



2024:DHC:3311



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

Decided on: 25.04.2024

+ O.M.P. 16/2018 & I.A. 9836/2018

NATUREX OILS PVT. LTD. & ORS

..... Petitioners

Through: Mr. Medhanshu Tripathi, Mr.
Satish Kumar & Ms. Savita,
Advocates.

versus

TYAGI PIPE CRAFT PVT.LTD.

..... Respondent

Through: Mr. Arun Batta, Mr. Shivek Trehan
& Ms. Rishika Goyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], is directed against an arbitral award dated 18.09.2017, by which disputes between the parties under a Memorandum of Settlement dated 16.02.2005 were adjudicated by a learned Sole Arbitrator. The learned Arbitrator allowed the claims of the respondent herein, to the extent of ₹6,53,21,534/- and ₹1,62,50,000/-, alongwith interest thereupon, and costs assessed at ₹50,00,000/-. The counter claims of the petitioners herein were rejected.

2. The genesis of the dispute arises from a transaction between petitioner No. 1 – Naturex Oils Pvt. Ltd. [“the Company”] and two banks i.e. United Bank of India [“UBI”] and Indian Overseas Bank [“IOB”], for



loans of ₹8,50,00,000/- and ₹1,45,00,000/- respectively. UBI and IOB formed a consortium. Petitioner Nos. 2, 3 and 4 are all directors of the Company.

3. In connection with these loan transactions, it is contended that the petitioners approached the respondent to mortgage a piece of land owned by it as security.

4. The parties entered into an agreement on 16.02.2005, entitled “Memorandum of Settlement” [“MoS”]. The parties to the MoS were the Company, the respondent and petitioner Nos. 2 and 3, who were described as “surety No. 1” and “surety No. 2” respectively. By way of the MoS, the respondent agreed to place an immovable property owned by it situated at *Anangpur – Kattan, 12th Milestone, Faridabad, Haryana* as collateral security to UBI, which was the lead bank of the consortium. It was agreed that the respondent would be entitled to a sum of ₹50,00,000/- per year as consideration, payable quarterly, until the property was released by UBI or the entire loan was repaid by the Company. The MoS records an undertaking on behalf of the Company that it would repay its loan to UBI and would not allow any default for more than three consequent defaults. It is also provided that, in the event the respondent loses its property for any default of the Company, the Company would be liable to the respondent for the sum of ₹6,00,00,000/- [computed at the rate of ₹2,600 per square yard] or the market value of the property at the time, whichever is higher. The MoS contains an arbitration clause in Clause 10 thereof.

5. There were certain other agreements executed between the petitioners and the respondent with regard to a different property of the



petitioner Nos. 2 and 3, which are not relevant for adjudication of the present dispute.

6. Pursuant to the MoS, the respondent resolved on 25.02.2005 to mortgage its property with the lenders of the Company. The Company consequently obtained the facilities sought from UBI in March, 2005.

7. Unfortunately, the Company started defaulting in servicing the loans from November 2005 and its accounts were declared as non-performing assets on 30.09.2007. UBI, on behalf of the consortium, sought to take measures under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the respondent's property, and a sale notice was issued on 18.06.2008. Ultimately, the property was released to the respondent in February, 2014 upon the respondent making payment of the sum of ₹6,53,21,534/- to the assignees of the consortium [M/s. Assets Care and Reconstruction Enterprises Ltd. and M/s J.M. Financial Assets Reconstruction Company Pvt. Ltd.].

8. The respondent sought to recover the aforesaid amount as well as a sum of ₹1,62,50,000/- alongwith up to date interest [towards arrears of the consideration of ₹50,00,000/- per annum payable by the petitioners under the MoS] from the petitioners. It addressed a legal notice dated 01.10.2014 demanding the aforesaid amount from the petitioners and invoked arbitration by a letter dated 31.10.2014.

9. The learned Arbitrator was appointed by an order of this Court dated 27.05.2015 in ARB.P. 14/2015.

10. Before the learned Arbitrator, the respondent herein was the claimant and all the four petitioners were arrayed as respondents.



