$~J-6

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

Pronounced on: 15.12.2023

\+ **O.M.P. 476/2012 & IA No. 5379/2023**

MORGAN SECURITIES & CREDITS PVT LTD ..... Petitioner
Through: Mr. Simran Mehta, Mr. Ankur Chawla and Mr. Shivam Tandon, Advs.

versus

SAMTEL DISPLAY SYSTEMS LTD..... Respondent
Through: Mr. Jay Savla, Sr. Adv. alongwith Mr. Sanjay Chhabra, Mr. Satish Choudhary and Mr. Dhruv Chawla, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] has been filed assailing the arbitral award dated 06.12.2011 read with order dated 10.01.2012 under Section 33 of the Act.

Factual Background

2. The factual background in the context of which the present petition has been filed is briefly enumerated as under:

3. A company i.e. Samtel Colors Limited (herein referred to as borrower) availed from the petitioner an Inter-Corporate Deposit (ICD) facility for a sum of Rs. 1,70,00,00,000/- on 12.02.2007. The same was granted subject to the borrower furnishing a surety/pledge of 11 lakh shares held by the respondent in the borrower company, as a security for repayment

of the outstanding amount under the ICD. It is the case of the petitioner that the said surety was given as a security for repayment of all outstanding amounts not only under the ICD but also "any other existing or future agreement".

4. It was the case of the respondent (claimant) that the borrower repaid the ICD on 19.11.2007 and thereby the borrower stood discharged. Consequently, the respondent (claimant) being the surety, automatically stood discharged and the petitioner herein was bound to return the shares pledged by the respondent (claimant). It was the case of the respondent (claimant) in the arbitration proceedings that the petitioner herein instead of returning the shares, unlawfully retained the same. In the above background, the respondent (claimant) herein invoked arbitration seeking to raise the following claims:

(i) **Claim no.1**: For return of 11,00,000 (Eleven Lakh) shares pledged to the petitioner.

(ii) **Claim no. 2**: Claim of Rs. 44,00,000/- on the averment that as on 26.04.2007 (the date when the pledged shares should have been returned), the market value of the shares was Rs. 21 per share whereas the market value of the shares on the date of the filing of the claims was Rs. 17 per share, resulting in a loss of Rs. 4 per share. In support of the said claims, the statement of claim contained the following averments :-

> "*Claim No.2*
> *Claim of Rs.44,00,000 (Rupees Forty Four Lacs Only) since as on 26/4/2007 when the shares should have been returned the average market value of Borrower"s Shares was Rs.21 per share. First Party had the opportunity to sell the Shares as on that date. The market value of Shares as on date of filing of claims is Rs.17 per share, hence loss of Rs. 4 per share*

[1] the „Act"

amounts to Rs.44,00,000/- (Rupees forty four lacs only). The charts downloaded from the Internet showing the details of prices of Shares of First Party as on 25/4/2007 and as on date of filing of the present statement of claims are annexed hereto and marked as ***ANNEXURE-F (COLLY)****. However, this claim may be modified when the shares are actually returned by the Second Party to the First Party depending on the market value of the Shares;"*

(iii) **Claim no. 3:** Claim of Rs. 1,24,74,000/- being interest @18% p.a. from April 2007 (when the pledged shares ought to have been returned) till the date of filing of the statement of claim. This claim was raised on the basis that the average price per share was Rs. 21 as on 26.04.2007 when, according to the respondent the shares were liable to be returned to it.

(iv) **Claim no. 4:** The claim for future loss on the shares along with the future interest @ 18% p.a.

(v) **Claim no. 5**: Direction seeking that the petitioner be directed to return the shares to the respondent/claimant.

5. Parallel to the arbitration which is the subject matter of the present petition, the petitioner also initiated arbitration proceedings against the borrower in respect of unpaid dues under a bill discounting facility dated 09.11.2004. The said proceedings culminated in an Award dated 06.12.2011 in terms of which certain money was awarded to the petitioner recoverable from Samtel Color Limited (borrower). The said Award is subject matter of separate proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 resulting in judgment/order dated 14.05.2012 passed in O.M.P (COMM.) 454/2012 followed by judgment dated 01.02.2013 in FAO(OS) 357/2012. Pursuant to the remand, the said petition under Section 34 of the Act, is stated to be still pending.

6. The arbitration proceedings which are the subject matter of the

present petition in which the respondent herein was claimant, culminated in an arbitral award dated 06.12.2011.

