. Appellant no.2 joined the Section 34 action instituted by appellant no.1 as a co-petitioner only on account of the fact that in the execution petition lodged by the respondent, appellant no.2 was arrayed as a party. Mr Kalra informs us that appellant no.2, at a relevant point in time, was the Managing Director of appellant no.1.

10. We may note that if it is Mr Kalra's submission that the award neither imposed any liability, nor was it directed against appellant no.2, there was no good reason for him to join the Section 34 action. However, because appellant no.2 was arrayed as a party in the Section 34 action, he was included as a party in the present appeal as well. That said, the aforementioned situation has led to the creation of an insignificant anomaly which need not detain us further. On merits, we find that the arguments advanced by Mr Kalra, which are also supported by Mr Kislay, are completely untenable.

11. As rightly noted by the learned Single Judge, insufficiency, if any, concerning stamp duty, is an aspect which gains legal significance only at a stage of enforcement of the award i.e., the execution.

12. As far as the right of a litigant to challenge an award within the prescribed period for limitation is concerned, it gets triggered the moment the award is rendered.

13. The learned Single Judge, in our view, has rightly appreciated the principles enunciated by the Supreme Court in ***M. Anasuya Devi and Anr. v. M. Manik Reddy and Ors***. (2003) 8 SCC 565.

14. The said judgment of the Supreme Court, in no uncertain terms, states that insufficiency of stamp duty is not one of the grounds provided in Section 34 of the Act for setting aside the award and therefore, this aspect of the matter, as observed hereinabove, will have weight only at a stage when an execution action is filed for enforcement of the award by taking recourse to the provisions of Section 36 of the 1996 Act.

15. Therefore, the submission advanced by Mr Kalra and Mr Kislay that the trigger point for commencing of limitation as prescribed under Section

34 of the 1996 Act would be the date when the award bearing the requisite stamp duty was served is completely untenable.

16. We find no merit in the appeal. The appeal is, accordingly, dismissed.

17. Pending application shall stand closed.

18. The fact that appellant no.1 is under moratorium, in our view, will not get impacted by the result rendered in the appeal.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 13, 2024/pmc