11. The respondent raised the following claims in the arbitration proceedings:-

“Claim No.1: Rs.6,53,21,534/- towards principal amount paid by the Claimant to ACR and JMF on 24.01.2014 to get its property released;

Claim No.2: Rs.2,40,74,090/- towards interest @ 24% per annum on the amount mentioned in Claim No. 1 w.e.f. 24.01.2014 to the date of filing of the present Statement of Claim;

Claim No. 3: Rs.1,62,50,000/- (Rupees One Crore Sixty Two Lacs Fifty Thousand only) payable towards the consideration amount in terms of the Memorandum of Settlement being the amount recoverable for the last quarter of the years 2011 and the year, 2012, 2013, 2014 @ Rs. 50,00,000/- p.a.

Claim No.4: Rs.68,40,000/- towards interest @ 24% per annum on the above amount mentioned in claim No.3 till the date of filing of the present Statement of Claim;

Claim No.5: Rs.50,00,000/- (Rupees Fifty Lacs only) payable towards the consideration amount in terms of the Memorandum of Settlement being the amount recoverable for the year 2015 @ Rs. 50,00,000/- p.a.

Claim No. 6: Pendente lite and future claim @ Rs. 50,00,000/- (Rupees Fifty Lacs only) per year from the date of filing of the present Statement of Claim till the entire due amount is paid by the Respondents to the Claimant, in terms of the Memorandum of Settlement;

Claim No. 7: Towards future and pendente-lite interest @ 24% per annum from the date of filing of this Petition till realization on the amounts mentioned in Claim Nos. 1 to 7;

Claim No. 8: Costs of the present proceedings.”

12. The petitioners made counter-claims of ₹1,12,81,20,000/- alongwith interest.

13. The learned Arbitrator framed the following issues for determination:-

“ISSUES FOR DETERMINATION:

- 1. Whether the Claimant's claims are barred by limitation?*
- 2. Whether the claims made by claimant are without any cause*



of action?

3. What is the effect of Memorandum of Settlement executed on 16.02.2005 on the claims of the Claimant?

4. Whether the Respondent's are liable to pay an amount of Rs. 6,53,21,534/- in terms of Memorandum of Understanding and also an amount of Rs. 1,62,50,000/- as claimed in the statement of claims?

5. If the aforesaid issues are answered in favour of Claimant, whether the Claimant would also be entitled to receive any interest on the amount found due to be payable to the claimant and if so, at what rate and for what period?

6. Whether the Respondent is also liable to pay an amount of Rs. 50,00,000/- towards consideration amount in terms of Memorandum of Settlement being an amount recoverable for the year 2015 at Rs. 50,00,000/- per annum?

7. Whether the Claimant is also entitled to claim pendente lite and future interest and if so, at what rate and for what period?

8. Whether the Claimant is also entitled to payment of cost and if so for what amount?

ISSUES ON COUNTER CLAIMS:

1. Whether the counterclaims as raised by Respondents are baseless and barred by limitation?

2. Whether the Respondents are entitled to claim and receive damages and compensation of an amount of Rs. 112,81,20,000/-

3. If the aforesaid issued is answered in favour of Respondents, whether the Respondent would also be entitled to claim any interest on the aforesaid amount, and if so, at what rate and for which period?

4. Whether the Respondents also entitled to claim an amount of Rs. 5,00,00,000/- or any other amount from the Claimant on the ground of loss of reputation and goodwill?

5. Whether the Respondents are also entitled to payment of cost of Rs. 25,00,000/- from the Claimant?"

14. The parties also led oral evidence.

15. After arguments, the learned Arbitrator has made the award summarised above.

16. I have heard Mr. Medhanshu Tripathi, learned counsel for the petitioners and Mr. Arun Batta, learned counsel for the respondent.