The Award

7. With regard to Claim no.1 (supra), the impugned award holds as under :-

> *"18. Admittedly amount of ICD with other dues was repaid on 19.4.2007 by ·the borrower, therefore, to my mind, security furnished by the claimant could not continue thereafter. Vide para 11 claimant under took to remain liable till the entire amount of ICD facility was paid off in full together with interest, costs, charges & expenses. The expression used in para 13 i.e. "whether under the present agreement or under any other existing or future agreement" has to be read with the opening words of this para which says "Securities shall be a continuing security to the lender for all moneys which are due from the Borrower for the entire amount of ICD facility in full together with interest, overdue interest, costs etc." It is in this context that the words whether under the present agreement or under any other existing or future agreement was used. This expression has a direct nexus with ICD facility and not to any other agreement to which claimant was not a party.*
>
> *19 . If the intention of the parties was to make the claimant liable for the past due of the borrower, it ought to have spelled out in the letter of pledge itself. Surety can"t be taken by surprise. How could he know that borrower owned certain amounts to the respondent under some other contract namely Bill discounting facility to which claimant was not party. Hence claimant could not have imagined. any other liability of the borrower under any other agreement. Any other existing agreement has to be read 'ejustem genesis' with the opening words of para 13. Black Dictionary sixth edition defines 'ejustem genesis" to mean in construction of laws, the ejustem genesis rule is where general words follow an enumerative of things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to things of the same general kind or class as these specifically mentioned. In this case opening words of para 13 are words of particular and specific meaning. Para opens with the word that "Securities shall be a continuing security to the lender for all moneys which are due from the Borrower for the entire amount of ICD facility in full together with interest, overdue interest, costs etc. remain unpaid. Therefore the expression whether under any other existing or future agreement are only general words which cann"t be read in their widest extent. These words have to be understood keeping in view the openings words of para 13.*

20. Para 8 of the letter of pledge authorizes the respondent to sell the shares if borrower failed to repay ICD to liquidate the amount due and then adjust amount outstanding against ICD. It does not whose authorizes the respondent to sell the shares and, adjust the amount pertaining to any amount due against some other contract lien of the respondent, to my mind, came to an end the moment borrower repaid the ICD along with other dues mentioned in the letter of pledge.

21. For the reasons stated above I hold that respondent is to return the Rs.11,00,000/- (Rupees Eleven lakhs) shares to the claimant."

8. With regard to Claim no.2 (supra), the impugned award holds as under :-

"22. Now turning to the question of difference of value of shares, claimant has failed to establish the same. There is no evidence as to what was the value of each share when pledged. In Claim No.2, the claimant has alleged that market value of each share was Rs.21/ - and that at the time of filing the statement of claim it went down to Rs.17/per share. In none of the correspondence exchanged between the parties claimant ever mentioned the value of each share when pledged or the market value of the shares on the date letters were written or legal notice was given. In the letter of 9th August 2007" Annexure D" it is stated market value of the security was not less than Rs.3.40 crores "Not less than" is neither here nor there.

23. In claim No.2, the claimant has mentioned that the average market value of Borrower"s share was Rs.21/ -per share. For this no supporting evidence has been placed on record. Neither the value of the shares at the time of pledge is proved nor at the time of filing this claim petition. Charts download from the Internet is no evidence in the eye of law nor it can be relied.· In fact this has not been proved in accordance with law. Hence this claim is decided against the claimant."

9. With regard to Claim no.3 (supra), the impugned award holds as under:-

"24. Claimant would be entitled to interest on the value of 11 lacs shares. Claimant has put value of each share at Rs.17/ -. The amount of 11 lakhs shares would work out to Rs.1,87,00,000/-. On this amount claimant would be entitled to interest @ 9% p.a. from the date statement of claim was filed till realization."

10. With regard to Claim no.4 (supra), the impugned award holds as

under:-

> *"25. So far as this claim is concerned as per Claimant"s own showing it is premature. Hence question of awarding future interest @18% does not arise."*

Submissions on behalf of the parties

11. In the above conspectus, the petitioner has assailed the impugned arbitral award primarily on the ground that there is inconsistency/contradiction in the findings/conclusions rendered with regard to claim no.2 & 3 (supra). It is submitted that while adjudicating claim no.2 & 3, it has been categorically held that the respondent (claimant) had failed to establish that the market value of each pledged share was Rs. 21 at the time when the shares were liable to be returned and/or that the value thereof had gone down to Rs. 17 per share, at the time of filing of the statement of claim.

