2023:DHC:6693-DB

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

\+ FAO(OS) (COMM) 33/2018 & CM APPL.7434/2018

DD GLOBAL CAPITAL PVT LTD & ORS. ..... Appellants

Through: Mr. Akshay Ringe, Advocate with Ms. Megha Mukerjee, Advocate.

versus

M/S S E INVESTMENTS LTD. ..... Respondent

Through: Mr. Sharad, Proxy Counsel (through VC).

Reserved on: 31st August, 2023

% Date of Decision: 13th September, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J:

1. The present appeal under Section 37 (1) (c) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") has been filed against the judgment dated 20th September, 2017 passed by the learned Single Judge in *OMP (COMM) 450/2016*. By way of the impugned judgment, the petition filed on behalf of appellants herein under Section 34 of the Arbitration Act challenging the Arbitral Award dated 22nd June, 2016 has been dismissed by the learned Single Judge.

2. Brief facts of the case that emerge from the documents on record are that appellant no.1 approached the respondent for availing a loan facility of Rs. 4 Crores. Pursuant to the same, loan amount of Rs. 3.20 Crores was

sanctioned and disbursed in favour of appellant no.1 in July, 2008 (2008 Loan Agreement). The said loan was to be repaid within a year, i.e., by 07th July, 2009 along with interest @ 25% per annum. The loan was secured by personal guarantees of appellants nos.2 and 3. In addition, around 5.92 acres of land at Zirakpur, Punjab belonging to Renaissance Buildcon Co. Pvt. Ltd. ("RBCL") was offered as mortgage to the respondent to secure the loan. RBCL also gave a corporate guarantee to secure the loan.

3. Appellant no.1 failed to repay the loan amount of Rs. 3.20 Crores together with interest. Thus, based on discussions, the respondent agreed to restructure the loan which had gone into default. Consequently, on 31st July, 2010, the entire loan amount plus outstanding interest was quantified at Rs. 6.37 Crores. This was re-financed by the respondent in the form of five new loans for a period of one year by charging and loading upfront interest @ 30% per annum. Consequently, five Loan Agreements dated 31st July, 2010 (2010 Loan Agreements) were executed between appellant and respondent for a sum of Rs. 9.10 crores as follows:

(i) Agreement dated 31st July, 2010 for a sum of Rs. 2 Crores
(ii) Agreement dated 31st July, 2010 for a sum of Rs. 2 Crores
(iii) Agreement dated 31st July, 2010 for a sum of Rs. 2 Crores
(iv) Agreement dated 31st July, 2010 for a sum of Rs. 2 Crores
(v) Agreement dated 31st July, 2010 for a sum of Rs. 1.10 Crores

4. The said loan was to be repaid within a year. The loan was secured by personal guarantees of appellants nos. 2 and 3, corporate guarantee of RBCL and collateral of the mortgaged land at Zirakpur, Punjab belonging to RBCL. The appellants also executed undertakings/declaration dated 31st

July, 2010 and five debit vouchers of the same date, aggregating to Rs. 9.10 Crores. The appellants also gave post-dated cheques of Rs. 9.10 crores.

5. Since default took place, respondent invoked arbitration under Clause 20 of the five 2010 Loan Agreements through a common invocation letter dated 25th September, 2012. Since, the five Loan Agreements, all dated 31st July, 2010 formed part of the same loan transaction and financial arrangement between the parties, common arbitration proceedings were conducted by the learned Arbitrator with respect thereto. By single Arbitral Award dated 22nd June, 2016, the respondent herein was held entitled to recover Rs. 9.10 crores as on 31st July, 2010 jointly and severally from appellants, along with interest for pre-award period and future interest @ 18% per annum.

6. Against the aforesaid Arbitral Award dated 22nd June, 2016, objections were filed on behalf of appellants under Section 34 of the Arbitration Act, which came to be dismissed by the learned Single Judge by the impugned judgment dated 20th September, 2017. Hence, the present appeal has come to be filed.

7. On behalf of appellants, it is contended that no amounts were disbursed by the respondent pursuant to the Loan Agreements of the year 2010. Not even a single document has been placed on record by respondent to show that amounts were transferred from account of the respondent to the account of the appellants.

8. It is further contended that the 2010 Loan Agreements and 2008 Loan Agreement are totally separate and independent from each other. The 2010 Loan Agreements do not have any reference whatsoever to the 2008 Loan Agreement. Therefore, the learned Arbitrator could not assume jurisdiction

on the matter pertaining to the loan granted in the year 2008, which did not contain an arbitration clause. The arbitration proceedings were invoked only under the five Loan Agreements dated 31st July, 2010.