17. The relevant terms of the MoS are set out below:-



“1. That in consideration of second party providing its abovementioned property as a collateral security to United Bank of India, Safdarjung Dev. Area, New Delhi to secure the above loan, the first party hereby agrees to pay the second party a sum of Rs.50,00,000/- (Rupees fifty lacs only) per year or part thereof till the above said property is released by the bank or the entire loan repaid by the first party to the bank and the property released by the bank. The said amount shall be payable by the first party quarterly by cheque for each year. The first party has assured the second party that the said loan shall be discharged within a period of 5 years from the date of disbursement.

The first party has assured that all the cheques which will be issued and given to the second party by the first party shall be honoured on presentation.

And that the second party has entered the present agreement on such assurances.

In case the loan is not discharged within the above period, the first party shall keep on paying the annual sum of Rs.50,00,000/- further as agreed herein above. In case of delayed payment the first party shall be liable to the second party to pay interest @ 24% p.a. from the date of delay till repayment.

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3. That under no circumstances the second party or its directors shall be personally liable towards the bank for the liability of the first party. Their liability shall be limited to the property itself only i.e. to the extent the above property is auctioned in the market by the bank or by the court or any other quasi judicial or judicial authority and the money realized therefrom.

4. That it is appreciated that the properties do not fetch the prevailing market value when sold by way of open auction; therefore the value of the property is presently fixed as Rs.6 Crores or @ Rs.2600/- per Sq. Yard (for the said land given as collateral at Faridabad)or the market value at that time, whichever is higher. If the second party loses its property for any default of the first party, the first party shall be liable to pay to the second party a sum of money equivalent to the value of the property as fixed above.

5. That the first party undertakes and assures the second party that it shall repay its bank the loan taken by it in terms of the agreement entered between itself and its bank and shall never allow itself in default of such payments for more than three consequent defaults.

6. That the surety no.1, surety no.2, hereby stand as sureties for first party and guarantee that the terms of this agreement shall be performed by the first party without fail. In case the first party fails to perform its part of the agreement the liability of the sureties shall be



joint and several with that of the first party. That the guarantee/surety of the surety no.1 and surety no.2 shall be continuing one and shall be irrevocable.

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10. That in the event of any dispute arising out of and/or from this agreement including but not restricted to non-payment by the first party and sureties, validity of this agreement, interpretation of any of the clause(s) of this agreement, the same shall be referred to arbitration of the President of the Bar Council of the Delhi at that relevant time, under the provisions of Arbitration and Conciliation Act or any amendment thereof.”¹

18. At the outset, it may be pointed out that although four petitioners are arrayed as petitioners in the memo of parties, the petition is supported by an affidavit of petitioner No. 2 as a director of petitioner No. 1 – the Company, alone. The petition is also signed only by petitioner No. 2 as a director of petitioner No. 1. *Vakalatnama* has also been filed only on behalf of petitioner No. 1. The petition is therefore maintainable only in respect of petitioner No. 1 and not in respect of other petitioners.

19. On issue No. 1, with regard to limitation, the learned Arbitrator found that the respondent’s claims arose only in 2013-14, when it discharged its liability to the consortium [or its assignees] and the claims were therefore within limitation. Other preliminary objections were also decided against the petitioners. No arguments have been advanced with regard to these findings. In any event, the findings are in accordance with the terms of the MoS and with applicable law.

20. On the main question of liability, the learned Arbitrator relied upon the clauses of the MoS reproduced above and the evidence adduced by the parties. He found that the oral evidence of the petitioners’ witness was contrary to the documentary evidence. He also rejected the petitioners’



contention that the property in question was encumbered by the respondent prior to creation of the mortgage in question, finding that the property had been released from the mortgage prior to execution of the MoS dated 16.02.2005. On this basis, learned Arbitrator held that the petitioners were liable to pay the sum of ₹6,53,21,534/- and ₹1,62,50,000/- to the respondent. The learned Arbitrator awarded interest at the rate of 15% per annum on both these amounts. The respondent's further claim for the sum of ₹50,00,000/- as consideration for the year 2015 was rejected.