12. It is contended that despite rendering the aforesaid findings, claim no.3 has been adjudicated on the basis that the value of each share was Rs.17 per share. Consequently, for the purpose of claim no.3, the value of 11,00,000 shares has been worked out at Rs. 1,87,00,00,000/-; on this amount interest has been granted to the respondent (claimant) from the date of filing of the statement of claim till its realization.

13. It is contended that contradiction in the findings of the impugned award is apparent on the face of the award. Consequently, the award cannot be sustained.

14. It is further contended that the respondent (claimant) itself filed a petition assailing the findings rendered in para 22 and 23 of the impugned award; the said petition came to be dismissed by a Coordinate Bench of this Court vide judgment/order dated 14.05.2012 in O.M.P (COMM.) 459/2012.

15. Reliance is placed on para 5 of the aforesaid judgment/order dated 14.05.2012 to contend that the challenge of the respondent (claimant) to the findings rendered in respect of claim no.2 having been comprehensively rejected. It is all the more untenable to sustain the finding/conclusion qua claim no.3, inasmuch as it has been presumed that the value of claim in shares of the respondent (claimant) was Rs. 17 per share, for the purpose of claim no.3.

16. *Per contra*, learned senior counsel for the respondent has drawn attention to the pleadings filed before the learned sole arbitrator in respect of claim no.2 & 3 and has sought to contend that the price of shares on the date of pledge and the date of filing of statement of claim stands proved. Reliance in this regard has been placed on the pleadings filed in the arbitration proceedings.

17. It is further contended that the shares continued to be shown as pledged in the records of the concerned depository were to the effect that the petitioner has wrongfully failed to return the pledged shares. It is further contended that the value of shares as on 25.01.2008 was Rs. 21.5/- per share as is borne out from the documents filed by the petitioner along with its application under Section 17 of the Act. It is reiterated that the loan was repaid i.e. in April 2007 and the value of the shares as stated was not less than Rs. 21/- per share. However, on 01.07.2010 as per the data downloaded from the "moneystock" BSE website, the pledged shares were priced at Rs. 17 per share.

18. An affidavit dated 15.03.2023 has also been purported to be filed seeking to place on record the price of the pledged shares from time to time as reflected on the official website of BSE. It is also averred in the said

affidavit that the pledged shares continued to be reflected on the records of the concerned depository participant of the respondent (claimant).

Analysis and Conclusion

19. This Court is conscious of the limited scope of interference with arbitral awards in exercising jurisdiction under Section 34 of the Act. The law is well settled that an arbitrator is the final arbiter on factual issues. Further, the interpretation of the terms of the contract between the parties is within the domain of the arbitrator. While examining an arbitral award on the touchstone of Section 34 of the Act, it is impermissible for this Court to embark upon reappraisal of the factual and evidentiary aspects. Further, this court will defer to the arbitral award as long as the view taken by the arbitral tribunal is a possible view, even if it is not a plausible view.

20. Only if the award is so palpably perverse that it can be said that no reasonable person can arrive at the conclusion which the arbitrator has arrived at, would it be permissible to interfere with the impugned arbitral award in exercise of jurisdiction under Section 34 of the Act.

21. On appraisal of the impugned award on the touchstone of the settled parameters, the impugned award is liable to be set aside on the ground of being perverse and being vitiated by patent illegality for the reason that there is a direct contradiction between the findings rendered in the impugned arbitral award *vis-a-vis* claim no.2 and claim no.3.

22. As is evident from a perusal of the findings rendered in the impugned award in respect of claim no. 2, it has been categorically held that :-

(i) the respondent (claimant) has failed to prove that the market value of the concerned shares was Rs. 21/- per share as on 26.04.2007.

(ii) That the value of shares was Rs. 17/- per share at the time of filing

of the statement of claim.

23. It has been categorically found that "neither the value of shares at the time of pledge is proved nor at the time of filing this claim petition". Further, with regard to the charts downloaded from the internet sought to be relied upon by the petitioner before the Ld. arbitrator and also sought to be relied upon in affidavit dated 16.03.2023 filed in the proceedings, it has been held in the impugned award that "*the charts downloaded from internet is no evidence in the eyes of law, nor can it be relied upon*".

24. The respondent (claimant) challenged the aforesaid findings contained in para 22 and 23 of the impugned award, which are comprehensively rejected by this Court vide judgment/order dated 14.05.2012 in O.M.P No. 459/2012 in the following terms :-

> *"5. Learned counsel for the Petitioner was unable to show what evidence was placed before the learned Arbitrator in support of its assertion that the average market value of the share was Rs. 21/- per share. The only evidence which was referred to were the charts downloaded from the Internet. It was submitted that since both the parties had agreed not to lead oral evidence, and go by the documents placed on record, the learned Arbitrator ought not to have insisted on any further proof. This submission is without merit. It was incumbent on the Petitioner to substantiate its claim through credible evidence. The fact the Petitioner did not choose to lead oral evidence, did not mean that it was relieved of the burden of proof. It did not mean whatever document was placed by it had to be accepted ipso facto by the Arbitrator without insisting on proof."*

The aforesaid findings have admittedly attained finality.