9. It is submitted that the appellants had signed blank debit vouchers along with 2010 Loan Agreements which were to record the banking details such as demand draft number, cheque number, RTGS, NEFT, etc. by which amounts under the 2010 Loan Agreements would have been disbursed. Given that the 2010 Loan Agreements under which the debit vouchers were signed by the appellants, do not make any reference to the 2008 Loan Agreement, the debit vouchers under any circumstances could not have been used to pay off outstanding amounts under the 2008 Loan Agreement.

10. It is the case on behalf of appellants that the claims under the 2008 Loan Agreement were barred by limitation. The issue of limitation was raised before the Arbitral Tribunal, but was wrongly rejected. Besides, there was no arbitration clause in the agreement pertaining to the 2008 loan and as no arbitration clause existed, no arbitration proceedings could have been initiated qua the same.

11. It is further contended that the Arbitral Award is liable to be set aside since the Award has been passed on 22nd June, 2016, by which date the Arbitration Act stood amended, under which a party interested in the outcome of the arbitration has no unilateral right to appoint an arbitrator. In the instant case, respondent had unilaterally appointed the learned Arbitrator. Thus, Award is liable to be set aside on this ground. In this regard, learned counsel for appellants has relied upon the judgment in the case of ***Perkins Eastman Architects DPC and Another Vs. HSCC (India) Limited, (2020) 20 SCC 760***; ***TRF Limited Vs. Energo Engineering***

Projects Limited, (2017) 8 SCC 377 and Proddatur Cable TV Digi Services Vs. Siti Cable Network Limited, (2020) 267 DLT 51.

12. On the other hand, on behalf of respondent, the Arbitral Award dated 22nd June, 2016 passed by the sole Arbitrator and judgment dated 20th September, 2017 passed by the learned Single Judge, were justified.

13. We have heard learned counsel for the parties and perused the record.

14. At the outset, this Court notes that the contentions raised on behalf of appellants that the five debit vouchers signed by them were blank and that the five Loan Agreements dated 31st July, 2010 are null and void, as no amounts were disbursed under the 2010 loan, cannot be accepted. There is a clear finding by the learned Arbitrator, as upheld by learned Single Judge that since the five Loan Agreements dated 31st July, 2010 were executed along with other documents as a part of re-structuring and re-scheduling of the earlier loan availed by appellant no.1 on 03rd July, 2008 which appellant no.1 had defaulted to pay, no amounts were disbursed or paid by respondent to appellant no.1 under the five Loan Agreements dated 31st July, 2010. The five Loan Agreements effectively resulted in the appellants getting a further period of one year upto 31st July, 2011 to repay the loan amount which was quantified at Rs. 9.10 crores, inclusive of interest upto 31st July, 2011. Thus, learned Arbitrator held as follows:

> *"Admittedly, pursuant to the five Loan Agreements dated 31.07.2010 no loan amount was disbursed by the Claimant as the purpose of the Agreements was to give one more year to the Respondents to repay. The adjustment of the first outstanding loan which the Respondents had defaulted to repay and loading of interest at the front-end, formed a valid and lawful consideration for the execution of the five Loan Agreements dated 31.07.2010."*

15. The appellants admitted to the execution of the five debit vouchers, though their stand was that the said debit vouchers when executed were blank and filled in subsequently by the respondent. However, the appellants failed to prove that the said debit vouchers were blank at the time of their execution. There is an unequivocal finding by the learned Arbitrator that except the bald statement on behalf of appellants herein, nothing further, either by way of oral or documentary evidence, has been adduced on record. In this regard, the learned Arbitrator has held as follows:

> *"……. It was incumbent upon Respondent No.1 to cogently explain as to why and for what purpose the said five Debit Vouchers when executed by Mr. Narender Kumar Agarwal were left blank. Was this a requirement of the Claimant? No plausible explanation in this regard has been forthcoming from Respondent No.1 and its two witnesses. The Claimant has categorically denied that the five Debit Vouchers when executed by Mr. Narender Kumar Agarwal, Director of Respondent No.1 were filled up with the narrations and were not blank. Therefore, the contention of Respondent No.1 cannot be accepted."*