21. The award proceeds on the basis of contractual terms, which are unambiguous. The respondent had placed its property as collateral for loans given to the Company, and the amount of the loans was received by the Company from the lenders. The Company failed to repay the loans, as a result of which the respondent had to pay the aforesaid sum of ₹6,53,21,534/- to recover its own property from the lenders. The learned Arbitrator has found that the MoS entitled the respondent to reimbursement of the said amount from the petitioners. This is an unambiguous consequence of the clauses of the MoS set out above.

22. The defences raised by the petitioners have also been analysed in detail in the following paragraphs of the impugned award:-

“23. The claim No. 4 of the claimant is supported by the oral evidence adduced by CW-1 and the documentary evidence being Ex. CW-1/1 to Ex. CW-1/17. These documents entirely supported the claim of the claimant in this regard and the veracity of the same could not be effectively questioned by the respondents. The defence of the respondents that the amount of Rs.50,00,000/- shall be paid once the unit/project started running and commissioned is found to be without any

¹ Emphasis supplied.



merit as no documentary evidence could be produced in support of such allegation. The Memorandum of Settlement dated 16.2.2005 is explicit and clear on this count and no contrary oral evidence could be relied upon and is not admissible. Besides, post-dated cheques issued by the respondents were also dishonoured on presentation. Shri Amandeep Gill, the RW-1 in his evidence has admitted that the Memorandum of Settlement dated 16.2.2005 was entered into between the parties voluntarily and without force or coercion and that the same contains the terms and conditions agreed between the parties. He has also stated that the respondents had agreed to pay Rs.50 lakhs per annum till the time the said property is released by the Consortium Bank.

24. The respondent has projected a Second Memorandum of Settlement dated 16.2.2005 executed between the parties to the effect that in case the respondents failed to discharge their obligations, the claimant has a right to deal with the Mehrauli property of the respondents No.2 & 3. However, it is admitted by the respondents in their evidence that the respondents No.2 & 3 did not possess any document of title in respect of the said property. The witness Shri Amardeep Gill has also admitted that the sale deed of Mehrauli property could not be registered. It is also established from the evidence that the said property was already mortgaged by the respondents in favour of one Mr. Narang. The said defence of the respondent is found to be baseless.

25. The other defence of the respondents that the property offered by the claimant was not free from encumbrances as the claimant had already created a charge upon the Faridabad property in favour of Syndicate Bank and that the respondents paid Rs.70 lakhs to the claimant through cheques, demand draft and cash on different dates is found to be baseless as none of the said defence could be proved by leading any cogent and reliable documentary evidence. RW-1 has admitted that the claimant has cleared all its outstanding with the Syndicate Bank as on 31.1.2005 which fact is supported by document dated 6.10.2015 (Ex.CW-1/16). Therefore, the property in question was released from mortgage by the Syndicate Bank prior to execution of Memorandum of Settlement dated 16.2.2005 and consequently there was no impediment to offer the said property as collateral security on 16.2.2005. Therefore, the defence of paying Rs. 70 lakhs by the respondents is found to be baseless and incorrect.

This issue is thus decided in favour of the claimant and



against the respondents holding that the respondents are liable to pay the amount of Rs.6,53,21,534/- and also an amount of Rs.1,62,50,000/- as claimed to the claimant and that all the respondents are jointly and severally liable to pay such amount to the claimant.”

23. On the counter claims, the question of limitation was held in favour of the petitioners, but no evidence was found to support the petitioners' claim for damages and compensation or loss of reputation and goodwill. Mr. Tripathi has not drawn my attention to any evidence led before the learned Arbitrator which according to him has been missed.

24. The award thus proceeds on an analysis of the contractual terms and consideration of the evidence that was led before the learned Arbitrator. I find no irrationality, perversity or arbitrariness in the aforesaid analysis, which would invite the jurisdiction of this Court under Section 34 of the Act.

25. As a consequence of the above discussion, it is held that the challenge of the petitioners to the impugned award is entirely unmerited.

26. The petition is dismissed with costs of ₹1,00,000/-, payable to the respondent within four weeks from today. All pending applications also stand disposed of.

PRATEEK JALAN, J

APRIL 25, 2024

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