25. Thus, the value of the pledged shares as asserted by the respondent (claimant) *vis.* Rs. 21/- per share as on 26.04.2007 and Rs.17/- per share (at the time of filing of statement of claims) was not accepted in the impugned award while adjudicating claim no.2. However, in an utter contradiction of the said findings, the impugned award assumes the value of these shares to

be to the tune of Rs. 17/- per share, for the purpose of adjudication of claim no.3. Furthermore, for the purpose of adjudicating claim no.3, the impugned award does not even mention the date on which it is presuming the value of each share to be Rs.17/- per share. In the statement of claim as filed by the respondent (claimant), claim no.3 was advanced on the basis that the average price per share was Rs. 21/- as of 26.04.2007 and it was on this basis that it was sought to be asserted that the respondent (claimant) was deprived from utilizing the amount representing the value of shares (on the basis that the value of shares stood at Rs. 21 per share as on 26.04.2007). Even the respondent (claimant) did not assert that the value of the shares for the purpose of claim no.3 should be taken to Rs. 17 per share.

26. Thus, the impugned award, while adjudicating claim no.3 proceeds in a manner which is at variance with the case set up by the respondent (claimant) itself. This is apart from the aspect of direct contradiction between the findings in respect of claim no.3 *vis-a-vis* findings qua claim no.2.

27. The attempt on the part of the respondent (claimant) to file an affidavit in these proceedings, without taking leave of this Court, purportedly for the purpose of establishing the value of shares, is also in contravention of the judgment of the Supreme Court in ***M/s Alpine Housing Development Corporation Pvt. Ltd. Vs. Ashok S Dhariwal and Others***[2] wherein it has been held as under:-

> *"The ratio of the aforesaid three decisions on the scope and ambit of Section 34(2)(a) pre-amendment would be that applications under Section 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in Section 34(2)(a) and Section*

[2] 2023 SCC OnLine SC 55

> *34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under Section 34 of the Arbitration Act, the issues are not required to be framed) otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings) the said object will be defeated; an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator) however) if there are matters not containing such records and the relevant determination to the issues arising under Section 34(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties) the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore) in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under Section 34(2)(a),* ***then the party who has assailed the award on the grounds set out in Section 34(2)(a) can be permitted to (i.e. affidavit in the form of evidence. However, the same shall be allowed unless absolutely necessary."***

28. In any event, the failure on the part of the respondent (claimant) to establish the price of shares in the arbitration proceedings stands conclusively affirmed by a coordinate Bench of this Court while deciding the respondent/claimant‟s petition against the very same award. As noticed hereinabove, the Coordinate Bench of this Court has taken a view that the petitioner failed to discharge the burden of proof in the arbitration proceedings to establish and prove the value of shares (Rs. 21/- per share as on 26.04.2007 and Rs. 17/- per share on the date of filing of statement of claim).

29. In light of the aforementioned inherent inconsistency and internal contradiction within the award, this Court is constrained to set aside the award qua claim no.3.

30. The law is well settled that an award suffering from such internal contradictions would be perverse and patently illegal. The Supreme Court in ***McDermott International Inc. v. Burn Standard Co. Ltd.***, (2006) 11 SCC 181, has held as under:-

> ***"Vis-à-vis the duty to assign reasons***
>
> *55. Another important change which has been made by reason of the provisions of the 1996 Act is that unlike the 1940 Act, the arbitrator is required to assign reasons in support of the award. A question may invariably arise as to what would be meant by a reasoned award.*
>
> *56. In Bachawat's Law of Arbitration and Conciliation, 4th Edn., pp. 855-56, it is stated:*
>
> > *"... „Reason" is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.*
> >
> > *The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration. In re, „proper, adequate reasons". Such reasons shall not only be intelligible but shall be a reason connected with the case which the court can see is proper.* ***Contradictory reasons are equal to lack of reasons.***
> >
> > *The meaning of the word „reason" was explained by the Kerala High Court in the contest of a reasoned award....*
> >
> > *„Reasons are the links between the materials on which certain conclusions are based and the actual conclusions...."*
> >
> > *A mere statement of reasons does not satisfy the requirements of Section 31(3). Reasons must be based upon the materials submitted before the Arbitral Tribunal. The Tribunal has to give its reasons on consideration of the relevant materials while the irrelevant material may be ignored....*
> >
> > *Statement of reasons is a mandatory requirement unless dispensed with by the parties or by a statutory provision."*