16. This Court also notes that the appellants did not at any point of time dispute or challenge the execution and validity of the five Loan Agreements dated 31st July, 2010. No demand for disbursement of the loan amounts as stated in the five Loan Agreements was ever made by the appellants. Thus, the learned Arbitrator rightly held that the five debit vouchers, all dated 31st July, 2010 contain a clear and categorical reference to the adjustment of the first loan of the year 2008 and linked the first loan of the year 2008 to the second loan of the year 2010. In this regard, the learned Single Judge has rightly held as follows:

> *"12. In my opinion, there are no reasons to interfere with the said interpretation of the documents by the learned arbitrator. A sample of the debit voucher dated 31.07.2010 is as follows:*

Debit Voucher	*Amount (in Rs.)*	*Dated*
Being case No.LD 2325 Disbursement adjusted against the current overdue in case No.LD 2018 on the request of Mr. Sanjay Gambhir, Director though Mr. Narendra Kumar Agarwal, Director of M/s. D.D. Township Ltd. *Adjusted in LD 2018 Rs.14000000 interest charged upfront for 1 year Rs.6000000* *Total: 20000000*	*20000000*	*31.07.2010*

Hence, as per above debit voucher, the disbursement of the new loan is adjusted against the previous loan overdue on the request of the Directors.

It is noteworthy that the petitioners executed all the loan agreements on 31.07.2010. There has been no protest ever lodged saying that the petitioners have not received any part of the loan.

The learned arbitrator has on account of the debit voucher dated 31.07.2010 linked the old loan which was overdue to the present set of documents. The interpretation of the debit voucher, the loan agreements etc. is a reasonable interpretation."

17. The five debit vouchers executed by appellant ex-facie show that the consideration against the five loans of the year 2010 was passed on to the appellant company by way of adjustment of outstanding dues of the year 2008. Since outstanding dues of earlier loan of the year 2008 were converted into five new loans of the year 2010 by way of adjustment, and the five Loan Agreements of the year 2010 contain arbitration clause, the present arbitration proceedings were rightly initiated pursuant to the said arbitration clause.

18. Law in this regard is well settled that interpretation of an agreement is within the domain of the Arbitrator. There is a categorical finding by the

learned Single Judge that the conclusion arrived at by the learned Arbitrator is a plausible conclusion and that there is no reason to disturb the finding recorded by the learned Arbitrator. Learned Single Judge has further held that the findings of facts recorded by the learned Arbitrator accepting the statement of accounts of respondent herein, are plausible findings which cannot be interfered with.

19. Once the conclusion given by the learned Arbitrator in the Arbitral Award has been held to be a plausible and justified view by the learned Single Judge, this Court would not interfere with the concurrent findings given by the learned Arbitrator and the learned Single Judge. Court does not sit in appeal over the Arbitral Award.

20. Holding that the court hearing an appeal under Section 37 of the Arbitration Act must be extremely cautious and slow to disturb concurrent findings, Supreme Court in the case of ***MMTC Limited Vs. Vedanta Limited, (2019) 4 SCC 163***, has held as follows:

> *"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

21. Further, reliance by the appellants on the judgments in the case of ***Perkins Eastman Architects DPC (supra) and TRF Limited (supra)*** is totally erroneous, as invocation of arbitration in the present case is by letter dated 25th September, 2012, by which the respondent appointed an

Arbitrator. Thus, the said invocation is prior to the amendment in the Arbitration Act in the year 2015, under which a party interested in the outcome of arbitration has no unilateral right to appoint an Arbitrator. Besides, there is nothing on record to show that objection in this regard was taken by the appellants before the learned Arbitrator. Rather, the appellants continued to participate in the proceedings before the learned Arbitrator even after the amendment of 2015. Therefore, the appellants having tacitly consented to continuation of the arbitration proceedings, cannot raise objection in this regard at this stage. Thus, the said judgments do not come to the aid of the appellants and have no applicability to the facts of the present case.

22. This Court also notes that the corporate guarantor of appellant no.1, i.e., RBCL had too filed objections to the Arbitral Award, which came to be dismissed. Appeal against the same was also dismissed by Division Bench of this Court by its judgment dated 19th November, 2018 in *FAO (OS) (COMM) No. 253/2018*. Petition for *Special Leave to Appeal (C) No. 15201/2019* filed in the Supreme Court challenging the aforesaid judgment dated 19th November, 2018 also came to be dismissed as withdrawn by Supreme Court vide its order dated 09th January, 2023.

23. In view of the aforesaid detailed discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed.

MINI PUSHKARNA, J

MANMOHAN, J

SEPTEMBER 13, 2023
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