> *57. In Konkan Rly. Corpn. Ltd. v. Mehul Construction Co. this Court emphasised the mandatoriness of giving reasons unless the arbitration agreement provides otherwise."*

31. In ***Union of India v. V. Pundarikakshudu and Sons***, (2003) 8 SCC 168, it has been held as under:-

> *"31. In this case the District Judge as also the High Court of Madras clearly held that the award cannot be sustained having regard to the inherent inconsistency contained therein. The arbitrator, as has been correctly held by the District Judge and the High Court, committed a legal misconduct in arriving at an inconsistent finding as regards breach of the contract on the part of one party or the other. Once the arbitrator had granted damages to the first respondent which could be granted only on a finding that the appellant had committed breach of the terms of contract and, thus, was responsible therefore, any finding contrary thereto and inconsistent therewith while awarding any sum in favour of the appellant would be wholly unsustainable being self-contradictory."*

32. Recently, this court in ***Jaiprakash Associates Ltd. v. NHPC Ltd***., 2023 SCC OnLine Del 3295, set aside an arbitral award containing contradictory findings. The relevant extracts of the said judgment are as under:-

> *"43. A perusal of the relevant portion of the Award shows that the Majority Tribunal clearly noted that the petitioner failed to produce any material basis which the quantum of the award could be arrived at. In the absence of any material substantiating the claim of the petitioner, which was originally of more than 300 crores, was decided to be fixed at 60 Crores. This amount of compensation has been fixed despite there being a clear contradictory finding that the case put forward by the petitioner herein was not established. At this juncture, this Court refers to the judgment passed by the Calcutta High Court in State of West Bengal v. Tapas Kumar Hazra, AP 1036/2011 dated 25th August 2022, wherein it was found the arbitral tribunal had given award in contradiction to its findings and hence it was set aside for the same reason.*
>
> *44. Every judicial authority is required to apply its mind to the case at hand while adjudicating the same, and to furnish the reasons for its findings. An arbitral tribunal is also considered a court for the purposes of adjudication of claims before it and is often subject to the requirement of providing*

reasons while granting a party any relief, not for the purposes of adjudicating the validity of an order but for the satisfaction, understanding and notional justice for all the parties involved. In the instant case, providing reasons was imperative especially because the learned Arbitral Tribunal specifically noted that the claimant, i.e. petitioner herein, had not properly established its case and also that the respondent herein was not responsible for the overstay of the petitioner at the site. Without fixing responsibility of payment of compensation, a significant amount of Rs. 60 Crores, without any basis, has been levied upon the respondent.

45. Certainly, there is nothing in the language of the Award which shows that any reasonable considerations to the claim have been given to say that the petitioner was entitled to a sum of Rs. 60 Crores. As per the mandate of law, by the plain reading of the Section 31(3) of the Act and by the reference to judicial pronouncement reproduced above, it is evident that the case of the petitioner falls under the principle of no-evidence. The Arbitral Tribunal has failed to delineate and specify any reason for fixing the amount of Rs. 60 Crores as additional cost in favour of the petitioner and against the respondent.

46. Moreover, in the absence of any substantiating evidence, the Majority Tribunal went on to decide the claim and the quantum thereof ex aequo et bono, that is, on the basis of equity and conscience, which is specifically barred under Section 28(2) of the Act when there is no express agreement or authorization on behalf of the parties in favour of the Arbitral Tribunal to act in such manner. The position has been settled by the Hon'ble Supreme Court in P. Radhakrishna Murthy v. National Buildings Construction Corp. Ltd., (2013) 3 SCC 747, by this Court in DMRC v. Kone Elevators India (P) Ltd., 2021 SCC OnLine Del 5048, and by the Bombay High Court in Board of Control for Cricket in India v. Deccan Chronicle Holdings Ltd., 2021 SCC OnLine Bom 834.

47. Accordingly, this Court finds force in the argument that the findings of the Majority Tribunal while deciding additional costs and the quantum thereof was based on no evidence and no reason."

33. In the circumstances, the impugned award is set aside to the extent of the findings/directions rendered in respect of claim no.3 in the arbitration proceedings.

34. The present petition, along with the pending application/s stand disposed of in the above terms.

DECEMBER 15, 2023/AT **SACHIN DATTA, J**